

Informal Land Delivery Processes in Kampala, Uganda

Summary of findings and policy implications

Emmanuel Nkurunziza



International Development Department
School of Public Policy
The University of Birmingham
England

Makerere University
Faculty of Technology
Department of Surveying
P.O Box 7062, Kampala, Uganda

Contents

Preface	1
Introduction	4
- Policy implications	
Context	8
- The pre-colonial socio-political context	
- The colonial environment	
- The post-colonial context	
Land tenure	12
- Pre-colonial land tenure	
- Land tenure changes in the colonial era	
- Post-colonial formal institutions of land tenure	
Kampala	16
- City evolution and development dynamics	
- Formal mechanisms of land access	
Land delivery	23
- Increased land demand and commercialisation	
- Access to land by disadvantaged groups	
- Acquiring land through purchase - motivations and processes	
- Acquiring land through inheritance - custom and legal provisions	
- The strengths and weaknesses of various land delivery mechanisms	
- Nature of the institutions that underpin and regulate informal land access	
Policy implications	32
Appendix	37
Footnotes	38
Publications	40

International Development Department
School of Public Policy, J G Smith Building,
The University of Birmingham, Edgbaston, Birmingham B15 2TT, UK

Website: www.idd.bham.ac.uk

Preface

Informal land delivery processes in African cities

Why research informal land delivery processes?

The colonial powers in Africa introduced urban land administration systems that were modelled on the systems of their home countries. The extent to which indigenous tenure systems were understood, recognised and incorporated varied from colony to colony, but it was generally believed that only a formal system based on a European model could provide a framework for urban development and protect the rights of urban property owners (who at that time were expatriates). These land administration systems, which were inherited at independence, are governed by formal rules set out in legislation and administrative procedures. However, the legislative provisions and the administrative systems that were established to implement them proved quite unable to cope with the rapid urban growth that occurred after independence.

The state-led approaches to development favoured in the 1960s and 1970s were associated with large-scale public intervention in urban land delivery systems. However, the cost of implementation and compliance has been too high for low-income countries, cities and inhabitants. At their extreme, land and property markets were perceived as ineffective or exploitative. These views were translated into attempts to de-marketise land by nationalisation and/or government control over land market transactions. Whether or not the concepts on which such land policies were based were sound, limited capacity at national and municipal levels ensured their failure. Administered land supply has very rarely met demand and attempts to regulate and register all transactions in land and property have been universally unsuccessful. As a result, most land for urban development has been supplied through alternative channels.

In the early years of rapid rural-urban migration many households, including poor households, were

able to get access to land to manage the construction of their own houses for little or no payment, through ‘squatting’ or similar arrangements. Following research in the 1960s and 1970s, there was a feeling that the processes of ‘squatting’ and the allocation of customary land by legitimate rights holders were fairly well understood. Upgrading projects of the 1970s were designed and implemented on this basis.

Most countries have now reversed some of the most extreme versions of state intervention, but other components remain despite serious implementation failures. There is considerable doubt about whether recent attempts to improve land management will be any more successful than previous approaches. In part, pessimism about the prospects for efficient and equitable urban land management arises from the continued lack of resources and capacity in government, but it also stems from doubts about the appropriateness of the principles and concepts on which recent urban land policies have been based.

Much research on land and property in African towns and cities assumes that the state has both the duty and the capacity to take on a major interventionist role in land management. It concentrates on documenting and explaining the failures (and more rarely successes) of state interventions. Despite their significant role in providing land for urban development, there has been relatively little recent in-depth research on processes of informal land delivery or the institutions (rules and norms of behaviour) that enable them to operate and that govern the relationships between the actors involved. To improve policy and practice, a better understanding is needed of how formal and informal systems operate, interact and are evolving.

Aims of the research

The aim of the project was to improve understanding of informal land delivery processes in six African cities and their relationships with formal land administrative systems. It analysed the

characteristics of informal land markets and delivery systems

- to increase understanding of the institutions that underpin and regulate transactions and disputes in land
- to assess the strengths and weaknesses of alternative land delivery mechanisms, especially with respect to the extent to which they enable the poor and other vulnerable groups (especially women) to access land with secure tenure, and
- to identify and explore implications for policy.

The comparative research project

Coordinated by Carole Rakodi of the University of Birmingham and Clement Leduka of the National University of Lesotho, studies were undertaken in six medium-sized cities in Anglophone Africa, in all of which informal land delivery systems are important, but which also typify different colonial and post-colonial policies, legal frameworks, governance arrangements and experiences. The cities and the local researchers were:

Eldoret, Kenya	Rose Musyoka, Department of Physical Planning, Government of Kenya
Enugu, Nigeria	Cosmas Uche Ikejiofor, Federal Ministry of Works and Housing, Gusau, Zamfara State, Nigeria
Gaborone, Botswana	Faustin Kalabamu, Department of Architecture and Planning, and Siamsang Morolong, Department of Law, University of Botswana
Kampala, Uganda	Emmanuel Nkurunziza, Department of Surveying, Makerere University
Lusaka, Zambia	Leonard Chileshe Mulenga, Institute for Social and Economic Research, University of Zambia
Maseru, Lesotho	Clement Leduka, Department of Geography, National University of Lesotho

The aims of the project and the methodological approach were jointly developed by the researchers. Findings and policy issues were discussed at workshops in each of the cities, to obtain feedback from relevant stakeholders and make a contribution to current debates about land policy and administration in each of the countries studied. The research teams generally identified some of the policy implications of their findings rather than making detailed recommendations, because the researchers all believe that policy formulation and legislative change should be negotiated processes involving all the stakeholders in land management.

The research was funded by the UK Department for International Development. DFID supports policies, programmes and projects to promote international development. It provided funds for this study as part of that objective but the views and opinions expressed are those of the authors alone.

The project in Kampala

Uganda was included in the study as an example of an East African country that was a British protectorate, in particular one in which British colonial administration and subsequent post-colonial governments altered the powers of existing traditional authorities, which nevertheless have remained strong. Uganda also presents an example of those African countries whose post-colonial history has been characterised by major political and economic crises that have impacted on the state's ability to formulate and implement coherent land policies. Like most other past attempts at land reform, current endeavours to streamline the ownership and use of land, as specified in the Land Act, 1998, are registering little progress.

The research was carried out by Emmanuel Nkurunziza of Makerere University, Department of Surveying with the assistance of a research team comprising John Berch Barugahare (research associate) and research assistants: Eva Gakumba, Martha Nyakato, Bernard Baitwababo, Sumini Nansubuga, Apollo Makumbi and Adrine Atwine. I am deeply grateful to all the LC I chairpersons and their committees, particularly Thomas Munyarugamba of Kamwokya II, Ismail Kayondo of Busega and Pascal Habimana of Mbuya I, for the great assistance rendered during our field study. Perhaps, the greatest gratitude should go to the various individuals and households who were the subjects of this study. For most households in the three study settlements, family sustenance derives from daily earnings of the heads of household. For these heads of household to willingly and enthusiastically commit their valuable time to this study, which provided no direct benefit to them or their families, was remarkably humbling on my part. In this category I will also include the various officials in Kampala City Council, Ministry of Lands, Directorate of Human Settlements, National Archives and Uganda Bureau of Statistics, who, despite their busy schedules, were able to spare time

and provide me with the information I needed. To them all, I am eternally grateful. Finally, many thanks to all those individuals who participated in the policy dissemination workshop held in Kampala on March 24th, 2004.

Following the workshop, a full report of the study was published as Nkurunziza E. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Kampala, Uganda*, Birmingham: University of Birmingham, School of Public Policy, Informal Land Delivery Processes in African Cities Working Paper 6 (ISBN No. 0 7044 2253 0, see also www.idd.bham.ac.uk/research/researchprojs.htm)

For further information contact Dr Emmanuel Nkurunziza, E-mail E.Nkurunziza@bham.ac.uk

Introduction

The formal land delivery systems in African cities, including Kampala, based on legal concepts and administrative systems introduced by colonial and pre-colonial governments, have proved unable to cope with the demands of rapid urban growth in contexts of extreme poverty and limited state capacity. In practice, most land for urban development, especially that occupied by the poor, is supplied and developed outside state regulatory frameworks. There has been little in-depth research on these informal urban land development processes, often simplistically labelled ‘squatting’, despite the inefficacy of formal systems and mounting evidence of the importance of secure access to land and housing to the livelihood strategies of poor urban households. Arguably, attempts to devise land administration and delivery systems capable of providing a supply of urban land sufficient to satisfy demand and meet the needs of low income households for secure tenure should build on the success of large scale informal land delivery, as well as addressing its shortcomings. To make this possible, a better understanding is needed of how formal and informal systems operate, interact and are evolving.

The **aim** of this research was to improve understanding of informal urban land delivery processes in Kampala, particularly mechanisms by which the poor obtain access to land. The **objectives** are:

- a) to analyse the magnitude and characteristics of informal land markets and delivery systems
- b) to enhance understanding of the nature and dynamics of the institutions¹ that underpin and regulate urban land markets, especially those operating in informal land delivery systems
- c) to assess the strengths and weaknesses of alternative land delivery mechanisms, especially with respect to the extent to which they enable the poor and other vulnerable groups, especially women, to access land with secure tenure
- d) to identify and explore the implications for policy.

Evidence is emerging that informal systems for delivering, accessing and developing land are neither chaotic nor anarchic, but are structured by institutions that enable transactions and regulate relations between actors. Inherited formal land administrative systems and their successors are, in theory, governed by formal rules, while ‘traditional’ tenure systems are regulated by ‘custom’ or informal, generally unwritten, rules. In urban areas, land transactions and conflicts are structured by hybrid institutions, which are neither strictly formal nor informal. However, the nature of these institutions, their source of legitimacy and the potential implications for urban land policy have not, as yet, been systematically examined and analysed.

The main **hypothesis** of this study was that the success of informal land delivery systems in delivering large quantities of land for urban land development can be attributed to their social legitimacy, but that the institutions that regulate transactions in and the use of land come under pressure during the process of urban development, resulting in changes, borrowing from formal rules and/or breakdown. To devise workable land policies and tenure systems, which are capable of meeting the demand for urban land with secure tenure, especially for the poor, avoid the adverse results of unplanned development; and command social legitimacy, a better understanding of evolving processes of land development is needed.

To achieve the aim and objectives listed above, the research sought to answer the following **questions**:

- a) What is the legal, political and economic context of land development processes and institutions and how has this context changed over time from the colonial era to the present?
- b) What is the nature of the institutions that regulate the land development process and land transactions in Kampala?
- c) What are the strengths and weaknesses of these processes and institutions in terms of the delivery of affordable land to the poor and vulnerable groups, especially women?

- d) What is the extent and source of legitimacy of institutions underlying transactions in land?
- e) How do various stakeholders, especially poor homeowners, perceive the effectiveness and legitimacy of the processes by which they gain access to land, as well as their weaknesses?
- f) What policy lessons may be drawn from this assessment, with respect to land management and ensuring access to secure and affordable tenure by the poor and vulnerable?

The nature of this study necessitated a carefully planned methodological approach employing appropriate data collection techniques and research conduct. Care was necessary because the study focused on informal activities undertaken outside the law and expected “households to expose details of illegal activities, intimate aspects of livelihood and survival strategies, [which might create] tension between researcher and researched, since it is not always clear to households why they are being asked about initiatives which are illegal”². The study adopted a multi-method approach involving secondary (documentary) data search, a questionnaire survey, focus group discussions and qualitative interviews. A brief discussion of how these techniques were employed is given in the appendix. Just like the data collection techniques, study areas had to be carefully selected. In order to gain an understanding of how informal institutions evolve and whether they are modified or break down as settlement population density increases, it was important that examples of settlements at different stages of development – informal settlements, consolidating settlements and old established or mature settlements - were selected. Given the differences in tenure systems in Kampala, particularly *mailo* areas (see below) and other forms of landholding, such as former public land areas or church land, it was considered important that areas representative of the city’s tenure systems were chosen. For comparison purposes, areas with similar status within the local government system were selected. The Parish level was found to be most

appropriate with respect to spatial extent and demographic composition. Because administrative units in Uganda are first and foremost based on population figures, the study areas selected varied considerably in size since they were of contrasting population densities.

The case study settlements that were eventually selected are: Kamwokya II, Mbuya I and Busega (see Fig. 1). Background information on these settlements is provided in the main report of this study but suffice it to say that Kamwokya II is one of the most densely populated settlements in Kampala and is located in the Central Division, on *mailo* land. Referring to the selection criteria described above, Kamwokya II represents an old established or mature settlement on *mailo* land. Busega, on the other hand, is located on the city periphery and has one of the lowest densities in the city. It is also located on *mailo* land, including that belonging to the Kabaka and managed by the Buganda Land Board (see the following section). Because the two settlements share tenurial characteristics and differ significantly with regard to the stage of development and population density, they should provide appropriate comparative cases to test the hypothesis on the dynamics of social institutions as settlements consolidate. While existing literature does not suggest any link between land tenure systems and the operation of informal land management institutions, for exploratory purposes and reasons of representativeness, another settlement located on land held under tenure systems other than *mailo*, was selected. Mbuya I is a medium density consolidating settlement that has developed on former crown/public and church land.

