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Land Tenure, Land Titling, Efficiency and Equity:
Lessons from Central Uganda

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DEDICATION

To Those Who Attempt to Decipher (Central) Uganda's Land Question Minus the Realisation of
Class and Politics

and

To My Dear Parents- Ephraim and Beatrice-Norah Buhwamatsiko

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ACRONYMS

LRD	Land Reform Decree
MISR	Makerere Institute of Social Research
MoWLE	Ministry of Water, Lands and Environment
NIE	New Institutional Economics
NRM	National Resistance Movement
ULC	Uganda Land Commission
USAID	United States Agency for International Development

Chapter One- Introduction

1.0 Background

The crisis in African food production has commonly been blamed on the indigenous tenure systems and adoption of western system of property rights is seen as the solution to these problems (Platteau 1996, Bassett 1993). In rural areas land is not only the primary source of livelihood but also the mechanism through which people invest, accumulate and transfer wealth across generations (Deininger and Binswanger 1999:247). As such land tenure systems are perceived to constitute one of the major components of any farming system and therefore the way in which property rights are defined and the way in which land is distributed and accessed has great implications on agricultural production. In the era when land becomes increasingly scarce because of increasing population pressure, many development specialists have argued that land tenure reforms¹ in favour of individual ownership rights would be the panacea to solving Africa's problems in bid to meeting the great need for technological change and commercialisation of agriculture (Bassett 1993).

Traditional tenure systems have been taken as obstacles to agricultural production because they lead to subdivision and fragmentation of land holdings through inheritance patterns and because property rights therein are not fixed regardless of size which impedes development of markets, access to credit and the incentive to invest (Bruce 1993, Roth et al 1993, Pinckney and Kimuyu 1994). On the contrary individualisation of ownership rights is perceived as the solution to this insecurity through facilitating easy transfer of ownership.

In effect of the above there has been much debate among various development specialists about the need to replace customary tenure with individualised tenure²; a move supportive of market led land allocation.

1.1 Problem Statement

Uganda is one of the few African countries that has a history of reckoning with individualised tenure system through land registration and individualised titling programs (Platteau 1996:38). Individualisation has since colonialism been perceived by the pro-market development specialists as

¹Although emphasis was previously on land tenure reforms, the current focus of World Bank is on land policy reforms which recognize that some customary tenure arrangements can increase security of landholders and are cost effective than formal titles (for details see Deininger and Binswanger 1999).

²The main emphasis here is on the acquisition of land titles or certificates to ensure security of ownership of that land.

the best alternative for achieving more efficient and increased agricultural production in Uganda. Despite *de jure* recognition of customary tenure, emphasis still remains on individualised tenure in form of freehold.

Central Uganda³ is a unique and distinctive region in Uganda because since the advent of colonialism, the area has had features that have made land tenure a central economic and political issue. The dominant prevailing tenure system (*mailo*) in the area is almost exclusive to it and this facilitated early development of markets (Platteau et al 2000) and commercial cash-crop production in the region which encouraged in-migrations of workers (from labour reserves) to provide labour on these plantations (Asiimwe 2002:26, Mamdani 1976). The land tenure reforms introduced by the colonial government in Central Uganda led to feudal-like relations of production through introduction of private land ownership, creation of a new class of Baganda landlords and transformation of traditional communal land occupants into tenants (*opcit.*). In particular the southern-central kingdom of Buganda became, through promotion by the colonial government the main cash-crop-growing region. It has since had a history of coffee production, which has been the major foreign exchange earner for the region and the country as a whole (Place and Otsuka 2002). Coffee in particular is given unique significance because both the *mailo* tenants and *mailo* owners tend to plant it in protecting and enhancing their use, access and ownership rights to land (*ibid.*). Since the Buganda⁴ agreement of 1900 between the British and Buganda kingdom, the Baganda have had a unique role and influential position in the national politics (Mamdani 1976). Up to date the difficulty with which the government has had in setting a clear land policy draws from the implications this would have on the occupants of *mailo* land i.e. the *mailo* owners and their tenants. According to Troutt et al. (1993) the complexity of Uganda's land question mainly hinges on the dilemma of compensation of these two classes with greater effect felt in this particular region where *mailo* tenure dominates.

