Colonial Legacy, Access Political Economy of Land, and Legal Pluralism in Uganda: 1900-2010

David Ross Olanya
Department of Public Administration and Management
Faculty of Business and Development Studies
Gulu University – Uganda

Abstract

The colonial regimes introduced various forms of land ownership in almost all African countries. To guarantee land access to diverse interest groups in Uganda, the British government introduced *mailo, native freehold, and leasehold* and *crown* land ownerships. After independence, different ruling regimes had supported different forms of ownership in the country with varying degree of state-led interventions to favor some specific interest groups within the country. However, the *mailo* and *customary* forms of land ownership have remained the most contestable politico-economic social reality at the moment in development discourse on property right development needed for poverty reduction in Uganda. These have drawn attentions from the diverse interest groups including the political, legislatures, business community, civil society and indigenous people. With the need to increase agricultural production and also protects the vulnerable indigenous groups in the country, access debate has been focused on reviewing the status of land ownership in the country with specific reference to *mailo* and *customary* land ownerships despite their recognition in constitution. This social reality has contradicted the state initiated interventions, especially in *customary* ownership where access to land was guaranteed to indigenous population by legally encouraging customary land holders form an association to acquire a certificate of customary ownership which could be used as a security for securing funding from banking institutions. However, this process of registering communal land has made very little progress as people perceive land as an inheritable not a commodity. Even banks do not recognize certificate of *customary* ownership as a guarantee for accessing loans by the holders. This study intends to focus on the colonial land policy and the subsequent access politics that cropped in since 1900 up to today as most of the land questions in Uganda have its origin in colonial land policy. It uses the agrarian political economy approach in analyzing access political economy. Specifically, it discusses the fundamental changes in customary land access and on whose benefits under the different ruling regimes as well as the social contradictions and reality.

Keywords: land ownership, political economy, customary regime and peasant resistance

Introduction:

Few countries in Sub Saharan Africa have developed comprehensive national land policy that guarantees access and responds to current development needs of citizens in a sustainable manner. In Uganda, land belongs to citizens as defined by the 1995 constitution and the Land Act of 1988. The land law of Uganda does not give the state radical title over land. Since independence, different regimes that governed the country enacted and/ or issued out land legislation without comprehensive land policy development. However, countries such Ethiopia, Eritrea, Mozambique, Rwanda, South Africa, Tanzania, Zambia, and Zimbabwe have developed the comprehensive Land Policy Development. Uganda is among the other countries having enacted land legislation without comprehensive policy development (Nkioki 2006: 8&9). The different regimes that ruled the country had legislated land policies which were not responding to issues that needed resolution at the time of enactment.

The politics of contemporary land reforms have been based on bringing specific interests of significant groups into the laws and these have been rooted in the post independence period (Manji 2006:9). The political economy of land in Buganda and the ruling government has been based on maintaining status quo of land lordship based on the previous arrangements with the colonial authorities. The interest of the government during the 1990s land reforms was politically motivated,

hurried to restore the traditional property rights to win the landlords loyalty (Juma 2006:12). The *freehold* and *mailo* tenures and estates that were abolished under the 1975 Land Decree were restored. The restoration of mailo made the bon fide occupants, a person who has a permission to utilize the land for a period exceeding 12 years without property rights over the land, but only use right.

Therefore, the 1995 constitution of Uganda and the Land Act of 1998 repealed the 1975 Land Decree that gave power to state as the owner of the radical title. The government instead reintroduced customary, freehold, mailo and freehold tenures and the state was pushed to the periphery on issues related to land. Land is not vested under the custody of state as a trustee on behalf of all citizens.

Uganda also recognizes informal certificate issued at the commune level to bring about increased security of tenure; improving women's access to land; preventing land fragmentation; legal recognition and ownership of tenants and rural poor population. Uganda has no comprehensive national land policy. However, the final drafting of National Land Policy has been finalized and it was issued out in March 2011.

Because of the legacy of colonial land politics, this study discusses land access from the political economy perspectives including access to, use and transfer. It addresses fundamental questions such as who has access to and who does not, whose rights are secure or not secure, who gets use the land, who gets the payment, and how decisions are made. This was done investigating the struggle for access to and control over land before and during post independent periods.

Colonial Legacy and Agrarian Question: African Perspective

Most studies on agrarian questions in Africa acknowledged tenure challenges as resulting from colonial legacy. In some countries, settler colonialism created massive land alienation and proleterianization while indirect rule was used to promote peasant farming for exports (Amin 1972). Chanock (1991) acknowledges the profound connection between the use of traditional institutions by colonial governments and the development of the customary law of land tenure (1991:64). In West Africa, the colonial governments prohibited sales of 'communal' land inorder to avoid 'spirited opposition to individualization' by Africans as ambitious settlers and corporations increased acquisitions of land. Customary system was therefore encouraged to reduce African resentment and anxiety of displacements from and land loss (ibid 1991: 82).

Customary courts were not under the control of colonial officials. Customary tenure rules were seen as a means to inhibit the development of individual rights that could encroach upon the ancient rights of some community, lineage or 'tribal polity.' In Northern Rhodesia (now Zambia), Reserves and Trust Lands were defined as areas for African use and the colonial government refused to recognize the legality of private transactions therein. These were assumed to be in permanent possession of African political communities (Colson 1971: 209). Evidence from Gold Coast (now Ghana) shows that land sales even preceded colonialism on the context of frontier development of export crops for European markets from 1830s (Amanor 2010: 105). The attempt by the British authorities to vest control under their authority met serious opposition from the elites including European mercantile firms who opposed interventions in the market. At last, a compromise was reached and land was placed under the authority of paramount chiefs, who were the only social groups with recognized rights to transact land.