In this summary, first the historical evolution of the economic and socio-political context of Uganda is summarised, with an emphasis on the part of the country in which Kampala is located. The evolution of land tenure and management systems in Uganda and the growth and development of the city of Kampala are then described. The main section of

the report presents the findings of this research, with respect to the current channels through which land is delivered for urban residential use. Finally, the main policy implications of the research are identified. These are also summarised below.

Policy implications

In view of the decreasing availability of affordable plots through either formal or informal channels, options to enable the poor to access land and adequate shelter should be explored, including rental housing, resource-pooling arrangements for group land acquisition and tenant-purchase housing.

The positive aspects of informal land delivery should be recognised, including its contribution to land and housing supply, especially for lower income groups, its often acceptable and affordable patterns of plot layout and development and its relatively simple and acceptable procedures.

The implications of alternative policies towards recognising informal settlements (regularisation, toleration, upgrading, eviction and demolition) should be explored through dialogue with all the stakeholders, with an emphasis on addressing the adverse consequences of informal settlements rather than prohibiting them altogether.

The rules governing bureaucratic behaviour with respect to land should be enforced.

The potential for the formal administration system to learn from informal approaches to adjudication, demarcation and recording land rights should be investigated, in order to devise procedures that are workable on a large scale and low cost.

The role currently played by Local Councils (LCs) in informal land access processes should be recognised and the potential for enhancing their contribution to planning and land management explored.

Because renewed population growth in Kampala dates from the establishment of stable government in the late 1980s, many occupants do not satisfy the 12-year requirement for claiming *bonafide* occupant status. This requirement should be reviewed.

The position of those who have acquired land from *lawful or bonafide* occupants also needs to be reviewed.

The appropriateness of encouraging freehold title in urban areas rather than leasehold should be reconsidered.

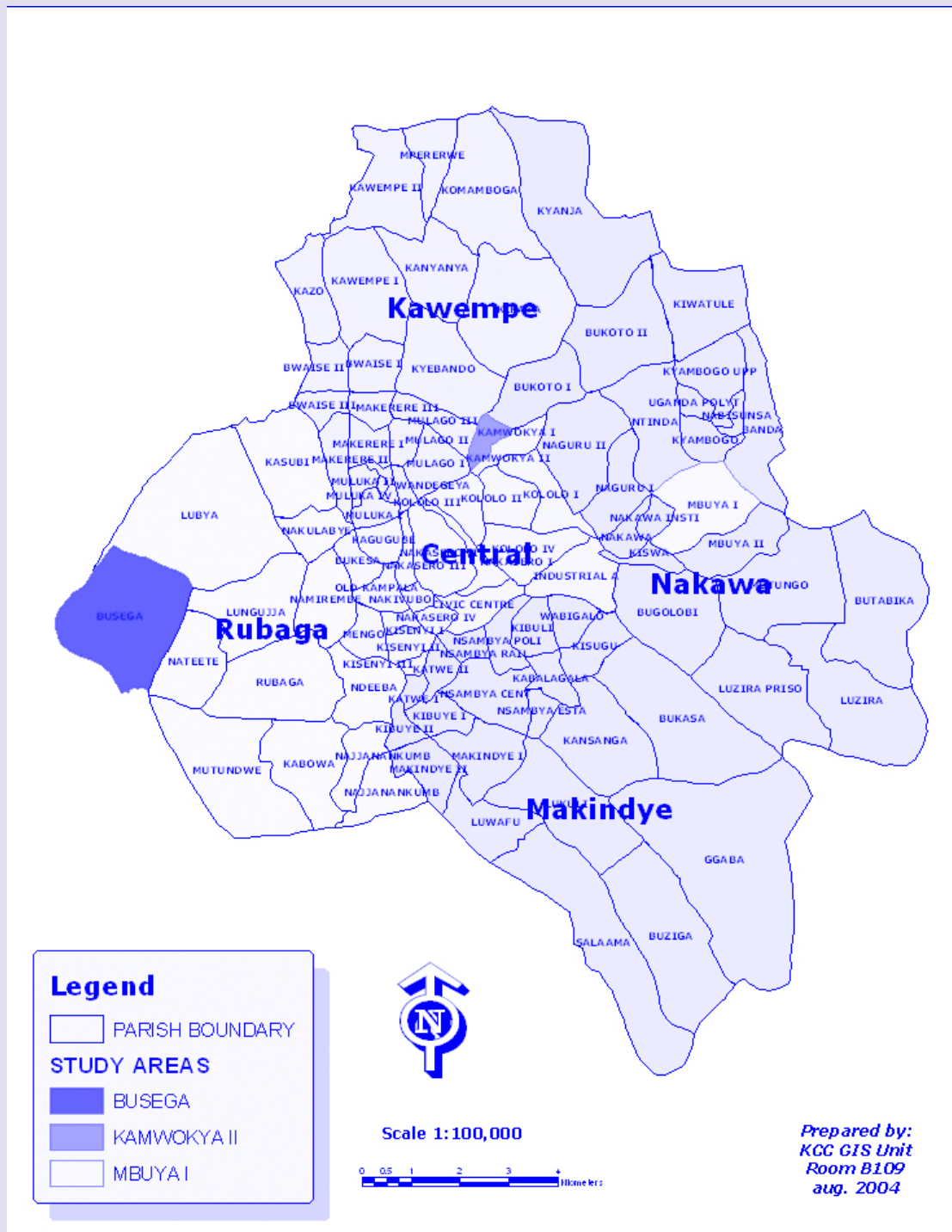
For new forms of tenure (certificates of occupancy and customary ownership) to be useful, their acceptability as evidence of land rights when applying for planning permission needs to be ensured.

The scope for decentralisation and delegation within the development control system should be explored.

In view of the failure to implement the Land Act 1998 (LA98) provision for the establishment of Land Tribunals and the LCs' continued fulfilment of relevant functions, legal recognition of their role in resolving disputes over land should be reconsidered.

As an integral part of the current legislative review, progress with the implementation of the LA98 should be assessed and the process and resource requirements for implementation identified and made available.

Figure 1: Selected study areas in Kampala



(Prepared by KCC GIS Unit for this study)

Context

The economic and socio-political context of land delivery

This study sought to understand the legal, political and economic context of land development processes and institutions in Kampala and how this context has changed over time. In this section the socio-political and economic development of Uganda is briefly summarised with a view to illuminating the environment within which land management and urban development institutions have evolved and operated.

The pre-colonial socio-political context

There is ample evidence in the literature on the pre-colonial kingdom of Buganda, which covered a significant part of contemporary Uganda (Figure 2), to suggest that the process of social development in the kingdom, at the time, was virtually all encompassing, involving complex relationships between the economy and the polity. The favourable ecological conditions, the absence of ethnic-based rank distinctions and the presence of class mobility made possible political centralisation, which became the basis for building infrastructure and collecting a larger surplus. This in turn provided the material basis for strengthening the very process of centralisation. The control of the ivory trade with Arabs, the consequent acquisition of the gun and the kingdom's monopoly over this new tool of violence/coercion further enhanced the process.

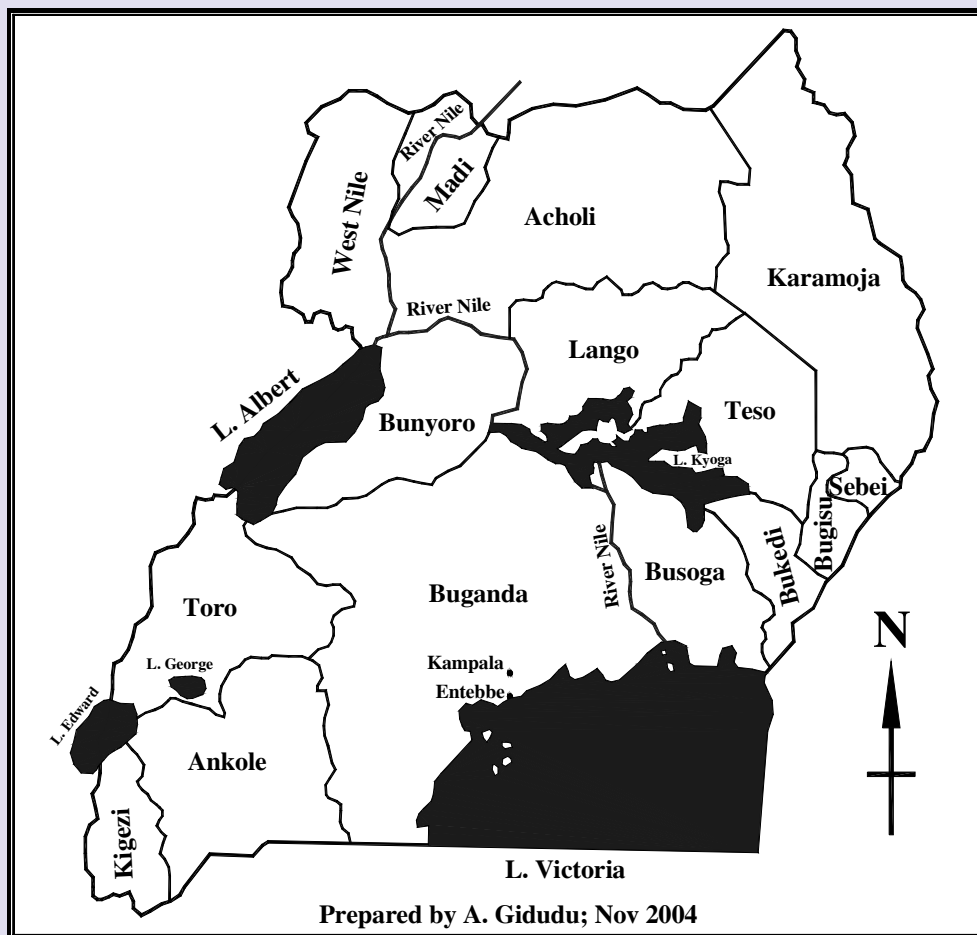
The favourable economic conditions in pre-colonial Buganda were further consolidated by the existence of an elaborate administrative system based on non-hereditary chiefs appointed by the Kabaka, largely based on their personal achievement on the battlefield and their loyalty to the Kabakaship. Their duties included mobilisation of the peasantry for productive work and warfare. Their obligations to the citizenry within their jurisdiction included provision of security and availing them land for cultivation. It was in the chief's interest that he treated his charges well, to prevent them from migrating to areas under the

control of other chiefs, which would result in him failing to meet the production quota set for his chiefdom by the Kabaka. This was an effective check on any excesses by the chiefs, as they all strived to satisfy the Kabaka while keeping those under their jurisdiction happy. Furthermore, the institution of the Bataka or clan heads, the custodians of the Ganda culture, provided an additional check on the powers of the chiefs. The relatively high level of political development of pre-colonial Buganda is attributed mainly to this system of social organisation that rewarded achievement through political appointments and offered reasonable levels of accountability through checks and balances within the institutions set up by the Kabakaship.

The colonial environment

Just like most of Africa the second half of the 19th century marked the advent and consolidation of colonial rule in the region, a process facilitated by the protestant chiefs in Buganda and Baganda agents in other territories of the protectorate. Colonialism, in general, and the role played by Baganda chiefs, in particular, in the process of colonial consolidation was to have profound implications for the socio-political structure of kingdom. These chiefs were quickly transformed into a ruling oligarchy/nobility through land allocations and other privileges, as enshrined in the 1900 Buganda Agreement, Buganda's *Magna Carta*. The ascendancy in power by the chiefly oligarchy was at the expense of the Kabaka and Bataka, and especially at the expense of the peasantry, who were left landless. Colonialism thus distorted the existing administrative framework by entrenching one group, the chiefs, and undermining the checks and balances that had served the kingdom very well. The land issue became a rallying point for protests by the latter two groups against the chiefs. While initially the colonial administration found the chiefs useful in implementing its policies, such as the initiation and supervision of cash crop cultivation, by 1920 imperial power was

Figure 2: Uganda in 1900 (prepared based on Kiwanuka, 1971)



sufficiently entrenched to propel itself without much reliance on the chiefs. This led to a decline in the power of the chiefs, but because of their status as big landlords, their descendants are still influential citizens in Buganda today.