Women in Uganda have been found to be the main tillers of land but have no claim of ownership of the land they till (Sebina-Zziwa 1995). Although inheritance is one of the main sources of land access women have ambiguous inheritance rights and this has implications for agricultural production and general development of the country.

³In this paper Central Uganda will be used to refer to areas within the Buganda region but some studies under analysis may be including data beyond the central region.

⁴Buganda refers to the land and Baganda to the people

1.2 Justification of the Research

There is a wide range of theoretical debates in literature among different development specialists about the impact of property rights especially in land on agricultural investment and productivity, access to land, tenure security and development of markets (Migot-Adholla 1991, Roth et al 1993, Bassett 1993, Pinckney and Kimuyu 1994, Besley 1995, Platteau 1996, Place and Otsuka 2002, Deininger and Mpuga 2003). These debates have kind of divided them into two blocks: one in support of individualised tenure and whose main emphasis is efficiency, and the other in support of customary tenure whose main argument is that granting individual rights creates landlessness on one hand and land concentration on the other and may not necessarily enhance efficiency.

Among these development specialists some argue that accessing land under customary tenure weakens land ownership rights and as such investments in land that would allow for increased agricultural production are deterred and neither can markets develop. They also argue that individualised tenure enhances tenure security, efficiency, access to credit, creates market for land and therefore encourages investment, which results into increased agricultural production. Yet others have argued that where as granting of individual ownership rights may enhance efficiency in production, land markets created may result into perverse effects i.e. may enhance unequal distribution of land resulting into a landless class on one hand and a land-rich class on the other. As such these debates have inspired and resulted into a wide range of studies on the subject.

Some studies indicate that in some parts of Africa including Central Uganda people invest in land in order to increase security of their ownership rights (Besley 1995, Place and Otsuka 2002, Brasselle et al 2001 as cited in Deininger et al 2003). Other studies have shown that individualization of land ownership rights increases landlessness and may not necessarily create land markets. Moreover the acquisition of land titles used to access credit may not increase investment in agriculture but rather in non-agricultural activities (Migot-Adholla et al 1991). This is likely to have negative impact on those who cannot compete in the markets. Contrary to the above some studies indicate that land markets correct initial inequalities in land endowments and as such enhance equity concerns in land distribution (Platteau et al 2000).

From above, it is evident that as expected these various studies have yielded different results or at least different interpretations. However these results have not been interpreted well to help in sorting out proposals for land tenure reform in Buganda. The current study addresses this through emphasis on the role of historical constructions together with the theoretical ideologies of the authors as what shapes the questions and outcomes of various studies done in Central Uganda.

1.3 Objectives of the Study

This study has got two objectives viz.

1. To draw out lessons from different studies done in Central Uganda on land tenure systems and land changes in relation to the questions raised from both equity and efficiency perspectives.
2. To assess these lessons in helping sort out proposals on land tenure reform in relation to the needs of other small holder farmers in Africa.

1.4 Research Questions

This research aims at contributing to policy in as far as understanding the problems facing agriculture development in Africa. The study attempts to answer two main questions:

1. What is the impact of land tenure and land titling on efficiency and equity in relation to land use and access in Central Uganda?

Efficiency Questions

- a) What is the impact of land tenure on agricultural investment and productivity?
- b) Does enhanced tenure security through land titling lead to development of land markets? Do such markets develop within customary tenure?

Equity Questions

- c) What is the impact of land tenure regime on tenure security? Does individualised tenure lead to higher tenure security than customary tenure? Does land titling enhance security of tenure?
- d) What is the impact of land markets on people's access to land? Do they enhance unequal relations in land access? What is the impact of land markets on migrants' access to land? Does development of land markets inhibit migrants' access to land?
- e) What is the impact of land titling on women's access to land? Are women's rights better protected under customary than under individualised tenure?

2. What lessons can be drawn from this study in formulating proposals for land tenure reform in Central Uganda?

1.5 Research Methodology

The methodology applied in this study is literature review of a large number of studies done in Buganda. These studies involve various related variables such as land tenure and tenure security, land titling, land markets and agricultural investment and productivity. The study assesses the results of these studies particularly in the context of both individualised and customary tenure systems (and others).