These were the beginning of distortions in customary tenure invented by the colonial authorities that the system does not recognize individual rights to land. Control rights over customary tenure were vested in African chiefs in trust of their communities. Unfortunately, the administrative aspects of land remained in the hands of colonial authorities. Customary tenure only embodies individualized use rights over arable land and homestead as well as to the common property notions including grazing lands, woodlands, rivers and dawn waters and other natural resources (ECA 2004: 76).

The nurtured distortions were three folds: the notion of community rights were equated one-sidedly with the concept of individual right; the definition of customary authorities who would exercise the

right to allocate community land for household use was mixed up with rituals powers with proprietary rights; and the identification of the community with tribes and migrants who did not belong to the particular tribe were viewed as strangers and had no traditional right to access land (cf. cheater 1988 in Moyo 2003). These distortions were however contrary to practices that prevailed in the pre-colonial African societies. Instead status and wealth accrued to those who could attract dependents or followers, and strangers were welcomed.

Therefore, the current land tenure complexities are based upon administrative and resource rights systems imposed during the colonial period, and cofounded by the emergence of rural markets as well as commoditization of natural resources. Colonialism defined land as a communal and customary possession (Mandani 1996), and thus customary tenure was related to both personal relations (marriage, succession, movement) and access to land. But colonial customary was not voluntary or socially sanctioned but was enforced by the colonial governments in order to tighten the control of the colonial state on the natives. Since indigenous black populations were seen as ignorant of land ownership concepts, the colonial state alienated land to white settlers on the basis of freehold tenure and thereby gave virtual absolute ownership to land rights. Customary law was modified by the colonial states to govern relations among the indigenous communities.

Lentz (2006) reviews the colonial theories of African landownership. He found that the colonial maters appropriated land for public use and guarantee security of tenure to European firms interested in concessions for mining or commercial agriculture. Uncultivated land had no 'owner' and could therefore be legitimately appropriated by the colonial powers (ibid: 7). In a similar analysis, it is argued that customary and statutory laws introduced during colonialism were meant to serve their interests, allowing customary tenure exists along the statutory law. The legal dualism was meant to reinforce settler interests, simplify and strengthen the roles of traditional authorities, and suppresses women's rights (Adams and Turner 2006:6). To govern customary regimes in West Africa, the colonial masters used *tutorat relationships* as institutional devices. The *tutorat* as a customary landowner was described as a first comer (*autochthon*) who concedes land rights to migrants, locally called '*strangers*.' (cf. Jacob 2007, in Colin and Woodhouse 2010)

The Historical Legacy of Land Tenure Regimes in Uganda:

The Pre-colonial Period

The pre-colonial tenure systems in Uganda were unique to every particular community. In *Buganda, Bunyoro, Busoga and Toro*, land relations were based on feudalism, controlled by oligarchies and security for the land users was based on continuous loyalty to pay tribute in the form of produce. Systems of territorial controls were used to govern access to landed resources, based on a complex network of reciprocal bonds within the families, lineages and larger social units guaranteeing both individual and community rights as prescribed by customs. As long as such bonds existed, any individual could secure access to such resources. In addition, land relations were defined by specific uses to such parcels of land occupied by families, clan, or lineages[1].

Customary land in *Buganda* was largely placed under the custody and trusteeship of the *Kabaka* on behalf of the people. By around 1840, the *Kabaka* had effectively undermined the power of the clan heads over land control, instead they had to get right to use and produce food crops. *Buganda* was having four types land control rights: *a)* rights of clans over land headed by clan leaders known as *bataka*. *Buganda* had around 522 butaka estates by 1911, held by individual clan heads and sub clans, but not collectively. However, even the *bataka* could not transfer the land to their offspring after death. The *Kabaka* had the right to remove them from estates for any good reason; *b)* rights of the *Kabaka* and the great chiefs who had the right to use estates attached to their chieftaincies. The great chiefs (*Bakungu)* were few in number while sub clan heads left out of the game were many; c) individual hereditary rights; and peasant's rights of occupation. Peasants were free to choose a chief under whom to live. These peasants can be evicted any time from the plot (*kibanja)* unless they

maintain correct social and political behavior. Also, some of the semi-feudal structures were developed in the kingdom of *Ankole, Bunyoro* and *Toro*.

In *Acholi, Lango, Kigezi* and *Sebei*, customary tenure did not recognize the various rights of individuals to possess and use land subject to the superintendent of his family, clan and/or community. For the *Acholi*, land was regarded as common heritage characterized by the following rules: individual land holder had his right under customary, including cropping, grazing and selling subject to approval by his family; the clan or family had the right to settle land disputes within the area of control, buy or prohibit the sale of clan land to 'undesirable persons' and declare void any land transaction which did not receive its approval; and community in general had the following rights: the rights to graze communally over the whole areas but not to damage crops, and the right of free access to salt licks, watering of cattle around or open waters and access to water from spring and other common rights[2].