One other consequence of British rule and economic development, worthy of note, paradoxical as it may seem, was a rustication of the Baganda. The chiefs no longer spent most of their time in the capital with their retinues, but were forced to reside in their districts, dispensing justice and collecting taxes. The common people no longer gathered together for war, road making and palace building but became strictly a peasantry, living permanently on and by the land in dispersed homesteads. The population, once

heavily concentrated around the capital, became more evenly diffused across the country. It is safe to say that Buganda was a less urban and consequently a less progressive and alert society in 1940 than it had been in the days just before colonisation.

The post-colonial context

The road to Uganda's independence was fraught with myriad problems, of which the resistance by Buganda to incorporation into a unitary Uganda has had, arguably, the most detrimental effect on the country's post-colonial political history. The Baganda's perception of themselves as ethnically superior, mainly because of the special treatment accorded to them by the colonial authorities, as well

as the desire of the Baganda chiefly class to protect its own interests, almost became an obstacle to the establishment of an independent Ugandan state. An uneasy compromise, granting Buganda a semi-federal status, was reached. However, this was not to last, as Obote sought to assert his authority and abolished the kingdoms altogether in 1966. The events of 1966/7 have had far reaching implications.

- First, the use of the military in settling political conflicts served to raise the profile of the army in the Ugandan polity and has since made it almost impossible to make the armed forces subservient to civilian authority. This has, arguably, led to a culture of militarism, which has characterised post-colonial Uganda and brought much suffering and destruction to the country. Idi Amin was a creation of the crisis, and the instability experienced during the post-Amin UNLF (Uganda National Liberation Front) governments were largely a result of the inability of successive civilian governments to control the army. The current NRM (National Resistance Movement) government also fought its way to power after a five-year armed conflict.
- Second, the unilateral abrogation of the independence constitution by Obote and the formulation of a new one that suited his political wishes set a very bad precedent for the rule of law in the country. Inevitably, the 1967 constitution and subsequent legislation lacked the legitimacy it needed to effect any of the social changes envisaged. Disregard for the rule of law peaked during Idi Amin's regime, when policy was formulated on the basis of the president's momentary whims; for instance Amin is said to have pronounced that the decision to expel Asians was revealed to him in a dream. It was also during Idi Amin's regime that the Chief Justice was dragged from his chambers and killed because of making a ruling in a court case that was unfavourable to the state. To restore the sanctity of the law, the NRM government undertook

nation-wide public consultations before the preparation of the 1995 constitution, although there are those who argue that the process was manipulated by the government to suit its political agenda. More importantly, however, the 'Buganda-Uganda' issue has not been laid to rest despite the restoration of the traditional institutions in 1993. There is still agitation for the restoration of Buganda's federal status and the return of all the kingdom properties appropriated by the central government.

With the limited legitimacy of the Obote I government and the pre-eminence of the military, Idi Amin took power in 1971. He presided over one of the most destructive periods in independent Uganda, which left the economy in ruins and cost about 500,000 civilian lives. The regime abolished virtually all civilian political institutions and the country was governed by decree. The predatory nature of the regime drove away the population from all state institutions, and led to rapid expansion of the informal economy. People responded to the irrational and unjust systems by building their own survival structures and ultimately by developing the capacity to challenge state authority. The Amin era was also marked by a retreat of the rural population into the subsistence economy and the collapse of the urban economy, accompanied by urban to rural migration. The civil service, which had already been weakened by the politics of the 1960s, was driven to near total collapse by Amin's terror regime. Some senior civil servants were murdered by state agents and others fled the country, while those who remained operated in terror of their illiterate military bosses.

After the overthrow of Idi Amin's regime, the primary task of those Ugandans who were responsible for the restoration of civil authority was to restore the legitimacy of central government institutions. Their ability to do so was weakened by their own internal divisions and their rival claims to legitimacy, which divided rather than united Ugandans. The search for control in post-Amin Uganda was ultimately a search for a new moral basis for society, and it was



Low density development on the edge of Busege settlement

The current government has so far accomplished much in terms of reviving the economy and the various institutions that had been destroyed by misrule. Probably its biggest challenge has been, and continues to be, the restoration of the legitimacy of the state through the creation of institutions that transcend the old cleavages of religion and ethnicity/region. Unfortunately, fresh structures have been created without eliminating those they should replace, leading to conflicting

mandates, competition for resources and contradictory obligations to stakeholders and the public. The result is often incompatible objectives and perverse incentive systems, leading to confusion, delays, and wasted efforts and resources.

Briefly, this section has discussed the environment in which state policies, including land policy, the subject of the next section, have been formulated and implemented. The policy environment has been characterised by all sorts of conflict between various social forces, often reaching violent levels; as well as accommodations and co-optations that have often compromised radical reforms. There has also been a general incoherence in the functioning of the state system, triggered off by state leaders' 'politics of survival' and the resilience of local social forces.

that objective with which the politics of liberation were unable to come to terms. As many as five post-Amin regimes were unable to establish the supremacy of civil institutions over the military, and they also failed either to acquire popular legitimacy or to restore political order in a country that had been ravaged by eight years of arbitrary tyrannical rule. The attempt to re-establish legal and normative rules was inhibited by the fact that no single group proved able to impose its ideas and interpretations upon others. The inability to achieve a new consensus gave encouragement to old political divisions. Hence those who sought to restore order to Uganda in 1979 had to engage in the same quest for legitimacy and control that had posed a fundamental dilemma for the former civilian regime before 1971.

Land Tenure

The evolution of land tenure & management systems in Uganda

The main objective of this section is to provide an understanding of contemporary formal rules that underpin and regulate land delivery and access in Uganda, with particular reference to Buganda region/kingdom. Such an understanding must be based on an analysis of how these rules have evolved from the days before colonialism to the present, because land policy in any country operates within a particular historical and social context, which shapes and constrains policy options. So that the evolution of land tenure and management can be linked to the evolution of Uganda's political economy, the same historical time periods are used.

Pre-colonial land tenure

While there are various strands of commentary on the forms of landholding that existed in Buganda prior to colonial occupation, there seems to be general agreement that all land in the kingdom belonged to the Kabaka and no holding of land was recognised unless it had been, directly or indirectly, conferred or agreed by him. Also generally agreed is the fact that every adult in Buganda, male or female, had access to land in one form or another, ranging from secondary usufruct rights, available to women commoners, to individual land ownership under *obwesengeze*, granted at the Kabaka's discretion to a few men commoners and women from the royal family. This form of land tenure existed within a socio-political framework that had developed checks and balances to regulate the exercise of authority by those in powerful positions and to protect the rights of the weak with respect to land and other resources. This apparent socio-political equilibrium was, however, to be distorted by the changes that were introduced by colonial policies in different arenas of Ganda life, including land tenure.

Land tenure changes in the colonial era

As Young correctly points out, the foremost objectives of the colonial state, right from its inception, were to achieve hegemony over local social forces and to meet the revenue imperatives of the imperial powers³. Land tenure and socio-political relations with respect to land provided a conduit for furthering the twin objectives. Firstly, land was used as a tool in the 'divide and rule policy' in which existing arrangements of power were distorted through co-opting existing chiefs as agents of colonialism in return for allocating them large areas of land. Through the co-option of chiefs, existing tenure arrangements were undermined, and with them the powers of the Kabaka and clan heads.

Existing tenure arrangements were replaced by laws imported from Britain and other spheres under British control, such as Australia. The new laws tended to emphasise the economic rather than socio-political value of land, promoted outright individual land ownership as opposed to the existing socially regulated usufruct rights and, most importantly, made the possession of legal land ownership rights contingent upon registration through a cumbersome, expensive and lengthy process. Because of the manner in which the imported legislative framework was superimposed on existing relations in land and the general lack of fit between the two, problems were bound to arise. Indeed subsequent pieces of legislation were often intended to offer ad hoc responses to the ensuing problems.

One of the enduring legacies of colonialism for land tenure in Buganda is the introduction of what is now referred to as *mailo* land tenure. As part of the political settlement between the colonising power and the indigeneous Ganda state, land in the kingdom was divided into Crown and *mailo* land, with the former vesting in the imperial power while the latter was divided between the Kabaka and his officials. The term *mailo* came from the English word

mile because the allotments were measured in square miles, pronounced as *mailo* in the local dialect. *Mailo* land is owned on the same basis as English freehold, although *mailo* land is often encumbered by occupants who had lived on the land under the various forms of pre-colonial tenure. The introduction of *mailo* tenure marked the most direct leap into individualised land ownership in Buganda.

Indeed, the introduction of *mailo* tenure was followed by the institution of a title registration system with a guarantee of indefeasibility on the lines of the Torrens system. For various reasons, however, surveys to demarcate the allotments for the purpose of registration were not done quickly enough to cope with the rapidly rising levels of land commoditisation. Since transactions in land could not await the slow and bureaucratic survey/registration process, a system of “*dealing by the acre in unascertained*

some of the informal institutions that currently underpin and regulate land delivery mechanisms in Kampala can be traced to this period, although they have been modified over time to reflect changing economic and socio-political circumstances.

Post-colonial formal institutions of land tenure

Like the political changes that accompanied decolonisation, the land tenure reforms that were instituted after independence were mainly aimed at entrenching the new political class through centralisation and according those in positions of power control over the land resource, often for reasons of patronage. The first post-colonial central government was particularly keen to use land tenure legislation in its power struggle with the Buganda

government. The process of consolidation of the central government’s control over land was epitomised by the 1975 Land Reform Decree⁵ 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.

Fundamentally, the 1995 Constitution repealed the decree by vesting all land

in Uganda in the citizens of Uganda in a corporate sense. The constitution also recognises customary tenure as a legal and distinct mode of land ownership. Customary tenants on hitherto public land with no registered owners now own the land on which they



Congested informal development in Kamwokya

parcels of land..., ‘*paper acres*’, as they have since come to be called”⁴ emerged in Buganda. This could be seen as the starting point for informal land transactions, which have subsequently become the predominant mode of dealing in land. Indeed,

are settled. The Constitution also provides for the conversion of *mailo* land, which under the LRD had been converted to leasehold, into freehold. Under this provision, *mailo* tenants will also have the right to convert to freehold, if they can reach a settlement with the titleholders. Articles 237(8) and (9) guarantee security of occupancy of “*lawful and bonafide*” occupants of *mailo* and other registered land and oblige parliament to enact a law for regulating the relationship between them and the registered owners of the land they occupy. Parliament was also enjoined to enact a law providing for the acquisition of registrable interests in land by *lawful or bonafide* occupants. The Land Act, 1998 was enacted to meet these obligations imposed upon parliament by the constitution.

The Land Act, 1998 thus aimed at regulating land ownership, management and use; simplification of ownership and occupancy systems; and liberalisation of the land market. Most importantly, the law defines the forms of tenure provided for by the constitution, specifies women’s land rights and gives clarity to the meaning of both *lawful* and *bonafide* occupants of land. Without repeating the detailed discussion of the provisions of the new land law covered in the main report, it is necessary to point out one issue with regard to occupants here. While the Land Act is commendable for the security of tenure it offers to two clearly defined categories of occupants, its 12-year limitation leaves a substantial number of people unprotected. The decision to make 12 years the minimum length of occupation for one to qualify as a *bonafide* occupant was based on the statutory law of limitation. Occupants who do not fall in this category are required to take the initiative to locate the titleholders and negotiate their occupation, if no such agreement already exists. Currently they are considered squatters and are liable to eviction at the will of the titleholder. It was found out, during this study, that the overwhelming majority of the landholding households in Kampala acquired and occupied their plots after 1989. While this particular

provision of the Act might be useful in rural areas where there is likely to be much more stable settlement and long occupation, it is of limited usefulness in urban areas where most occupants are relatively recent migrants/land acquirers.

The Act is also silent with respect to those occupants who acquired their land from *bonafide* or *lawful* occupants. It is not clear whether they inherited that status with the acquisition of their rights. Unfortunately, the law is still new and has not been significantly put to test in the courts of law so that some of these ambiguities are given clearer legal interpretation. One case was identified (Venansio Babweyaka & 5 others vs Kampala District Land Board and another – Civil suit No. 511 of 2001), in which the judge was faced with this very ambiguity. Finally he gave the interpretation that the limitation provision in this Act was not intended to cover successors to the ‘title’ such as purchasers.

Despite the explicit guidelines provided by the constitution, debates leading to the enactment of the Land Act, 1998 were dominated by political controversies centred upon mediating historic ethnic conflicts and competing interests in land. Indeed, the ambiguities within the law that have made it impossible to implement are partly attributable to attempts to accommodate the various interests at play, in an environment devoid of a guiding land policy. Amendments to the law have already been made and others are in the pipeline, although there are still enormous difficulties to overcome if the Act is to be transformed into a piece of legislation that can be fully operationalised. There is a risk, however, of continually diverting from the original course intended by the reform process as the law is amended to accommodate those opposed to its provisions. Of course, any law may be modified to be as accommodative as possible, but in situations where a small but powerful minority comprised of self-seeking bureaucrats is opposed to reforms that appear to reduce their powers, strong political leadership will be necessary to promote the interests of the majority.