1.6 Organization of the Paper

The paper is organised in five chapters. Chapter 2 reviews the theoretical debate on African tenure reform in the context of efficiency and equity perspectives; chapter 3 highlights the land policies and more specifically their application in Central Uganda from a historical perspective. The outcomes of chapter 3 partly shape our views in chapter 4 because of the outstanding influence of politics and class in Central Uganda's land question. Chapter 4 makes an analysis of the relationship between land tenure, land titling, efficiency and equity and finally chapter 5 gives a synthesis of the study by drawing lessons and showing how, if at all they apply to other smallholder farmers in Africa as well as the conclusion.

1.7 Limitations of the Study

Since the study was a review of various studies, it was such a difficulty to compare their results because of an uneven overlap in space and time. The focus area of the study was Central Uganda but some studies under review covered beyond or were in between the boundaries of the region and another and or covered different areas altogether. Similarly the time periods within which various studies were done differed. These together made it difficult to make effective analyses of these studies.

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Chapter Two- Conceptual and Analytical Framework: African Land Tenure Reform- Beyond Efficiency vs. Equity Debate

2.0 Introduction

As already mentioned in the previous chapter, most literature in analysing the land question in Africa in relation to efficiency and equity concerns, usually do so as if the two were opposing strands, each on its own capable of providing the answer to the problem. In this chapter we attempt to go beyond the usual efficiency/equity debate. To do so we begin by considering the effect of the theoretical positions held by the respective writers as what shapes the outcomes of the debate on defining concepts, asking questions and interpreting findings. We present four theoretical approaches involved in the debate viz. the Neoclassical theory, the New Institutional Economics (evolutionary) theory, the Class-based historical political economy (Marxist) approach and the Gender approach which critiques all the others on both efficiency and equity concerns.

2.1 Theoretical Approaches to Land Reform in Africa

Although land reform⁵ in Africa classically came as a result of and addressed inequalities in land distribution, it has now come to mean the legal changes in tenure regime i.e. shoving customary tenure systems in the direction of private property rights rather than in the distribution of land itself. Such changes are intended to enhance efficiency goals through increased tenure security and there by (at least theoretically) improve both conservation and productivity (Maxwell and Wiebe 1999: 827). However tenure reform policies may have different effects on different classes of farmers which raises another question of: for whom do tenure reform policies bring productivity gain (Carter et al.1994)? In fact preservation of the equity elements of customary tenure systems has now become an important consideration in Africa's land question (ibid, Bruce et al. 1994: 254).

In presenting these theories we begin by acknowledging that the Neoclassical and New Institutional approaches are very much interrelated as Stein (1994:1835) argues that the latter does not fundamentally challenge the precepts of the former but rather criticises it for failing to explain the nature of institutions and the role they play in supporting the existence and operation of markets. On the other hand the Marxist approach basically sees the land problem as a result of politics and class.

⁵In the efficiency/equity debate it fits well being termed land tenure reform

From the Gender perspective the argument is that all the above approaches even the class based (which ought to be gender inclusive) do not take into account the intra household relations in relation to both efficiency and equity.

2.1.1 Neoclassical Approach

The proponents of the neoclassical theory pioneered by the World Bank argue that markets are considered to allocate resources more efficiently and so should be allowed an unrestricted role in both domestic and international production and exchange to benefit all. They, basing on the 'private property right paradigm' assert that land distributed through the market is based on merit because the market is seen as the optimal allocator of farmable land to the most efficient producers. As such land distribution should not be modified through land reform or other redistributive measures (Cornia 1994:224) if already commoditised. Stein (1994: 1834) argues that state intervention in the operation of markets necessitated operation of structural adjustments in Africa. The state is only expected to provide an enabling environment like security and good infrastructure which would encourage investment in agriculture and thus increased productivity.

The theory recommends creation and expansion of an unconstrained land market, granting and registration of individual land rights, demarcation of boundaries and development of a land cadastre (Cornia 1994:224). This individualisation of land rights and the consequential production efficiency would be expected to increase tenure security by reducing transaction costs and increasing private investment in land. Demand for loanable funds would also be expected to rise because of lower transaction costs and greater security. They therefore argue that customary tenure systems in Africa reflect obsolete institutional arrangements that cause restraints and inefficient allocation of resources because property rights are not clearly defined, costs and rewards are not internalised and contracts are not legal or enforceable (ibid.: 223; Barrows and Roth 1990: 266).

