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Summary

Understanding the existing property rights regime in Uganda, in which the development right was ‘nationalized’ for the purpose of implementing physical development plans and sustainable management of land in the country, was important to contribute to the topical issue under study that is; the influence of property rights regimes on spatial forms. Although the development right was nationalized in Uganda, in fact to prevent a so-called tragedy of the anti-commons, through the enactment of the Physical Planning Law in 2010, unsustainable urban development in Kampala continues. The aforementioned urban policy reform aimed to reverse the negative effects of fragmented, individualized property rights (introduced by law since 2008) on sustainable use of land and urban development. Policy and newspaper reports noted that Kampala continues to grow in a manner that doesn’t reflect the provisions of its mixed use master plan, as seen from the existence of single use developments that dominate the city’s centre space. Questions were being asked as to why the city authority was not able to utilize its explicit right to issue development permission to effect the master plan goals of mixed use developments; which formed the motivation for the study. Specifically the study aimed to; i) identifying the relevant criteria that would be used to assess the property rights institution in which the development right had been nationalized; ii) identifying the obligations and rights that are accrued to the proprietors managing and using the resource iii) finding out how these obligations and rights manifest themselves in practice and; iv) finding out how the process of granting and seeking the development rights has influenced the spatial structure of Kampala since 2010, after the enactment of the Physical Planning Act. A congruence case study was chosen as the appropriate research approach, with Kampala Capital City Authority selected as the unit of analysis. Secondary data sources and qualitative primary data collection formed the main data collection methods. For analysis of field data collected, ATLAS ti and a fuzzy set ideal type analysis tools were used. 4 cases of development proposals, submitted to the city authority for the purpose of acquiring the development right, were closely followed and studied to help build the case by unravelling the events, strategies, practices and choices made by the different appropriators involved in the development permission process. The aim was to gain an in-depth understanding and insight that would ultimately provide explanations to the phenomenon of spatial segregation, inspite of the city authority’s explicit right to issue development permission and a mixed use master plan and the; in the local context.

The results show that the necessary conditions required for the efficient allocation of the existing property rights in Kampala were absent which led to ambiguity in the allocation of rights and obligations amongst appropriators. This was manifested in the fact that appropriators were found to have misunderstood, misinterpreted or violated the rules of the game because of the ambiguity in the rights and obligations allocated to them. Consequently, conflict and inefficiencies were typical of the plan approval system, processes and procedures. The analysis of private property architectural designs and development proposals submitted and approved by the city authority, showed a greater number of approved plans were of single land use category and a lesser number were of mixed use development, moreover at low densities. In conclusion, the nationalization of development rights so far has not been successful in preventing single use developments. The results of my research show that, although the legal, formal framework provided for the institution of the necessary planning conditions to prevent unsustainable urban development were in place, the city of Kampala has not been sufficiently able yet to promote sustainable mixed-use urban developments.

Keywords:

Property rights, development rights, spatial segregation, densities, tragedy of the anti-commons, urban commons, sustainable land use

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Abbreviations

MLHUD	Ministry of Housing and Urban Development
KCCA	Kampala Capital City Authority
KCC	Kampala City Council
KPDP	Kampala Physical Development Plan
PPA	Physical Planning Act

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Chapter 1: Introduction

Kampala capital city is a primate city in Uganda with the highest urban population of 1.8 million people, growing at a rate of 3.6% (Uganda Bureau of Statistics, 2014). On the other hand the city is expanding exponentially in an organic and concentric spatial pattern, according to the KPDP report (2012). The form and structure of any city serves to enable, direct and organize human activities and investments; thus enhancing or limiting its functionality, efficiency and productivity (Angel, 2012). Unfortunately, Kampala's spatial structure is criticized to be a limitation to its functionality, efficiency and productivity due to social inequality, urban poverty, sprawl (Kiggundu and Mukiibi, 2012).

According to Okalebo, et al., (2010) and Mukiibi (2012), Kampala's current spatial structure is a product of several factors including: a) high urbanization growth that has led to sprawl and informal land use practices. This coupled with outdated and inflexible planning and land management policies, procedures and practices that emphasize top-down-authoritative administrative approaches, only exacerbates the situation.; b) A distorted land market that is largely driven by speculation and; c) A complex land tenure system that has led to unsustainable use of land and poor enforcement and implementation of master plans due to the low capacity of urban authorities. A combination of the aforementioned factors has led to a high complexity in city growth, administration and management.

The main contributory factor to complexity in cities worldwide, has been the fragmented land use decisions made by private property owners at the minutest land parcel level. When viewing a city as a system, the decisions made by individual private property owners are divergent, sporadic, spontaneous, emergent and fragmented with occasional government top-down action (Batty, 2011, D' Acci, Haas, et al., 2016). In the end city growth in itself is fragmented and unpredictable, posing a challenge for city managers. Ultimately city authorities find themselves managing crisis instead of managing land use and growth. In Kampala city, the complexity that exists is a product of the property rights framework. Property rights in Kampala are fragmented and yet still exist in a continuum (Okalebo, Hass, et al., 2010).

In order to counter the aforementioned crisis, legal reforms were instituted; most important of which was to nationalize the development rights. The construction right was decoupled from the individual private property rights' bundle and made public under the Physical Planning Act, 2010; which declared the whole country a planning area. This consequently implied that every improvement and development on land in Uganda, irrespective of type of tenure, (Section 3 of the PPA, 2010) was subject to development approval by the Local Authorities from the date the said Act came into force. Subsequent to the revision of the Urban Planning Law, the City Authority updated the land use plan of 1994 in 2013. The new urban plan was developed to guide development and intervene the existing spatial structure. Compatible mixed use zones at higher densities formed the key strategies for Kampala's physical development.

The implication of the aforementioned land reforms was that the land use right was made conditional for the private land owner, subject to the acquisition of the development right from the city authority. On the other hand, the city authority had an obligation to grant the development right to the private property owners in consideration of the public interest as guided by the city's master plan. Therefore, it is inevitable that private land owners, developers, users and other actors in urban areas come into contact with local planning authorities in their day to day use and development of land and buildings.

1.1 PROBLEM STATEMENT

Urban planning and development control takes place in a market economy which is imperfect and primarily dominated by the private sector whose main objective is to maximize profits from the use of their land. The use of urban planning tools and land use regulations have been considered not only as important political and institutional tools for promoting public interest, but also for dealing with and correcting land market imperfections (Angel, 2012, Goytia, Mendoza, et al., 2010). Nevertheless, in reality, the effectiveness of land use regulation in dealing with the complexity and imperfections of land markets, largely depends on the extent to which the development control agency is able to influence the private sector, who own the land and property. For instance by deploying policy instruments that incentivize “land use relevant” activities rather than those that seek to regulate directly or control the use of land, has been found to be a more desirable way of managing cities as complex entities that they are (Batty, 2011, Nuisl and Schalaak, 2009). Traditional top-down urban planning approaches have been found to produce negative externalities and distort land prices, leading to urban sprawl, social and spatial segregation, and poor functionality and vitality of cities (Angel, 2012, Evan-Cowley, 2006, Jacobs, 1989).

According to the Kampala city status report (2012), the high rate of urbanization resulted into unprecedented city construction and activity, which in turn gave rise to an exponential expansion of the city’s built up area at a rate of 6%. Unfortunately for Kampala City, the expansion has been unplanned and largely organic, following a concentric spatial pattern and at very low densities. Furthermore, from local newspapers reports, Kampala’s spatial space is dominated by single use developments, contrary to the goals of the city’s mixed use master plan (Mukisa, 2014).

Kampala’s spatial form has been described to be non-functional; which was partly attributed to the property rights framework which existed before the enactment of the Physical Planning Act of 2010. The Land Act of 1998, bestowed exclusive land property rights including the development right on the citizens of the Republic of Uganda from a statutory lease holding (Okalebo, Hass, et al., 2010, Land Act, 2008). Subsequently, land use decisions were undertaken in a fragmented manner, driven by the need to maximize profit. Consequently, the number of rent and profit driven individuals grew, which in turn led to over consumption of the land resource as a whole. The result of poor land management practices such as those in Kampala, stems from fragmented property rights which has been found to harm the environment and the most vulnerable in society more, a situation theorized in the tragedy of the anti-commons (Heller, 1998). On the other hand, the Land Act of 1998, rendered the city authority powerless without a straightforward legal instrument to check abuse in land use and development of private property in Kampala, rendering urban plans and planners ineffective at the end of the day.

In order to intervene the situation at the time, the Government instituted legal reforms that led to the nationalization of the construction rights in 2010. Ultimately the development right was separated from the private property rights bundle. The nationalization of the development right was established under the Physical Planning Act, 2010; which gave the Kampala Capital City Authority the explicit rights to issue development permission in the city. However, the city continues to grow organically.

In addition, the city authority possess a mandatory mixed use master plan that gives it the foundation to negotiate, influence and supply mixed use developments using its explicit

development rights. However, the city continues to be characterized by single use developments contrary to the physical development plan.

Recently, newspaper reports (Abimanyi, 2013) raised concerns about the products of the real estate which; firstly, do not meet the needs of the market (both for sale and to let) and secondly, the oversupply of single use developments and that do not reflect the preferences and desires of the targeted market. Thus it is envisaged that if nothing is done to intervene the observed situation, market players may be running the risk of sending the real estate industry into a collapse. Unfortunately, the construction of commercial and office complexes have for a long time sent a wrong signal of city development and progress, yet in reality, the rent or price that these establishments attract is very high, in fact, way above the ability and willingness of the average user and trader in the inner city to pay. This leads to urban sprawl and illegal placement of kiosks in public spaces such as public streets, parking areas, walkways and alleys as well as street vending. Consequently, the tension and conflicts between the enforcement teams of the city authority (enforcing trade order) and the traders who are seeking to derive a livelihood continues to grow (Nakibuuka, 2015, Abimanyi, 2013). On the other hand, developers are concerned about the low returns on investments since their high end residential, commercial and office complexes remain unoccupied (Abimanyi, 2013); a situation very similar to what Heller (1998) described as a tragedy of the anti-commons.

It should be noted that worldwide, planning authorities have found it very challenging to achieve public policy goals of promoting welfare, safety, public health and morals. This is true especially in environments where the State's political agenda is to protect the people-land relationships, promote individual rights to land and capitalization of such rights, with less regard for social production and welfare (Loehr, 2012). In such a scenario, urban plans may be overshadowed by market forces in which benefits of planning and development are captured by the economically and politically powerful interest groups, and the costs borne by the rest of society and vulnerable groups (Jacobs, 2013, Heller, 1998).

However, there is paucity of scientific knowledge to attribute the same explanation to what is happening in Kampala especially after major legal and planning reforms were established in 2010, which should have yielded better urban planning benefits. Research to establish whether there is indeed a relationship between the city's segregated functional form and the existing property rights framework is needed for policy evaluation and to contribute to the body of science.

The purpose of this study therefore, is to provide scientific evidence and knowledge that gives insight into the occurrence of segregation in the functional space within Kampala's city center frame. The study aimed at critically analyzing the property rights framework and its interaction with the city's urban planning framework.

1.2 Research Objective

To explain why the city center space continues to reflect spatial segregation, in spite of the fact that the city authority possesses a mandatory mixed use master plan and the explicit right to issue development permits.

1.3 Research question(s)

To what extent is spatial segregation in Kampala city influenced by the property rights institution, in which the development right has been decoupled from the private property rights bundle, for the purpose of effecting urban plans?

Research Sub- Questions

1. What criteria are relevant for assessing an effective property rights institution, in which the development right has been decoupled from the private property right bundle, made public for purpose of effecting urban planning goals on private property?

Given that different property rights theories (urban commons, tragedy of the anti-commons, informal planning and tragedy of the commons) predict contradictory outcomes, assessment criteria will be developed from such predictions and checked against the empirical evidence observed in the unit under study.

2. What are the development right obligations and rights assigned between the public (city authority) and the private property owners in Kampala city, in view of the assessment criteria?

Important to make known is the empirical situation of what various rights and obligations exist amongst the private sector and public sector, in order to understand why each party made certain land use decisions; the answers given will be scored and measured against the pre-conditions of the commons by Ostrom (1999)

3. What is the procedure and practice for exercising the assigned development rights and obligations between the public (city authority) and private property owners in the city, in view of the assessment criteria? *Important for the research is to understand and explain the various approaches, procedures and strategies (formal and informal) surrounding the acquisition of the development right from the city authority by the private land owner. Findings will be compared with the evaluation criteria for an urban common.*

4. How have the resultant development decisions from the plan approval process (in which allocated obligations and rights amongst the private property owners and the city authority are exercised), influenced the spatial structure of Kampala; for the period between 2010 and 2015?

It is important to aggregate the individual land use decisions of the development permission process (expressed in architectural layouts of private property) and ultimately relate the derived cumulative outcome to the city's spatial structure, which has been described as segregated.

1.4 Significance of the study

Due to the growing challenges and opportunities posed by high urbanization growth rates in the country's urban areas, institutional and legal reforms were instituted to enhance and support urban planning efforts and the agenda of sustainable urban development. Assuming that the instituted policy and planning reforms are beneficial to solving societal problems and achieving urban sustainability, there is need for an evaluation of the planning approach (practices and procedures) adopted by planning authorities. In this context, there was need to focus research into the plan implementation procedures and practices. In the end, the research should provide insight and knowledge invaluable for policy intervention and possible reframing. Important to the research, is that current debates and views of mixed use and compact urban forms as the key to sustainable urban development be conceptualized and contextualized to Kampala.

Outcomes and recommendations of the study were indeed aimed at contributing to policy evaluation and current academic debates; specifically for this study was to contribute to the policy and academic debates, of how property rights regimes and urban planning approaches interact and influence spatial forms of cities today; by responding to the question: why does Kampala's spatial structure continue to be characterized by single use spaces and structures, in spite of the fact that the city authority possess the explicit rights to issue development permission and a mandatory mixed use master plan?

1.5 Scope and limitations to the study

The study unit of analysis was limited to Kampala Capital City Authority's plan approval process and private land use development proposals which were submitted to the city authority for approval, since 2010. Data was collected using primary field data collection tools such as interviews and observation checklists. Secondary data, complemented the primary data.

The study used a case study approach, and internal validity and reliability was sought for by emphasizing triangulation of methods and data sources, member checks and peer reviews during and at the conclusion phase of the data collection exercise. During the analysis, standards of good practice in qualitative comparative analysis and use of fuzzy ideal type models by Schneider (2010) were strictly followed and adhered to during the data analysis phase.

The researcher envisaged limited time and financial resources available to carry out the study as constraints. However effective planning and scheduling of the study activities helped to overcome such challenges. Finally, the researcher envisaged plan approval data as a key input into the research, however, this data was classified as politically sensitive. In this context, ethical considerations became imperative to the research design and dissemination of research results.

Chapter 2: Literature Review / Theory

This thesis is founded on the premise that, the land reform policy to nationalize the development right, should have registered positive feedback in the implementation of the city's master plan goal for mixed use patterns in Kampala capital city. However, the city's spatial structure continues to reflect spatial segregation which has affected the economic vibrancy, vitality and functionality specifically in the central business district.

The key concepts relevant to the study are examined in this chapter. Firstly, an examination of the theory on mixed used planning, underlying assumptions and practices are given; secondly, a review of the theory of nationalization of use or development rights, underlying assumptions and practice is provided; and lastly, a review of theories and concepts of spatial segregation in cities is discussed.

2.1 Emerging trends and debates on planning for mixed use developments in a global context

Urban planning as a concept has evolved over time and space. Conventional planning used for most of the 20th Century in North American and European cities has been criticized for trying to sweep away the complexity of cities by proposing systematic, simplified and irrational layouts for city development. Consequently, the conventional planning approach leads to far-fetched metaphors and naturalistic fallacies, which are unable to deal with today's challenges of rapid urbanization, climate change, financial crises among others (Batty and Marshall, 2009).

Conventional planning was the first coordinated action to deal with the chaos of cities in industrialized countries, emphasizing the need to classify human activities into land use types. Incompatible activities are separated and kept apart by use of zoning laws, regulation and strict enforcement through use of top-down administrative authoritarian procedures (Hirt, 2007). However, recent research has found this approach to have diverted planning from viewing cities as they truly are chaotic, complex and self-organizing (Heylighen, 2008, Lim and Kain, 2016).

Conventional planning traditions were based on the assumption that, social problems in their complex nature could be solved by simply manipulating the physical environment through ordering land use and development. This modernist approach has however, been perceived to be misguided and it is criticized for having contributed to the destruction of urban vitality and diversity, led to spatial and social economic segregation, urban poverty and market distortions (Goytia, Guadalupe, et al., 2015, Nuissl and Schalaak, 2009). Goytia and Lanfranchi (2009) attribute top-down planning approaches to have contributed to increased land consumption and urban sprawl which in return has led to traffic congestion and related high energy consumption levels, high costs of public service delivery and ultimately unmanageable urban growth and development.

The evolution into contemporary urban planning approaches and theories such as mixed use urban forms, compactness and pedestrian- orientation have been viewed as a solution to the problems that conventional modernist planning approaches created; and the pathway to sustainable urban development (Jacobs, 1989).

Further still, conventional approaches have been criticized for being inflexible to the ever changing needs and preferences of society and bureaucratic procedures characterized by hierarchical and fragmented functions; which are very time consuming thereby increasing the cost of doing business in cities (Batty, 2011). While other authors argue that the conventional planning traditions are to a large extent, a component of globalization that results from internationalization of cooperate strategies. Such strategies operate outside the influence of local political actors and in the end while some functions of the state like markets and technology are strengthened, others are weakened; for instance powers of local planning policy and regimes (Sanyal, B., 2005, Schmidt and Ralph, 2007). Other authors believe that central to urban renaissance and contemporary urban planning approaches, is the humanistic approach to managing cities which the conventional planning approach cast aside. The humanistic approach emphasizes the protection of people-land relationships, property rights, human rights, democracy and public participation whose dimensions are complex and change over time and place (Mashhodi, 2011, Jacobs, 2013, D' Acci, Haas, et al., 2016).

Despite of the arguments put forward to justify the evolution and transition from simplistic conventional planning approaches, there is no dominating approach to contemporary planning, however, recent urban planning approaches generally acknowledge the complexity of cities and aim to adapt to that complexity (Batty, 2011, Marshall, 2012). Due to the divergence in planning approaches and the lack of a universally acceptable implementation strategy or framework, city managers are faced with a challenge in the implementation of contemporary urban policies especially at the local city level (D' Acci, Haas, et al., 2016).