As discussed in main report of this study, the Land Act, 1998 provides for the decentralisation of land management and significantly reduces the hitherto 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 in managing land of people who are not technically qualified in land matters. It is thus not hard to see why there have been attempts by the technical staff in the Directorate of Lands to impede the implementation of the Land Act in its present form in various ways⁶. To them, land management is their preserve and any involvement by ‘unqualified’ people is an affront to their professional and technical expertise.

At the time of this study, most of the decentralised structures provided for by the Act were either not yet in place or were hardly operational, principally because of lack of funds and the ambiguity of the law. For instance, no sooner had the Act been enacted than it was realised that the government could not afford to have a land committee in each of about 5,000 parishes in the country. The resource implications were so immense that an amendment, being debated in parliament at the time of this study, is seeking to move the land committees from the parish to the higher level of sub-county. As Bosworth correctly points out, the Land Act, 1998 was enacted without an implementation strategy⁷. Provisions for wide ranging reforms and creation of a huge land administration bureaucracy were made without any forethought with regard to their financial and human resource implications. It was after the enactment of the Act that reality dawned upon policy makers charged with overseeing its implementation. A Land Act Implementation Study (LAIS), commissioned by the government and funded by the UK Department for International Development (DFID) in 1999, concluded that the cost of implementing the Act was enormous, while the benefits were not likely to be great and, even more importantly, were likely to accrue to the wealthy and

so to be inequitable. Although elements within the MWLE (Directorate of Lands) contested some of the study’s findings, arguing that they were based on flawed assumptions, it is indisputable that the government could not raise the funds necessary for the implementation of the Act in its original form. Indeed it is on the basis of the recommendations of the LAIS (1999) that the amendments that are currently before parliament were drafted.



Rudimentary structures that serve as drinking joint in Kamwokya

Kampala

The origins and growth of Kampala

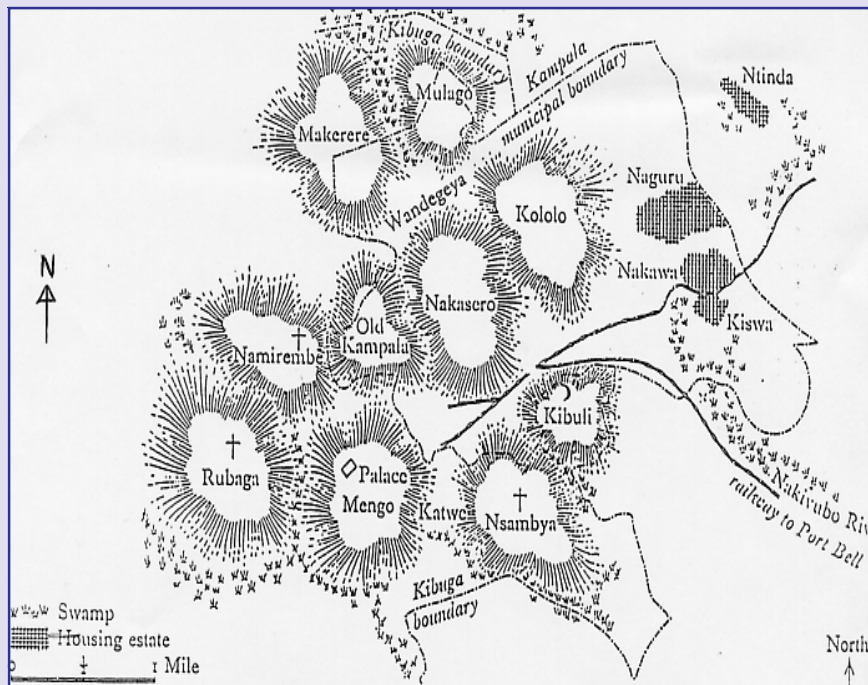
This section is aimed at tracing the origins and development process of Kampala, with specific reference to its spatial/demographic growth, and the evolution and dynamics of its land management and administrative regimes.

City evolution and development dynamics

Unlike most other urban areas in eastern Africa, Kampala grew out of an indigenous town, the *Kibuga*, which had been the royal capital of the kingdom of Buganda since the 1700s. Foreigners,

including traders, colonisers and missionaries, entering the kingdom had to first get clearance from the Kabaka and therefore the *Kibuga* became their first port of call. While the Kabaka initially exercised discretion on who to admit into the kingdom and allocated them different hills in the *Kibuga* for their settlement (See Figure 3), this changed once the colonial machinery was in place. Arguably the most significant changes in the levers of power in the kingdom were brought about by the 1900 Buganda Agreement. These were to have important implications for the way Kampala developed as an urban area.

Figure 3: The Hills that made up Kibuga/Mengo and Kampala



Source: Van Nostrand (1994) *Kampala Urban Study, PartII: Structure Plan Final Report*, Kampala: Town and Country Planning Board.

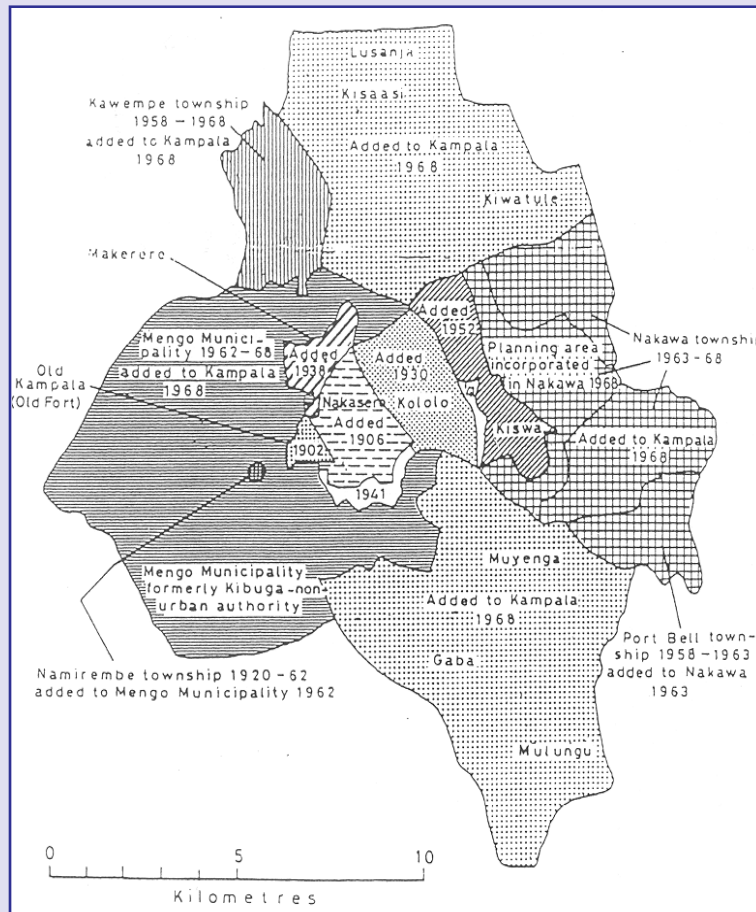
The 1900 Buganda Agreement had a significant influence on the way the development of Kampala proceeded, in at least two ways. Firstly, the land settlement clause effectively divided the area on which the current city is built into two zones with differing tenurial regimes. On the one hand, there was 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 whose security of tenure was later to be given legislative guarantee through the Busuulu and Envujjo law, 1928 (Figure 4). As discussed above, the relationship between the landowners and occupants of *mailo* land was mainly regulated by a socio-political relationship that drew on pre-colonial practices. The eastern part of the city, commencing from the area currently occupied by Kampala Central Division, was, on the other hand, made Crown land by the 1900 Buganda Agreement (see Figure 1). 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, which was readily available for public purposes. The growth of the formal city therefore proceeded eastwards in alignment with the tenurial divisions that had been implanted onto the city. (Figure 4)

The second influence of the 1900 Buganda Agreement came by way of the political and administrative arrangements negotiated between the native Buganda government and the colonial administration. The agreement left the administration of most native affairs in Buganda to the Kabaka's government. This meant that the part of present-day Kampala then called Mengo municipality was fully controlled by the native government. Citing the 1900 Agreement, the native government always protested against any interference in the management of affairs involving the native population, including the administration 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 (*Kibuga*) and Kampala, developed under different land management and administrative regimes, with the latter formally planned while the former evolved organically, devoid of any formal physical planning. Sanitary and public health concerns were used by the colonial government as justification for gradually incorporating some of these unplanned areas into the formal city, despite opposition from the native government. The end of colonial rule was expected to mark the disappearance of the duality that had pervaded the city, but because of the constitutional arrangement that maintained the powers held by the Kabaka's government, no such change occurred immediately. It was only after the 1966/7 political crises between the central government and Buganda government that all urbanised areas around Kampala, including Mengo municipality, were brought under a single administration (Kampala City Council) and subjected to similar legislative controls, at least in theory. (Figure 4)

The political problems that have characterised the major part of Uganda's post-colonial history have been examined above. The nature, pattern and pace of Kampala's post-colonial development have been greatly affected by the country's political economy. For several years there was general breakdown of public institutional arrangements, widespread disregard for the rule of law and ubiquitous corruption in public offices. As a result there was little attempt at formalised land management, leading to haphazard development in most areas of the city, particularly those areas that were only incorporated into the formal city after independence. The 1970s and 1980s were also characterised by a general absence of security for both persons and property, resulting in a retreat of urban residents to their rural areas of origin, thereby retarding the growth of the major urban areas, particularly Kampala. This problem was exacerbated by the prevailing adverse economic conditions, which forced most urban

Figure 4: Historical Spatial Expansion of Kampala



(Van Nostrand, 1994 *op.cit*:100)

populations to resort to informal activities or rural subsistence living. Even after relative peace and economic stability was restored, attempts at reversing the accumulated problems in the city have not achieved much success.

Nevertheless, significant attempts at institutional reform, including formulation of a new land law and the introduction of an elaborate system of decentralised local government, have been embarked upon since the early 1990s. With regard to land management and, particularly, contemporary physical planning in Kampala, there are currently attempts to reverse the negative effects of the years of neglect experienced by the city in the 1970s and

80s through revitalising formal city planning procedures. However, planning regulations and procedures remain largely unchanged from colonial days and are inappropriate for the current city, as reflected in their rampant violation and the Council's inability to enforce them. One of the specific concerns of this study was to understand the various mechanisms that are utilised by those seeking to acquire land in the city formally. These formal mechanisms are shown to be bureaucratic, expensive and cumbersome, with the result that they benefit only a small minority. The formal procedures for accessing land from different sources in Kampala are summarised in the boxes in the next sub-section.

Formal mechanisms of land access

By far the largest supply of land in Kampala comes from subdivisions of *mailo* land⁸. Anybody with a *kibanja* on *mailo* land wishing to regularise their occupancy and obtain a land title to their holding has to first ‘buy him/herself in’ by paying the titleholder’s valuation of the plot in question. In addition, a *mailo* land titleholder wishing to subdivide their land and obtain separate land titles for the subdivisions has to go through the process described below.

Procedures relevant to *mailo* land

- An application for planning consent is submitted to the Chief Town Planner. A copy of the proposed subdivision is also attached.
- Once consent has been granted, then the applicant has to get a ‘*Proceed*’ from the Registrar of Titles in charge of Kampala *Mailo* office.
- A subdivision is carried out and the *Job Record Jacket (JRJ)* is submitted to the District Surveyor, Kampala for checking, processing and subsequent issuance of deed plans after payment of ‘checking and deed plan’ fees.
- Duly completed transfer and consent forms are submitted to the Chief Government Valuer for valuation.
- The applicant pays 1% of the assessed value as stamp duty to the Uganda Revenue Authority. He/she also pays Ushs. 10,000, being the transfer fee, and Ushs. 25,000 for assurance of title by Kampala City Council⁹.
- The applicant can at this stage proceed to the *Mailo* office for the preparation of his/her land title.

The other source of land in Kampala is the churches, mainly the Roman Catholic and Anglican churches, which own substantial areas of land in the city. Many families have settled on this land over time, albeit illegally. Some have sought to regularise their tenure by applying for a lease from, for instance, the estates department of the Catholic Church. The 1900 Buganda Agreement provided for freehold land grants to the major religious denominations in the country, particularly the Roman Catholic and Anglican churches. Some of this land happened to be in areas that are now close to Kampala’s central business district. In the years that followed the Agreement, different churches were keen to have some of their most ardent followers occupy and utilise the land that was not planned for immediate church use. At this particular time there was animosity between different religious denominations in Buganda, which further encouraged different churches to attract their own followers onto their land. Since then this land has been exchanged through sales, gift and inheritance. Indeed, an active land market exists in this land. Some of the occupants are wealthy and eager to formalise their tenure before starting high value investments on the land. The procedure needed to obtain a land title on church land is summarised below.