In critiquing the neoclassical argument of the market in relation to increased agricultural productivity Cornia (1994: 244) argues that since land is not demanded only as a factor for agricultural production but also as a financial investment (especially if investment opportunities are limited and capital markets undeveloped), land will not necessarily be allocated to the most dynamic profit maximizing entrepreneurs but rather to those with greater financial resources and political patronage. Platteau

(1996:52) further stresses that to a large extent demand for land may arise from non-economic motives such as social prestige and political power. From the supply side Cornia (1994:244) further asserts that capital market imperfections and unsustainable consumption expenditures can cause distress sales by defaulting small farmers.

2.1.2 New Institutional Economics (Evolutionary) Approach

NIE derives from the work of Coase, North and Williamson (Stein 1994). North (1990:3) defines institutions as rules of the game in society or more formally as humanly devised constraints that shape human actions. To them institutions exist as a means of reducing transaction and information costs so that markets can operate with the kind of flexibility and efficiency projected in the neoclassical model (ibid.: 1835). While the neoclassical economics' basis of existence is individual rational choice (maximization of certain objectives, subject to constraints), the NIE is in addition concerned with how institutions influence behaviour by amending the choice set, and also how institutions vary overtime (North 1990: 3-9). Unlike the neoclassical theory which assumes institutions as a given, the NIE approach argues that institutions evolve spontaneously in response to market imperfections and changes in technology and factor endowments so as to minimise transaction costs (Cornia 1994: 244).

The proponents of this approach argue that during market exchange some costs like of information, monitoring and enforcement of contracts are encountered by the parties involved in the transaction (Kydd 2002: 5-6). They thus argue that markets will work well only when these costs are low and thus the need for institutions such as property rights to reduce them as North 1990:25 asserts 'institutions exist to reduce the uncertainties involved in human interactions'.

The proponents of the Evolutionary Theory of Land Rights (ETLR) led by Platteau argue that in the era of increasing population pressure and market integration, land rights will spontaneously evolve towards individualization of ownership rights unless the state intervenes to stop or distort them (so some forms of customary tenure are actually colonial constructions that impede the evolution of tenure). They in fact treat customary tenure systems as flexible and argue that since the colonial days, there has been gradual but meaningful changes in land tenure practices towards enhanced individualization of tenure (Platteau 1996:32). This theory recognizes that as long as land is abundant private property rights are not necessary and as such accessing land through communal tenure systems

makes sense in as far as internalizing external effects of enforcing exclusivity and transferability attributes of private property rights. But with increasing population pressure, as is the case in Africa, land gains more value resulting into competitive use that makes communal ownership unstable and inefficient which then necessitates granting of individual rights to internalize the externalities involved so as to gain economic efficiency (Platteau 1996, 2000, Bruce 1993). This is where the theory comes to agree with the neoclassical theory in as far as state intervention to grant individualised rights of ownership through land registration and titling.

2.1.3 Class-based Approach

This approach is premised on the work of Karl Marx and has been supported by others such as Lenin, Mamdani and Bernstein. According to Mamdani (1976: 8) there is no such a thing as one class and asserts that the beginning of social appropriation is the beginning of class formation. He looks at class relations as relations of appropriation, power and politics. He further argues that it is at the level of production when individuals and groups combine into classes derived from their relations to a historically determined social process of production and in terms of the way in which they appropriate the economic surplus. The proponents of this approach argue that unequal distribution of resources in society automatically produces a stratified peasantry (Rahman 1986).