The concept of mixed use development is derived from formal theory of “New Urbanism” endorsed in the charter of the congress for the New Urbanism that was founded by a coalition of architects, planners and environmental advocates in 1993 (Gerrit and Talen, 2005). The Agenda of New Urbanism and mixed use developments in particular, is currently top on the agenda of both the academic and urban policy development discourses. Theorists in support of the New Urbanism agenda, argue that the concept of mixed use developments offers a new perspective to managing cities as complex systems. The complexity theory is derived from the view of and realization of the existence of dispersed powers, divergent interacting multiple agents coupled with increasing information flows and channels and; prevailing external influences of globalization that form cities. Additionally, the fact that this complexity has been exacerbated by the unpredictability of both internal and external factors that drive, affect and make-up cities (Lim and Kain, 2016, Heylighen, 2008). Complementary to the complex theory of urban development, is the perspective and analogy of cities as organisms (Batty and Marshall, 2009). Cities are seen to be built incrementally from the bottom-up and spontaneously emerge over time and space to form a specific structure; rather than assembled

together systematically through predictable top-down planning approaches within a given time period (Heylighen, 2008).

Urban development policies today advocate for densification and mixed use urban patterns at all levels, because of the perceived benefits that such spaces offer to society. New Urbanism theorists argue that mixed use and compact spaces have positive benefits to health, resource and energy efficiency, urban economic vitality, social cohesion and increased cultural dynamics of cities (Hirt, 2007, Jacobs, 1989, Marshall, 2012). Today mixed used patterns are internationally preferred spatial forms for cities grappling with challenges of urbanization, climate change and resilience, natural resource management, public health, economic growth and social inequality (Mashhodi, 2011).

The concept of mixed use is a mantra for New Urbanism and contemporary planning because of the perspective in which cities are viewed. It's founded on the view of cities as complex dynamic spaces that need most intricate and close-grained diverse uses that complement each other economically and socially, commonly referred to as the integration principle. Therefore, it is widely agreed that city governments cannot deliver on this principle without placing development negotiation and partnership at the intersection of urban planning, city design and real estate development (Angel, 2012, Jacobs, 1989). Studies done in the Netherlands, identify the adoption of a "hybrid" planning tool for integrating environmental ambitions into the city's landscape; negotiation and consensus building form a major part of the process. However the pre-condition for the implementation of the model include political and social support; financial feasibility and; allow for flexible use (Runhaar and Driessen, 2009).

Delivering mixed use patterns requires that the public and private sectors work in partnership, as they both have critical resources that are required for the successful production of mixed use structures and patterns: resources summed up as the end users who demand space; the developers, investors, and financial institutions that supply space; and the planners and policy makers that regulate space (Herndon, 2011, Klijn and Scholten, 2015). In this context, it is imperative for city authorities to adopt new and efficient approaches to urban management and development, that allow for creativity and flexibility, similar to those of a private sector enterprise (Knaap, G., Haccou, A., Huibert, et al., , 2007, Klijn, 2007, Klijn and Koppenjan, 2012).

It should be noted that contradictions on what defines a mixed use development and pattern do exist, and this is largely attributed to the ambiguity of the concept, as seen from its multi-criteria and multi-scaler dimensions thereby introducing a degree of complexity to its actual definition (Cheshire, 2007, Herndon, 2011). Such ambiguity is feared to render its application a challenge just like concepts of "sustainable development" and "resilience" that are vague enough to justify any kind of urban development (Lim and Kain, 2016)

However, its definition has been agreed to be relative when compared to its antonym of “single” use; but still, variations in definitions do exist and yet all that exist are largely agreed upon by academics and practitioners. Consequently, there are varying degrees of mixed use developments including; a combination of primary and secondary uses or a concentration of compatible uses which generate synergy within individual buildings; within individual blocks; within streets or other public spaces; within neighborhoods; a mixture of tenures and housing types; or a mix of different income groups (Hirt, 2007, Jacobs, 1989, Nuissl and Schalaak, 2009, Lim and Kain, 2016) and could also vary in a time dimension to which land and improvements are put to use i.e. hourly, monthly, quarterly or annually (Mashhodi, 2011, Jacobs, 1989).

Mashhodi and Hirt (2011, 2007) argue that by advocating mixed use, planners imply three things: an increase in the intensity of land uses for each land use category; an increase in the diversity of uses; and that barriers between different land use cells be lapsed. Mashhodi (2011) relates mixed use to a combination of density and intensity of use, accessibility and land use distribution; with each having their own thresholds but complementary to each other.

Knaap and Tallen (2005) chose to define the concept by viewing it from two interrelated perspectives; firstly, is the environmental perspective that focuses on the use of mixed use to further sustainable development and urban growth management; secondly, is the design based perspective that focuses on the adoption of urban design solutions that integrate mixed use principles into the design of buildings at street, block and neighborhood levels. Comparative studies between USA and Germany and Japan and Sweden reveal that different planning approaches adopted in each of the four cases, produced different outcomes (Lim and Kain, 2016, Schmidt and Ralph, 2007). It is imperative that governments become aware of the outcomes of the kind of planning approaches that they chose to adopt that can best promote mixed use forms tailored to their context; and evaluation studies are invaluable.

Contrary to the conventional urban planning approach, the mixed-use approach is premised on a master planning approach where the production of a master plan is not perceived as an objective in itself but rather a process for synergy and bargain between the public and the private sector. In addition, new approaches view planning as a tool to tackle methodological problems; whereby urban managers should perceive and reformulate urban issues in terms of costs and benefits, which can ultimately be translated into prices, on one hand and as a consequence of individual rational decisions based on the perspective of cost and benefits, at various scales, on the other hand (Sanyal, B., 2005, Nuissl and Schalaak, 2009, Alterman, 2012). Theorists of New Urbanism indeed put confidence in the potential of market forces and advocate that regulatory obstacles to urban development be removed through policy and practice reforms.

Knaap and Talen (2005) lay down a scientific foundation for thinking about mixed use developments; firstly, the role of Information and communication Technology, its influence and effect on urban form; secondly, the connection between land use and transportation;

thirdly, the link between environment and urban form; fourthly the connection between urban form and public health; and lastly, relating urban form to sociological issues.

However recent research reveals that the mixed use concept and its principles sound logical and relevant for cities only in theory, but in practice, not much progress has been registered (Hirt, 2007). Enemark, Hvingel, et al., and Nuissl et., al. (2009) found that cities all over the world, have failed to reinvent themselves to adequately deal with the complexity of urban areas and to adjust to contemporary planning approaches such as the mixed use concept; mainly because they were still stuck to outdated-top-down authoritarian and inflexible planning procedures of conventional planning traditions of the 20th Century, even when legal reforms that required necessary transition had been adopted. Planning offices even those in the developed world still operate using inefficient planning administrative procedures based on restrictive voluminous laws, with little to no attention paid to the ever changing cultures and behaviors of individuals as well as the social and economic behavior of cities themselves, ultimately leading to the decay and perverseness of cities we see today (Jacobs, 1989, Cheshire, 2007, Enemark, Hvingel, et al., 2014).

Research by Hirt (2007) revealed that in practice, the mixed use concept has been found to gain some support, however, its implementation has been found to be limited to a few specific mixed use developments rather than to the wider pattern of the cities' structure. Furthermore, in cities where the concept has been popularly advocated for and practiced, it remains an exception and not the rule of local level urban planning procedure and practice. Research in North American cities reveal that, despite the adoption of legal initiatives that encourage mixed use developments (including city statutes that authorize more flexible development control), city planning offices continued to use outdated planning procedures shaped by conventional zoning planning laws of the 1920s that do not promote mixed use (Hirt, 2007, Gerrit and Talen, 2005).

On the contrary, city authorities have not been single handedly blamed for the limited success of implementing mixed used developments but rather the homeowners as well. Herndon (2011) and Angel (2012), argue that homeowners resist and curtail land use mix and densification in the interest of maintaining social and economic attractiveness of their properties. Angel (2012), states that when the supply for land is short and the demand for housing is high and steadily increasing, the rent and price for existing housing increases in return, which drives the existing land owners to act more like a cartel for those already in possession of land in the city as a way of maintaining high valued properties brought by differential rent effect and; ultimately pushing out and keeping the new comers in the periphery of cities”.

2.2 Emerging debates on land policy reforms that result into institutional property regimes in which the Development Right is separated from the private property bundle and nationalized, in a global context

Jacobs (2015), defines property (land) as a social fiction comprised of a bundle of rights; implying that when one owns property, they do not just own space but a set of rights. The set of rights referred to could be categorized as; the owners right to use land for consumption or income generation (referred to as the use right); the right to contract property with other parties by mortgage or renting out; and the right to dispose and transfer property to another party in form of gifting, bequest and sale. Payne (2002), defines property rights as a “recognized interest in land or property vested in an individual or group and can apply separately to land or development on it”.

Renard (2000), describes property rights as the balance between the guaranteed interests vested in the owner of the property and the general public’s interest comprised of rights and obligations. Lee, Webster, et al., (2013) define property rights in terms of the economic property right and the legal property right. The economic property right being the ability to benefit from the use and the transfer of property by any kind of sanction including individual force, defacto and customary rights while legal property rights refers to rights protected by law.

According to research by Renard (2000) and Harvey (2013) property rights frameworks differ from country to country and are influenced by social, economic and political events over time and space. In Europe, property rights frameworks have been reframed to protect private property from the case value detriment in the process of allocation of development rights by local authorities.

Getting the definition and framework for property rights allocation “right” in transitioning and developing countries has been highlighted as a key obstacle to economic development. Theory on property rights asserts that recognized property rights are very important for market and land use allocation efficiency (Besley and Ghatak, 2010). Secure property rights and market prices signals, are believed to direct land to the property owners who can put a specific piece of land to its highest and best use at any given point in time (Cheshire and Sheppard, 2004). However, besides market forces, the allocation of property rights has been found to be influenced by governance frameworks put in place for urban planning, land titling, registration and administration. Weak governance structures that lead to asymmetric information, lack of transparency, inefficiencies and corruption, have been found to negatively influence the allocation of property rights and hinder optimal land use allocation (Koroso, 2011).

Property rights not only grant access to resources and use privileges, but also they are central to assigning wealth and political influence. In the USA, wealth generation and economic prosperity has been attributed to the economic policy of privatization of property rights (De Soto, H., 2000). However, it should be noted that, the demand and agendas over the nature and

assignment of property rights are diverse and complex, consequently rendering their allocation as highly contentious, due to concerns that arise during the distributional process. This results into conflicts, which usually take long periods of time to be resolved, and compromises made for resolutions to be reached, sometimes through land policy reforms. However, it has been argued that land reforms sometimes may weaken the property rights framework, which has an effect on the incentives to invest or limits the gains from use and capitalization efforts. De Soto (2000) argues that for similar reasons, other countries outside the west have to profit from the policy of private property rights.

Proponents in favor of the notion to nationalize and separate the development rights from the private property rights bundle, premise their arguments on the theory of the tragedy of the anti-commons (Loehr, 2012, Heller, 1998); whose arguments are premised on the weaknesses of the theory of private property rights and ownership and those that advocate for individualized titling and capitalization of use rights, as a way of achieving market efficiency and eliminating poverty (De Soto, H., 2000). It should be noted that the arguments on private property rights are inspired by the theory of the tragedy of the commons by Hardin (1968).

Heller (1998) has referred to this issue as the tragedy of the anti-commons, in which fragmented ownership leads to diminishing prosperity. Anti-commons property can be understood as the mirror image of commons property and the related tragedy of the commons (Hardin, 1968). The theory on the tragedy of the anti-commons identifies a gap in the privatization of property rights theory; by nullifying its hypothesis that states that: Privatization of property rights through formalization and capitalization of individualized rights leads to market efficiency and helps to combat poverty. Studies in Peru and Cambodia show that privatization of property rights has not only distorted land markets further, but has led to land grabbing and to the rise of rent seeking interest groups; caused tension and clashes between formal tenure forms and other existing forms of tenure such as customary tenure; increased social and economic inequality, excluded some groups from cities; leading to a state of a *de facto* anarchy and unsustainable urban development characterized by sprawl and low densities evident in cities today (Mitchell, 2009).

Parker (2011), built on Ostrom's work on the commons to theorize and conceptualize urban commons. From Parkers' work 9 criteria for evaluating were provided including:

1. Appropriators need sufficient knowledge to understand the value of the resource. This is an addition to the classic list, awareness of the resource is not a problem in classical common-pool resources but may certainly be so in the case of urban ecosystem services.
2. Clearly defined boundaries (effective exclusion of external unentitled parties); for urban commons we expect this criteria to be relaxed. Effective exclusion is unlikely for practical reasons and may not be desirable from a citywide perspective.

Furthermore it is to be expected that people other than direct appropriators of the resource may contribute to its management.

3. Rules regarding the appropriation and provision of common resources are adapted to local conditions; The criteria is expected to hold unchanged
4. Collective-choice arrangements allow most resource appropriators to participate in the decision-making process; The criteria is expected to hold but modified to an extent by difficulties of clearly delimiting appropriators
5. 5. Effective monitoring by monitors who are part of or accountable to the appropriators; The criteria is expected to hold unchanged but we note that mutual monitoring is likely to be more difficult in many cases in that value of the resource in the urban common often is indirect.
6. There is a scale of graduated sanctions for resource appropriators who violate community rules; The criteria is expected to hold unchanged
7. Mechanisms of conflict resolution are cheap and of easy access; The criteria is expected to hold unchanged
8. The self-determination of the community is recognized by higher-level authorities; The criteria is expected to hold with the slight modification that urban commons are likely to have a more active presence of government enabling in order to overcome increased difficulties of meeting some of the criteria above and the additional uncertainty caused the contested nature of the resource. A new critical challenge arises for collective management of urban commons in making the cross-sector collaboration function well.
9. In the case of larger common-pool resources: organization in the form of multiple layers of nested enterprises, with small local CPRs at the base level. The criteria is expected to hold unchanged

Loehr (2012) reveals that the titling process in Cambodia favored those with formal lease and freehold titles and disadvantaged those with customary rights to land. Those with formal title reap the benefits of increased land values, not attributed to any improvements made by the individual property owners, but due to the element of differential rent that increases the value of land depending on the location of a particular piece of land, influenced by factors such as; scarcity of land that increases land prices everywhere else, to the extent that marginal land can earn a rent. Valorization and land use changes in society over time also increase land values.

On the other hand, the same process is viewed as opposed to customary ownership and rights; which has led to a general lack of acknowledgement of formal land use laws, mainly because it has been held responsible for weakening customary law and traditional rights to land. Consequently, tension between formal norms and customary societal norms has risen, leading to a state of *de facto* anarchy, especially in cities as poverty levels increase and the vulnerable have been deprived the access to land and sources of livelihoods. (Payne, 2002, Nakibuuka, 2015, Loehr, 2012, Heller, 1998, Jacobs, 2013).

Given that using private property rights theory to correct market inefficiencies has failed, Loehr and Heller advocate for the reframing of land policy to allow for the unbundling of the exclusive private property rights bundle by separating the use right from the private property rights bundle sector and hand it over to the government to manage current and future use of land in accordance to national land policies. Loehr explains that capitalization of use of land should not be exclusively linked to privatization and individualized titling as argued by De soto but rather to urban planning beyond the logic of market efficiency and profitability (Payne, 2008).

The fact that there is an undeniable continuum of property rights that do exist in society and that it is the responsibility of the state as the trustee of the common good to protect the variety of rights that do exist, urban development policy should acknowledge and plan for this variety, rather than advance just one form; an ongoing debate held in the spheres of social and human rights activists (Jacobs, 2013, Payne, 2008). Theorists of the tragedy of the anti-commons further argue that if the state advanced formalization of individual land titles without equal regard for common ownership rights; land grabbing and rent seeking interest groups arise, inevitably leading to a scarcity of land supply specifically for the politically and economically less powerful, which further leads to land invasion, sprawl, increased encroachment of natural resources and agricultural land. They further argue that in this context, a state of *de facto* open access (tragedy of the commons) and *de facto* anarchy is inevitable; sparked by increased poverty levels, social and economic inequality or exclusion and clashes between formal law enforcement teams and vulnerable groups that contest formal laws in the urge to maintain and gain access land or space to be able to survive and earn a living in cities (Loehr, 2012).

However, theorists in favor of private property rights and those that are against the notion agree on one thing, that capitalism may lead to the rise of rent seeking groups, but the difference lies within the strategies that the two groups propose to deal with the problem. The former believe that the benefits from capitalization and individual titling should outweigh the costs while the later believe that the use rights and capitalization of benefits should be decoupled from the private property rights and left in the hands of the state that holds the responsibility to protect and advance the common good of society and the ecological systems.

Theory on the nationalization of use rights believe that through urban planning and the state's possession of the use and capitalization of land use rights, land value capture especially from valorization is possible, market imperfections can be corrected and that the negative externalities such as sprawl and natural resource destruction that arise from privatization and capitalization of property rights can be checked. Eucken argues that in a market economy, competition serves the function to distribute wealth and balance power efficiently. However, Keynes argues against this notion and states that land is not like any other good, as it cannot be substituted nor reproduced and therefore the market cannot work as a decapitalization tool and; profits and rents may be captured by the political and economically powerful at the expense of the rest of society.

Theory that justifies the need to nationalize use rights, assumes that, state planning agencies are effective in the enforcement of land use regulations and that the rule of law will prevail; diversity and complexity of cities will be acknowledged; that plans shall be environmentally, economically and socially feasible; that the benefits derived out of planning outweigh the costs and; that plans work to correct the negative externalities that would have risen from fragmented individual rational land use decisions.

However, on the flip side, it is warned that use rights may also be prone to be misuse by state governments, especially if they are unable to resist the economically powerful and profit driven interests; or deal with the methodological issues of articulating societal needs and balancing costs and benefits in developing urban plans, land use regulations and development initiatives (Nuijss and Schalaak, 2009). In this context the outcomes of planning may turn out to be perverse whereby the costs of private benefits are incurred by the less economically powerful and the benefits of public costs are privatized and captured by the economically powerful individuals. In this context, urban plans need to provide a variety of spaces aimed at striking a balance between economic, social and ecological costs and benefits, beyond the market efficiency and profitability. Loehr (2012) explains that if planning authorities permit land uses that produce high external effects but with low ability to pay, other socially profitable land uses may not be realized and therefore certain significant uses will be foregone and excluded from the city space (principle of equality). Loehr further explains that, decoupling the use right from the private property bundle, may provide unique assignments of benefits and costs across board between the private and public sector; however, the same may lead to misuse and underuse of the land resource especially if the institutional framework is weak and cannot restrict private property use from producing aberrations. Enforcement of public law, building codes and natural resource protection laws are important in such a case.

Today governments' control of rights to develop, is highly contentious especially in the west as it is seen to benefit some and injure or deprive some property owners of the opportunity to capitalize on the use of their properties (Alterman, 2012). The rationale behind private property and their subsequent institutionalization, is that that an individual holds a natural right to property and the state is obliged to respect and defend it; which has laid the foundation for a current debate, that government should compensate property owner for the costs caused by public regulations; as it is seen as a taking and a violation of human rights (Jacobs, 2013).