Obtaining title on church land

- The applicant is required to present proof of user rights from an LC;
- He/she is then required to seek subdivision permission from Kampala City Council;
- Once subdivision permission has been secured, the applicant can then hire a surveyor to undertake the cadastral survey; the process thereafter is the same as that on public land described above and outlined below;
- Assessment of premium and ground rent by KCC;
- Preparation of lease documents;
- Preparation of land title.

A large number of people do not proceed beyond the first stage because they feel that once they have secured the consent of an LC they are guaranteed security on the land. The reality is that LCs are happy to allow an applicant to proceed with developing the plot after the payment of a development fee to their Council (and often a tip to key members of the executive).

Following the restoration of the Kabakaship in 1993, Buganda kingdom properties and the Kabaka's private assets that had been confiscated by the central government in the 1960s were returned. To manage these properties, including markets, buildings, traditional sites and chunks of land across the kingdom, a land board called the Buganda Land

Board (BLB) was set up by the Kabaka. Also within the Kabaka's government is a minister in charge of Lands to whom this board is answerable. The Buganda Land Board is therefore a body mandated to transact business over property belonging to the Kabaka, in his official capacity, albeit without any specific legislative sanction. Very little of the land under the control of the Buganda Land Board is unoccupied, especially in the urban areas. However, the Board has been trying to encourage those occupying the land and anyone that buys land from such occupants to regularise their tenure by obtaining a lease. The procedure for such regularisation is outlined below¹⁰.

Regularisation of a lease on land administered by the Buganda Land Board

- Payment of Ushs. 11,000 to obtain application forms;
- Securing a recommendation letter from an LC I signed by 5 officials on the executive and bearing the LC I stamp certifying that there is no dispute on the land;
- Submit an application to Buganda Land Board with attachments as follows: the LC letter mentioned above; any other documents, such as a purchase, inheritance or donation agreement, to confirm the claim to the land in question; a sketch map of the land showing its location and distance from the nearby main road; a photograph of any development on the site; and if it is a company applying, the Articles and Memorandum of Association with a certificate of Registration.
- There is a Lease Committee within Buganda Land Board that scrutinises the application and makes a recommendation as to whether the application should be accepted or rejected. If the plot applied for is larger than 1 acre, the application must be approved by the Executive Committee, which is chaired by the *Katikiro* or Prime Minister in the Kabaka's government;
- Once accepted, the Buganda Land Board makes an assessment of the premium and ground rent on the basis of the area and location of the plot, which the applicant has to pay;
- The Buganda Land Board then submits an application to Kampala City Council for planning consent with regard to the proposed subdivision;
- After City Council approval, the plot is surveyed and thereafter the Buganda Land Board applies to the Commissioner of Surveys for the issuance of deed plans;
- The Buganda Land Board prepares lease agreements that are submitted to the Registrar of Titles to prepare the land title;
- The Chairman and Secretary of Buganda Land Board append their signatures to the land title before handing it over to the applicant.

Because most of the land under the Buganda Land Board is occupied by people who feel quite secure, the Board has experienced difficulties in convincing these occupants to regularise their rights by acquiring leases. This is more so with respect to those occupants who are Baganda because they feel that, since the land belongs to their kingdom and their Kabaka, they have a legitimate right to use it. Indeed, although there is no hard evidence, anecdotal accounts suggest that it is mostly people from other communities who buy land from Baganda occupants that feel the need to regularise their land rights and therefore apply for leases from Buganda Land Board. Such sales occur despite the fact that there have been complaints, not least from high-ranking officials in the Buganda government, castigating Baganda for selling their land to non-Baganda. *The New Vision* April 8, 2003

Although the scope of this study is limited to the land delivery process, it is worth summarising the procedure for obtaining planning permission. Any person intending to undertake any development within the city planning area is required to submit a building plan for inspection and approval by Kampala City Council. A copy of the land title to the plot in question must accompany the building plan, while the rest of the procedure is summarised (on p. 22)¹¹.

As indicated at the beginning of this report, however, most households in Kampala access land through informal channels and only a minority acquire land through formal mechanisms. The next section specifically focuses on contemporary land access mechanisms in informal settlements.



High-cost structures and low cost informal development in Kampala

Application for planning permission

- The applicant is expected to solicit the services of a registered Architect in the preparation of 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, the 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 Officers Forum, comprised of the Chief Town Planner, Chief Building Surveyor and Principal Staff Surveyor, makes further scrutiny of the plans before making recommendations 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 expected to review the recommendations of the Technical Officers Forum before making a final submission to the full plenary of Kampala City Council. 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 the construction pending final plan approval by the Council.
- It is the plenary of Kampala City Council that has the power to grant any 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 postponements.
- Once the Council approves the plan the Chief Town Planner can then proceed and pass on 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 whose responsibility is development control;
- After completion of the development, the applicant is required to apply for a permit to occupy the development

Land Delivery

The delivery of land for urban use: the current situation

This section is aimed at achieving two major objectives. Firstly, it aims to examine the different channels through which households in Kampala's informal settlements access land. Allied to this objective is an attempt to describe and analyse the socio-economic characteristics of landholders who access land through informal channels. Secondly, it aims to provide understanding of the nature and efficacy of the informal institutions that underpin and regulate transactions in land in Kampala's informal settlements.

Increased land demand and commercialisation

As initially set out in the design of this study, three informal settlements, at different stages of growth/settlement densification, were selected as case study areas. All three settlements have evolved from predominantly agricultural villages in the past four decades or so, albeit at different rates. Two of the settlements, Kamwokya II and Mbuya I, which are closest to the central business district, have registered the most dramatic transformation from rural neighbourhoods to high-density urban settlements. Busega, on the other hand, still maintains rural characteristics, with low settlement densities, although urban uses are steadily displacing agricultural activities and other non-urban uses. The patterns of urbanisation and settlement growth have closely mirrored the dynamics of the country's political economy. As data collected by this study demonstrates, the levels of activity on the land market in Kampala, as inferred from the date at which most people acquired plots, have fluctuated in a manner not dissimilar to the country's political and economic fortunes.

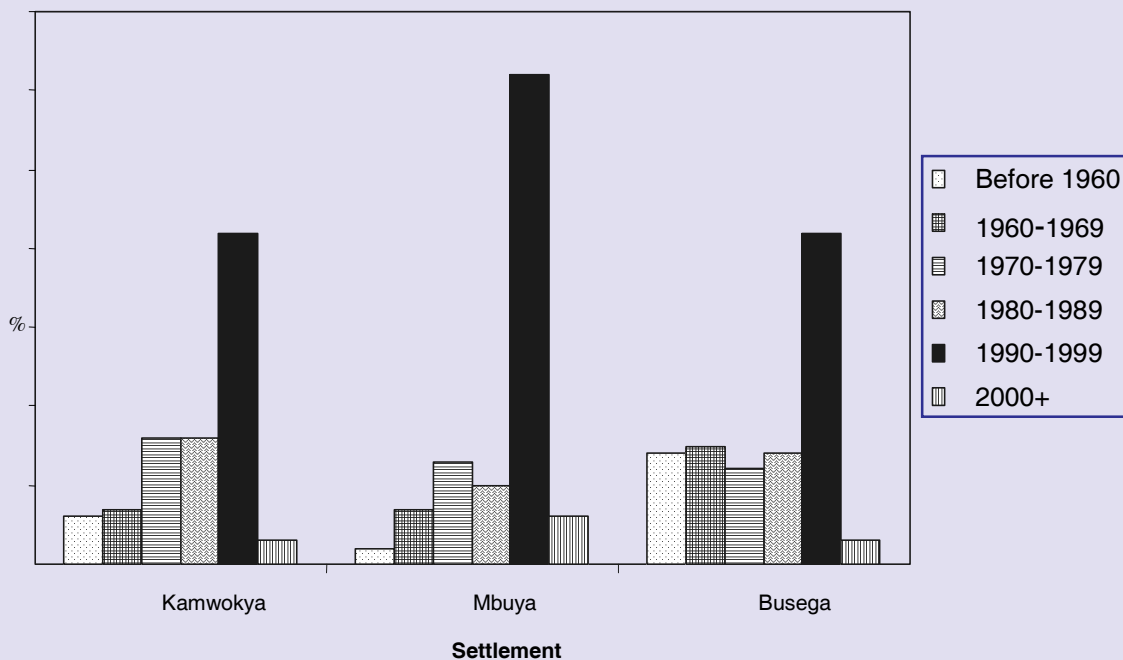
During the period of political instability and economic collapse in the 1970s there was a general drift of the population from the major urban centres to their rural areas of origin as the security situation in the former became increasingly precarious. In addition

to the problem of insecurity, land was made less attractive to private investment when it was nationalised through the Land Reform Decree, 1975. Therefore, apart from a small minority, allied to and protected by the regime in power, very few individuals were willing/able to acquire land in Kampala, a fact borne out by the data on plot acquisition, summarised in Figure 5.

The beginning of the 1980s marked the invasion of the hitherto relatively peaceful rural areas, particularly districts neighbouring Kampala, by civil strife that claimed many lives and displaced several thousand people. One consequence of this civil war was the reverse migration of people back into the relatively safe urban areas, particularly Kampala. While most of these fleeing people hoped to return to their villages once the war was over, for a substantial proportion of them this was to mark an almost permanent departure from rural life into urban living. Partly because of this influx and also because of displacement of people by some of the reconstruction projects undertaken in the aftermath of the war, demand for land in Kampala, particularly in the relatively cheap peripheral areas, increased tremendously from the late 1980s onwards.

The increased demand for land was accompanied by the near-extinction of non-commercial forms of land access, particularly in the denser inner-city settlements (Figure 6). In all three study settlements the majority of the landholding households had to pay for the land they hold, although some non-commercial land access mechanisms still exist, especially in the incipient urban settlement of Busega. Generally, only in a minority of cases are households able to access land freely as a gift or bequest. Moreover, even inheritance is steadily shifting from 'unqualified' entitlement in accordance with traditional inheritance rules to the dictates of reciprocity, where parents are more willing to pass on their land to children who have been materially or otherwise helpful to them than to those have been less responsible or caring children.

Figure 5: Date of plot acquisition



Source: Own survey October/November 2002

The pervasive commercialisation of land transactions is even becoming increasingly apparent in land acquisitions through ‘gifts’. Traditionally among the Baganda a gift of land was appreciated by presenting a *kanzu* or gift to the donor. However over time the *kanzu* has become monetised and its value has risen with land prices. While it would not be correct to suggest that the *kanzu* in gift-situations is reflective of the actual market value of the land, its monetisation and variation in value in accordance with the value of land illustrates the pervasiveness of commercialisation in land transactions in Kampala. Notwithstanding the ubiquity of commercialisation of land transactions and the predominance of market forces in driving the land market in Kampala, it was noted in this study that prices of land in Kampala are also influenced by non-market factors, such as the relationship between the buyer and the seller.

Access to land by disadvantaged groups

As noted above, land access in Kampala is primarily through buying which is effected through either lump sum or instalment¹² cash payments. From the outset this study had as one of its objectives an examination of the relationship between different modes of land access and the socio-economic characteristics of the households that benefit therefrom. For analytical purposes, this study categorised land access channels on the one hand as either commercialised or non-commercialised and on the other as formal or informal. The former refers to the extent of market relations in land transactions and the latter to the rules regulating such transactions.

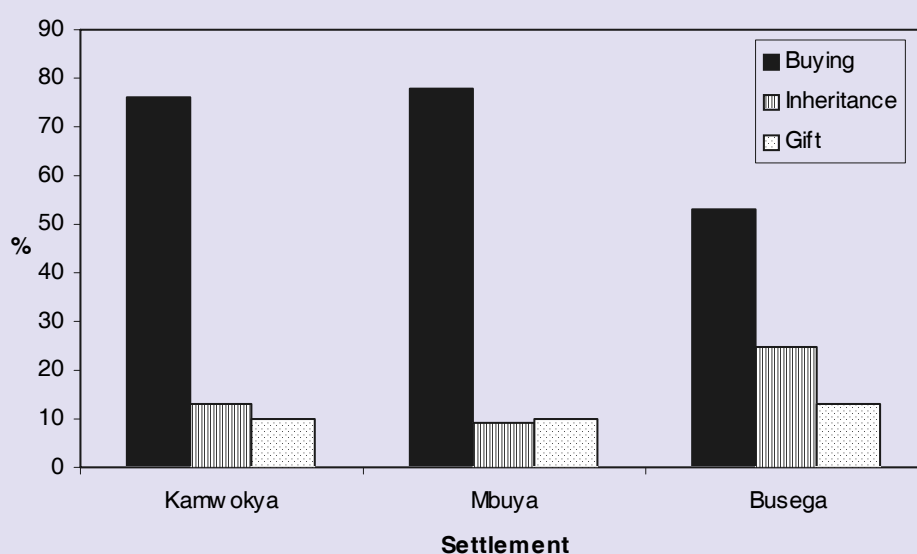
One of the key hypotheses was that informal land access mechanisms, particularly the non-commercialised ones, have tended to be more accessible than formal commercialised channels to disadvantaged sections of the population, such as

women and the poor. Analyses demonstrate statistically significant relationships between variables such as the employment status, gender and education level of the household head and household possessions, used as proxies for estimating household well-being, and the different land access mechanisms, as categorised above. The data and analyses confirmed that informal channels for accessing land (especially non-commercialised ones) provide more opportunities for disadvantaged groups to access land than formal channels.