Also termed as the Marxian political economy approach by Ellis (1993), the class based approach emphasises the disagreement and potential conflicts that exit between social classes as the innermost explanation of the way societies change overtime (ibid.:46). They contend that in any society the livelihoods of different groups of people are determined by the social relations of production⁶ between those who own the means of production and those who produce and such questions as who has control over it, how it is exposed and who controls the proceeds from that output are a common norm (ibid.: 48). Ellis further points out that under feudal relations of production, land as a productive resource is under the control of landlords while the production on that land is solely an activity for serfs (peasants/tenants). Also under capitalistic relations of production wage labourers who do not own the means of production work for those who own the means of production (capitalists) in order to obtain a livelihood (ibid). Mamdani (1976:11) argues that where as classes form at the level of production, in

⁶This refers to the access of different groups of people to productive resources such as land and control over the output, from the larger society and not as individual unit.

their relation to the process of production, they operate at the level of politics thus 'class organization is political organization, class consciousness is political consciousness and class conflict is political conflict'.

In summing up the main arguments and contrasts in the above theories in regards to the issues raised in the paper we emphasise that the neoclassical position emphasises productivity growth as a measure of efficiency and looks at development of markets with clear land title as a condition for investment and access to land by the most efficient producers as an aspect of equity.

On the role of the state, the NIE unlike the neoclassical theory (which is against outright state intervention but only sees it necessary for providing the enabling environment) emphasizes that institutions such as the state are needed to provide the necessary legal framework and intervention in case the markets are not functioning properly or are missing. Platteau (1996:76) a strong proponent of institutions argues that in some cases governments should be justified to carry out titling programs. This should be done when traditional systems become weak or if there are new settlers in an area so as to curb down disputes. Migot-Adholla et al (1991:70) concur with him on his points but also add that land titling should be justified when project interventions that require full privatization of land rights are likely to impinge on rights of some vulnerable groups. Both therefore give a lot of importance to what the state legally does about formal land titling although they ask different questions about the results.

On the other hand the Marxists argue that the efficiency of commercial producers has to be measured against the neediness of others. The tendency of surplus appropriators extracting the maximum from those who carry out production should be annulled (Ssekumba 1993:3). They argue that imposing western property rights in Africa results into increased landlessness on one hand and land concentration on the other in favour of those who are well connected socially and politically (Xavier 1997). In relation to individualisation they trace landlessness from politics of land titling.

2.1.4 Gender Critique Approach

The position of women needs special attention not for its own sake but for the significant role women play in African agricultural production. According to Razavi (2003), there is needed effort to

recognize gender differences in land ownership if land objectives such as increased agricultural productivity are to be achieved. Bruce (1993: 46) also observes that since most of African farmers are women any evaluation of indigenous tenure systems must ask how well their needs are met. Platteau (1996: 42) further argues that since women are both marginalized land users yet at the same time the critical producers, their relation to land is both an issue of equity and efficiency. In most African societies women provide the largest share of agricultural labour force (in case of Uganda 70-80, and 90 percent of all labour involving food production) yet they own a very small fraction of land (Tripp 2004). So here the paradox is how production is expected to be enhanced when the major stakeholders in it have limited access to land- a fundamental resource in realizing increased output and productivity.

Some societies in Africa are patrilineal and thus women do not inherit land from their parents and do not access land in their own right but rather as their husbands' wives and in case of divorce or widowhood as sisters or daughters of males within their own families. Such kind of arrangement does not guarantee them permanent rights to any piece of land since they may be shifted from one field to another (Bruce 1993: 46). Even in matrilineal societies where land rights should pass through and over to women they are generally (not always) held and controlled by men (see Davison 1988:17). More so with the HIV AIDS scourge on the increase so have the number of women headed households and this threatens women's usufruct rights to land previously enjoyed (if at all they did) through their husbands (Bosworth 2002, MoWLE 2004). But even so the assumption that women always have access to land as long as they are married is challenged by this approach.

Today the role of traditional institutions in guaranteeing women's access to land is getting undermined in preference to the market and purchasing land has become a way of circumventing traditional authorities (Tripp 2004). However the proponents of the equity view argue that as much as women do not inherit land from their parents under customary tenure systems they are nevertheless allocated usufruct rights as wives in their husbands' clans. To them the impact of the market through land titling does not either protect the disadvantaged groups such as women (Shipton 1994 as cited in Xavier 1997) as also evidenced by the experience in Kenya where the effect of increased land sales resulted into increased exclusion of women from their customary access to land (Mackenzie 1993:199-200 as cited in Platteau 1996:40).