2.2.1 Emerging debates on the use of publically owned development rights by city authorities, in a global context

Urban planning procedures and practices have been argued to be a product of the culture and expressions of ideologies and beliefs about the way decisions should be taken in administration of public policy (Sanyal, B., 2005); and governments rights to issue development permission is no exception. Lim and Kain (2016) identified that four outcomes came out of two planning approaches that aimed at producing compact diverse city patterns in Japan and Sweden; for which the two approaches, government owned the use right, shown in the table below.

Approach Form	Planning by coding	Planning by design
Low density and diversity	A. Functional simplicity; Continuous adaptation	C. Functional separation Ready-made neighborhoods
High density and diversity	B. Functional complexity; Continuous adaptation	D. Simulated complexity; No adaptive capacity

Figure 1: Outcomes of two main planning types adapted after Marshall, (2012); Lim and Kain (2016)

In Brazil, different municipalities have used their explicit right to issue building permits into an instrument of urban policy, recovery of valorization of land for communities in cities, financing and as a leverage tool for social urban development programs through negotiation and co-influence of private real estate developers to undertake inclusive social projects, that the market would not provide under normal circumstances (Furtado, Rezende, et al., 2006). While in the USA, the city authorities have successfully been able to manage urban growth and preserve green spaces and agriculture land using transferable and a trade in development rights; for instance between the areas zoned for open space or agriculture (sending areas) and the areas zoned for commercial development (receiving areas) (Kaplowitz, Machemer, et al., 2007).

Sandroni (2010) states that the model chosen by any given city, largely depends on several factors; the maturity of the real estate and stock market in a particular city, enabling legal provisions, new institutions, new forms of city management and urban planning, new relations between the private and public sector, new approach to social development and the slum problem. Complimentary to Sandroni's notion for new methods of managing cities, using public tenure of building rights, Harvey (2011), quotes Ostrom (1990) to argue the importance for new forms of property rights institutions that demonstrate mixtures of public and private

partnerships, invaluable in devising practical and generally acceptable indigenous institutional property rights frameworks for sustainable resource use. Ostrom notes “shatter the convictions of many policy analysts that the only way to solve common property or rights problems is for external authorities to impose full private property rights or centralized regulation”

Parker (2011) states that today the emergence of new urban commons is governed in different ways, however, what is important note is the issue of collective and participatory management of the common and in cases where privatization of the common is in effect, regulatory slippage must be paid attention to. Parker adds that indeed the nationalization of the development right transforms private property into a common and thus use must be juxtaposed with society's welfare. However, he also notes that formalization of a common also affects the role and perception of collective responsibility of managing the resource by the general population.

The model chosen by different cities is not standardized; however comparison studies of how different cities chose to use their explicit rights to issue development permits is imperative for urban managers to better understand the role and potential that the possession of such a right is to effective urban management and development (Furtado, Rezende, et al., 2006).

Proponents that argue for the nationalization and separation of use or development rights from the private property bundle, believe that the market or state alone cannot dictate land uses and therefore collaborative action is inevitable for sustainable urban development (Payne, 2002, Loehr, 2012).

The theory of new public management introduces a technology for planning by negotiation, which has been adopted in the discourse of urban renaissance and transition of urban management and development practices, also known as the theory of collaborative planning. Negotiation theory has been thought to provide a framework for resolving tension amongst the most divergent interests and integrating wider urban planning visions and plans with city design and real estate development into the production of the built up space (Alfredson and Cungu, 2008, Cochrane, 2007).

Other authors have described negotiation as a crucial element to help cities grappling with urbanization challenges to be able to cope and anticipate the complexities and dynamics in decision making processes; by a learning by doing experience that should ultimately feed into policy and systems for sustainable development (Lim and Kain, 2016, D' Acci, Haas, et al., 2016, Klijn and Koppenjan, 2012). Altrock (2012) defines negotiation in urban planning as an emergence of informal practices that permeate social institutions, giving rise to a hybrid governance process, which bridges the gap between formality and informality imperative for informing urban theory, policy and practice by learning by doing. Duarte (2015), explains that negotiations are used in two instances; firstly where for interactions in contexts not covered by formal rules, shaping formal institutions and secondly, in cases where formal rules simply don't work.

Important to theory and practice, the debate is not about the divide between formal and informal planning but rather the continuum of practices that do exist, acknowledging the co-existence of formality and informality in contemporary planning approaches. Important to research is the

measurement of interactions, outcomes and levels of satisfaction between actors is important in order to establish a nuance of negotiation involved in any given urban planning institutional set-up (Samsura, Adriansyah, Ary, Datuk, Krabben der van, et al., 2015)

The use of negotiation tools and frameworks in cities today has led to the formation of consensus building theory as drawn from successful negotiation practices. The decisions made by planners today is shifting from the rational decision making style into more like a bargaining process between stakeholders with divergent interests (Klijn and Koppenjan, 2012, Klijn, 2007, Samsura, Adriansyah, Ary, Datuk, Krabben der van, et al., 2015); in cases where the development rights are publically owned, negotiation is gaining ground in practice. case studies in Hong Kong and British Columbia show that procedural or bureaucratic positional negotiations prescribed by law or policy, obstructed participation and lead to less wise sustainable decisions; while development control that natured creative and integrative negotiations led to innovative and intelligent outcomes in which negative externalities were turned into positives, beneficial to society as a whole (Lai W C and Lorne, 2006, Fisher, R., Ury, W., et al., , 1991).

Theory highlights *Principled, distributive* or *integrative bargaining* to produce intelligent ideas and outcomes as compared to *positional bargaining*; the former focuses on interests and mutual gains while the later on fixed positions where argument and counter arguments are reduced to a compromise (Fisher, R., Ury, W., et al., , 1991, Klijn, 2007). Three evaluation criteria for any negotiation are highlighted including: negotiation should produce a wise agreement, a successful negotiation should lead to efficiency and lastly, it should improve rather than harm the relationships between parties involved in the negotiation (Shmueli F, Kaufman, et al., 2008). Pre-conditions for fruitful negotiation is the availability of accurate information accessible to actors involved in the negotiation, will influence the outcome and satisfaction level for parties involved (Samsura, Adriansyah, Ary, Datuk, Krabben der van, et al., 2015)

Lai and Lorne (2006), provide a related argument for a “creative negotiation” rather than a “classical planning game”. A classical planning game is described as ‘non-price rationing of development rights, where developers make tangible development proposals which are subject to an all or nothing kind of test, there is no or little chance of negotiation and the style of participation is adversarial and confrontational’. On the other hand planning by creative negotiation presumes that besides the planner and developer, other participants or stakeholders have the willingness and ability to work towards collaboratively developing an intelligent idea, and as an outcome, be able to contribute as users in a way that enhances the projects value and sustainability; where potential negative externalities are internalized and or where costs of the project are turned into benefits through a catallaxis process (Alfredson and Cungu, 2008, Shmueli F, Kaufman, et al., 2008).

Theorists of New Public management and policy advocate that classical planning games that were fixed on positional bargaining need to be transformed into integrative, principled or creative negotiations processes, through changing both institutional design and the mindset of participants; beyond innovation and tangible products or processes, by creating an environment conducive to change (Lai W C and Lorne, 2006, Klijn and Scholten, 2015). Negotiations have been argued to emphasize opportunities that are suggestive rather than prescriptive, of course not drifting from the paradigm of sustainable development but may strangely conflict with

perceived efficiency of the neoclassical paradigm that hypothesizes that the marginal conditions should be one where marginal social costs equate to marginal social benefits.

Negotiations that take on a direction of principle based or integration approaches, acknowledges the need for a conducive environment for actors involved, who have diverse interests to collaborate in land use, conservation or development of land for mutual gains, as a way of dealing the complexity that exists in land management and development (Shmueli F, Kaufman, et al., 2008). It is explained that in the process of negotiation, the developers should no longer perceive the planning authority as an external threat to the ideas of developers, but rather a source of market information and a potential client and; third parties or other stakeholders perceive the developer as a source of seed money and a trustworthy partner of the community (Lai W C and Lorne, 2006). Otherwise, once this environment is not achieved, it is argued conflicts build up with no effort for resolution leading to delays in the decision making processes; abortions of development projects and; flight of entrepreneurship and capital from cities brought about by the uncertainty in the investment environment. It is argued that planners need to embrace growth and urbanization challenges and opportunities by charting a sustainable future among interested parties

2.3 Spatial segregation in cities in a global context;

Spatial segregation is defined as dispersed and differential enclaves of society reflected on space. Segregation is not a new issue in the debate of urban policy and can be traced back to the very beginning of the formation medieval cities and industrialized cities. The phenomenon has been defined as an outcome of both social and economic processes reflected on urban space, which outcomes vary according to the intensity and character of such processes.

However in recent research, the physical structure of the built environment in itself has a role to play in the separation of people and activities in cities. Urban planning and design play a central role in either neutralizing or producing spatial segregation in cities. Analysis of how cities are built and structured is important to gaining a deeper understanding on the topical issue of spatial segregation in cities (Ann, 2010). In Stockholm, public spaces played a role in integrating land uses and people, and their role should not be underestimated. Therefore, public spaces have been found to trigger and foster the functional separation or mix of land uses, activities and income groups of people (Bibeva, 2012).

The factors that drive spatial segregation are complex, diverse and differ from place to place; categorized into voluntary and involuntary segregation. Economic structure and the type of economic restructuring in cities coupled by globalization processes have been noted to be one of the most powerful driving forces of spatial segregation in metropolitan areas. Cities need to be understood as expressions of urban spatial practices or imagined entities rather than as fixed realities. Land use decisions made by community affects its very character; traffic patterns, consumption patterns, economic character,

(Musterd, S. and Ostendorf, W., 2013).

Today, a combination of economic policy coupled with neo-liberal urban policy goals have reinforced spatial segregation. For instance Mitchell (2009) and Goytia, et al., (2015), state that recent globalization, neo-liberal urban policy and economic restructuring trends that require state governments to adopt privatization and capitalism principles, has resulted into a situation in which city policy or programs for regeneration of central or inner city space, aimed at attracting foreign direct investment, have reinforced gentrification processes that drive the poor and middle income groups out of central city locations with higher land values and amenities into suburban un-serviced locations.

Legal and regulatory frameworks such as apartheid in South Africa have also been powerful forces reinforcing segregation of groups in society based on race and ethnicity.

On the other hand, economists suggest that spatial segregation can be stimulated by increase in land and housing prices in a given area, resulting into situation where groups with low ability to pay and incomes are driven out. Today, in most cities all over the world, the legal market for affordable serviced land and housing has proven to be incapable of meeting the needs for the lower income groups in society leading to more segregated and polarization in society (Goytia and Lanfranchi, 2009); or social groups may decide on their own to separate themselves for social reasons such as strengthening of lifestyle or social-cultural identity or for security reasons in cities where crime is prevalent.

Many city spaces today are characterized by internally dispersed and differentiated neighborhoods, curved out along ethnic-cultural and socio-economic enclaves. It is argued that life style differences between social groups and cost differences in central city areas make it inevitable for spatial segregation to occur, however, this is not seen as a problem in itself. It becomes a policy problem when inequality is stimulated by limiting or denying a social or cultural group opportunities available to them along socio-economic or cultural lines. The impact of spatial segregation, polarization and social exclusion has been seen to threaten the very foundation of building cities as centers for cultural diversity leading to reconcilable societal inequalities. City policies and service programs have been reported to exacerbate the problem, whereby certain neighborhoods such as the middle and higher income residential areas are provided with services and amenities and the low income poor neighborhoods neglected from municipal service and infrastructure provision (Moser, 2009).

2.4 Conceptual framework

The figure below shows the conceptual framework for a property rights institution, in which the development/use right has been decoupled, and made public for the purpose of effecting city planning goals on private property; which results into a given spatial structure, over time and space. The independent variable is the property rights institution and the dependent variable is the emerging spatial structure of the city. The relationship between the independent and the dependent variable is theorized in several formal theories that have been reviewed in the literature including; the theory of the urban commons (tragedies of the commons; tragedies of the anti-commons) and informal planning theory.

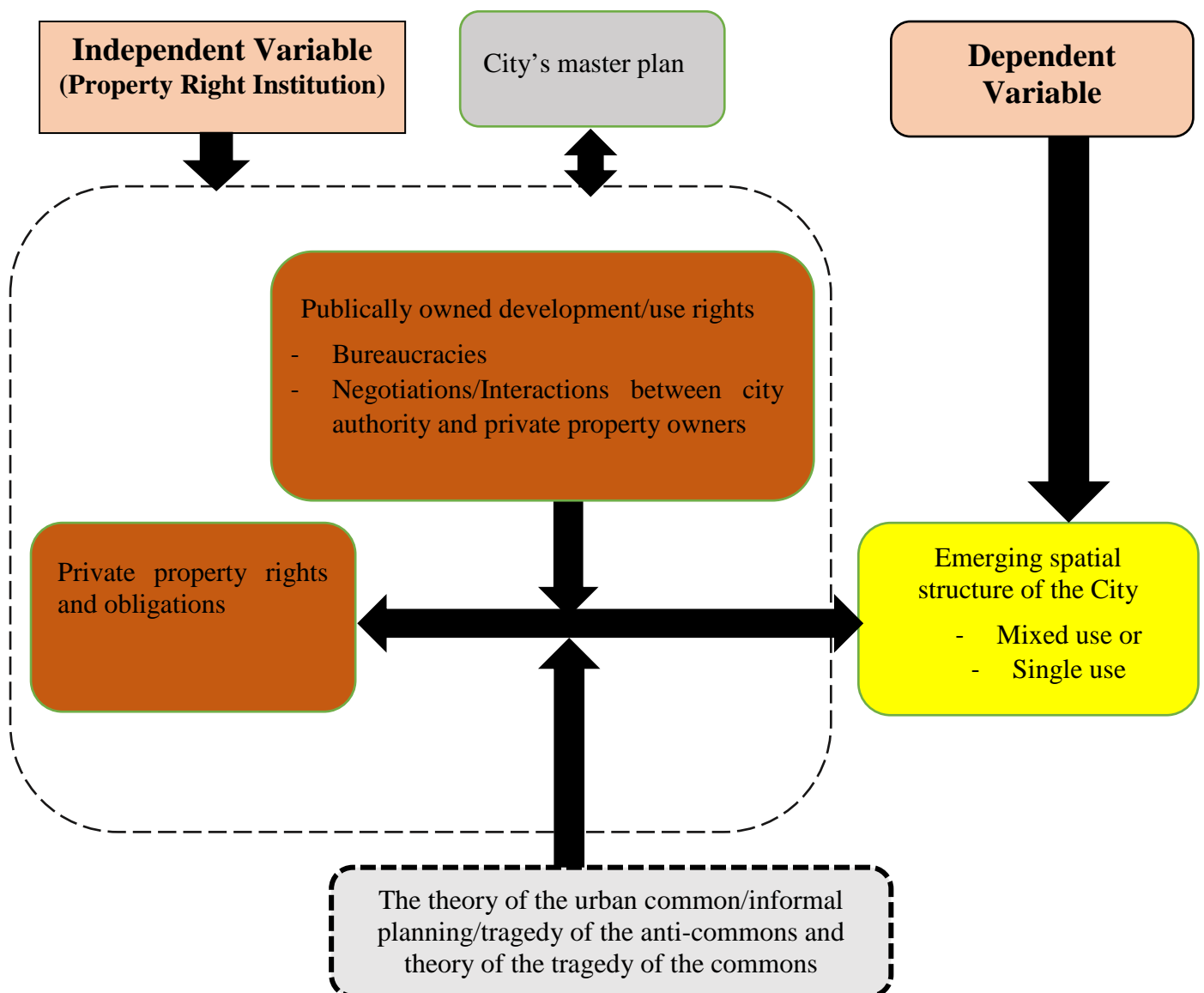


Figure 2: Conceptual Framework

Chapter 3: Research Design and Methods

This section highlights the research design, the tools and methods that guided the study as well as sampling frame and data analysis tools. Both secondary and qualitative tools of data collection and analysis were employed in the study.

3.1 STUDY DESIGN

A case study.

The research sought to answer an explanatory research question using a congruence case study approach and qualitative research techniques to explain the phenomenon of spatial segregation in Kampala in relation to the land rights framework in place; in which the development right was decoupled from the private property owner's bundle of rights, by formal law, with an aim of managing it as an urban common pool resource. The researcher aimed at checking whether the development right was indeed considered and used as a common good in practice, by measuring the empirical situation findings against the preconditions and predictions set out in the theory of urban commons and; thereafter analysis was done to find out whether the empirical situation unraveled the presence or absence of the sufficient and necessary conditions stated in theory; in order to arrive at valid conclusions, and, a holistic picture of the situation under investigation (Schneider and Wagemann, 2010). This type of study design was preferred to be appropriate, given that the phenomenon under investigation could not be separated from its context, given that the aim of the study was to explain the phenomenon in its context.

The study followed a single embedded case study design. The unit of analysis was the Physical planning department of the Kampala Capital City Authority. A non- probability strategic sample comprised of multiple cases with similar and yet different characteristics was drawn from the city authority's spatial development plan schedules and data base. For the purpose of comparison and contrast; location was a significant factor to consider, however, the study controlled for it by selecting cases with similar land values. Two highly significant categories were selected to form the research sample, i.e. 2 cases in which the developers were international developers; with one case permission granted for a single land use vs another with permission granted for a mixed use development and; compared with 2 cases in which the developers were local developers with one case where permission was granted for a single land use and the other case for a mixed land use development.

The selected sub-units were closely followed and studied in order to provide insight into the iterative, complex and possibly entangled choices, decisions, strategies, processes, structures and interactions between the private property owners and the city authority; which ultimately resulted into the observed successes and failures in acquiring the development right from the city authority, for the different cases under investigation (Verschuren, 2003). The information generated from the cases was checked against the predicted outcomes stipulated in the theories of the urban commons; and further still compared against the theories of the "tragedy of the anti-commons" on one hand and the "theory of the tragedy of the commons" on the other hand to provide further knowledge and inference. Altogether the information generated, was to provide firsthand information necessary to explain the spatial segregation in Kampala within

the property rights institution; but also contribute to existing theory on the topical issues under discourse.

Kampala was purposively chosen as a case study mainly because it is the only city in Uganda, with a hybrid decentralized function whereby the city authority is run as both a central government agency with a ministerial status and a local government entity with established local government tiers. In addition Kampala has the highest urbanization growth rates and the highest land values in the country; but also the City Authority has unique urban challenges such as a complex land tenure system, which forms a complexity as well as challenges for effective land management and urban planning. Critical to the research was to reveal and explain the dynamics involved in the process of acquiring the development right from the city authority by the developer on one hand; and the process through which the city authority grants the development right in public interest without depriving the private land owners of their rights to property.