A caveat has to be added to this conclusion, however. While statistical tests revealed a significant relationship between the education levels of heads of household and the rules of land access utilised, this was not the case with regard to commercialised land access. 83% of the landholders without any formal education in Kamwokya II purchased their

plots. This does not negate the education level-income linkage. However, it does call into question the usefulness of education level as a proxy for income in an environment where most people are engaged in informal activities that often do not require them to have formal education. Given this result, it would seem pertinent to ask why there appears to be a strong positive relationship between educational attainment and the rules governing land transactions while no link of such significance could be shown between education levels and access to land through commercial or non-commercial mechanisms. The answer seems to lie not in the economic benefits that accrue from higher levels of education but rather in the ability of those with a reasonable level of formal education to comprehend the complex process of formalising land ownership, which often takes them through a myriad offices, accompanied by the need to complete equally numerous forms.

Figure 6: Modes of land access compared



Source: Own survey October/November 2002

Furthermore, those with formal education are more likely to have social networks that link them to the bureaucratic elite that controls the land registration process. It would also appear that individuals with formal education are more likely to be aware of the importance of possessing a title to their land. On the other hand, in situations where there is no immediate threat to their tenure, most landholders with no formal education expressed little willingness to go through the rigours of processing a land title just for the sake of replacing one paper (letter of agreement) with another (certificate of title).

Acquiring land through purchase - motivations and processes

The foremost reason for acquiring land given by most households in the three settlements studied was to satisfy their shelter needs, but the need to provide space for generating some income through renting out part of the premises or conducting a home-based business activity was also important. Today, most land sales are induced by family 'stress' such as the need for funds to pay for children's school fees, meet medical bills, particularly in this era of HIV-AIDS, pay a bride price, or rescue a family member from indebtedness and prison. It is quite clear that motivations for land sales and purchases have changed since the earlier days of private individual land ownership. The overriding factor in the land market in the 1940s and 1950s was the socio-political benefits associated with land ownership¹³. However, basic livelihood needs are the prime movers in contemporary transactions.

Once the seller and the prospective buyer have been brought together and the buyer is interested in the plot in question, what follows is a process of bargaining, with each party trying to secure the best deal possible. In a minority of cases landowners, particularly absentee-landowners, give authority to land brokers to undertake the bargaining on their behalf as long as they can deliver a reserve minimum sum of money at the end of the transaction. Similarly,

prospective buyers, particularly those living/working outside the country, may use agents – relatives/friends or land brokers – to negotiate the transaction on their behalf. In most cases, however, the negotiations are conducted between the landholders themselves and the prospective buyers¹⁴. Negotiations often centre on the price of the land and the mode of payment. It is rare for such negotiations to be concluded during the first meeting, as often the parties need to go back to their homes and confer with their families before returning with a final commitment or fresh proposals. Having briefly described the bargaining process between landowners and prospective plot purchasers, what then influences the price of a plot of land in Kampala?

While in the past, as Mukwaya observes, kin relationships played a crucial part in the determination of the price paid for any piece of land, information gathered from this study's focus group discussions indicated that the significance of this factor has greatly reduced. According to Mukwaya, the prices of land in Buganda in the 1950s ranged from the economic price paid by a complete stranger through a price slightly reduced for the clan relative to a nominal one for a close relative. The transaction was a gift when the price disappeared altogether in situations involving relationships with a brother or son¹⁵. The situation has changed significantly, with economic factors overtaking social considerations. Nevertheless, there are still cases of price discrimination on the basis of affection and affinity between transacting parties. Some individual landowners would rather sell their land at a much cheaper price to members of their own ethnic group or close relatives/friends than dispose of it at a market price to strangers. This often happens when the reason for the sale is a targeted expenditure or distress-induced. In such a case the landowner is willing to give up a piece of land to whoever amongst his or her close relatives is capable of providing the money required for the emergency, even when it is much less than the market value of the land in question.

There are a number of issues that those transacting in land in Kampala take into consideration during the price negotiation process, including the existence or absence of a registered certificate of title, the size of the plot, its physical location, the level of services and the tenurial attributes. There are distinct sub-markets in titled and untitled land, with land transacted in the former being much more expensive than that in the latter. The difference in value between titled and untitled land is a reflection of both the cost of processing land titles and the extra security of tenure conferred by the possession of a land title. Indeed the first question most prospective land buyers in Kampala ask a seller is whether the land in question is titled or not. By doing so, the buyer is able not only to estimate the risks involved in buying the land but also the value bracket within which the land falls, subject to investigating other important plot attributes. The difference in value between titled and untitled land in the three settlements studied was estimated to be about 65% to 75%, *ceteris paribus*¹⁶.

Given the nature of Kampala’s terrain, which is dominated by hills and often swampy valleys, there is always a distinction between what has come to be referred to as ‘wet’ and ‘dry’ land. Because of the difficulties associated with developing ‘wet’ land and the environmental hazards to which inhabitants

of such land are exposed, prices of plots in such areas are much lower than those on ‘dry’ land. Two plots of land advertised in *The Monitor* newspaper of December 28, 2002 by Property Masters estate agents illustrate this point. The advertisement for the two plots located in Kisaasi – close to Kamwokya - reads thus: “25 dec. residential – 7M; 25 dec. lower – 4M”. Both plots were located in the same area, had the same size of 25 dec. (0.25 acre) and both were titled, with the only distinction being the location and consequently the price. The word ‘lower’ attached to the description of the second plot indicates that it is located in the lower part of Kisaasi which is ‘wet’ land although this could not be explicitly stated since the advertisement had the purpose of marketing the plot. Therefore while the ‘dry’ plot cost Ushs. 7 million, the ‘wet’ one was available at almost half the price, Ushs. 4 million. Factoring in the effect of possession of a certificate of title, a similar plot located on ‘wet’ land and **without** a land title would cost between Ushs. 1 million and Ushs. 2 million. This is the main reason why poor families often opt for the cheaper option of untitled ‘wet’ land despite the problems of tenure security and environmental hazards with which it is associated. The table below summarises land prices, in Uganda shillings per 0.25 acres, as estimated by focus group participants in the three settlements.

	Titled ‘dry’ land	Titled ‘wet’ land	Untitled ‘dry’ land	Untitled ‘wet’ land
Kamwokya II	16 million	Hardly any such land	10 million	4 million
Mbuya I	13 million	7 million	6 million	3 million
Busega	9 million	6 million	5 million	2 million

Besides titling and terrain, other factors relate to the physical attributes of the plot, ownership details and neighbourhood characteristics. With regard to physical attributes, the obvious factor is the area of the plot. Most households in the three settlements occupy plots smaller than the minimum standard set

by Kampala City Council, primarily because they cannot afford larger plots of land. Generally, land prices are strongly affected by the level/quality of infrastructure and social services available on the plot or in the immediate neighbourhood. In the informal settlements covered by this study, while

services were considered important, particularly plot access and water sources, the absence of these does not seem to have been a deterrent to households seeking a place to live. To those heads of household we talked to, worrying about services came after securing a piece of land where they can put up a shelter.

Acquiring land through inheritance – custom and legal provisions

Next to buying, the second most common way of accessing land is through inheritance, which is largely guided by custom as opposed to legal statute. Under Ganda customary practice, issues of inheritance and disposal of property are decided by the family and clan members at the last funeral rites (*kwabya olumbe*), which take place up to a year after the burial¹⁷. During the celebration of last funeral rituals, the widowed spouse is socially elevated to a position of *Namwandu* (widow) or *Semwandu* (widower). It is also at this ceremony that clan provisions to cater for the welfare of the widowed and orphaned are announced¹⁸. These include, *inter alia*, levirate marriage (rarely)¹⁹, settling inheritance issues, adoption of orphans into the extended patrilineal family and, most importantly, the appointment of an heir to the deceased. According to custom, the heir is the eldest son or the eldest male relative in the patrilineal line. If the heir is a minor, the clan appoints a caretaker (*omukuza*) to look after his interests until he is mature enough to take over his responsibilities. If there is no will, the shares of the estate allocated to the male offspring of the deceased is determined by the clan. A *bulamo* (will) may be written or orally communicated by the deceased to the clan head or another elder in the clan. The heir receives the largest share, including the family house, although the widow is allowed to continue occupying the house until she remarries, dies or voluntarily leaves the home.



Old, poor quality mizigo in Mbuya

One of the reasons why inheritance claims continue to be settled through customary channels is the inadequacy of existing formal provisions. The law relating to marital property in Uganda is basically the common law of England as at its date of inception (1902). The Marriage Act and the Customary Marriages (Registration) Decree 16 of 1973, which provide for the celebration of marriages, are merely procedural. They have no provisions as to how marital property is to be held or distributed on the termination of marriage. In common law, real property is presumed to belong to the person in whose name it is held, who is invariably the husband. For this presumption to be overturned, the divorced woman is required to provide evidence to the contrary. She is required to produce documentary evidence of receipts to show her financial contribution to the property in which she is seeking a share, or other suitable evidence. In discussions with a number of practising lawyers in Kampala, it was found that such cases are very hard to win and most divorcing women are hesitant to make claims against property that is registered in their husband's names. The situation is worse for women who separate after years of cohabiting with their partners. According to the legal experts consulted in Kampala, there is no presumption of marriage or marriage by repute in Uganda and the Divorce Act, 1904, which

is still in force, makes no provision for persons who chose not to marry under the recognised forms of marriage. Because of this, there are no legal provisions to determine what will happen to jointly acquired property. Invariably women walk out of such relationships without any receiving any share of the real property that was previously jointly held.

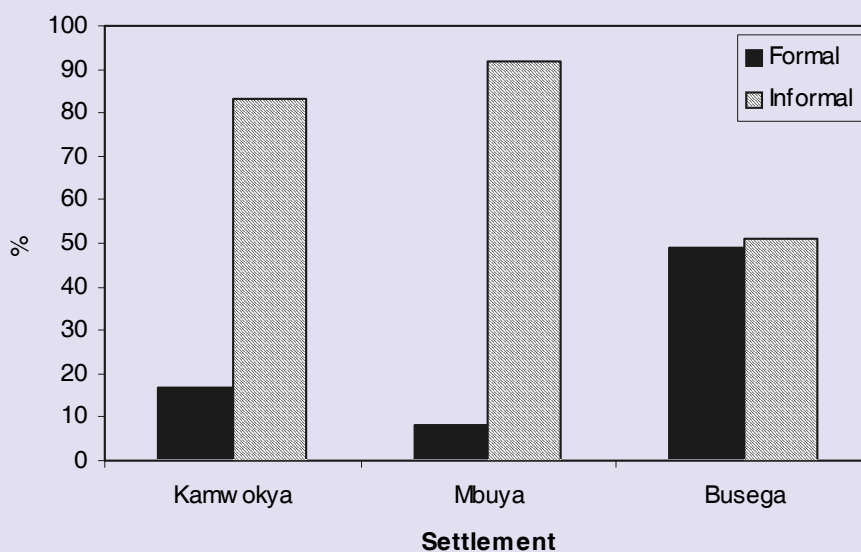
The strengths and weaknesses of various land delivery mechanisms

Having demonstrated the fact that informal land access mechanisms are more accessible to the less privileged sections of the population than formal channels, further analyses were attempted to assess the efficacy and appropriateness of informal land delivery processes, particularly with respect to availing affordable land in suitable locations to the poor. Amongst the three study settlements, informal land delivery mechanisms are most prevalent in Kamwokya II and Mbuya I (Figure 7), the two settlements closest to the central business district

and other employment areas such as Nakawa Industrial Area.

The two settlements are within walking distance of the city centre and other main employment areas. In contrast, in Busega, which is located farther out of the city and is therefore less accessible to the central business district and other employment areas, informal land delivery mechanisms are much less prevalent. Therefore, in terms of making available land in locations that offer accessibility and convenience with respect to the main centres of employment, informal land delivery channels appear to acquit themselves quite well. Furthermore, informally delivered land has been shown to be far cheaper than land accessed through the cumbersome and expensive formal channels and therefore more likely to be affordable by the poor. However, it must be added that the very poorest in Kampala can not afford any commercially delivered land, formal or informal, and invariably end up renting poor quality *mizigo* rooms erected by relatively ‘well-off’ landholders.