The Colonial Period: 1900 – 1962

During this period, the British and traditional authorities signed multiple agreements in *Buganda, Toro* and *Ankole* Kingdoms. As a result, British authorities granted private estates called '*mailo'* in *Buganda* and '*native freehold'* in *Toro* and *Ankole*. A system of land registration was introduced in *Buganda* for the King, his princes and other landlords. For the rest of Uganda, all land was declared "*crown land,"* where the British became holder of the radical title and proceeded to give limited number of freehold estates to individuals and corporations (Nkioki 2006: 212; MHLUD 2007:1-3). *Mailo* land and private tittles were exceptional in *Buganda* kingdom. The system of *mailo, freehold,* and *leasehold* introduced by the British were non-existence before colonialism. It was only *customary* system being used in these kingdoms.

As stated in Article 15 of the 1900 *Buganda* agreement, out of the total 19,700 square miles (Rugadya 1999; Juma 2006), the Kabaka and 4000 of his received free-hold rights t0 9,003 lots of 1 square mile each known as *mailo* and passed them to their heirs (Ofcansky 1996:24). The agreement therefore guaranteed British sovereignty and as well as privileged status to Buganda Kingdom, dividing the Buganda land equally between the British and Buganda chiefs, many of whom held land in private ownership and leased plots to tenants under the system (Human Rights Watch 1999:28).

The *mailo* system introduced by the colonial government is equivalent to *freehold* that is associated with individual rights. Access power was consolidated in the hands of Kabaka and his great chiefs. The peasants depended on the chiefs who were turned into landlords. Few individuals had access power over the poor peasants who were left at sufferance of the landlords. Even if *mailo* is being broken by the forces of the markets, it is only capable individuals who could afford the buy and have full control over the land while the poor majority is left out[3].

Outside Buganda, there were three categories of freehold introduced by the colonial government: the first was alienated individual lands given by the colonial government based on 1903 Crown Land Ordinance. The second was freehold converted from customary tenure plot schemes in districts of Kigezi, Bugisu and the Kingdom of Ankole. Third was the native freehold under Toro and Ankole agreements of 1900 and 1901 respectively. These freeholds were similar to mailo land in Buganda. In Ankole, as a result of 1901 agreement, a demarcation of 50 square miles for private freeholds and 26 square miles for the official estates were given. Also, in Toro, 255 square miles were given as private freeholds and 122 square miles as official estates to Omukama and his chiefs. These were restricted freeholds, with allodial title vested in the colonial power. The land could only be transferred to a native of the kingdom[4].

Uganda Order in Council of 1902 defined Crown lands as "all public lands which are subject to control of His Majesty by virtue of any treaty convention or agreement of His Majesty's Protectorate and all lands which have been acquired by His Majesty for the public service or whatsoever." This was a reference to the 1899 protectorate agreements. The Buganda Agreement of 1900 provided a detailed land settlement whereby the waste and uncultivated land was vested in the Crown and the remainder divided into private and official estates. The Crown Lands Ordinance allowed the

governor to allocate crown. It was the Crown Land Ordinance of 1922 which states the Crown's rights over land, other than the unoccupied land, land acquired for public purposes and covered by the agreements was clarified. It states that "all and any rights therein in the protectorate shall be presumed to be property of the Crown unless they have been or are thereafter recognized by the Government document to be property of a person or until the contrary thereof be proved.[5]"

In *Kigezi* region, the 1902 Uganda Order in Council and the 1903 Crown Land Ordinance declared all land in Uganda to be 'Crown land', legally vesting ownership in the Crown while the rights of African were protected. Crown land however excluded land allocated to chiefs under the agreements signed with leaders in the kingdoms of Buganda, Ankole, Toro and Bunyoro. It was only meant for land outside these Kingdoms. Fortunately, the 'right of native to occupy Crown Land' was legally recognized. Even the 1950 pronouncement on the colonial's policy on land outside Buganda stated that crown land was held 'in trust for the use and benefit of Africans'. However, it did not mention anything like control over, and access to, was only guaranteed in terms of use. This is what Carswell called 'native customary rights.' Furthermore, the official policy of protecting African interests was non-alienation in the freehold. In some few cases land under the freehold was granted to missions through leasing, for examples, the Native Anglican Church and White Father Mission. Also, leaseholds were given for pyrethrum plantations as well as certificate of occupancy were granted to a number of Buganda Agents for the land they held in Kigezi (Carswell 2007: 86-87).

The Buganda parliament, *Lukiiko*, passed Land Law in 1908, defining the system of tenure introduced by the 1900 Buganda Agreement, requiring tenants and peasants to pay rent. The tenants and peasants were to pay dues every year, *busulu* as for the tenants and *envujjo* for each acre. This later led to *Bataka Movement* that was disatisified with the agreement, because they had no rights to land (Juma 2006:8). As a result, the colonial government enacted the envujji and busulu laws to limit the amount of rent that the landlord could levy and guaranteed tenants complete and hereditary security of tenure provided they used the land productively. The tenants therefore were protected against arbitrary eviction (ibid.p.9).

The colonial government acted these laws on the fear of resistance from *bataka* (clan leaders) who were settling on these estates and just to protect them. *The Busuulu and Envujju* Law of 1928 entrenched the rights of the tenant as provided clause11, that no peasant could be evicted by the mailo owner from the kibanja unless the order was made by court having the jurisdiction[6].

During this period, land alienated was in mailo and crown. Under Mailo system, Kabaka, chiefs and some notables benefited from the alienation. Baganda peasants and immigrants on large tracts of undeveloped land were legally rendered landless and actually had to pay to pay "Busuulu" or "Enjunjo" rent to the holders of the certificates (ML &PP 1997 in Tukuhirwa 2010: 6). For the crown land, alienation was for government purposes and this land was vested in the custody of the Queen of England.