3.2 Operationalization of concepts: Variables and Indicators

1. CONCEPT OF PROPERTY RIGHTS

Source	Definition of property rights concept
Harvey Jacobs (2015)	A social fiction comprised of a bundle of rights; implying that when one owns property, they do not just own space but a set of rights. The set of rights referred to could be categorized as; the owners right to use land for consumption or income generation (referred to as the use right); the right to contract property with other parties by mortgage or renting out; and the right to dispose and transfer property to another party in form of gifting, bequest and sale.
Geoffrey Payne (2002)	A “recognized interest in land or property vested in an individual or group and can apply separately to land or development on it”.
Vincent Renard (2000)	“the balance between the interest vested in the right of the owner and the general interest”
Lee, Webster, et al., (2013)	define property rights in terms of the economic property right and the legal property right. The economic property right being the ability to benefit from the use and the transfer of property by any kind of sanction including individual force, defacto and customary rights while legal property rights refers to rights protected by law.
Definition as a result of combination of definitions given by different authors: <i>In this thesis property rights refer to a social convention comprised of a bundle of rights and obligations that balances the interest vested in the private property owner and the general public</i>	

Operationalization of Property Rights concept

Variables	Indicator	Data
Social convention	<ul style="list-style-type: none"> - The property rights contracts in place (urban planning law and city master plan); taken as a given; - The description of the identified property rights contract; - Precision of the contract i.e the rules of appropriation (who shares what? How is it shared?) - Sanctions for violation of rules - Mechanisms for inexpensive conflict resolutions 	<ul style="list-style-type: none"> - Secondary data (laws, plans, reports) - Key Informant Interviews (government officials, legal land experts, private land owners)
Bundle of rights and Obligations	<ul style="list-style-type: none"> - Categories of benefits and costs assigned between the owner and general public - Description of the process (procedure and practice) of assignment of rights/benefits - Effectiveness/efficiency of assignment of rights and obligations (time and cost) 	<ul style="list-style-type: none"> - Secondary sources (laws, plans) - Interviews -
Vested interests	<ul style="list-style-type: none"> - the degree of rights exercised - the degree of obligations met 	<ul style="list-style-type: none"> - Secondary sources - Interviews - Surveys
Private Property Owner	<ul style="list-style-type: none"> - An individual or private group of individuals with legal title to land 	<ul style="list-style-type: none"> - Secondary data (plan approval schedules) - Interviews with the land owners or developers
Public	<ul style="list-style-type: none"> - The city authority 	<ul style="list-style-type: none"> - Secondary data
Stipulative definition based on indicators; Property rights refers to the set of rights (benefits) and obligations (costs/compensation) allocated amongst the private land owners and the general public by contract (urban planning law and plans) as well as the procedure and practice for effecting such assigned obligations and rights, which result into a certain level of rights exercised and obligations fulfilled.		

2. CONCEPT OF MIXED USE DEVELOPEMENTS

Source	Definition of Mixed use development concept
(Hirt, 2007, Jacobs, 1989, Nuissl and Schalaak, 2009, Lim and Kain, 2016)	a combination of primary and secondary uses or a concentration of compatible uses which generate synergy within individual buildings; within individual blocks; within streets or other public spaces; within neighborhoods; a mixture of tenures and housing types; or a mix of different income groups, also varying in a time dimension to which land and improvements are put to use
Definition based on concept definitions by different authors: For purpose of this research mixed use developments refer to a combination of commercial, offices and residential uses for different income groups	

Operationalization of the mixed use concept

Variable	Indicator	Data Sources
Combination of uses or incomes groups	the cumulative ratio of different land use types incorporated in the approved building designs	- Secondary sources (plan approval schedule comprised of private property architectural layouts)

Stipulative definition derived from the indictors:

Mixed use developments refers to the ratio of different land use types and income groups, that have been incorporated in the design of individual building projects and submitted to the local authority for approval, before commencement of development and after its occupation.

3. THE CONCEPT OF THE URBAN COMMONS

Source	Definition of urban commons
(Gidwani and Baviskar, 2011)	Defined as the use of a resources in a shared and non-subtractable way through collective practices to avoid over use or pollution of the resource
(Parker, 2011)	Shared resources in an urban setting, available in a city wide or smaller scale
Charlotte Hess (2008)	An urban resource that is shared and managed collectively and specifying who shares what, how it is shared and how it is sustained for future generations.

Definition as a result of combination of definitions given by different authors:

An urban common is a shared resource, that is non-subtractable in an urban setting, managed using collective practices in order to sustain the resource for future generations.

Operationalization of urban commons concept

Variables	Indicators	Data Sources
Use of shared resources	<ul style="list-style-type: none"> - Choices of collective/collaborative management of the resource (level of participation) - Attributes or characteristics of actors involved in the management of the resource - Perceptions and Strategies of the actors in view of the resource as shared - Condition or outcome of the management of the resource - Degree of excludability from the resource 	Secondary data (Theory)

Sustainability	Degree of sufficient knowledge to understand the value of the resource <ul style="list-style-type: none"> - Degree of over use/misuse/abuse - Degree of pollution - Degree of effective monitoring by monitors who are part or accountable to the appropriators 	Secondary data (Theory)
Non-Subtractability	Degree of rivalry for the resource	Secondary data (Theory)
Collective practices	Rules (formal or informal) in place that promote equalitarian, incorporative and fairness in use of the resource <ul style="list-style-type: none"> - Rules of appropriation of rights and obligations (who shares what? How is it shared?) - Scale of graduated sanctions for violation of rules - Mechanisms for conflict resolutions (cheap and easy?) - 	Secondary data (Theory)
Stipulative definition of an urban common derived from the indicators: <i>An urban common refers to a resource in an urban setting that is characterized by a low degree of excludability and a high degree of rivalry of use and managed collectively using local arrangements and rules that enhance equity, incorporation and fairness leading to a certain condition of the resource such as pollution, over use, misuse, abuse or underuse.</i>		

4. THE CONCEPT OF INFORMAL PLANNING

Author	Definition of informal planning
Boonstra (2015)	Planning decisions initiated by non-government parties from the bottom up and their interactions with formal planning practice

Operationalization of the Informal Planning concept

Variables	Indicators	Data Sources
Bottom up	individual spatial land use choices (development proposals) submitted to the city authority for development permission	Secondary data
Planning decisions	Description of procedures, practices & strategies of negotiating for the development right	Secondary data Key Informant Interviews
	Attributes of actors involved The respective spatial choices, preferences or desires of actors	Secondary data Key Informant Interviews
Interactions	communication, collaborations, interfaces	Secondary data Key Informant Interviews
Stipulative definition of informal planning derived from the indicators; Informal Planning refers to the procedures, practices and strategies that emerge from the communication, collaboration and interfaces between the city authority and the private land owners in the process of granting and acquiring the development right		

3.3 Data Collection Methods and Sampling Procedure

Selection of cases

The city's master plan and the planning law were taken as a given and therefore the process of how the law and the plan were negotiated and developed did not form part of this research's focus. Land tenure was not considered to be a significant factor in the study since none of the existing tenure types in the country is exempted from the process of seeking development permission. Cases were selected from the planning schedules that contained a list of private land use proposals submitted to the city authority for approval. However, the general criteria for selecting the cases included;

- Comparable cases that were within the same location, similar bio-physical characteristics, to control for land value influences or effects
- Comparable cases in terms of land use as per the master plan
- Comparable cases in terms of time in which development permission was requested
- Type of developer i.e. Local developer vs International developer

Data collected for the cases under study was guided by the criteria for evaluating urban common axioms and analyzed using the fuzzy set ideal type model (Kvist, 2007, Schneider and Wagemann, 2010); i.e. the criteria for evaluating urban commons was used as the basis for scoring the public development right to be classified and understood as a common or not; in so doing, thereafter analysis was done for congruence between theory and the empirical findings using the fuzzy set ideal type tool.

Table 1: Truth table of scoring an urban common good

Theory	Set Scores
Criteria/Indicators (attributes)	
Criterion 1: Collective choice/collaborative management of the resource (level of participation) <ul style="list-style-type: none"> - Attributes or characteristics of actors involved in the management of the resource - The effectiveness (cost and time) in management of the resource as a common - Perceptions and Strategies of the actors in view of the resource as shared as a common or not? - Degree of rivalry for the resource 	1
Criterion 2: Rules (formal or informal) in place that promote equalitarian, incorporative and fairness in use of the resource <ul style="list-style-type: none"> - Rules of appropriation of rights (benefits) and obligations (Costs) (i.e. who shares what? How is it shared?) - Scale of graduated sanctions for violation of rules - Mechanisms for conflict resolutions (cheap and easy?) - 	1
Criterion 3: Degree of excludability from the resource	0
Criterion 4: Multiple layers of nested enterprises, with local common pool resource at the base level and are recognized by the authority	1

<ul style="list-style-type: none"> - Local neighborhood plans, rules, laws and regulations on management of the development right - How are they instituted (process) - If available true then indicators for <i>criteria 6</i> applies 	
Criterion 5: Sufficient knowledge to understand the value of the resource as a whole <ul style="list-style-type: none"> - Degree of over use/misuse/abuse - Degree of pollution - 	1
Criterion 6: Effective monitoring by monitors who are part or accountable to the appropriators <ul style="list-style-type: none"> - Monitoring system in place (rules governing monitors) - The attributes of the monitors and whether they are part of the appropriators (who are the monitors?) - The accountability of the monitors to the appropriators (mutual monitoring) 	1

Procedure for scoring attributes/indicators of the criteria in the truth table above

Following the application of a Five value fuzzy set, where continuous fuzzy scores between 0 (fully out) and 1 (fully in), indicate partial membership as follows:

Score of 1 to 0.8 is fully in

Score of 0.51 to 0.79 is more or less in

Score of 0.5 is the cross over point, where the case is neither more in nor more out

Score of 0.2 to 0.49 is more or less out

Score of 0 to 0.19 is fully out

1. Selection of respondents for Interviews

A Purposive sample was drawn from 3 Quotas. A total of 11 respondents were interviewed (see Appendix 1 for the list of respondents). The following formed the quotas from which respondents were selected;

1. Technical persons in government who are actively involved in the process of issuing development permissions at the City Authority and at the Ministry of Lands Housing and Urban development
2. Professional bodies closely linked to the plan approval process i.e. Architects, Engineers and Physical Planners
3. Land developers who have submitted their development proposals to the City Authority for Approval since 2010, when the development right was made public

2. Procedure for determining the cumulative outcome of the developments permitted since 2010

Primary-secondary data of development proposals, submitted to the city authority's Physical Planning department by the private property owners, requesting the city authority for

development permission, will be collected and analyzed to establish the degree of mixed use developments that have been allowed in the city since 2010.

3. Secondary data sources

- The constitution of the Republic of Uganda
- Minutes and reports of the Physical Planning Committee deliberations
- Official letters exchanged between actors
- Building regulations and codes
- The Physical Planning Act of 2010
- The Land Act of 2007
- Newspapers
- Data base of development proposal submissions

3.4 Data Analysis

Objective 1 was entirely constructed from theory of the urban commons while a fuzzy set qualitative comparative data analysis method was used as the main data analysis tool for objective 2 and 3 while for objective 4, Microsoft Excel was used. As a first step in analyzing the qualitative field data, which was in form of text, ATLAS.ti was used to code (see Appendix 1 for the list of codes) and structure the raw data. The structured data was aggregated into topical concepts which were later provided as narratives under the different research sub-questions to provide possible answers to the questions. To measure for congruence between the empirical findings and theory, the fuzzy set ideal type analysis tool was used (Kvist, 2007). Data collected was scored using the dimensions of the theory of the urban commons in order to be able to classify the development right as a common good or not. A range between 0-1 was used to objectively measure the multi-dimensional aspects of the use of the development right in Kampala, against the criteria for evaluating urban common goods (Kvist, 2007, Hess, 2008, Parker, 2011). The evidence gathered from the study was measured to derive inference on whether the empirical conditions in Kampala revealed the presence or absence of the necessary conditions spelt out in the theory of the urban commons.

Methodological Framework

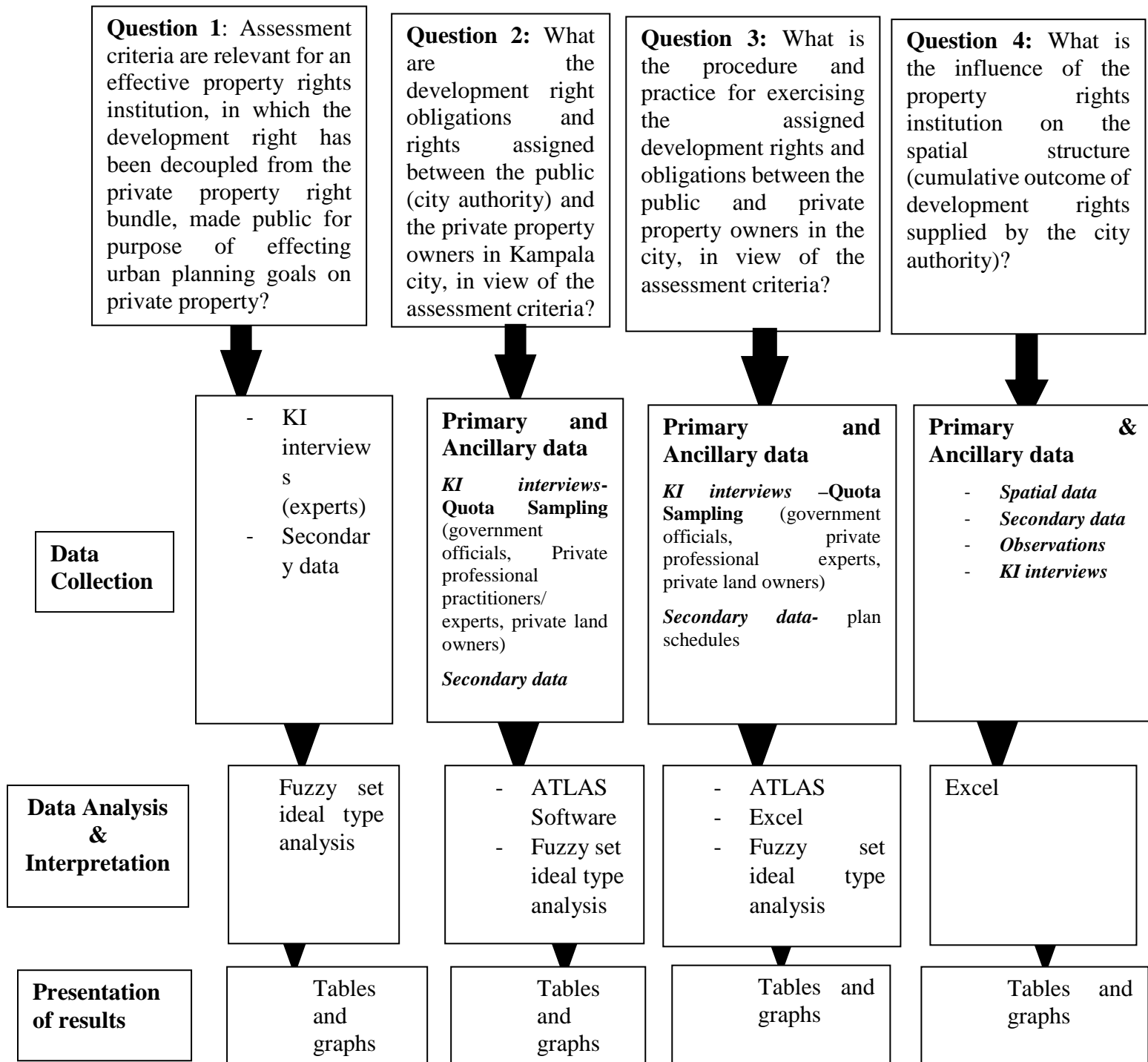


Figure 3: Methodological Framework

3.5 Validity and Reliability

The case study design has been criticized for lacking in controllability and researcher-independence. This is attributed to the high degree of freedom that the researcher has when carrying out the research as compared to quantitative approaches (Verschuren, 2003). The researcher however overcame such shortfalls in several ways. Firstly, the researcher carried out literature review on the topical issue, which aided in the conceptualization of the phenomenon based on theory. The concepts were defined to the context of the study (stipulative definitions) thus delimiting and focusing the research in the end. Additional effort was made to operationalize key concepts of the study into measurable indicators; which the researcher used to further delimit, focus and control the data collection process. In the end, this helped to reduce the risk of collecting data unrelated to the research question.

The study aimed at achieving internal validity. In so doing, data was collected from different credible sources, using different but complimentary methods. Data from the various sources was triangulated to derive consistency, validity and all-inclusive knowledge on topical issues under investigation. The research was ultimately sensitive to the functional, temporal and spatial inter-connectedness of the phenomenon under study (Verschuren, 2003, Neuman, 2006). And most importantly, standards of good practice as spelt out by Shneider (2010) were followed to enhance the validity of results when using Fuzzy ideal analysis techniques for qualitative methods. The results generated may fall short of being generalized to other cities outside the unit of study because of the few number of cases studied, but, results can be linked and generalized to the Kampala capital city and particular to the planning approval process therein (Verschuren and Doorewaard, 2010).

Chapter 4: Research Findings

This chapter presents the findings based on the analysis of data obtained from in-depth interviews and secondary data sources.

It begins with the description of the criteria relevant for assessing an effective property rights institution, in which the development right was been decoupled from the private property right bundle and made public to effect urban planning goals on private property.

Subsequently, a description is given of how the obligations and rights are assigned between the public (city authority) and the private property owners is given and; how they manifest themselves in reality Kampala city, in view of the relevant assessment criteria identified.

Lastly, the findings of how the property rights institution has influenced the spatial structure; through analyzing the cumulative development rights requested for and issued is presented and discussed, for the period between 2010 and 2015?

4.1 Necessary and relevant criteria for analysis of the property right institution in Kampala as an urban common

The results stem from review of the theory of property rights which include the theory on the urban commons, tragedy of the anti-commons, informal planning and tragedy of the commons. These theories predict conflicting outcomes following given necessary conditions, an exhaustive assessment criterion was generated to provide sufficient and necessary conditions necessary for the analysis of empirical conditions observed in the unit under study using four cases; given below:

1. Appropriators need sufficient knowledge to understand the value of the resource. This is an addition to the classic list, awareness of the resource is not a problem in classical common-pool resources but may certainly be so in the case of urban ecosystem services.
2. Clearly defined boundaries (effective exclusion of external unentitled parties); for urban commons we expect this criteria to be relaxed. Effective exclusion is unlikely for practical reasons and may not be desirable from a citywide perspective. Furthermore it is to be expected that people other than direct appropriators of the resource may contribute to its management.
3. Rules regarding the appropriation and provision of common resources are adapted to local conditions; The criteria is expected to hold unchanged
4. Collective-choice arrangements allow most resource appropriators to participate in the decision-making process; The criteria is expected to hold but modified to an extent by difficulties of clearly delimiting appropriators
5. Effective monitoring by monitors who are part of or accountable to the appropriators; The criteria is expected to hold unchanged but we note that mutual monitoring is likely to be more difficult in many cases in that value of the resource in the urban common often is indirect.