Figure 7: Prevalence of informal land access



Source: Own survey October/November 2002

The other criteria used to assess the appropriateness of the mechanisms of land access included: the physical and topographical suitability of the plots made available, security of tenure, adequacy of land supply to match demand and access to infrastructure services. While not all informally delivered land is physically marginal much of the relatively cheap urban land in Kampala is located on physically challenging terrain, especially wetlands. This is arguably one of the major problems associated with informally delivered land in Kampala. Such land is not only difficult to develop but also presents safety and health hazards, resulting from regular flooding, poor drainage and contaminated water sources.

The other, albeit less straightforward, shortcoming associated with informally accessed land is limited security of tenure. Despite the variations that exist amongst the different modes of land access that fall under the analytical umbrellas of ‘formal’ and ‘informal’, data analysed in this chapter suggests that, generally, levels of tenure security are lower on land accessed through informal than formal channels. According to UNCHS, a landholder can be said to have secure tenure if he/she is protected from involuntary removal unless exceptional but objective, clear, equally applicable, contestable and independent circumstances warrant such removal²⁰. Although Kampala has not had a history of evictions, government threats against those occupying land illegally, such as those who have occupied wetlands, persist.

Despite lack of recognition by the public authorities, most informal landholders in the three study settlements nevertheless felt secure, largely by virtue of community or social recognition. To buttress this social recognition, social institutions such as written agreements, witnessed and authenticated by local leaders, are widely used in Kampala. However, because of the supremacy accorded, by state law, to a registered certificate of title, most landholders expressed the sentiment that acquiring such title would

not only enhance their own security of tenure but would, most importantly, guarantee the security of rights passed on to their children. Current informal institutions designed to guarantee security of tenure seem to be most effective when parties to the land acquisition transaction are still alive, but because there is hardly any system of record keeping, such arrangements become precarious following succession.

Nature of the institutions that underpin and regulate informal land access

What this study has also been able to present and analyse are the various informal institutions deployed by different actors to structure and regulate transactions in land. As McAuslan correctly observes “*informal settlements, even those which start as wholly illegal, do not exist in a Hobbesian state of nature*”, but rather evolve ‘systems of ordering’ interpersonal relations with respect to various societal issues, including land transactions and tenure²¹. In situations where actors are unable to deploy conventional planning and surveying tools and skills, approaches that are responsive to the local contexts have been developed and utilised. These institutions were shown to draw from both formal rules and customary practices.

For instance, the measurement of the sizes of plots of land draws on conventional land surveying techniques while utilising locally available and affordable tools and skills. Moreover, the means of obtaining settlement of land disputes was shown to draw from customary practices of arbitration/reconciliation while at the same time utilising some of the formal rules to justify the decisions arrived at. Actors in the informal land delivery process are also astute enough to use symbols of the formal processes to reinforce their informal institutions. A case point is where landholders use formally trained surveyors to demarcate their land and implant survey beacons

to mark plot corner points, even though they stop short of pursuing the process to the registration stage. From interviews conducted in this study, it was learnt that some landholders felt that, once a surveyor had been seen on their sites demarcating the boundaries, there was no need to pursue the title since nobody would ever know that they had not obtained it. To them, bringing a surveyor to the plot with his/her highly conspicuous measurement instruments and the beacons left in the ground provided sufficient security. Therefore the expense and trouble of processing a land title was not considered to be a worthwhile venture. Rakodi aptly captures the eclectic nature of these informal institutions when she argues that,

“in each of the informal supply systems, rules or institutions apply [which] ... although linked to and often bearing some resemblance to the state-enforced rules for the formal market, these draw on other practices and social relationships”²².

Furthermore, the research demonstrated the strong linkages that exist between formal and informal institutions, as evidenced by public employees operating in the informal sphere, selling their services informally to those that can afford them. It is thus rather mechanistic to talk about formal and informal systems as operating in two exclusive spheres. Instead, McAuslan’s conception of informal institutions and formal laws as intersecting circuits²³ seems more plausible in light of the findings of this and other recent related studies.

The discussion summarised above enables us to revisit one of the key hypotheses of this study. From the outset it was hypothesised that the relative success of informal institutions in regulating land transactions derives from their social legitimacy, which is, in turn, an outcome of ‘trust’, defined as faith in the integrity or honesty of the parties to the transaction. On the basis of the evidence presented and analysed, it is clear that informal institutions enjoy

considerable social legitimacy, reflected in their general acceptance and respect by those whose relations they regulate. However, whether this legitimacy derives from ‘trust’ is debatable. From extensive focus group discussions there was general agreement that a combination of trust and other safeguards, such as written and witnessed agreements as evidence of transactions, underpin the efficacy of informal institutions. However, an assessment of the relative significance of trust is problematic. Based on an assessment of the empirical evidence assembled, it can be argued that trust is very important, particularly at the outset of a transaction. Even though other safeguards become necessary, initial trust underpinning the relationship between transacting parties reinforces their willingness to rely on less than foolproof informal institutions. Nevertheless, the apparent breakdown in the efficacy of informal institutions as informal settlements densify can, to a great extent, be attributed to a reduction in levels of trust between transacting parties who are less likely to know each other or have any other socio-cultural relationship.

Other factors that serve to buttress the performance of informal institutions were identified by the study, including

- simplicity;
- well understood and relatively low-cost procedures;
- locally recognised leaders that authenticate informal transactions;
- tacit approval by formal authorities of some of the informal institutions, such as acceptance of letters of agreement as exhibits in the formal courts;
- political patronage resulting from the large numbers of people (read voters) involved in informal land transactions; and, not least,
- the limited alternatives, given the disincentives to using the formal system.

Policy

Key policy implications

From the outset, this study focused on mechanisms of land access for the poor and other vulnerable sections of the population. The findings have conclusively pointed to the increasing commercialisation of land in Kampala and the near-extinction of non-commercial channels of land access. While the study shows that informal land delivery mechanisms are more likely to be accessible to the poorer sections of the population, these channels are also out of the reach of a substantial proportion of the population that is very poor. To compound the problem, administrative channels of land delivery have also almost ceased to exist, although they also never benefited the poor. In a situation where land reserves in close proximity to the city centre or other employment areas are either drying up or selling at unaffordable prices, policy makers face a significant challenge to explore options for dealing with the shelter needs of the poor and other disadvantaged sections of the population.

As pointed out by this study, the main motivation for accessing land by most households is to provide shelter for themselves. It is thus fair to argue that access to shelter rather than land per se is what needs to be addressed, through options such as appropriate intervention in the rental housing market so as to make it accessible to the poor.

While it is important to address the supply side, what ultimately needs to be dealt with is the demand side and this implies emphasising policies that improve the economic situation of urban households and thereby improve their purchasing power. Just like the land reform policies examined by this study, existing poverty alleviation programmes are skewed towards rural areas despite the existence of extreme conditions of poverty in urban areas. It is thus important that urban poverty is given more attention and programmes and policies tailored to urban situations devised. In the short term, the possibility of assisting poor urban households to form co-operatives or groups through they can pool resources to acquire land can be explored. This approach

would also give the poor households the ability to resist being bought out by the rich. In a similar vein, the possibility of central or local governments facilitating the initiation of tenant-purchase housing development schemes, with the involvement of the private sector, should be explored.

In view of the decreasing availability of affordable plots through either formal or informal channels, options to enable the poor to access land and adequate shelter should be explored, including rental housing, resource-pooling arrangements for group land acquisition and tenant-purchase housing.

One of the key objectives of this study was to assess the efficacy of informal land delivery mechanisms, particularly with respect to making affordable land available to the poor in suitable locations. The evidence has shown how these processes avail land to the majority of Kampala residents in areas close to the city centre and other employment areas. To be sure, informal mechanisms have succeeded where formal channels have performed dismally. However, the study has also brought to the fore the various problems associated with informal urban land development, including development of settlements in environmentally precarious locations, generation of settlements that are difficult to service and the suspect security of tenure afforded to residents.

In general, the attitude of planners in Kampala towards informal settlements is negative because they violate city-planning norms and are thus viewed as an hindrance to the development of a good quality urban environment. Although there have been no aggressive attempts to get rid of these informal settlements, because they carry an illegal tag, they remain hostage to the predatory activities of some KCC employees, particularly the 'street level bureaucrats' who constantly harass and demand

bribes from informal developers. There are serious implications for policy here, particularly with regard to the legal status of informal settlements and developments therein, which has a bearing on the security of tenure enjoyed by the residents. Should the state regularise informal settlements, just tolerate them, embark on an upgrading programme or resort to the bulldozer? There are implications of adopting each of these options that demand serious consideration.

What this study has been able to identify are some of the virtues of informal processes, but these need to be communicated to those involved in land management, including the aforementioned planners who see no good in developments that are not formally planned and regulated.

The positive aspects of informal land delivery should be recognised, including its contribution to land and housing supply, especially for lower income groups, its often acceptable and affordable patterns of plot layout and development and its relatively simple and acceptable procedures.

The implications of alternative policies towards recognising informal settlements (regularisation, toleration, upgrading, eviction and demolition) should be explored through dialogue with all the stakeholders, with an emphasis on addressing the adverse consequences of informal settlements rather than prohibiting them altogether.

Furthermore, the various agencies set up by the government to check corruption amongst public officers need to pay attention to the land sector, in which bureaucrats are keen to perpetuate systems

and processes that only benefit them, to the detriment of the large majority of urban residents. This study has pointed out some of the avenues through which government officers, particularly ‘street level’ bureaucrats, use the defective land management system for self-benefit.

The rules governing bureaucratic behaviour with respect to land should be enforced.

Another important area that calls for policy attention, which this research has shown to be one of the reasons for the proliferation of informal developments, is the existing formal institutional framework. One of the major concerns of policy makers is that residents of informal settlements deliberately or out of ignorance fail to comply with the law. However, evidence from this study indicates that, while actors’ behaviour was a direct response to state rules and enforcement strategies, it was neither antagonistic to state rules nor necessarily borne of ignorance. Indeed, informal actors borrow from or utilise state rules where appropriate, although they circumvent them when they consider them unaffordable or retrogressive. As a matter of fact, this study has shown that existing formal regulations and procedures are cumbersome, expensive and often protracted, besides lacking clarity in several respects, quite apart from the predatory enforcement strategies adopted by formal authorities.

The standards adopted, such as plot sizes, plot coverage, plot setback, access width, are clearly unaffordable by the majority of Kampala residents. The costs involved in the adjudication, demarcation and registration of land through formal channels are prohibitive, besides being barely comprehensible to the largely illiterate residents of Kampala’s informal settlements. The issue of land registration and acquisition of land title is very central, because the possession of a land title is a pre-requisite for the

issuance of planning permission by KCC. The problem is rather cyclical: households cannot acquire land titles because of the expensive/complicated process and the fact that their plots fall short of KCC's legislated sizes. Consequently such households cannot apply for planning permission and thus have little option but to develop illegally, risking the wrath of Building Inspectors, Council Agents and enforcement officers.

As alternatives to formal procedures, this study has documented various informal approaches to adjudication, demarcation and evidencing possession of land rights. These informal institutions have been shown to be widely known and affordable and to enjoy legitimacy amongst those whose relations they are meant to regulate, despite having some weaknesses as well, such as breakdown as settlements densify and limited 'durability'. For purposes of policy, it would seem useful to explore the possibilities for the formal system to learn from informal processes, as a starting point for a reform process geared at making state rules appropriate to the situations they are meant to mediate. One thing that seems critical is recognising the role currently played by LCs in informal land access processes and exploring possibilities of enhancing their contribution in planning areas under their jurisdiction. Working with LCs would have the additional effect of integrating the larger community in their areas of jurisdiction into the land management process.

The potential for the formal administration system to learn from informal approaches to adjudication, demarcation and recording land rights should be investigated, in order to devise procedures that are workable on a large scale and low cost.

The role currently played by Local Councils (LCs) in informal land access processes should be recognised and the potential for enhancing their contribution to planning and land management explored.

The Land Act, 1998 is most certainly the vanguard of current state reforms in the land sector but some of its provisions have rather unsavoury implications for urban land management in Kampala. To begin with, the Act possesses an unmistakable focus on agrarian reform and therefore espouses regulations that are primarily relevant to the management of rural land relations and less appropriate to urban situations. Several of the provisions in the Act would need re-interpretation or qualification when referring to land in urban areas in general and Kampala in particular. This study has pointed out some of the main concerns with regard to the LA98, including the issue of *lawful and bonafide* occupants. Of relevance here is the 12-year limitation imposed on occupants before they can claim *bonafide* status, which for rural settings with highly stable settlements seems an appropriate clause. However, the findings of this study show that the majority of current landholders in Kampala acquired their plots fairly recently, starting from the late 1980s. Obviously a substantial proportion of these are occupants but, because they have not lived on their plots for the stipulated period, they cannot lay claim to *bonafide* status. Given the history of this country, as reviewed by this study, it would appear that Kampala land occupants deserve special consideration with regard to the land occupation limitation clause.