The argument then is that if the new arrangement is to shift access to land through freehold market accessed systems; women's traditional rights become threatened and may result into more marked social inequalities (Razavi 2003:21). Sebina-Zziwa (1995) asserts that women may find it hard to buy land from the market because of statutory laws that require married women to register land in their husbands' names and their lack of information about government bureaucracy. Others argue that although land titling may reduce risk and transaction costs for some categories of people, it may at the same time create new uncertainties for others such as women who rely on customary or informal practices and rules to safeguard their land claims (Place et al. 1994, Atwood 1990). Green (187:26 cited in Platteau 1996:40) argues that where as land titling may yield greater security for the registered owner (usually the male household head), it may mean insecurity for other users to the extent of turning them into users at the sufferance of the owner. This, Platteau (2000) refers to as 'loss of derived or secondary rights'. Sebina-Zziwa (1995) points out that land markets may not necessarily guarantee women security of tenure since land titles in most cases get registered in the husbands' names alone and automatically deprive the wives previously held rights.

In **conclusion**, although these theories have been presented separately they are actually interrelated and in some aspects some of them overlap. The land question in Central Uganda can be analysed from each of these perspectives. However we argue that the Class-based historical political economy (Marxist) approach is in a much better position to explain the current land relations in Central Uganda as presented in chapter three.

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Chapter Three- Land Policies in Uganda and Historical Specificity of Central Uganda

3.0 Introduction

The current distribution of land rights together with the systems of land administration and management are rooted in the past and therefore any attempts to resolve Uganda's land problems requires an appreciation of the past policies and their impacts (Bosworth 2002). Much as Central Uganda cannot be looked at in isolation from the rest of the country, it is imperative to note that this region has had unique features, which have made it different from the rest of the regions. Uganda's current complex tenure system that has been and remains an issue for debate and concern draws from the various political eras experienced in the country and the resultant conflicting land policies. In order to be able to understand how these policies have affected land access, distribution and production and to locate Central Uganda's position as well as its relation with other regions we shall trace back the development of these changes right from pre-colonial era up to date.

3.1 Pre-colonial Uganda

In pre-colonial era, it is not possible to identify a single land tenure pattern (Mugambwa 2002:1) because the way land in Uganda was owned differed from one ethnic group to another. The control of land depending on a specific community was under chiefs, clan heads and elders. This means that each community had its own way of allowing its members access to land. Whatever the differences none of the communities recognized individual ownership⁷ of land although various individual usufruct rights to possess and use land were recognized subject to sanction by family, clan or community. An individual had a right to utilize his/her land as he wished, could pledge crops on the land but not the land itself, could dispose off land according to the customary laws of inheritance and could sell land subject to approval of his family (Ssekumba 1993, Rugadya 1999, 2003). Inheritance was primarily the source of access to land in many of the societies (Kisamba-Mugerwa 1991, Doornbos 1978).

According to Mamdani (1976) pre-colonial Uganda was indeed characterized by regional variations the main significant of which were the north and south divisions. Slave trade⁸ affected much the northern part of Uganda and as a result the area became depopulated. The harsh ecological conditions

⁷This means an individual exclusively and independently controlling the land and benefits from that land.

⁸This activity was attributed to some parties from the centralized south that would export the captured slaves from the north to the East African coast but also there were direct entry attacks from southern Sudan.

together with low technology resulted into two systems of production viz. simple herding and shifting agriculture. The constant search for pasture and new lands had an impact on the social organization of the communities that became characterized by decentralized-segmented units. Division of labour was such that women and old men did cultivation where as young men pastured the animals. This communal mode of production was based on cooperation rather than antagonism (Mamdani 1976: 21). Its scale and complexity were less than in the south.

In the south in which we locate Central Uganda there was development of feudal kingdoms of Buganda, Bunyoro-Kitara, Toro and Ankole⁹. The ecological climate was conducive with fertile soils that resulted into settled agriculture and settled life. The resulting effect of this kind of relationship was a hierarchical social arrangement characterized by a more complex division of labour and a class division between those who produced the surplus (peasants) and those who appropriated large parts of it (chiefs and heads of clans). The main objective at the time however was production for consumption and not for accumulation and so the peasants were paying tribute to the landowners in kind and appropriation was on a small scale. The main relation of production was political, social and one of kinship and blood rather than economic (ibid.). These relations were to change with the inset of colonialism.