Tukuhirwa further notes that "perhaps, nowhere in Uganda is the land issue as sensitive as in Buganda." The argument was based on impact of Bugamda's agreement of 1900 that resulted into the creation of Landlord class within Buganda. This landlord class was later extended outside Buganda, in Toro and Ankole under the 'native freehold' system. The creation of landlord class by colonial authorities was a tool to elicit political royalty and collaboration for the latter to extend its sphere of influence against rebellious Kabalega. It was through this royalty that many Baganda acquired big chunks of land in Kabaale as a reward for support the Baganda rendered to the British against rebellious Kabalega (2002:9)

Access power by the different interest groups was based on power relations with the colonial authorities. While mailo was meant for the Kabaka and his chiefs, native freehold were meant for kings and private individuals in Toro and Ankole respectively. Crown land was meant for the British authorities, and originally created for specific purposes such as churches, and specific commercial ventures. The customary tenure was used as a means and the easiest way administering justice in Africa setting. They used African customs for long term sustainability.

Post Independence Land Policies:

The 1962-1975 Period

At independent, Obote I government retained land tenure systems introduced by the colonial government except the crown land, which was converted into public land. During this period, the mailo, freeholds, customary were maintained. The Crown Act of 1962 converted crown land into public land, under the control of Uganda Land Commission. Similarly the Public Land Act of 1969, provided that no customary tenants could be evicted without his or her consent, and that compensation must be paid. Because of the political economy associated with land, Obote I government maintained feudalism – mailo and freeholds. Although the 1966 and 1967 Constitutions abolished federalism in Uganda, they did not change the structure of land holding and distribution established under colonialism and confirmed in the Independence Constitution (MHLUD 2007:3).

Leaseholds were granted for 99 years and a viable rent was paid. These leases however, have been granted on former public land. Mailo owners and freeholders were entitled to lease out part or all their land if they so wished. Under the 1969 Public Lands Act, lands that did not fall under either as freehold or leasehold, is held under customary Law. Customary tenure is a system of land holding governed and regulated by customary principles and in the majority of cases sanctioned by customary authorities' council of elders, village chiefs, village headmen, etc, the owner has user rights. The owner may be an individual or a community. With the exception of Buganda and few areas in Ankole, Toro and Bunyoro, where titling took place, most land in Uganda is held under customary tenure. (ibid. p.5)

The 1975 – 1995 Period

The 1975 Land Reform Decree (Decree No 3) declared all land in Uganda as public land under the control of Uganda Land Commission in accordance with the provisions of Public Land Act (1969). It was aimed at ending big underdeveloped land, distributing land use for development project, and providing security to land occupiers subject to public need (Juma 2006:11). As stated in section 1 of Land Decree 1975 that:

> *"With effect from the commencement of this Decree all land in Uganda shall be public land to be administered by the Land Commission in accordance with the Public Land Act 1969, subject to such modifications as may be necessary to bring that Act into conformity with the decree."*

The 1975 land degree: *(a)* declared all land in the country public land to be administered by the Uganda Land Commission, abolishing freehold interests in land except those where interest was vested in the state through Uganda Land commission; *(b)* all mailo ownership, which existed immediately before the enactment of the decree, was converted into leasehold for a period of 199 year for public bodies and 999 years for individuals; *(c)* altered the fundamental legal status of tenants by abolishing the Busuulu and Envujju Law of 1927, the Ankole Landlord and Tenant Law and the Toro Landlord and Tenant Law of 1937. These tenants did not have any transferable interest in the land; only developments on land could be transferred after giving notice of three months to the controlling authority; and *(d)* no person was to occupy public land by customary tenure except with written permission of the prescribed authority (FAO Land database 2010).

Although the prescribed reforms were hardly implemented, it repealed all previous tenure systems except for leasehold. It affected both the landed class as well as communal areas also became public lands, potentially available for lease by any interested party. As a result, several areas

originally gazetted for protection (especially Forest and Wildlife reserves) were degazetted (MLHUD 2007b).

Amin's regime (1969-1979) was interesting in seeing state's control over land. The Land decree declared all land in Uganda public land. Access to land was only based leasehold tenure only. The state was to hold land in trust for the people of Uganda, and to be administered by the Land Commission.

The 1995 constitution of Uganda however repealed the decree and restored the land tenure systems based on customary, mailo, freehold and leasehold. It made new and radical changes in state land relations by declaring that land belongs to the citizens of Uganda and would vest in them in accordance with specific land tenure systems enumerated therein. A new system of land administration, consisting of land boards in every district, was also established (MHLUD 2007:4).

The Period of Legal Pluralism: 1995 – 2010+

Museveni's regime restored legal pluralism in land policy through the 1995 constitution and the subsequent enactment of the 1998 Land Act. Access was accommodated through legal pluralism. As argues by Manji (2006), the politics of contemporary land reforms have been based on bringing specific interests of significant groups into the laws and these have been rooted in the post independence period (ibid. p. 9).

Article 237 of the 1995 constitution stipulates that land belongs to citizens of Uganda and shall be vested in them in accordance with the customary, freehold, mailo and leasehold. Because land belongs to citizens, a decentralized management of land was created through the establishment of District Land Boards tasked with the responsibility of holding and allocating land on behalf of the people. By vesting land ownership to citizens, the government contradicted the 1975 Land Decree where tenants could be evicted without notice. Mailo and freehold systems were abolished and customary owners must register for their customary occupation with the Uganda Land Commission. The bona fide occupants were not supposed to pay rents to landlords but also not to transfer land to the next generation apart from improving and using the land productively.