Because renewed population growth in Kampala dates from the establishment of stable government in the late 1980s, many occupants do not satisfy the 12-year requirement for claiming *bonafide* occupant status. This requirement should be reviewed.

The Act is also silent with respect to those occupants who acquired their land from *lawful or bonafide* occupants. It is not clear whether they inherited that status at acquisition of their rights. In a recent court case, the judge's interpretation was that the limitation provision in the Act was not intended to cover successors to the 'title' such as purchasers. It is contended here that this is an issue that demands policy redress.

The position of those who have acquired land from *lawful or bonafide* occupants also needs to be reviewed.

One further issue in the LA98 that calls for attention is the implied drive towards freehold land ownership in the country. For an urban area such as Kampala, such a policy orientation has significant implications with regard to both development control and revenue generation. Given the unsatisfactory experience with development control and enforcement of planning regulations on *mailo* land, the Act's apparent encouragement of landholders to acquire freehold land rights seems to point to an even more difficult future for KCC's planning and urban land management department. It also has implications for the acquisition of land for public purposes, in a situation where there is virtually no undeveloped state land within the city boundaries. In the early stages of drafting the Act, leasehold land ownership had been recommended for urban areas but this provision was later dropped in favour of a plural system that indirectly favours freehold tenure across the country. There is need to re-examine the merits of this approach and explore alternative interventions.

The appropriateness of encouraging freehold title in urban areas rather than leasehold should be reconsidered.

The LA98 also makes ambitious proposals for the creation of various decentralised bodies of land management, including land committees, land tribunals and land boards. Decentralisation of land management and administration is certainly a very welcome development but question marks remain with regard to the compatibility of the roles of some of these bodies with existing formal regulations, particularly in Kampala. The main function of land committees is to adjudicate and demarcate land for the purpose of preparing certificates of occupancy and certificates of customary ownership. For these instruments to be useful, there is a need to review existing planning regulations so that such certificates are treated at par with registered titles in the process of applying for planning permission. Furthermore, these provisions suggest a need to decentralise planning as well: why should an individual planning to put up a simple residential house have to seek permission from the central KCC office, requiring the sitting of the full council and scrutiny by politicians.

For new forms of tenure (certificates of occupancy and customary ownership) to be useful, their acceptability as evidence of land rights when applying for planning permission needs to be ensured.

The scope for decentralisation and delegation within the development control system should be explored.

Another important issue with regard to the LA98, pointed out by this study, is the removal of jurisdiction over land disputes from LC courts to specialised Land Tribunals. The evidence indicates that in most areas LCs still handle land disputes, out of ignorance of the changes in the law, vested interests or the lack of alternatives available to those in dispute. LCs tend to view settlement of land disputes as part of their administrative duties, since they are often the



A reclaimed and settled area in Kamwokya

first point of call for the disputants. The important question here is whether it was absolutely necessary to create a separate local court for land disputes. For example, does this suggest that we are likely to see other courts specialising in other matters such as domestic disputes? These questions are pertinent because in practice the provision for Land Tribunals has not been implemented, leaving most disputants in legal limbo.

In view of the failure to implement the Land Act 1998 (LA98) provision for the establishment of Land Tribunals and the LCs' continued fulfilment of relevant functions, legal recognition of their role in resolving disputes over land should be reconsidered.

The current author has, in this study, expressed dismay at the manner in which the LA98 was formulated with apparently no implementation strategy, which has resulted in unending amendments even before operationalising the Act. Where

necessary, law should be modified to be as accommodative as possible, but there is a risk of diverting from the original course intended by the reform process as the law is amended to accommodate various interests. Accusations that they have frustrated the implementation of those provisions of the Act that seem to curtail their powers and privileges have also been levelled at the bureaucrats within the implementing ministry. All these problems leave the implementation of the Act in a precarious situation. There is thus a need to evaluate the implementation process and institute appropriate management systems that are capable of delivering the primary objectives of the envisaged land reform.

As an integral part of the current legislative review, progress with the implementation of the LA98 should be assessed and the process and resource requirements for implementation identified and made available.

Appendix

Secondary (documentary) data search was carried out, at national, city and Division levels, to:

- a) understand the contextual factors, such as economic trends, the incidence and characteristics of urban and rural poverty, political changes at national and city levels, and population trends;
- b) review previous research on land and informal settlements in the city;
- c) identify key policy and legal instruments;
- d) assess the availability of data from national, state or local government sources (e.g. census data for the city as a whole and the case study settlements, poverty assessment/household surveys);
- e) assess the availability of maps, satellite images or aerial photographs of the city as a whole (showing historical growth patterns, surrounding areas, the location of the case study settlements) and the case study settlements themselves (showing historical growth patterns and main features);
- f) assess the availability of land records (to identify patterns of ownership, volumes and prices of transactions, etc.);
- g) assess the availability of court records (to identify a selection of cases that indicate the sources and prevalence of conflicts over land, to illuminate the process of dispute settlement, and to assess its accessibility and efficacy).

One of the main objectives of the research was to assess the efficacy of land delivery systems to urban residents, especially the poor. In order to achieve this objective, an assessment of the socio-economic status of landholding households, through a questionnaire survey, was conducted. A random sample of about 90 landholding households per settlement was used for the survey and the collected data analysed using SPSS.

Focus Group Discussions (FGDs) were used in this study as one of the principal data collection methods, within the framework of a multi-method approach. The discussions were aimed at eliciting information on the ways households in different socio-economic categories access land for housing and the relative importance of these land access mechanisms. FGDs were also important in gaining an understanding of settlement dynamics, such as growth patterns, subdivision processes, local politics and the social regulation of land transactions. In each of the settlements three FGDs were conducted. These included:

- a) Landholding heads of household regardless of gender;
- b) Landbrokers operating in the settlement;
- c) Women heads of household – mainly landholding;

Qualitative interviews included both key informant interviews of officials at national, city, division and local levels, and follow-up in-depth interviews with some of the heads of household that participated in the socio-economic survey. The former were aimed at not only facilitating the data triangulation process but also filling some of the gaps within the available secondary data. Interviews were conducted with officials in the Ministry of Water Lands and Environment, the Directorate of Human Settlements, Kampala City Council, Rubaga Division, Kampala Central Division, Nakawa Division and the Buganda Land Board. In addition, informal discussions with land-related professionals in private practice were very useful. At the settlement level, interviews were conducted with Local Council chairpersons and heads of household identified through a preliminary analysis of the questionnaire survey data. In this category were heads of household who had experienced disputes on their land, long-standing settlement residents, recent acquirers and purchasers, those who had inherited land, women landholders and holders who had subdivided their plots. The aim of these in-depth interviews was to obtain deeper insights into the processes involved.

Footnotes

- ¹ For the purpose of this study, ‘institutions’ are defined as “rules, enforcement characteristics of rules and norms of behaviour that structure repeated human interaction”, North, D.C. (1989) “Institutions and economic growth: an historical introduction”, *World Development*, 17(9), pp.1319-1332.
- ² Zetter, R. and F. A. M. De Souza (2000). “Understanding the processes of informal housing: appropriate methodological tools for a sensitive research area.” *International Planning Studies* 5(2): 149-64.
- ³ Young, C. (1994) *The African Colonial State in Comparative Perspective*, London: Yale University Press.
- ⁴ West, H. (1964) *The Mailo System in Buganda: A Preliminary Case Study in African Land Tenure*; p.15.
- ⁵ The Decree vested title to all land in Uganda in the government for the benefit of the people of Uganda. It essentially nationalised all land in the country, extinguishing any form of absolute rights in land and private land ownership in perpetuity.
- ⁶ Bosworth, J. (2002) *Country Case Study: Uganda*, Land Policy and Institutions Workshops CD-ROM Africa and the MENA Region, Kampala April 29 – May 2: The World Bank; McAuslan, P. (2003) *Bringing the Law Back In: Essays in Land, Law and Development*, Aldershot: Ashgate.
- ⁷ Bosworth 2002, op cit.
- ⁸ Nordberg, L. and Nsamba-Gayiiya, E. (1991) *Report on land delivery in Uganda*, Kampala: UNCHS/UNDP.
- ⁹ These figures are, however, negligible compared to fees charged by private surveyors who undertake a subdivision. In my personal experience as a surveyor in Kampala and also based on accounts from professional colleagues, the minimum cost of a survey of a small plot of land up to the land title production stage is about Ushs. 500,000. There are many cases of unqualified surveyors who cheat people of their money by offering very cheap rates for survey services, which end up being fakes. The high costs of surveying are largely due to the very high standards of accuracy stipulated by the Survey Regulations, which were derived from the Survey Act, enacted in 1936 with only two minor amendments in 1968 and 1970. The exchange rate at the time of the study was 1 US\$ = Ushs. 1,800
- ¹⁰ It was learnt from an interview with the land surveyor for the Board that this process takes about 3–4 months to complete. It was interesting to find out that the Board is more organised than KCC, at least in as far as having clear guidelines regarding the process of lease acquisition is concerned. There are written guidelines and forms in both English and Luganda to assist applicants who desire to acquire leases on land administered by the Buganda Land Board.
- ¹¹ In the absence of any published guideline with respect to plan permission application procedures, the information included here was obtained from an interview conducted with the Chief Building Surveyor on December 10, 2002.
- ¹² The use of installments to purchase land is one of the positive attributes of informal transactions. Households with limited irregular incomes are able to pay for land over an extended period of time through manageable cash installments.
- ¹³ Mukwaya, A. B. (1953) *Land Tenure in Buganda: Present Day Tendencies*, Kampala: The Eagle Press.
- ¹⁴ Such negotiations are often discreet until the final agreement is reached when disclosure to those intended as witnesses to the sale agreement is made.
- ¹⁵ Mukwaya, 1953, op. cit.
- ¹⁶ In the absence of any published data on land prices, focus group discussions involving land brokers were used to arrive at these estimates. This information was triangulated with estimates obtained from the Principal Valuer, KCC on December 15th, 2002.

-
- ¹⁷ Bikaako, W. and Ssenkumba, J. (2003) “Gender, Land and Rights: Contemporary Contestations in Law, Policy and Practice in Uganda”, In Wanyeki, L. M. (ed.) *Women and Land in Africa: Culture, Religion and Realizing Women’s Rights*, London: Zed Books.
- ¹⁸ Kyewalyanga, F. X. (1976) *Traditional Religion, Custom and Christianity in East Africa*, Hosheschaftlarn: Klaus Renner Verlag
- ¹⁹ Marriage of the widow to a brother of the deceased husband.
- ²⁰ UNCHS (United Nations Centre for Human Settlements) (1999) *Urban Poverty in Africa: Selected Countries’ Experiences*, Africa Forum on Urban Poverty, UNCHS: Nairobi.
- ²¹ McAuslan, P. (2002) “Tenure and the Law: The Legality of Illegality and the Illegality of Legality”, In Payne, G. (ed.) *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor*, London: ITDG, p.29.
- ²² Rakodi, C. (2002) “Interactions between Formal and Informal Urban Land Management: Theoretical Issues and Practical Options”, In Kreibich, V. and Olima, W. H. A. (eds.) *Urban Land Management in Africa*, Dortmund: Spring Centre, University of Dortmund; p. 18.
- ²³ McAuslan, 2002, op. cit.

Publications

Informal Land Delivery Processes in African Cities

Working papers

1. Rakodi, C. and Leduka, C. (2003) *Informal Land Delivery Processes and Access to Land for the Poor in Six African Cities: Towards a Conceptual Framework.*
2. Ikejiofor, C.U. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Enugu, Nigeria*
3. Kalabamu, F.T. and Morolong, S. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Greater Gaborone, Botswana*
4. Musyoka, R. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Eldoret, Kenya*
5. Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*
6. Nkurunziza, E. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Kampala, Uganda*
7. Mulenga, L.C. and Rakodi, C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Lusaka, Zambia*

Policy briefs

1. Ikejiofor, C.U. (2004) *Informal Land Delivery in Enugu, Nigeria: Summary of Findings and Policy Implications*
2. Kalabamu, F.T. (2004) *Land Delivery Processes in Greater Gaborone, Botswana: Constraints, Opportunities and Policy Implications*
3. Musyoka, R. (2004) *Informal Land Delivery in Eldoret, Kenya: Summary of Findings and Policy Implications*
4. Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*
5. Nkurunziza, E. (2004) *Informal Land Delivery Processes in Kampala, Uganda: Summary of Findings and Policy Implications*
6. Rakodi, C. and Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor: A Comparative Study of Six African Cities*

Publications can be obtained by either telephoning Carol Fowler on 44 (0) 121 414 4986 or Email: c.a.fowler@bham.ac.uk and also downloaded as a PDF file from <http://www.idd.bham.ac.uk/research/researchprojs.htm>