In Buganda kingdom, rights of access to and control of land were of feudal nature (Mamdani 1976). Kisamba-Mugerwa (1991), Ssekumba (1993) and Mugambwa (2002) identify four categories of such land rights in Buganda viz.

- (a) **The *Obutaka* rights** were rights of specific clans over lands believed to belong to their ancestors. The control of such lands was under heads of clans (*Bataka*) and sub clans and were taken as ancestral grounds and used as burial grounds for the clan members but not for settlement, nor could they be given or sold to strangers.
- (b) **Rights of the *Kabaka* (king) and Chiefs-** the king had paramount command over all land and could allocate part of this land to his great chiefs- *Bakungu* and his lesser chiefs- *Batongole* who enjoyed usufruct rights to the land but such rights were only valid as long as the beneficiary held office. These rights were not inheritable by the heirs of chiefs but could be passed to the next

⁹These were the pronounced kingdoms although there were others.

office bearer upon death, promotion or demotion. Rights under this categorization were called *Obutongole*.

- (c) **The individual hereditary rights** were those rights recognized after long and undisputed occupation of land or from original grant by the *Kabaka* to his loyal subjects. These rights locally termed *Obwesengeze* could be inherited and the holder (chief or peasant) could lay a permanent claim to the allotted parcel. Occupants carried no political duties.
- (d) **Peasants' rights of occupation** locally termed *Ebibanja*- here ordinary people (*Bakopi*) had a right to choose a chief under whom to live. The chief could allocate them land to cultivate and in return they could provide respect to the chief, pay him tribute and do occasional work for him or provide services in the army or on community works such as roads. These rights could be inherited upon the death of the original user but were subject to termination in case of disobedience.

We can therefore conclude that before colonialism all land in Uganda was governed under the traditional customary¹⁰ tenure system subject to customary laws in various societies (Platteau et al 2000) and it simultaneously recognized both individual and communal or collective rights to land (Kisamba-Mugerwa 1991, Rugadya 1999).

3.2 Colonial Era

With the setting in of colonialism, the duty of kings, chiefs, clan heads and elders to control and allocate land was abrogated and replaced by colonial administrators. For instance in Buganda the *Bataka* lost their authority to allocate land and together with their relatives some of them were transformed into tenants (Bazaara 2000). Although some of the officials were retained in the colonial administration this time they were to dress up in another skin, they were more of collaborators than mere political chiefs. During this era a number of land reform policies implying and or aimed at individualization were initiated and effected.

¹⁰It refers to the numerous forms of tenure that obtained in different societies of pre-colonial Uganda. What requires appreciation is that this tenure has been changing, as we shall see later.

The **Buganda Agreement of 1900** also known as the Uganda agreement¹¹ formed the basis of land tenure change in Buganda. This was the beginning of differentiating Buganda from other kingdoms. Under this agreement large tracts of land in Buganda were turned into a form of private freehold tenure. It got portioned between the *Kabaka*, his relatives and other notables on one hand and the British Protectorate government on the other (Kisamba-Mugerwa 1991, Ssekumba 1993, Bikaako 1994, Rugadya 1999, Bazaara 2000, 2002, Bosworth 2002, Hunt 2004).

The above arrangement enhanced the concept of individual or private ownership of land in Buganda under a new tenure system- *mailo* derived from the square mile blocks used in allotting land, a system that resulted into the emergence of a few landlords and a large peasantry. The agreement altered the relationship that had existed between the political officials (chiefs) and peasants by turning chiefs into landlords and peasants into tenants (Barrows and Roth 1990). In fact the agreement did not recognize the rights of the local peasants originally settled and cultivating the land (Hunt 2004, Rugadya 1999). This created according to Mamdani (1976) a class of notables- a landed gentry of collaborative, powerful and parasitic landlords on one hand and a tenant peasantry on the other. The result was unequal relations of production as Mamdani (ibid: 42) puts it

‘What had been a potentially dynamic pre-colonial ruling class, increasingly deriving its surplus from trade, was at one stroke converted into a parasitic collaborating class divorced from both trade and production central only to the process of consumption’

Mamdani further asserts that the 1900 Buganda agreement between the British and Baganda created “an exceptional case in colonial Africa” (Mamdani 1992: 198).