The main objectives of the 1998 Land Act include:

- *To provide security of tenure to land users, mainly customary landholders, referred to as customary tenants on public land, and the lawful or bona fide occupants on registered land;*
- *To resolve the land use impasse between the registered owners- mailo, freehold and leasehold – and lawful and bona fide occupants of this land;*
- *To recognize customary tenure as legal tenure equal to other tenures;*
- *To provide an institutional framework for the control and management of land under a decentralized system;*
- *To ensure proper planning and well-coordinated development of urban areas;*
- *To ensure sustainable land use and development throughout the country to conserve the environment;*
- *To redress historical imbalances and injustices in the ownership and control of land; and*
- *To provide the state and local government rights to compulsory acquisition of land in the public interest for the public use, public safety, public order, public morality or public health* (FAO 2010).

This enactment was based on the principles: that good land tenure system should support agricultural development through promoting land markets; a good land tenure system should not force people off their land; and good land tenure system should be uniform throughout the country (ibid).

Mailo system

The 1995 constitution of Uganda and subsequently the 1998 Land Act restored mailo, freehold, leasehold and customary ownerships. In Buganda, customary rules of tenure allowed a peasant to lease portions of the freehold (*'bijanja'*) from landlords, and many Baganda and non-Baganda rural dwellers held land under customary holdings (Tukahirwa 2002:28). Basically, customary tenure can be in threefold: those under *mailo* tenure are owned by the tenants, then those from the former public land and communal tenure in rural settlements. Depending on a specific part of the country; customary holdings are normally in the hands of individuals, families and tribes.

Customary land holding constitutes 75 of total land holdings in Uganda. Therefore, the Land Act of 1998 was seen necessary to improve on customary security. Customary tenants were encouraged to acquire a certificate of ownership on the land they occupy and they can convert this certificate to a freehold. The certificate is also accorded with value under the Land Act enabling it to be transferred, mortgaged, or otherwise pledged. The regime thought encouraging certificate of registration would avoid land fragmentations and promotes productive use of the land. *Mailo* tenants were expected to obtain a certificate of occupancy from a registered *Mailo* landowner, which recognizes and protects his/her interest in the land.

Land Act 1998 permits the lawful and *bona fide* occupants to mortgage the certificate of occupancy subject to the consent of the registered owners. The state assumed that the registered owners will grant permission to the occupants. However, the landowners view the occupants as trespassers imposed on them and have interfered with their right to private property. This has been the conflict with regards to effective utilization of certificate of occupancy (MLHUD 2007b).

Tukahirwa (2002) therefore notes that untitled customary ownership constitutes the biggest percent of land in Uganda. The bona fide occupants are protected by the law and compensation is required before eviction. This is common with mailo land tenure where titleholders find it difficult to sell the land. Another one is culture promoting land acquisition through inheritance In addition, not only culture, politics is another hindering factor. Many people own large tracts of undeveloped land, which are unable to sell due to legal constraints while others who would even be willing to buy lack access. These are serious demand and supply constraints (Tukahirwa 2002: 19).

Certificate of Customary Ownership (CCO):

The 1998 Land Act recognizes any person, family, community or Association holding land under customary tenure may convert the customary tenure into freehold. Members may agree to set out their rights and duties of an individual or families who belong to this association and apply for a certificate of ownership or a freehold title. Certificate holders can thus have access to credits. Financial institutions, bodies, and authorities are obliged to recognize a certificate of customary ownership as a valid certificate for the purposes of evidence of title (FAO 2010).

What is this certificate of customary ownership all about? It is a document that can be acquired by any person holding land under customary tenure and it is issued by a recorder (sub-County Chief). It confirms and concludes an evidence of customary rights and interests specified in it. This certificate also means that any transaction on it to third party rights shall be exercised in accordance with the customary law; section 8(1) of the Land Act 1998, cap.227.

To obtain a certificate of customary ownership, the applicant(s) must have a customary land without dispute on it. In case of dispute it has to be resolved first. Neighbors have to be present when Area Land Committee is marking the boundaries. An applicant submits a complete form to the Area Land Committee together with application fees. Area Land Committee puts a notice in public place which runs for 14 days to give time for those with claims on the same land to come up. The Area Land Committee confirms the boundary by way of land inspection. The Area Land Committee writes

a report to the District Land Board. The District Board communicates its decision in writing to the recorder and the recorder issues the certificate to the applicant based the decision of the Board.

The advantages associated with certificate of customary registration are that: a map is attached to it and also acts as proves where your land boundaries are. It shall also be recognized by the financial institutions, bodies and authorities as a valid certificate for purposes of evidence of title. One can conduct land transaction successfully since it is an official proof of ownership[7].