6. There is a scale of graduated sanctions for resource appropriators who violate community rules; The criteria is expected to hold unchanged
7. Mechanisms of conflict resolution are cheap and easily accessible and the criteria is expected to hold unchanged
8. The self-determination of the community is recognized by higher-level authorities. The criteria is expected to hold with the slight modification that urban commons are likely to have a more active presence of government enabling in order to overcome increased difficulties of meeting some of the criteria above and the additional uncertainty caused the contested nature of the resource. A new critical challenge arises for collective management of urban commons in making the cross-sector collaboration function well.
9. In the case of larger common-pool resources: organization in the form of multiple layers of nested enterprises, with small local CPRs at the base level. The criteria is expected to hold unchanged.

Source: Hess, 2008 and Ostrom, 1990 provide the criteria for mapping urban commons and common pool resources respectively.

4.2 Analysis of obligations and rights assigned between the public (city authority) and the private property owners and; how these manifest themselves in reality, in view of the relevant assessment criteria identified.

Important to the research was to make known what the empirical situation for Kampala was, by establishing the various rights and obligations accrued to the private sector and public sector.

To begin with, it was imperative that the researcher established what the legal and institutional framework was, in relation to the property rights, within the process of development permission. Identifying the obligations and rights assigned between actors in the development permit process in relation to the legal and institutional framework was equally important. Further analysis of the empirical situation to find out how the obligations and rights manifested themselves in practice, in relation to the development permission process, was very key in providing knowledge and understanding to the issues under investigation in this research. The findings were thereafter assessed, scored and measured against the criteria presented in the first section of this chapter in 4.1, using a truth table to illustrate whether the development right is actually within the set of urban commons and finally whether the outcomes of the analysis give inference towards the tragedy of the commons or conversely the tragedy of the anti-commons.

4.2.1 Description of the property rights institution

The Land Act of 1998, vested all land in the citizens of the Republic of Uganda under four land tenure systems which gave birth to individual property holdings of land. The land holding framework before 1998, had bestowed land property rights in Uganda on the planning authority under a statutory lease and not individuals. Subsequently, the revision of the land law left several gaps and implications for planning, which included: 1) In the absence of planning frameworks and institutions, what were the people expect to do, regarding development and use of land? 2) What would have obliged the individual private land owners and developers to seek development permission, especially in areas where there are no spatial plans and local based regulations to guide development? 3) Where would the Local Government get the right to require that every development be subjected to development permission? (10 and 11). A combination of the three elements drove the need to enact a new law. In 2010, the Physical Planning Act was enacted, to bridge the gaps created when the land law of 1998, was established.

The research established that the fundamental departures of the new law from the previous Town and Country Planning law of 1964, was not only the issue of the declaration of the whole country as a planning area but also the decentralization of planning functions to the different tiers of local government in the country. This meant that all developments in Uganda, including the rural areas had to be subjected to planning regulation under the new law. The legal reforms in the physical planning law of 2010 required that, immediately after the enactment of the law, it was imperative to transfer planning functions to the local government level, to aid efficient administrative working processes and mobilization of resources for urban planning. In 2013, a physical planning committee was established at the city authority to handle matters related to urban planning and land management.

A physical development plan was developed for Kampala city in 2012, albeit in isolation of wider regional and national urban plans. Ideally physical development plans at various levels including, regional, district and lower divisions and sub county area physical development plans. However, six years down the road, the regional and national development plans had not been developed (3, 6, 10 and 11).

“Normally when you declare an area a planning area, you embargo certain developments. You say between now and for the next six or nine months, no development should take place until the plan is completed; that should have been done but it was a gap and not done so because it wasn’t done it was business as usual and declaring the country a planning area doesn’t make sense if you don’t follow it up with the planning itself” (10)

Most of the technical staff interviewed agreed that, a number of legal and institutional reforms should have been adopted right after the enactment of the Physical Planning Act of 2010. Unfortunately, most of such policy actions were not undertaken, which was attributed mainly to poor interpretation of the law, the lack of pro-activeness by the government and a general lack of financial resources and skills capacity at the Local Government level.

The data from the interviews and secondary data sources, indicate that the change in the land

holding (from the land belonging to the planning authority under a statutory lease to the land now belonging to the people, since 1998), coupled with the enactment of the Physical Planning Act, made it incumbent upon private property owners to plan for their land and the government left with the obligation to offer oversight and coordination at the broader national, regional and city planning levels (6, 10,11,9). The Land owner was obliged by the law to hire and pay for the services of qualified physical planner, architect, engineer and surveyor; who are charged with the preparation of development proposals on behalf of the private land owner or developer. Planning proposals are generally expected to be developed in accordance with the overall planning framework, building standards and regulations for any given local authority. The physical planning law further states that, the land owner is not allowed to develop his/her property without prior permission from the Local Governments (The physical planning act, 2010).

However, some of the respondents noted that Kampala registered more progress in the implementation and compliance to the provisions of the Physical Planning Act, 2010 as compared to other areas in the country. This was however attributed to the enactment of the Kampala Capital City Act of 2010, which transformed the administration and management of the city from a local government entity to a central government agency. The Kampala Capital City Act was perceived to have improved the overall capacity of the city authority to carry out its duties including physical planning functions. Therefore the enactment of the physical planning act alone was perceived to be inadequate, without administrative action and reforms to advance the provisions of the Act in the implementing agency.

“In terms of financing KCCA gets more and there were reforms in its establishment like the staffing and the conditions of service improved, the work culture also changed and KCCA seems to be more serious and more committed to enforcing the law” (10)

However, it was found out that such reforms have happened in an environment where developments have already taken place. Consequently, enforcement of the physical development plan and the law in Kampala is constrained to a certain degree. In the end, the little that is being done is more of growth management than it is development control, *“how do you manage growth for areas that have already been developed? You want to improve circulation, you want to improve connectivity, you want to improve functionality, you want to improve efficiency. All these can only be done in an environment where developments have not yet taken place. Where developments have taken place those become obstacles, so there a number of obstacles to the city managers” (11).*

Despite the above reforms, a number of challenges still do exist in the day-to-day process of physical planning and development control. All respondents both in the private and public realm stated that, despite of the fact that, KCCA was empowered by the Physical Planning Law and the KCC Act, there are several governance challenges such as general public impunity and lawlessness (2, 4, 6, 7, 9, 10, and 11).

One respondent stated that “Somebody develops where the road reserve or public space is... if you try to do anything, the man brings guns and at the end of the day you feel disempowered; while another stated that “Another challenge is that developers do things with impunity...

because they are well connected and have backing from the army and so forth; that is a governance issue which should be taken up” (10)

Secondly, some of the government respondents interviewed from the Ministry of Lands Housing and urban development all agreed that physical planners at the City Authority failed to appreciate and to adjust to the new ways of doing things (10, 11). One stated that:

“The land law has changed, the physical planning law has also been repealed, the KCCA status as a local government has changed, but the technical people, their mentality and mindset has not changed. So they are still thinking in terms of the old ways of doing things, even in terms of planning, you come you say you are planning the central business district, you are planning your zones into strictly residential, commercial and industrial zones. Although the reality on the ground is actually telling you that, that is not feasible anymore because you can see, in residential areas, there are people who have converted their residences into day care centers, or nursery schools with-in their residential area; You find another who has changed his residential area into a supermarket, the other one has converted it into a restaurant and he is already serving and people are responding. Another one is has converted his into a hotel. So the writings on the wall the demands which are shaping the way things are happening are pointing in the direction of mixed use development” (10).

Such a phenomenon was attributed to the nature and background of training of the planners in KCCA. One respondent noted that, planners in KCCA were trained to plan areas using traditional norms of zoning. Such traditional planning norms have been criticized for producing plans that were inflexible to the demands and needs of the times and for future generations. Therefore in terms of the mindset, the planners at the City Authority were perceived to be thinking in a rigid manner, which did not respond to the demands and needs of the public. This may have led to a clash in the allocation of rights and obligations in the process of acquiring development permission (4, 10 and 11).

Furthermore, challenges to implementing the Physical planning act in Kampala were attributed to the fact that the management of KCCA, had failed to interpret and implement the law as expected. After the enactment of the Physical Planning law in 2010, the role of KCCA in planning had changed but the planners didn't realize that it had changed, one of the respondents from the Ministry of Lands, Housing and Urban Development noted that, *“...I talked to one of the KCCA directors and he was lamenting that you people at the ministry what is it that you are doing for us? Why don't you get money and support us to do neighborhood plans. Why? Neighborhoods? This neighborhood belongs to who? Neighborhoods now belong to the land owners. Why don't you evoke section 31 of the physical planning act, send out a circular instruction saying am giving you one year and within which all of you must get together and propose how you intend to use your land” (10)*

Another respondent noted that the changes that had taken place in the land law, the physical planning law and in the administration of KCCA, were meant for good but unfortunately they were not well perceived and thus have not been well understood and implemented (4, 6, and 7). Some of the respondents believed that the existing laws and concurrent instruments which are already in place, were good enough to create the order needed in the city (4 and 10). However, some respondents believed that the laws that were in existence were foreign and borrowed from developed countries and therefore were found to be unsuitable for the physical

spatial context of Kampala as well as the norms, cultures and traditions of the citizens of the city (2, 3). A case in point that was identified, was the building rules and regulations of the Public Health Act of 1964, which was used in the process of reviewing development proposals and monitoring building rules compliance for public health, the statement below captures the issue thus:

“...entirely the legislation should look out for what works for Uganda, it doesn’t have to be what works for everyone but we should understand the problem and labor the legislation to capture the problem. Why am saying this is, previously we even went ahead and we were trying to develop building standards for construction but items like building materials seem standardized to the outside world standards; we are not looking at cow dung because we think that the villages’ need to be part of the developing world, but the reality is that people still use cow dung. So we need to find the best way in which people can use cow dung instead of brushing it off, because these are systems that haven’t been there only for now but have run over the years. And also we tend to borrow and lose the human factor of it all like when we are planning we seem to think that issues are mechanic if it isn’t, it should never be” (3)

4.2.2 Analysis of the rights and obligations that exist within the legal and institutional framework

The rights and obligations accrued to the private property owners and the public, where agreed by most of the respondents in one way or another, to exist as a set of rights comprising of obligations and rights, that is; for every right, an obligation was embedded therein. In addition, the findings show that the existing set of obligations and rights allocated to each identified party did not exist in isolation but rather in complementarity and therefore exist as a system in its entirety. On the other hand, the rights and obligations that existed led to conflicting interests between the public and private property owners as one of the respondents noted:

“The authority has to look at aspects of public safety as an obligation... protection of sensitive and prime areas, aesthetic qualities and at the potential for employment... to see how all these come together... and how you bring in the investor, because at the end of the day the investor, if you don’t give the conditional use, things like encroachment and development control cannot be checked because the investor is looking at maximum profit at the end of the day, he doesn’t care that you need green or the façade of a certain street; so urban authorities need to give that permission that is inclusive enough to cater for the public’s need” (9)

In addition, some of the respondents reported that in practice, the manner in which the obligations and rights were structured and allocated, resulted into the city authority having the upper hand over the private land owner. In turn this led to a general perception of the city authority being over assertive and authoritative, to the extent that the private property owner’s rights were abused and disregarded. As a result, some of the developers felt deprived of the opportunity to negotiate their development ideas since they were not considered to be at the same footing with the city authority, but rather at a lesser footing. More often the developers were left with no option but to accept whatever kind of development permit was granted to them. Consequently, the will power and innovations of the private developers was not taken seriously and did not form the outcomes and decisions of the development permission process

most of the times, which they (private property owners) described as market driven, modern and eco-friendly ideas (2,4).

At the same time, there were inadequate mechanisms to address such concerns, stemming from the fact that it is not a very common culture to question authority in Uganda (4). Consequently, the private sector felt like they were at the mercy of the City Authority. This was made worse by the lack of clear localized development plans, standards and guidelines at the local neighborhood level. They thought these would have helped developers know their rights and obligations better, to be able to confidently negotiate for the development right with the city Authority. In the absence of clear local grid level plans standards and guidelines, the private sector depended on the institutional judgment of the city authority which they (private property owners) did not trust in the first place as it had no basis from which it was drawn most of the time (1, 2, 3, 4, 6, 7, 9, 10 and 11).

Field data further established that, the failure of the city authority to fulfill their obligations, had clumped on the rights of the private developers to capitalize on investments in land and properties in Kampala. From all the four cases followed, it was established that the failure of the city authority to provide adequate infrastructure and services, hindered developers from investing in multi-storied structures in particular, which would have yielded them higher profits margins than they currently realize with buildings of fewer stories (1, 4, 5, 7, 8, 10 and 11).

However, all respondents indicated that, in the urge to meet their respective obligations and exercise their rights, the lack of appropriate means and mechanisms of feedback, knowledge and information flow, indeed were the root cause of the obstacles that they faced. And for these reasons, it was perceived that the more elite and economically powerful clients had benefited more from the process. The elite and economically powerful were seen to have easy access to information through the connections that they possessed within the system as compared to the less economically powerful and less elite clients who did not have similar contacts and social networks (1, 2, 3, 7, 10 and 11). Therefore the economically elite and educated clients were perceived to enjoy their rights more than their counterparts did. A case in point, was where the economically elite and educated clients were identified to take advantage of the legal provisions and opportunity to appeal the decisions of the City Authority to higher planning authority bodies, such as the National Physical Planning Board which was not the case for their counterparts with no connections or higher levels of incomes (4 and 11).

Some of the respondents from the city authority explained that in order to overcome the gap in the knowledge and information flow, efforts were made to engage with the key stakeholders in the built environment. The key stakeholders that the city authority engaged with, included real estate developers and professionals like the surveyors' engineers, architects and environmentalists. These engagements were described to have yielded a better appreciation of the content and requirements of the physical planning act of 2010, particularly for the actors involved in the development permission process (1, 2, 6 and 9). However, the developers and private practice professionals who were interviewed revealed that, the knowledge and information engagements held by the city authority, were done simply for formality. They felt that their issues were not really addressed thereafter and thus they continued to battle with the same old challenges despite their engagements with the city authority.

Some of the respondents proposed that such engagements should not be occasionally organized in form of workshops and seminars but rather held during the actual process of scrutinizing their development proposals. In addition, the data from the interviews established that the city authority only engaged with the large scale developers and sidelined the one time developers. Amongst the professionals, the city authority only engaged with the architects and engineers, while the surveyors and physical planners were left out (1, 2, and 3).

Table 2: showing a summary of rights and obligations in the development permission process for the various appropriators

Rights	Obligations	Rights	Obligations
Private Land Owner		Public	
To use and benefit from property	<p>To plan land using services of a qualified physical planner;</p> <p>To seek planning guidance and approval in the development and use of their land in accordance to relevant laws and plans.</p>	To guide and approve developments in accordance with relevant laws and city plans in a timely and professional manner	<p>To manage, coordinate and regulate planning and development at in accordance to relevant laws and regulations</p> <p>To sensitize and make aware of development regulations, standards and guidelines</p> <p>To propose amendments and reviews of the laws, fees and penalties related to land development and management in a non-arbitrary manner</p>
To secure property	To pay premiums, property taxes, ground rent	<p>To make available land for private investment.</p> <p>To acquire land in public interest</p>	<p>To protect and secure the rights of private individual property</p> <p>To compensate for loss of private property due to public interest</p>
To quality services and infrastructure	To pay taxes, fees and fines	Mobilize and collect revenues through lease premiums, ground rent, property taxes, fines and fees	<ul style="list-style-type: none"> - Provision of infrastructure and services in a timely and transparent manner - To make available land for development and investment
Obligations and rights for third parties			

- 1. Ministry of Lands Housing and Urban Development/ National Physical Planning Board:** to provide overall oversight, guidance and supervision to Local Governments in the country on issues related to physical planning and land management in general, as stipulated under section 4 of the Physical Planning Act.
- 2. The community:** to participate by contributing or making representation to physical development plans as provided in section 20 of the PPA, 2010. The community should be able to participate and make comments to development proposals before their approval, a condition that should only be waived with justifiable reasons.
- 3. Private practice professionals:** to develop land use and development proposals on behalf of developers, to Act as agents and advisors to developers in accordance to physical planning and building regulations of the city as provided in sections 10 and 12 of the physical planning act of 2010 and; regulation 7 and 13 of physical planning regulations of 2011.

4.2.3 Analysis of how the identified obligations and rights manifest themselves in reality, in view of the assessment criteria identified in section 4.1.

Table 3: Truth table of rights and obligations

Theory Criteria/Indicators (attributes)	Membership scores for an Urban Common good	Empirical Scores
Criterion 1: Collective choice/collaborative management of the resource (level of participation) <ul style="list-style-type: none"> - Attributes or characteristics of actors involved in the management of the resource - The effectiveness (cost and time) in management of the resource as a common - Perceptions and Strategies of the actors in view of the resource as shared as a common or not? - Degree of rivalry for the resource 	1	0.3
Criterion 2: Rules (formal or informal) in place that promote equalitarian, incorporative and fairness in use of the resource <ul style="list-style-type: none"> - Rules of appropriation of rights (benefits) and obligations (Costs) (i.e. who shares what? How is it shared?) - Scale of graduated sanctions for violation of rules - Mechanisms for conflict resolutions (cheap and easy?) - 	1	0.2 -
Criterion 3: Degree of excludability from the resource	0	0.6
Criterion 4: Multiple layers of nested enterprises, with local common pool resource at the base level and are recognized by the authority <ul style="list-style-type: none"> - Local neighborhood plans, rules, laws and regulations on management of the development right - How are they instituted (process) - If available true then indicators for <i>criteria 6</i> applies 	1	0.19
Criterion 5: Sufficient knowledge to understand the value of the resource as a whole <ul style="list-style-type: none"> - Degree of over use/misuse/abuse - Degree of pollution - 	1	0.3
Criterion 6: Effective monitoring by monitors who are part or accountable to the appropriators <ul style="list-style-type: none"> - Monitoring system in place (rules governing monitors) - The attributes of the monitors and whether they are part of the appropriators (who are the monitors?) - The accountability of the monitors to the appropriators (mutual monitoring) 	1	0.2

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Score of 1 to 0.8 is fully in

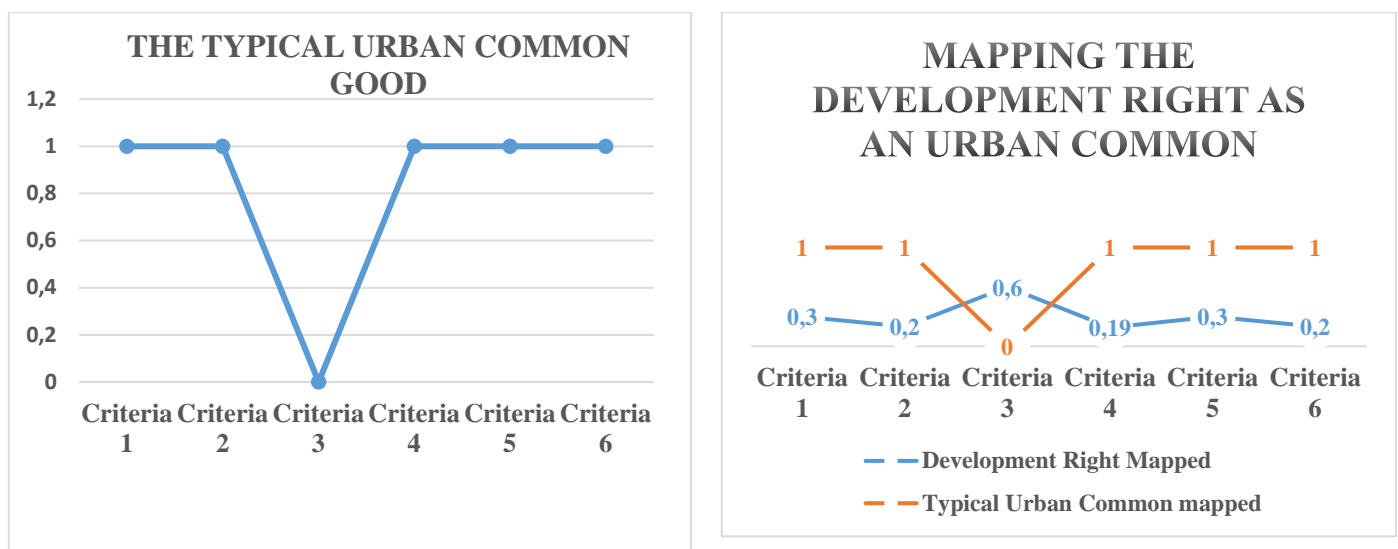
Score of 0.51 to 0.79 is more or less in

Score of 0.5 is the cross over point, where the case is neither more in nor more out

Score of 0.2 to 0.49 is more or less out

Score of 0 to 0.19 is fully out

Chart 1: Mapping the development right as an urban common good



4.2.3.1 Explanations for the empirical scores given in the truth table (table 2)

Criterion 1: Collective choice/collaborative management of the resource (level of participation)

Sub criterion 1: Attributes or characteristics of actors involved in the development permission process

From secondary data and the data from the interviews, it was established that the land owners have a right to develop and use their land. However, this right was found to be conditional and only became operational for the private developer, upon acquiring a development permit from the city authority. The city authority owned and regulated the development right, a right bestowed upon them by the PPA, 2010. The implication of this, is that the private developers have the obligation to seek for development permission, from the city authority on one hand and on the other hand, a right to propose the type of land use that they intended to use their properties for.