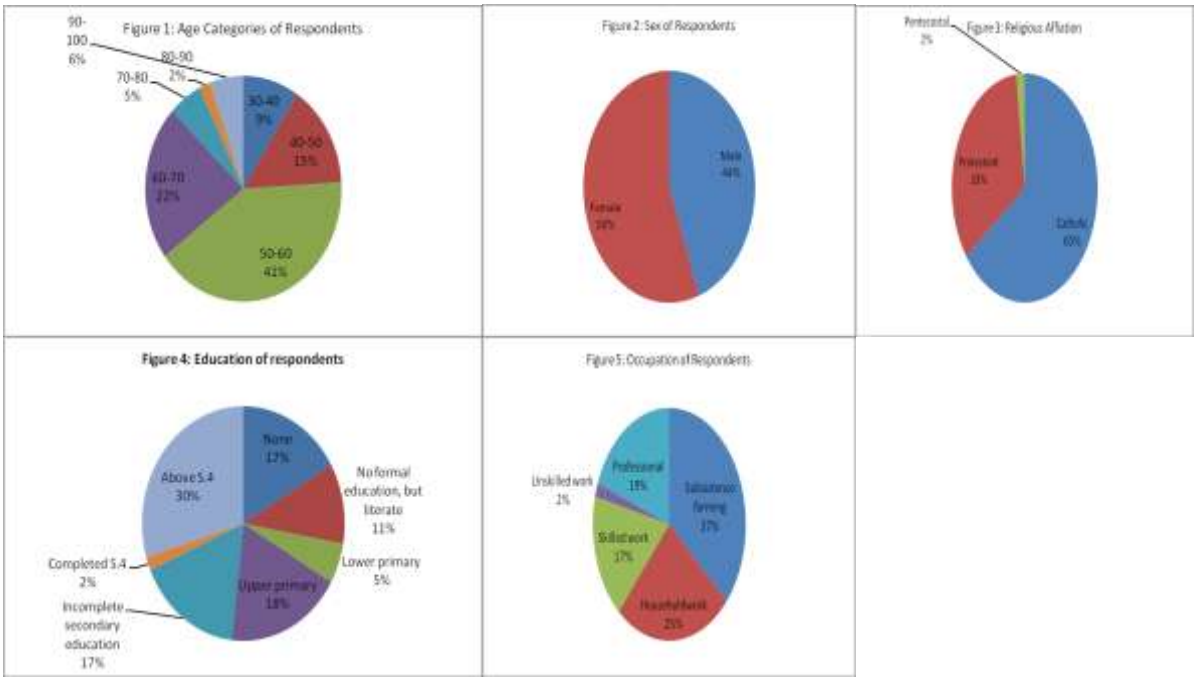
The government introduced certificate of customary ownership as a way of securing land right security and marking customary tenure works for prosperity. It was believed to be cheaper for the rural population so that they can secure financial support from financial institutions. This was a misconception of social reality. The purpose of certificate of customary ownership is to protect tenure rights under customary system while land titles are meant for to protect tenure under *mailo* and *freehold*.

The Case of Peri-Urban Settlement in Kitgum District

As part of the study, Kitgum district was purposively selected to explore the knowledge and perception on certificate of customary ownership. An International Non-Governmental Organization working on this project was also purposively selected to provide qualitative information. Then, a simple survey was conducted in peri-urban settlement. The focus in the area was that the 'spirit money making' is frequently high among people living in urban or peri-urban than those living in villages. Therefore, the perception of people towards registration of their customary land could help in contrasting the social reality and contradictions of the state-led intervention. A total of 100 households were clustered at parish level, based on the household's history. The study focused only on those who were settling in the area for many years and/or on their ancestral land.

Background information of Respondents

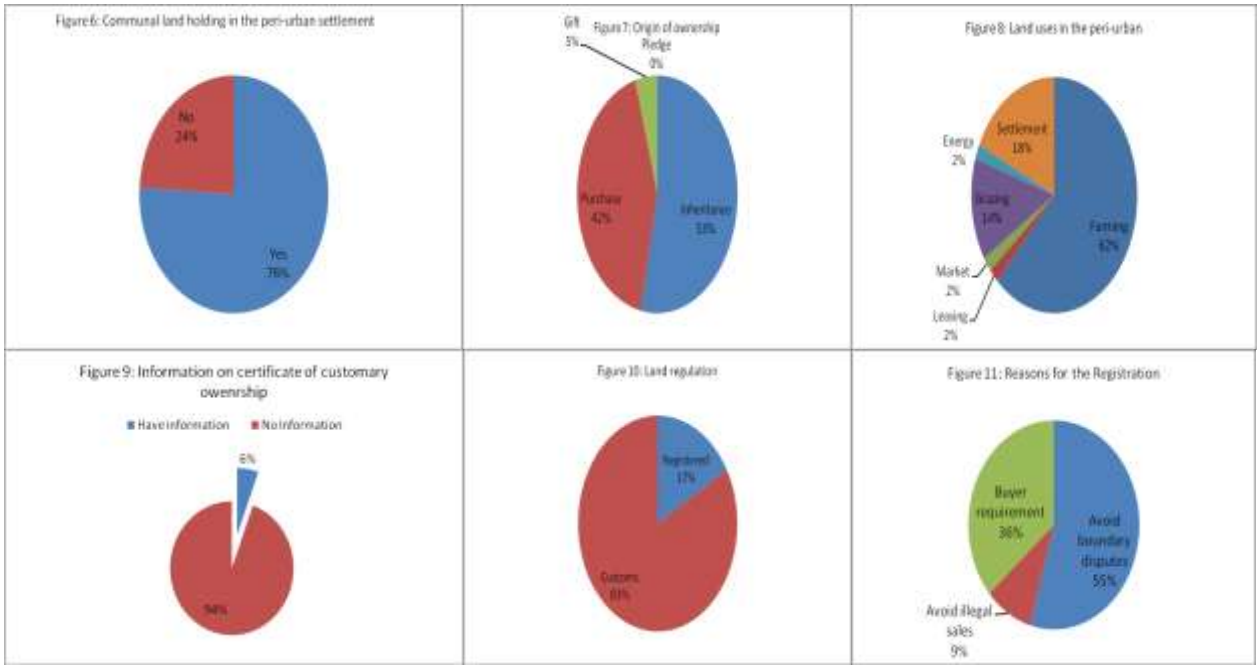
The figures below present the background information of respondents. Most of the respondents were aged in between 50-60 years old and females represented the majority. Most of them depend on subsistence farming within the peri-urban.



Source: Primary data

Related information on certificate of customary ownership

As pointed earlier, the purpose of the survey was to find out knowledge and perception of customary owners on the usefulness of the certificate of customary ownership. The majority of residents holds land under customary ownership and mostly acquired through inheritance although some residents have acquired private ownership through purchase. The purchase in the peri-urban signifies dynamics of customary tenure as responding to the urban land demands as settler population increases. Despite the recognition the certificate of customary ownership in the Lad Act 1998 and the purpose was to enable the poor register their ownership rights that will be used as collateral to borrow capital from financial institutions, the biggest percent of residents have no knowledge regarding certificate of customary ownership. Generally, the perception of people is negative with regards to any matter that touches land and they value land as inheritable. They perceive it as the process of taking their land by the government and prefer their land being regulated under customs. Even those who registered their land did it to avoid boundary dispute rather than on credit related matter. The figures below illustrate their knowledge and perception on certificate of customary ownership.



Source: primary data

Based on ICLA projectthat is being implemented by Norwegian Refugee Council, Kitugm district, over 500 people have applied for certificate of customary ownership after sensitization. However, the dysfunctional Land Board in the Kitgum district has made it very difficult and so far no body has acquired the certificate. The district has been non-operational until Jan 2011. The main principle of Certificate of Customary Ownership is to protect people's rights.

It was further admitted that people tends to be suspicious on the benefit of the certificate. They believe this project is being engineered to grab their land. Because it is an organizational project, the organization meets the costs of all requirements needed – including paying the application process, buying the form from District Land Office on behalf of the applicants. Like titling, this infrastructure is necessary to give incentives in the process so that people register[8].

The New National Land Policy: Final Draft

Based on the problems of social reality and contradictions that are associated with the interventions in both *mailo* and customary, the government organized a national land consultative seminars throughout the country and also held the national land policy conference in May 2010 to discuss ways of democratizing the process of changing tenure relations. Because multiples rights and

complexities of tenure systems, especially mailo (having both individual and customary rights) in Uganda, the final draft 2011 of National Land Policy has been issued out by the Ministry of Housing, Land and Urban Development. It now suggests number of changes to be made in the current legislation including article 237 (1) of the constitution which states that all land belongs to the citizens of Uganda granting the radical title to citizens not the state. The new policy now vests the radical title of all land in Uganda to citizens but state shall exercise sovereignty over all land in Uganda in trust for the citizens. The state shall guarantee all titles to land issued under the radical title on behalf of the citizens of Uganda. It is further spells out that the state shall maintain the multiple tenure systems as enshrined in the constitution, but shall clarify the nature of property rights under the designated tenure regimes to remove uncertainties and allow for evolution. Regarding land tenure regimes, the land tenure regimes shall be categorized as private, public and government land. Customary tenure shall be recognized along other tenure regimes, but state shall establish a customary land registry for registration of customary tenure in its own form. The state shall also resolve and disentangle the multiple, overlapping and conflicting interests and rights on *mailo* tenure and native freehold tenure (MHLUD 2011).

Conclusion:

The colonial legacy through the 1900 Buganda Agreement legitimizes *mailo* tenure, a form of modern feudalism, and a contestable issue shaping land politics in Uganda up to the present day. Control rights were given to traditional leaders who became landlords, a system that never existed under the customary law. Subsequently, the Buganda parliament, *Lukiiko,* passed Land Law in 1908, defining the system of tenure introduced by the 1900 Buganda Agreement, requiring tenants and peasants to pay rent for each acre every year. The colonial authorities also supported land registration to the few privileged groups absolute rights such as kings, princes and other notable landlords. Yet, before colonialism, even those chiefs had no authority or control over land. It was only the Kabaka who had the discretion of whether they should stay and use the land or not. In addition, they had no rights to transfer land to their children. People were free to choose under whose rule of those chiefs they want to live.

The post land policies in Uganda were based on ad hoc attempts through legislations that were not comprehensive enough to be put into practice during the implementation. The 1969 Land Act, 1975 Land Decree, 1995 constitution of Uganda and the Land Act of 1998 were all passed without wide consultation and scrutiny instead there were based on whose access is being secured through the law. Some of the historical land relations have become obsolete to answer the current the current development dynamics the country. The mercurial changes in land policy by every regime that came in have retarded property rights development needed for poverty eradication. The policy shifts have been from individuals to state as the controller of land and then the citizens of Uganda without comprehensive policy to support it. The radical title was transferred from the state (based on the 1975 Land Decree) to citizens without properly defining the nature of party rights therein for its operationalization.

It can also be argued that the period between 1900 to 1975, the governments guaranteed individual access which was based on legitimized historical mistakes of the 1900 Agreement where many peoples where rendered to tenants. It was only after the 1975 Land Decree that changed the law. State then had total access to land and it was up to the individuals to apply for access for specified periods of time. Surprisingly, the 1995 constitution and subsequently the 1998 Land Act restored the abolished *mailo*, freehold, and customary. The government only wanted political loyalty from the Buganda, the Kabaka and landlords, believing that the past government that issued the 1969 Land Act and 1975 Land Decree were authoritarian.