However, findings show that the developer had other obligations to meet, including; a) To use their land in accordance with the city's master plan, building standards and guidelines and, b) to hire the services of private practicing professionals such as architects, engineers and surveyors (regulation 13 of the Physical Planning Regulations, 2011).

The private practice professionals were regarded as agents, acting on behalf of the developer. They possessed the right and the obligation to not only design and submit development proposals to the city authority, but to also negotiate the development right with the city authority, on behalf of the developers.

In addition, the technical staff and the physical planning committee at the City Authority were identified as critical actors in the development permit process. The city authority possessed the explicit development right in the city and therefore they held the right to grant, reject or defer private development proposals with amendments. However, these rights were to be exercised in accordance with the KPDP, the Physical Planning Act, 2010 and the building rules and regulations of the Public Health Act of 1964; in a timely and efficient manner.

Lastly, another category of critical actors identified, were the technical staff and the National Physical Planning Board at the Ministry of Lands Housing and Urban development. They had an obligation and right to offer oversight and guidance to the city authority. In addition, it was their responsibility to manage conflict and appeals made by the land owners against the decisions made by the city authority, in respect to private property development proposals and overall physical planning guidelines and standards.

The government and land owners were identified as the main appropriators in the development permission process. However, from secondary data and the interview process, third party stakeholders such as the private practice professionals and communities formed part of the critical actors of the process. And consequently they also had obligations and rights allocated to them stemming from the Physical planning legal framework.

Sub-criterion 2 and 3: The effectiveness (cost and time) in the development permission process

The developers and technical staff noted that the main obligation of the land owner/developer, in the process of development permission was to plan their land. However, this was to be carried out with the aid of registered and practicing architects, engineers and surveyors. Nevertheless, some of the developers mentioned that the private practice professionals, most of the times acted unprofessional. For instance they did not meet deadlines as agreed, specifically during the process of design of the development proposals. And worse still the developers indicated that the private practicing professionals sometimes abandoned the designs half way the process, without notice or remorse.

Some of developers believed that the private practicing professionals did not negotiate the development right on their behalf sufficiently. This was perceived to be because of the lack of the will and expertise to adequately do so on the part of the private practicing professionals. And worse still it was noted that, the private practicing professionals did not play their part in following up the development proposals through to the final stage of development approval. The consequences of such unethical behaviour was seen not only to cost the developers time and development partnerships but it also increased the burden of interest paid on loans acquired from financial institutions for land investment. Such inefficiencies on the private practicing

professionals part lengthens the time taken to acquire the development permit and to carry out development; which ultimately increases the cost of doing business in the city.

Some of the respondents also indicated that, such inefficiencies on both the public and private practicing professionals' part, ended up in legal suits. Legal suits and processes have been perceived to be time wasting and financially constraining, leaving the developers frustrated in the end.

The lack of professionalism could not be checked by the existing institutional setup for plan approval, since the sanctions for poor performance and malpractice were absent. Even if they existed, they were not known to the developers. In this case the developers were left with one alternative that was, to seek court redress. This alternative however, was described as time consuming and expensive and caused unnecessary stress, stemming from the embedded bureaucracy and lengthy procedures of the judicial system. In the end, such frustrations were seen to be the root cause for illegal construction in Kampala.

Additionally, private professionals as well as the government technical staff both at the city authority and at the MLHUD expressed the lack of clear guidelines and standards tailored to suit local urban development. This was seen to cause delays in issuing permits and ultimately caused conflict and tension in the process of exercising rights and obligations assigned between the different actors. Most of the respondents attributed this to the vagueness and lack of clarity in the content of the city master plan. While the technical staff at the MLHUD blamed it on the mentality and rigidity of thinking amongst city authority planners. However, some blamed it on the existing system which was described as bureaucratic, inflexible and not open to innovation. In the end, the development permission process has failed to meet the current demands of the public, despite favourable market conditions and technological innovation possibilities. Consequently, opportunities to capitalize on land interests for the different appropriators involved in the management and use of the resource was lost in the process. However, the international developers and the large scale developer indicated that, their experience of working with the system for a long time, had enabled them master the art of overcoming and dealing with the hiccups of the system. They however indicated that they felt for the onetime developer who had no time and muscle to negotiate their way through the system, the system may be described as very frustrating and corrupt. (1, 2 and 7)

The guidelines and standards which were used in the development permission process were viewed by most of the technical staff interviewed, as outdated and foreign (introduced by the colonial masters). Subsequently, the building guidelines and standard have been perceived to not only be insensitive to the local physical attributes of Kampala but also to the traditional building norms and materials that have been in existence for a long time, since they do not form and inform formal urban policy, standards and guidelines (2, 3, 6 and 7).

In addition, from secondary data, it was established that the existing laws may also contribute to the bureaucracy of the development permission system. The existing laws required that, development proposals be reviewed following 10 procedural steps and that a checklist of 54 items was used yet still such information was not shared with the developers. Furthermore it was established that some government agencies (like the National Environment Management Authority and the Ministry of gender, labour and social development) who formed part of the technical review team were still not decentralized to the city authority level. A combination of

all the aforementioned issues slowed down the process of decision making (see annex 4 for procedural steps and checklist).

All of the developers interviewed, perceived the city authority as inconsistent and not transparent in the decisions made during the plan approval process. The private practicing professionals and the developers indicated that such inconsistency and non-transparency led to ineffectiveness in the plan review process, misunderstandings, mistrust and conflict amongst actors. In addition, the approvals were not done in the stipulated time as provided in the law (30 days) and; that the development permission fees were seen to be too high and too many in number as captured in the following statement;

“the costs of fees to pay as required by the authority are too many; these include plan approval fees, land premiums or ground rents, renovation permits, hoarding permits, occupation permits which out way the benefits we get from the formal development process” (7)

Consequently, there was a general perception that the city authority overcharged for development permits. This was further viewed to be unfairness on the city authority's part, since the developers felt that they did not get the value for the fees remitted to the authority, in terms of services and infrastructure, which the city authority is obliged to provide from the revenue collected in this regard. Consequently, some of the developers claimed that it was the very lack of adequate services in the CBD, which hindered them from putting up high rise structures, in spite of the fact that market conditions were favourable *“only 4% of Kampala has sewage lines only 7%-8% has storm water channels only 30% to 40% has capacity of electricity....people always comment on our Facebook page like why haven't you [the developer] built a 30 storied building in Uganda but we don't have services that can support a 30 storied building in Uganda. If you put 20 to 30 storied buildings, the system will be overloaded...Nairobi today you earn 3-2% of your investment. Today in Uganda you are still earning up to 16%, so we are still doing well, which means that there is a higher demand for these trading buildings than there will be in future.” (1).*

Sub-criterion 3: Perceptions and Strategies of the actors in view of the resource as shared or not?

All developers were aware and agreed to the fact that that they had a conditional development right, which only became operational when they sought permission from the city authority and it had been granted. The city authority was also aware that the private developer had the right to get approval for his land, if they fulfilled and followed the laws, regulations and standards governing building and development in the city.

However, some of the respondents mentioned that the city authority over stepped its mandate of guiding and supervising developments in the city. For instance, the developers stated that they agreed with the city authority's role of offering guidance and ensuring that developments comply with building standards and regulations of the city. However, they did not agree with the city authority getting involved in controlling every single detail of buildings and developments, but rather felt that certain small detail should be left to the private developer to choose. For instance the choices made in the design and the finishings of their buildings, was believed to be a matter of personal choice that the property owner should not be deprived of. This concern was captured as follows:

“Why does council concentrate on things that are irrelevant to them? For example the way we clad a building, it is all personal choice, now I understand when you talk of steel, you talk of concrete to put up structure, it is a standard but do not talk to me about my cladding, do not talk to me about how am going to finish a building, it’s not an important factor...because they need to look at the safety aspect, ...at the environment impact, change in pollution, change in sound, change in for example the services, can the services handle whatever we are putting there? You should not look at if the building is efficient, tomorrow if I want to build an inefficient building; it’s my building so I put an inefficient building, so it might not be an efficient building but it is not for council to query, council should concentrate on what they are there to do. They are there to guide and to enforce a good policy on development” (1)

Some of the respondents interpreted the revision of the physical planning standards to include the metropolitan area and land parcels of smaller sizes to have affected the cost of construction for developers with bigger plots.

“The revision of the boundaries for Kampala to include the metropolitan and the revision of the plot size regulation to much less will affect the other developers with bigger plots. Costs would increase on other bigger developers because when you look at the way the new development is coming up and how KCCA approvals come out. Before the government or KCCA planning department had put up policies that people who have got small pieces of land shouldn’t be given permission to develop them”.(5)

Sub-criterion 4: Degree of rivalry of the resource

The development right requested for by the developers and granted by the city authority, for buildings in the CBD, comprised mainly commercial type which was attributed to the fact that the principle of highest and best use for commercial to bid the central locations with quality services and infrastructure was evident in Kampala. On the other hand it was observed by most respondents that the commercial structures erected within the CBD have their upper levels unoccupied *“the way buildings are being planned is going to create a problem, we are going to end up with empty buildings and it’s already evident downtown. On Mengo hill road we have a whole section of buildings which is empty even on the first floor”* (3)

This was attributed to the fact that KCCA is planning for the rich and upper income classes, which is evident in the kind of permits issued i.e. mainly commercial structures that attract high rent values of approximately 25 US \$ per square meter, that the local trader cannot be able to pay (1).

Criterion 2: Rules (formal or informal) in place that promote equalitarian, incorporative and fairness in use of the resource

Sub-criterion 1: Rules of appropriation of rights (benefits) and obligations (Costs) (i.e. who shares what? How is it shared?)

The Physical Planning Act made it incumbent upon a private property owner to plan for his/her land, using the services of a physical planner who is qualified. The planning of private property however had to be done in accordance with the overall planning framework and standards of the city authority. It was perceived that a qualified physical planner can be held accountable for his actions but also understands the planning standards better than the land owner would. The law further states that, the land owner is not allowed to develop his/her property without prior permission from the City Authority. Thus the law requires that all land owners seek permission to develop their property, leaving the planning in the hands of individuals with the

government to guide, coordinate and manage the planning process linking individual private property developments to the wider neighborhood and city wide physical development plans.

However, data from the interviews, established that the rules of appropriation were not clear. This stemmed from the fact that the city authority had not translated the KPDP and the PPA, since their formulation, into local area plans, guidelines and standards. This resulted into arbitrary decision making and contradiction in the use of space in the CBD area. A private professional noted that, *“guidelines are not set out...for example you can contrast with what’s in Kigali, they [KCCA] don’t follow building heights they don’t follow lee ways, they don’t follow road reserves, All that is put aside..”* (2)

Some of the respondents explained that the situation is made worse by the fact that the term mixed use is ambiguous in its definition *“so is mixed use a mix of commercial and residential apartments?”* (2 and 4)

In addition to the ambiguity of the physical planning law and the city master plan, most of the respondents thought that the formal rules which were in place, lacked consistency. This led to a non-coherent and arbitrary decision making process and also caused conflict and tension between the actors involved in the process, as they exercised their rights and obligations. Some of the developers, technical people in the MLHUD and private practice professionals, mentioned that the City Authority only cared about exercising their rights more than they were concerned about meeting their obligations (1, 4, 7, 8, 10 and 11). *“What’s happening today, people only see KCCA going to collect taxes? After taxes have been collected, they disappear... and appear only to collect more tax...there is no single planner on ground. That is wrong and I condemn it... it shouldn’t be a one way traffic”* (11).

Furthermore, the city authority was perceived to work in isolation of other critical actors in the process of development permission (2, 4, 5 and 7). For instance Institutional linkage between the governments agencies involved in the process was seen to be lacking. One of the respondent stated that *“we have communicated to KCCA and even put to them real issues regarding the development permit process...and we would like to hear from them, so that we can inform our planning...discussions and give guidance if any...but they have not been very corporative... no response on those communications even when we have reminded them”* (4)

Sub-criterion 2: Scale of graduated sanctions for violation of rules

Though sanctions for violation of rules by the developer existed as provided for by the Physical Planning Act, there was a general lack of graduated sanctions in the existing legal and administrative frameworks in light of the offences committed, which have rendered existing sanctions ineffective and not punitive enough. Consequently, impunity is widespread amongst developers and a perceived inequality and unfairness has been created amongst actors involved in the process, who see the Authority to be favouring some and punishing others.

On the other hand, the sanctions against the technical staff were viewed to be highly punitive ranging from imprisonment, loss of jobs and interdictions, which has made them afraid of taking decisions just in case they make mistakes, thus slowing the plan approval process (1). However there was a gap in the sanctions against the private practice professionals like the architects, engineers, surveyors and planners; who most of the time acted unprofessionally when handling work on behalf of the developers. There were no sanctions available in the physical planning legal framework to bring them to book, apart from court redress which was described as time wasting and expensive for the developers (5and 8).

Sub-criterion 3: Mechanisms for conflict resolutions (cheap and easy?)

Two mechanisms for conflict resolution existed. First, the institutional chain of command, as established in the Kampala Capital Act, 2010 and the Physical Planning Act, 2010. This mechanism was considered by most of the respondents to be the cheapest and easiest of all the available mechanisms, mainly because there were no filing fees required in the process and it involved dialogue and round table discussions, which were perceived as less stressful and inexpensive.

However, the technical staff at the city authority noted that, several conflicts could not be resolved using the afore-mentioned mechanism and that most conflicts were referred to court for redress. The respondents further noted that, solving conflicts through court helped avoid conflict of interests on the part of the city authority. This was because the city authority always came up as one of the parties directly or indirectly involved in the conflicts that arose in the development permit process. Therefore it was believed that court provided a neutral ground for conflict resolution as compared to the institutional conflict mechanism. However, court redress was described as a very expensive option in terms of time and money for both the public and the private property owners (3).

Unfortunately, it was noted that court processes had slowed down the city authority's processes of enforcement and at the end, some developers managed to get away with illegal construction. Such a situation was exacerbated by the fact that the fines as provided by the building Law were mild. Consequently, some developers found it rewarding to disregard the rules, since the benefits of violating the law outweighed the costs and at the same time superseded the benefits of seeking for development permission (2, 3 and 8).

However, some of the developers were not aware of the cheaper conflict resolution option (institutional conflict mechanism) and usually had to take the more expensive court redress (5 and 8). One of the developers noted that they were not aware of any of the available conflict mechanisms within the institutional framework of the development approval process, except for court redress and therefore he mainly addressed any conflict by use of threats and court filings.

Criterion 3: Degree of excludability from the resource

The developments permitted in the city showed a high degree or level of land use exclusion and segregation as seen from the cumulative ration of mix of land uses in architectural building designs. Commercial land use was the predominant use sought for by developers and permitted by the city authority for the CBD area. In addition, some respondents revealed that the buildings constructed in Kampala's CBD area, technically excluded low income groups from the inner city frame, on the basis of the ability to pay. The structures in the CBD area were described by the respondents as targeting the rich who are very few in number and neglecting the majority group with low incomes.

This in turn has led to a less competitive environment in the CBD, since most Ugandans who would have loved to live or do business in the CBD, were either pushed to the outskirts of the city or left with the options of occupying the doors, windows, verandas', hallways and streets while most of the shops and offices within the buildings were left unoccupied.



The top floors of the buildings were observed as unoccupied while the street was invaded by traders and; the doors and windows of the ground level floors of buildings down town were rented out to traders to display their goods

Criterion 4: Multiple layers of nested enterprises, with local common pool resource at the base level and are recognized by the authority

- Questions asked included; where Local neighbourhood plans, rules, laws and regulations on management of the development right in place?
- And if so how were they instituted, what was the process like? Was it participatory, integrative and collaborative?

For the first question above, field results showed that local area plans or neighbourhood plans were non-existent. The decisions to grant or reject development proposals were based on the wider city vision that was described by respondents as “a sketch” and “hanging” (3, 6, 9, 10 and 11) which left a gap for proper development guidance.

“the authority has had the master plan for the city in place without the detailed neighborhood plans for the different land uses, so it is still unclear; say if someone was not to come to the authority they would not exactly know the skyline of a particular area... that has been a gap where we don’t have the different detailed code system for the different uses, so the public still has to rely on the technical input of the team that is within the authority...the ideal situation would be that the detailed plans are in place and everything is self-explanatory to all parties”(9)

In addition to the above, most of the respondents noted that the wider city’s master plan in itself had not penetrated the grassroots. The implication was a general lack of knowledge of the city’s development plan and its contents for most of the resource appropriators. This was attributed to a general lack of multiple layers of nested local common pool resource (base level detailed neighbourhood plans, building codes, development guidelines and standards). Therefore the link to the wider city common pool resource (Physical development plan) was lacking.

The benefits and management of the resource were perceived to be for a few groups like the economically elite, educated, the rich and the technical people at the City Authority who had access to knowledge of the plan. Therefore the development right was perceived as being exclusive to certain groups who had access and contact within the city's development permission system and were able to easily negotiate the development right from an informed point. While the technical people at the MLHUD, the communities, private practice professionals, and the one time developers, CBOs, FBOs who also had a stake were perceived to be alienated. This is captured in the statement below:

“We are regular property developers and we have learnt how to deal with the system as it is but I feel pity for the one time developers who have to go through the frustrations of the system. We are forced to develop empty plots but at the same time the plan approval process is very frustrating; so what happens to the developer who has no muscle and no time to negotiate with the authority?” (7)

Criterion 5: Sufficient knowledge to understand the value of the resource as a whole measured by the degree of over use/misuse/abuse

All respondents agreed to the fact that the land resource and the development right was abused and misused to a large extent. Typical cases showed conversion of parking within buildings into retail shops; corridors, windows and doors were being rented out to small scale traders while the top level floors were unoccupied due to very high rent of space (25 US\$ per square meter). At the same time monitoring and compliance measures to building plans and space use were not taken by the city authority, to check the abuse. The end result is street vending, illegal parking, garbage littering and poor solid waste management among others. This phenomenon was made worse by the weak planning and weak governance systems that are non-transparent and corrupt which affect the effectiveness of monitoring and enforcement obligations on the city authority's part (3 and 10).

Criterion 6: Effective monitoring by monitors who are part or accountable to the appropriators

This criterion sought to find out whether there was a monitoring system in place, who the monitors were, whether they were part of the appropriators and what the rules governing monitors would be?

A monitoring system was found to be in place, with rules and sanctions laid out in the physical planning act, 2010, the Public service code of conduct, the Public Health Act, 1964 and the Kampala Capital City Act, 2010. The city authority was identified as the monitor and an appropriator in the use of the resource. However, the city authority was described to be ill equipped in terms of finances, staffing numbers and skills. This coupled with corruption and authoritativeness, rendered the city authority incompetent in their monitoring role.

Indeed some of the respondents noted that, reforms in the law and the change in the model of management of the city authority, had not achieved much in registering change in the way things were being done in practice.

“To be honest the old Kampala City Council and the new Kampala Capital City Authority are the same, it's just that the new KCC is more corrupt. Plans are approved faster now but that depends on who the client is... It is the same system just like I said the corruption. The new

KCC has somehow publicized the planning act and people are now more knowledgeable and I think it's the best thing they have done. Otherwise I won't talk about the roads and the likes, the rest is more or less the same" (2)

On the other hand, the respondents from the city authority agreed to being ill equipped to effectively carry out their roles. The respondents revealed that the problem stemmed from the fact that the city authority did not have leverage available for them that would ultimately pull developers to seek development permission. Subsequently, assertiveness of authority and use of force were the only ways the city authority was able to get developers to adhere to building rules and regulations. In the end, developers and other stakeholders have perceived the city authority as abusive, over assertive and authoritative on developers and the private property owners during enforcement and the monitoring process.

Some of the technical staff indicated that, if the city authority only owned the necessary services and infrastructure like water, power and sewage, developers would be pushed to seek permission without the exertion of authority and force by the city authority. To explain this further, it was noted that such services are basic services that every property owner would require to run business or occupy a building. Therefore at any given point in time, a developer would have no option other than to come into contact with the authority, and in turn compliance to development standards and guidelines would be made easy for both the developer and city authority. However, currently there is no reason as to why private property owners would want to come and seek permission willingly without being pushed by the city authority.

In addition, carrying out enforcement was undertaken using a very broad plan, national guidelines and standards which had not been tailored to fit the context for Kampala city and in turn, this hindered the effective monitoring and compliance to plans, standards and regulation.

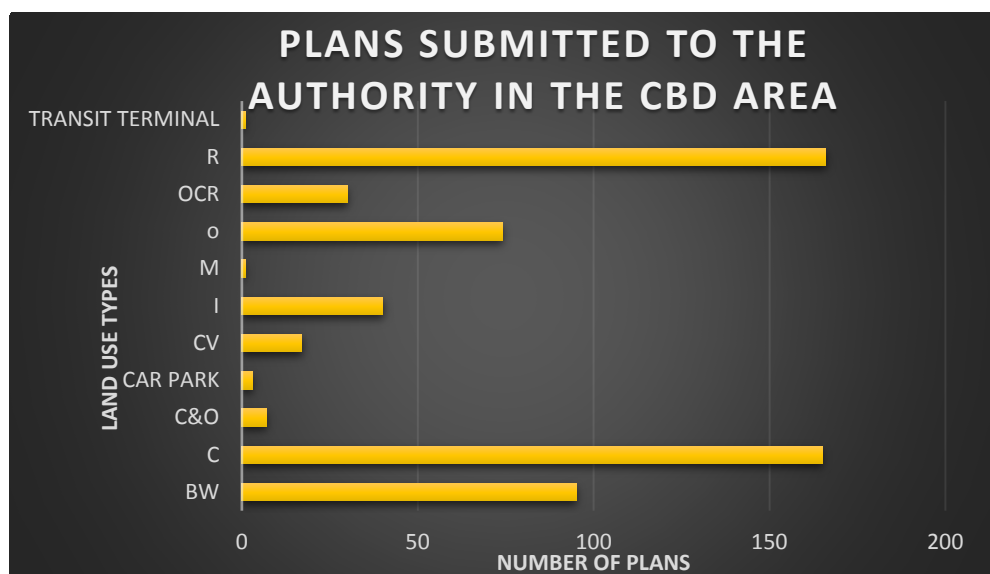
In summary the research findings showed that the nationalization of the development right in Uganda did not meet its objective to effectively balance the protection of individual property rights on one hand and secure public interest on the other hand. Results indeed show that it is insufficient just to nationalize the development rights, if the conditions for the day-to-day management of the development rights as a common pool resource are not ignored by the appropriators of the resource. This was mainly attributed to the absence of local neighbourhood land use plans and strategies that link to the wider city vision. The outcome being:

- a) A weak land use governance system comprised of bureaucracy, assertiveness and inadequacy in resources and skills. This coupled with insufficient enforcement, monitoring, punitive sanctions and conflict mechanisms, further crippled the use and management of land in Kampala.
- b) Poor collaboration and integration of land use decisions and strategies for the different appropriators involved, caused conflict and misunderstandings between parties. Such a situation was attributed to poor information flow and asymmetric information pertaining to rights and obligations as well as the use of land itself.

4.3 An analysis of private property architectural urban designs and how these influence spatial segregation or mix of land uses in Kampala,

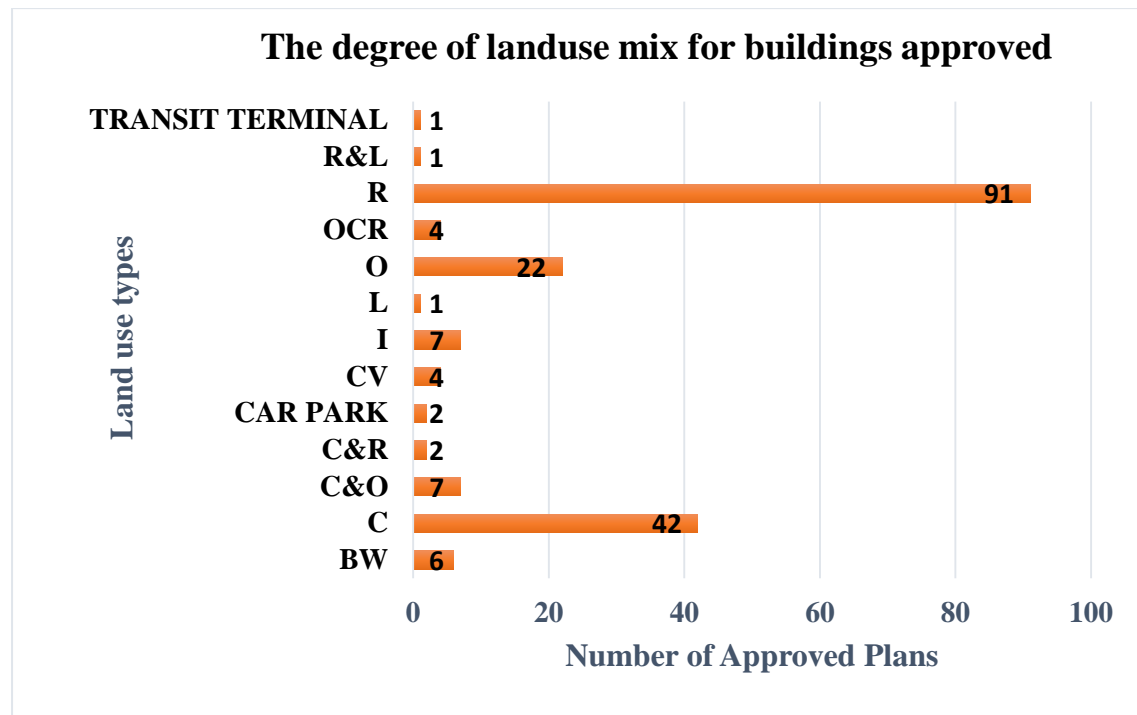
Important to the research, was to relate the cases studied to the overall spatial structure and the overall development permission process. Architectural designs, which were submitted to the city authority for development permission by private property owners, between 2010 and 2016, were aggregated and compared to show the cumulative difference in land use mix for spatial properties in the CBD area. The results derived from the analysis aimed to draw inference on whether the architectural designs submitted to the authority and those actually permitted for development produced or neutralized the segregation in functional use of land space and buildings. An analysis of the architectural design was important in showing whether the spatial properties in Kampala reflected a separation or mix of land use types. The land use types as derived from the data base were then aggregated for comparison purposes. Inference of the results, in relation to the functional separation or mix of land uses, would then be possible at this point.

Chart 2: Graph showing the number of land use or development proposals submitted to the Authority for the CBD area



Author, 2016

Chart 3: Graph showing the degree of land use mix for development proposals approved by the city authority



KEY

R&L: Residential and Leisure

R: Residential

OCR: Office, Commercial and Residential

O: Offices

L: Leisure

M:

I: Industry

CV: Civic

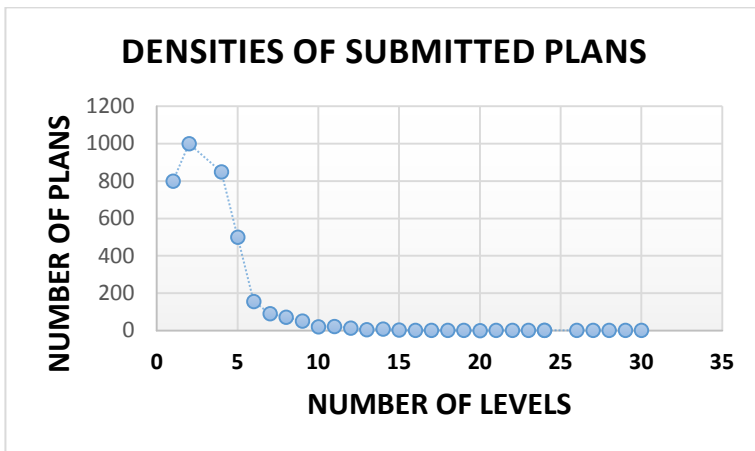
C&R: Commercial & Residential

C&O: Commercial and Office

C: Commercial

BW: Boundary wall

Chart 4: Graph showing the densities for plans submitted to the Authority for approval



Author, 2016

Kampala's skyline (KPDP, 2012)

From the analysis of primary-secondary data derived from the planning schedules/database, a considerable number of buildings submitted to the authority for approval, ranged between 1 to 4 levels, followed by the range between 5 and 10 and much less were above 10 levels. Vertical mixed use developments were much less in number for plans submitted and approved in Kampala. The predominant use for properties in the CBD area (requested for by the developers on one hand and approved by the authority on the other hand), was commercial, followed by residential use, offices, commercial, boundary walls and industrial uses in that order.

From the interviews, it was revealed that the mixed use development concept is very recent concept that has gained momentum in the last 10 years, within the circles of developers and the city authority. From the developer's perspective, adoption of mixed use developments was described as an opportunity to make better proceeds from the anticipated booming rental markets in Kampala one of the developer's stated:

"In Uganda the most expensive expenditure is rent... a Ugandan would spend up to 50% of their salary on rent... Short term yields are quite low but overtime when things start to get more costly in Uganda these apartments will be valued at a much higher value"... (1). However, the structures that have come up in the CBD area have targeted the high and middle income groups who are able to pay the high rents that such buildings charge and therefore the city authority has been left with the burden of looking for space to accommodate the majority low income groups; which has proved to be a challenge. One of the developers described the types of income groups targeted within his buildings as *"...the one along Entebbe road and Kampala road are both mixed use with middle income residential with a 1.5million shillings for two bedrooms and 1 million for a single bedroom apartment. A very fair price for a working family with a man and wife with household income of 3 to 4 million monthly household income per month"* (1).

Mixed use developments were identified to be undertaken by the local large scale developer (1) while the international land developer (7) went more for the single use developments. The former attributed his choice to the fact that mixed use development were the future opportunity

to make profit especially from rental markets which is exacerbated by the current city challenges of traffic congestion and scarcity of land in good locations; while the later attributed his choice to the fact that mixed use developments were more difficult to manage than the single use developments and therefore opted for single use commercial and office buildings that could be rented to one or two tenants.

The one time developers developed their properties on the basis of other market indicators and personal reasons such as jobs and workspaces for the low income groups like the street vendors (5) and the need to supplement household incomes and have a place to live in a good location (8).

From the technical staff perspective, the mix of use in Kampala was described to be more of a horizontal mix than vertical. However, it was found that the vertical mix of land uses is slowly picking momentum mainly with residential uses at the top floors since business and offices are not very attractive on such levels. *“most of the sites I have visited always have a multitude of uses around the site... residential near a commercial; but on the same building it’s also coming up of late take for instance Kampala road, so far four of the buildings that have come up are mixed use, you have commercial down, offices in the middle and residential somewhere, where the commercial people feel they do not make a lot of money and at the top you have a hotel or lodgings”* (3). Some of the technical staff that were interviewed indicated that the physical development plans and lease covenants in the city have been adjusted to reflect mixed use developments to motivate investment and development and because they thought that it was the trend at present and it would be the trend that would carry on.

One of the respondents also noted that for any city to thrive, it must have a critical mass of residents, however for Kampala, its CBD is only active during the day and dead during the night because of the lack of a critical mass of residents. This was attributed to poor planning for infrastructure to support buildings of higher densities and low housing provision for all income groups within the CBD area. The CBD comprises of mainly work spaces and not residences. This has been seen to deprive Kampala’s CBD area of the very much needed economic and socio-cultural vibrancy. This situation has been exacerbated by the sky rocketing land values and traffic volumes which have further crippled the functionality of Kampala’s CBD area (6 and 10)

To support the concept of mixed use developments, the city authority begun to implement a densification policy, aiming at ensuring that all developments within the CBD area were not allowed to be less than 5 levels to supply more area for a variety of uses within individual buildings (3,6). On the other hand, it was feared that the implementation of mixed use developments is being fronted by the city authority yet not much effort was made to put in place infrastructure and services that would support for such developments.

“looking at the case of Kololo we are saying we are making mixed use, we are proposing over 10 storied buildings but the services we have provided for Kololo are inadequate, the roads are smaller, the sewage facilities are meant for one family, yet we have come up with a plan which calls for the sporadic increase in the numbers of population in these areas but that will mean a great investment in infrastructure which means that either we are going to have developments which do not have these services and therefore the plan would fail and crash or

we are not going to be able to put up these services, plan and it will remain on paper so whichever way there is a danger to fail” (3)

However, it was noted that the mix of income levels has been a more difficult policy to implement in the city, due to the high land values in the CBD area that render the investment cost too high to cater for low income groups with a low ability to pay.

“For Income levels mix, that one is very challenging and it may not be possible for anybody to achieve it. Take an example of Kololo, which has got its own income rate even in terms of the land acquisition. Land there is very expensive. You cannot expect a low income person to afford, so automatically the low income person is pushed to go somewhere else...there is no mix of incomes in the city. However, what is happening today, especially when you go to some informal settlements the land is relatively cheaper there, some high income people are able to buy land there and establish their residences there and of course you agree with me that through that a number of informal settlements and slums are reducing in this city because of that. So apart from that mix of incomes is quite difficult for one to think about” (11)

In addition, from secondary- spatial data Kampala can be described as a monocentric radial city as shown in the image below;

Figure 4: Kampala’s spatial structure



Google maps, 2016

In summary, the results show that it is insufficient to possess a mixed use master plan if administrative reforms are not employed in the process of review and approval of architectural designs. The architectural plans for the various private properties submitted to the city authority for development approval, indicated a functional separation of land uses. This is made worse by the physical structure of Kampala which is monocentric in nature. Spatial structures of this kind locate the highest land values to the central locations of the city like the CBD area. The implication of this is that the CBD attracts specific land uses, usually with the highest ability and willingness to pay like commercial and office uses and expels others like residential and public spaces with lower ability and willingness to pay. This observation is similar to theory and research on spatial forms in western cities of the world by Alonso (1964). Inference can be made that Kampala is growing in a monocentric spatial form and the spatial structures approved by the city authority constituted more of single uses than mix. Therefore the city’s development

permission system and the resultant physical structure of Kampala in itself team up to play a pivotal role in the fostering spatial segregation. However, social and economic data was needed to make further inference on segregation based on social and economic enclaves, which the research did not undertake.

Chapter 5: Conclusions and recommendations

This thesis set out to explain the congruence between theory of using the development right as an urban common, emanating from the decoupling of the development right from the private property owners property bundle and nationalized for the purpose of implementing urban development plans, laws, guidelines and standards. The theory of the urban commons provided the necessary conditions for analysing the development permission process, which process could be broken into three phases namely;

- 1) Input phase in which the private developers submit their ideas or proposals to the authority;
- 2) The review stage, which included the methods, practices and activities employed in the negotiation and acquisition of the development right by the property land owners and;
- 3) The output phase which included a description of the cumulative outcome of development proposals submitted and approved which are expressed in terms of the degree of land use mix and the densities in Kampala

5.1 The relevant conditions for the management of the development right as an urban common

The findings from the study indicate that, the necessary conditions for managing the development right as an urban common pool resource were provided for in the physical planning legal framework. However, they were found to be more or less absent in the day to day actual processes and practices of issuing development permits. The existing legal and institutional framework aimed at organizing the development right into a common pool resource in order to reduce the abuse, misuse, over use and administrative costs involved in the development of land in the country.