In promoting land markets for productive purposes, the government enacted law for creating certificate of ownership registration. In *mailo* certificate of ownership was encouraged by the bona fide occupants and peasants. But mailo system itself is an overlapping tenure with both private and customary (tenants and peasants) tenures. Landlords enjoy private rights while the tenants and

peasants have use rights under the private rights. For rural communal owners, registering and titling was taken to be very costly, and the government encouraged certificate of customary ownership. Because of this misconception that customary tenure is static; the survey conducted in the peri-urban found that customary tenure is flexible, responsive to economic need of the time. Economic conditions would let the communal land let their land out.

Notes

[1] Nkioki, 2006, p. 212 citing from Issue Paper for National Land Policy, Ministry of Water, Land and Environment, Land Tenure Reform.

[2] Justice Benjamin Odoki (chairperson), The Report of the Uganda Constitutional Commission: Analysis and Reconstructions (Entebbe: Uganda government printer, 1992) in Mugambwa (2002:1-2)

[3] Mugambwa 2002, p. 6. Citing the work of Moris and Read, Uganda the Development of Its Laws and Constitution, London. Stevens and Sons, 1996, pp.44-46

[4] ibid [3]

[5] ibid [3]

[6] Mugambwa, 2002, p.5 citing Mutyaba MP (chairperson), Report of the sessional Committee on lands water and environment, Parliament of Uganda Parliamentary Debates (Hansard), 20 June 1998 pp.4046-4047

[7] UNHCR and NRC, Understanding Certificate of Customary Ownership. Land Belongs to Us. Gulu Uganda

[8] Based on Information provided by ICLA Project – Kitgum District, Northern Uganda

References:

Adams, M. and S. Turner. 2006. Legal Dualism and Land Policy in Eastern and Southern Africa: In Land Rights for African Development: From Knowledge to Action. Ed. Mwangi Esther, CAPRI Policy Briefs, IFPRI, Washington D.C

Amanor, K.S. 2010. Family Values, Land Sales and Agricultural Commoditization in South – Eastern Ghana. Africa 80 (1), pp. 104-121

Amin, S. 1972. Neocolonialism in West Africa. Hammondsworth, UK

Carswell, G. 2007. Cultivating Success in Uganda: Kigezi Farmers and Colonial Policies. The British Institute in Eastern Africa

Chanok, M. 1991. Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure. In: Law in Colonial Africa, eds Kristin Mann and Richard Roberts, 61-84. Portsmouth, NH: Heinemann Educational Books

Colin, J and P. Woodhouse. 2010. Introduction: Interpreting land markets in Africa. Africa 80 (1) pp.1-9

Colson, E. 1971. The Impact of the Colonial Period on the Definition of Right: In The Impact of Colonialism, ed. Victor Turner, 193-215. Cambridge: Cambridge University Press

ECA. 2004. Land Tenure Systems and their Implications on Food Security and Sustainable Development in Africa. Addis Ababa, Ethiopia

FAO Gender and Land Rights Database at http://www.fao.org/gender/landrights/topic/ accessed on 5/13/2010

Human Rights Watch. 1999. Hostel to Democracy: The Movement System and Political Repression in Uganda. USA

Juma, A.O., 2006, The Land Act (1998) and Land Tenure Reform in Uganda. African Development, Vol. XXXI, No.I, 2006 pp.1-26

Lentz, C. 2006. Is land Inalienable? Historical and Current Debates on Land Transfers in Northern Ghana. Collogue International "Les Frontieres dela Question fronciere – At the Frontier of land Issues," Montpellier, 2006 pp. 1-8

Mandani. M. 1996. Citizens and Subjects: Contemporary Africa and the Legacy of late Colonialism. Princeton University Press

Manji, A. 2006. The Politics of Land Reform in Africa: From Communal Tenure to Free Markets. Zed Books.Lnodon/New York

MLHUD, 2007. Drafting the National Land Policy: working Draft 3. Kampala.

MLHUD, 2007b. The National Land Use Policy. Kampala Uganda

MHLUD. 2011. The Uganda National Land Policy Final Draft March 2011. Kampala, Uganda.

Moyo, S. 2003. The Land Question in Africa: Research Perspectives and Questions. A Draft Paper presented at Codesria Conferences on Land Reform, the Agrarian Question and Nationalism in Gaborone, Botswana (18-19 October 2003) and Dakar, Senegal (8-11 December 2003).

Mugambwa, J.T. 2002. Source Book of Uganda's Land Law. Fountain Publisher

Nkioki, A., 2006, Land Policies in Sub Saharan Africa. Center for Land, Economy and Rights of Women. Nairobi

Ofcansky, T.M. 1996. Uganda: Tarnished Pearl of Africa. Westview Press

Rugadya, M. 1999. Land Reform: The Uganda Experience. Land Use and Villagisation Workshop Hotel De Mille Collines, Kigali 20-21 September 1999

The Constitution of Uganda 1995

The Land Act 1998

Tukahirwa, J.MB. 2002. Policies, People and Land Use Change in Uganda: Case Study in Ntungamo, Lake Mburo and Sango Bay Sites. LUCID working Paper Series Number 17. The Environment Conservation Trust of Uganda, Kampala, Uganda