However, the research findings indicate that the property rights regime existed in ambiguity whereby the different appropriators involved in the management and use of the resource exhibited a tendency to disregard, misinterpreted, misunderstood or violated the provisions of the legal framework evident in the conflicts and the clogged development permission system. An argument can be made to support the notion by property rights theorists like Harvey (2011) and Ostrom (1990) who suggested that, clear and well understood property rights institutions form the foundation for sustainable use of common pool resources.

In addition, the fact that the city authority still used bureaucratic and rigid plan approval processes and procedures, based on foreign and old colonial laws of the 1960s (the building rules of the public health act 1964) to carry out plan approval reviews, was found to be counterproductive to; a) the physical planning law of 2010; b) to current society's needs and; c) market signals. The failure to adopt efficient working processes and frameworks led to arbitrary decision making processes, conflicts, impunity, corruption, poor service delivery and tax evasions amongst others effects.

Moreover, there was no evidence to show the existence of amicable informal rules and regulations employed to stop gap and negotiate through the shortcomings of the existing legal framework. In theory of the commons Ostrom (1990) and Hess (2008), it is suggested that if formal rules in the management of a common pool resource did not work in practice, then the appropriators of the resource should be able to self-organize and develop informal rules that

suited their local context. In so doing, obstacles in the sustainable management and use of the common pool resource would be overcome. Therefore inference can be drawn that the formal legal provisions were not seen to be adopted to the local context, yet not much effort was made amongst the resource appropriators to self-organize and adopt informal ways of sustainably managing and using the resource as a common pool resource.

Consequently, the city continues to suffer from the tragedy of the anti-commons as seen from; firstly, the high administrative and transaction costs (corruption) in the development permission process brought by the system's bureaucratic and rigid nature; secondly, the current political economy where the economically elite and powerful capture the benefits of planning while the costs are borne more by the low income groups of the city who have been excluded from the CBD area; thirdly, the existence of unoccupied buildings due to high rent values co-existing with a situation where the streets and public spaces have been invaded by the low income traders who cannot afford the high rents within the structures in the CBD area. Such findings are similar to studies done by Heller (1998) in Moscow and Loehr (2012) in Cambodia, who discovered that adopting a property rights regime that did not evolve and strike balance between anti common property and common property rights, would lead to empty buildings and street kiosks full of goods, and at the same time the benefits of urban planning would be captured by the politically and economically powerful.

Therefore inference can be made that, the creation of a property rights regime, in which the development right was meant to be managed as a common pool resource in Uganda, did not meet its objectives because the necessary conditions as prescribed in the theory of the urban commons by Hess (2008) and Parker (2011), were found to be absent in reality. Indeed the legal reforms in Uganda that led to the nationalization of the development right, have not yielded much difference between the situation that existed before and after the enactment of the physical planning law in 2010.

5.2 Obligations and rights and how they manifest themselves in practice

This study managed to identify and describe the appropriators of the resource and subsequently the respective obligations and rights assigned amongst them in the development permission process, as stated in the legal planning framework. From the findings, it can be inferred that third party appropriators like community and the Ministry of Lands Housing and Urban Development were sidelined and their obligations and rights were not clearly conceived. Between the major appropriators that is the city authority and private land developers, the obligations and rights were also found to be ambiguous and misinterpreted which led to a process characterized by conflict and misunderstandings.

This was attributed to the inefficiencies of the governance system in place which failed to first and foremost, recognize the continuum of rights and obligations that existed in Kampala. Furthermore the failure to put in place holistic, punitive and graduated sanctions for breach of property rights contracts (laws and plans), further exacerbated the observed governance inefficiencies. Such findings contravene property rights theory notions that view recognized property rights, graduated sanctions and efficient conflict mechanisms as central to achieving efficiency in land use allocation in market economies. Therefore getting frameworks for

property rights allocation “right” in transitioning and developing countries has been highlighted as a key obstacle to economic development (Besley and Ghatak, 2010, Payne, 2002)

Secondly, the governance system in place also failed to adopt approaches that integrated and collaborated the diverse interests and ideas of the different actors involved in the development permission process. Subsequently, developers and other stakeholders have viewed the city authority as obstacle in exercising their rights. This coupled with administrative inadequacies of tools, skills and expertise on the part of the city authority, resulted into a system characterized by bureaucracy, asymmetric information, lack of transparency, mistrust, and corruption. In the end, the existing system (procedures and practices) has proved to be inefficient and counterproductive to the objectives and provisions of the new physical planning law and the city’s wider vision for mixed use developments.

Such findings, contravene contemporary urban planning principles of negotiation and informal planning as key to resolving the complexity of urban planning, urban growth and urbanization challenges and opportunities. Lai and Lorne (2006) argue that, developers should no longer perceive the planning authority as an external threat to their ideas, but rather a source of market information and a potential client and; the government, third parties or other stakeholders should perceive the developer as a source of seed money and a trustworthy partner of the community. Otherwise, once this environment is not achieved, as is the case of Kampala, it is argued that conflicts build up causing uncertainty for investment. This coupled with no effort for cheap and easy conflict resolution only slows down decision making processes, leads to abortion of development projects and flight of entrepreneurship and capital from cities.

In addition, the land market has further been distorted by the poor governance institution for development permission which in turn affected the allocation of property rights in Kampala. For instance due to the type of governance system in place, the city has grown in a monocentric spatial pattern, thereby rendering land values in the CBD to rise exponentially. Subsequently, this has increased the investment and transaction costs and ultimately affected the cost of doing business in Kampala’s CBD; this has had a ripple effect on surrounding areas. The research results confirm theory notions by Cheshire and Sheppard (2004, 2007) who noted that, secure property rights regimes and market prices signals, are believed to direct land to the property owners who can put a specific piece of land to its highest and best use at any given point in time. However, this is dependent on the efficiency and effectiveness of the institutions and governance frameworks put in place for urban planning, land titling, registration and administration.

In Kampala, the failure to manage the development right as prescribed in the theory of the urban commons, has rendered the benefits of urban planning private and the costs public. For instance the provision of infrastructure is paid for by the public sector yet the valorization for installed infrastructure is never undertaken by the city authority. In such instances the private sector reaps all the benefits of public investments which is socially wrong and counters the objectives of sustainable urban development. Such a situation has given rise to rent seeking individuals which in turn has denied certain groups like the low income earners the right or privilege to occupy and use centrally located and well serviced spaces or buildings of the city, because of their low ability to pay. The effects of this has been, spatial segregation and increased commuter traffic volumes to and from work, an active CBD during the day yet dead by night. Further still clashes between the city authority’s law enforcement officials and illegal

occupants of streets and public spaces is a reality in Kampala (Nakibuuka, 2015). Such findings are similar to studies undertaken by Loehr (2012) and Heller (1998) in Cambodia and Moscow respectively who argued that the failure to effectively manage property regimes in cities, would result into tension between formal norms and informal-societal norms, leading to a state of *de facto* anarchy, especially as poverty levels increase and the vulnerable have been deprived the access to land and sources of livelihoods.

However, on the other hand, the findings contradict findings of De Soto (2000) who claimed that wealth generation, redistribution and economic prosperity can be achieved through economic policy of privatization of property rights alone. For the case of Kampala, the privatization of property rights and the failure to manage the development right as an urban common pool resource, in adherence to the prescribed necessary conditions, has led to several challenges. First of all land markets have been distorted more and the number of rent seeking interest groups have increased. Social and economic inequality is increasing, some groups in society have been excluded from the city's best locations and the gap between the rich and the poor is now beign reflected on the city's spatial space. The outcome has been increased poverty levels which has led to a state of a *de facto* anarchy and unsustainable urban development characterized by sprawl and low densities evident in Kampala today. Such findings concur with findings done by Mitchell, (2009) who found out that.

From the above observations, a conclusion can be drawn that for the case of Kampala, the demand and agendas over the nature and assignment of rights and obligations were diverse, controversial and complex. Consequently rendering the allocation of property rights as highly contentious. This stems from the complexity, distresses and obstacles that appropriators face during the distributional process. This has made investment in land a risky venture in Kampala and ultimately the private sectors' incentive to carry out investment on land has dropped overtime. For instance for all the four cases followed, it was mentioned that the city authority over taxed and levied fees on developers (right) but failed to provide the services and infrastructure that would be able to support multi-level storied structures (obligation). Therefore, the failure of the city authority to adopt a governance system that effectively allocates and balances rights with obligations amongst the different appropriators of the resource, affected the type of developments that came up in the city despite the favorable market conditions or signals and, the investment capacity of the developers in Kampala.

5.3 The influence of the urban design process (practices and procedure) on spatial segregation or mix of land uses in Kampala.

The research sought to analyze the architectural and urban designs for properties submitted to and approved by the city authority, in order to establish whether the spatial segregation observed in Kampala can be linked or disassociated from the urban design procedures, practices and the planning process in general. The results showed that in practice, the architectural designs submitted to the authority for approval as well as those that were granted development permits, indicated more of functional separation in use than mix. Further analysis, showed that developments submitted to and approved by the city authority were designed for low densities, yet theory indicates that high density urban forms are critical and complement mixed use urban forms (Wardner, 2014, Hirt, 2007, Herndon, 2011).

The analysis of the development architectural plans further revealed that public spaces and facilities did not form a major part of the uses of private properties in Kampala. This will have implications on the potential physical, social and economic interactions between people and land uses, and ultimately on the city's vibrancy and functionality. Findings by Bibeva, (2012), in Stockholm, showed the importance of public spaces in integrating land uses and people, and their role should not be underestimated in city land use mix or separation depending on what spatial form is being aimed at being achieved in the long run.

The research found that the current development permission procedure and practice in Kampala was inefficient in the allocation of rights and obligations in accordance with the city's mixed use master plan and the physical planning act. Subsequently, the observed development permission practices and procedures have only exacerbated the effects of the already inefficient land market by producing buildings that are highly separated or segregated in function. Single use developments dominate the city's spatial space which implies that architecture and urban design have produced rather than neutralized spatial segregation in Kampala. Such findings support research carried out in Stockholm, where the physical structure and urban form played a central role in the separation of people and activities in the city's space (Ann, 2010, Bibeva, 2012).

On the contrary, cultural norms of the locals who preferred homes with large and spacious gardens rather than apartments without, could also explain the absence of certain groups in the city center space and their presence in the periphery of the city where land is cheaper to afford such preference as compared to the CBD. The research findings support notions by Musterd and Ostendorf (2013), which state that social processes and land use decisions made by community affect the physical outcomes and character of cities. Traffic patterns, consumption patterns and economics in cities need to be understood as expressions of social processes and practices, which evolve over time rather than as fixed realities (Batty and Marshall, 2009).

From the cases followed, it was also established that the development permission process was still guided by outdated laws with a high degree of foreign influence. The process did not allow for negotiation, mainly because it was very rigid and bureaucratic which discouraged the possibilities to negotiate the use right for properties in Kampala, even when the developers came up with innovative ways to use their properties. However, this was only true for one-time developers or developers without contact in the system or in general who the developer was; for instance large-scale developers had their plans move faster because they had an already established reputation in the industry and in the city authority. This coupled with the developer's contacts within the plan approval system, helped to speed-up the approval of development proposals, but also increased the odds for which a developer could be given a forum to negotiate the development right with the city authority. However, the experience of the international developer was different to a small extent; whereby despite his financial capacity and muscle, he faced a problem of having his very first development proposal in Kampala approved mainly because he lacked the contact within the system to help fast track his approval. To overcome the problem, he was forced to partner with a local Ugandan company who had contacts within the system but lacked the financial muscle.

From the above, inference can be made that the city authority did not utilize the explicit development right to achieve a more sustainable spatial development and structure for Kampala. The permits issued by the city authority were to a large extent for buildings with single use and functions. In addition, permits granted by the city authority, to a large extent

depended on the social and financial capital or strength of the developer in question, which defined and influenced the ability to negotiate the development permit rather than the provisions of the city's master plan did. Indeed findings of this research are similar to research done in North American cities by Hirt (2007), which revealed that cities, despite the adoption of legal initiatives that encouraged mixed use developments (including city statutes that authorize more flexible development control), city planning offices continued to use outdated planning procedures shaped by conventional zoning planning laws of the 1920s that do not promote mixed use and; therefore mixed use developments have remained an exception and not the rule of local level urban planning procedure and practice.

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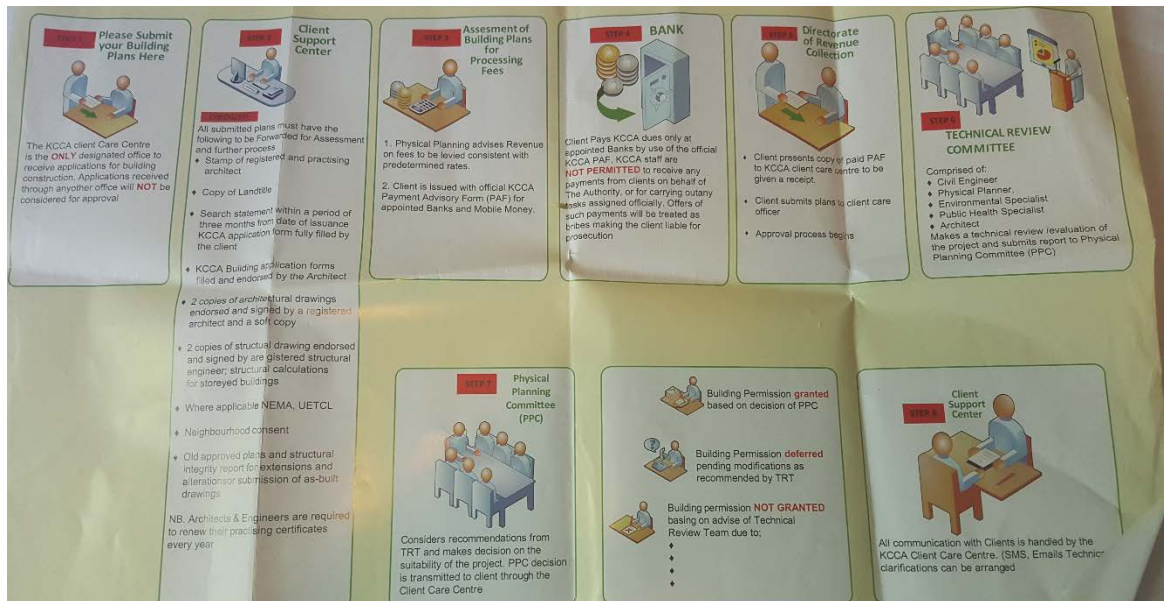
Annex 1: List of Respondent and their respective codes

Respondent	Code
Respondent 1: Private Local Developer (large scale- regular developer)	1
Respondent 2: Private Practice Professional	2
Respondent 3: Government Technical Person at the City Authority	3
Respondent 4: Government Technical Person at the Ministry of Lands, Housing and Urban Development	4
Respondent 5: Private developer (large scale-one time developer)	5
Respondent 6: Government-Private Practice professional	6
Respondent 7: Private International Developer (Large scale regular developer)	7
Respondent 8: Private Developer (small scale- one time developer)	8
Respondent 9: Government Technical Person at the City Authority	9
Respondent 10: Government Technical Person at the Ministry of Lands, Housing and Urban Development	10
Respondent 11: Government Technical Person at the Ministry of Lands, Housing and Urban Development	11

Annex 2: Code list

1. Abuse of rights & authoritarianism
2. Attributes of actors involved
3. Attributes or characteristics of actors involved in the management of the resource
4. Communication, collaborations, interfaces
5. Condition or outcome of the management of the resource
6. Conflicts
7. Cumulative ratio of different income groups
8. Cumulative ratio of different land use types
9. Degree of effective monitoring by monitors who are part or accountable to the appropriators
10. Degree of excludability from the resource
11. Degree of over use/misuse/abuse
12. Description of procedures, practices & strategies of negotiating for the right
13. Description property rights contract;
14. Effectiveness/efficiency of assignment of benefits and costs
15. Individual spatial land use choices
16. Management of the resource (level of participation)
17. Mechanisms for conflict resolutions
18. Mechanisms for conflict resolutions (cheap and easy?)
19. Obligations and rights
20. Perceptions and Strategies of the actors in view of the resource as shared
21. Precision of the contract
22. Procedure and practice of assignment of rights/benefits
23. Property rights contracts
24. Rules of appropriation of rights and obligations (who shares what? How is it shared?)
25. Sanctions for violation of rules
26. Scale of graduated sanctions for violation of rules
27. The degree of obligations met
28. The degree of rights exercised

Annex 3 building plan approval procedural steps



Checklist used in the plan review process

No	ITEM	COMPLIANT	NON COMPLIANT	NOT APPLICABLE	OBSERVATIONS/REMARKS	DECISION
Physical planning & surveying checks						
1	Land Ownership	✓				
2	Proposed Land use	✓				
3	Project Description		✓		data sheet	
4	Size of development	✓				
5	Assessment/fees	✓				
6	Location Plan	✓				
7	Copy of approved plan (where applicable)			✓		
8	Plot size as per zoning area	✓				
9	Percentage of plot coverage	✓				
10	Validation of site plan title dimensions		✓		Attach a current scanned copy of the cadastral book of title showing all dimensions. Site plan should explicitly show the dimensions of the plot on which development is proposed. See comment 10.	
11	Accessibility	✓				
12	Road Reserve	✓				

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No	ITEM	COMPLIANT	NON COMPLIANT	NOT APPLICABLE	OBSERVATIONS/REMARKS	DECISION
13	Utilities traversing property	✓				
14	Leeway reserve	✓				
15	Skyline observation	✓				
16	Minimum setbacks		✓		Attach site plan for analysis	
17	Boundary wall	✓				
18	Parking provision	✓				
Architectural checks						
19	Reg. & Practising Architect, ARB Return Form		✓		ARB form Missing	
20	Project briefs by Project Architect (big projects)	✓				
21	Dimensions [site, btm buildings, floor plans]	✓				
22	Appropriate scales [plot, plan, sections, details]	✓				
23	Building orientation [sun-shading where necessary]	✓				
24	Clarity of text & drawings	✓				
25	Space planning [allocation / sizes]		✓		See comment 3 & 2 Missing	
26	Door & window schedules	✓				
27	Roof plan	✓				
28	Septic tank details [suitable option identified]		✓		show solid waste water disposal details on site	
29	Appropriate Indoor Heights	✓				
30	Stairs integrity [for storeyed structures]	✓				
31	Elevations [showing sides, rear, frontage]	✓				
32	Cross Sectional drawings	✓				
33	Existing/new/adjacent buildings [labeled clearly]	✓				

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No	ITEM	COMPLIANT	NON COMPLIANT	NOT APPLICABLE	OBSERVATIONS/REMARKS	DECISION
52	Layout and compatibility	✓			Plans are not provided	
53	Bldg Materials in relation to health & safety	✓				
54	Development location in relation to health & safety	✓				

Annex 4: IHS copyright form

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