Elsewhere further freeholds (though on a small scale) were allotted to chiefs who signed the **Ankole** and **Toro** agreements (Kisamba-Mugerwa 1991). The British faced resistance from Kabalega the *Omukama* (king) of Bunyoro-Kitara kingdom who was later defeated by the help of Baganda chiefs. In return these were awarded more freeholds on Bunyoro land (Bosworth 2002) - a further advantage to the Baganda. However, later on around 1933 the *Omukama* was also allotted some miles as well (Bazaara 2000).

¹¹Mamdani 1976 explains that the word Uganda came from the word Buganda, the latter being the first British possession in the region. During colonial days Buganda was referred to as Uganda kingdom and the larger protectorate territory as Uganda.

The rest of the land in Uganda (all lands in Buganda, Ankole, Toro and Bunyoro which were not allotted as mailo, as well as all other land in the country where mailo did not operate) was declared crown land and the occupants were at a stroke of a pen turned into tenants of the British crown (MoWLE 2004). This replaced customary tenure although most of these lands remained de facto operated by chiefs (who settled on tenants) until 1966 when chieftainships were abolished.

The first two decades of colonial rule in Uganda witnessed expanded commodity production for export in the south especially in Buganda as a result of the created mailo tenure and the need to meet the compulsory state tax payments. This process was very much limited in the north until the 1920's when instead of keeping the north (and parts of west) as labour reservoirs to work on plantations in the south, the state encouraged cash crop production of cotton and tobacco (Asiimwe 2002). This change in policy came because of finding an alternative source for labour secured from the Rwandese running away from the harsh Belgian rule. Although some of the northern areas remained labour reservoirs for the south there was substantial difference and like in the other southern kingdoms, the peasants' security became guaranteed as long they cultivated the land with the state as the landlord (Mamdani 1976).

Prior to colonialism, land in Uganda was utilized for subsistence production. The colonial regime introduced cash crop production such as cotton and coffee. In *mailo* land areas of Buganda this production was carried out by the tenants. The monetization of production led to an increase in the price of land (Mamdani 1976) which compelled landlords to increase rents charged on tenants. In response to increased rents, the aggrieved tenants joined hands with the *Bataka* and formed the *Bataka* association in the 1920's. This resulted into reduced cash crop production and subsequent decline in the revenue base to which the latter responded by passing the *Envujjo* and *Busulu* law in 1928. This law mainly benefited the tenants and undermined the power of landlords by putting a limit on the *busulu* and *envujjo*¹² that the landlord could appropriate from the tenant while guaranteeing tenants complete and hereditary tenure security. The landlord was not allowed to evict a tenant as long as the latter was cultivating the land (producing cash crops) even if the former wished to farm it himself.

¹²Envujjo (commodity rent) was paid in kind where as busulu (ground rent) was paid in cash

As a way to ensure uniform production throughout the country similar policies in protection of the tenants' security were established in Ankole and Toro by establishing a ceiling on the amount of rents that could be extracted from the tenants. In Bunyoro, certificates of occupancy were introduced to guarantee security of tenure of the tillers of the land (Bazaara 2000). Where as mailo system cut across all kingdoms in the south it is imperative to note that where as tenants in other kingdoms became tenants of the Crown, those in Buganda remained tenants of the mailo owners (Mamdani 1976). However, tenants in other areas were also dynamic in protecting their interests. For example there was *Kumanyana* movement in Ankole, which was in response to the land allocation inequalities created by mailo tenure in favour of *Bahima* vi-s visa *Bairu*¹³ (Doornbos 1978).

The traditional tenure system was from the start perceived by the colonial administrators as backward, rigid, inefficient and an impediment to agricultural productivity and development. To them two fundamental problems were inherent in such system- subdivision and fragmentation as a result of succession and the confusing land rights clear neither to individuals, clans nor communities which created tenure insecurity that provided neither sufficient incentives to develop the land (Roth et al 1993). To overcome these problems it was considered imperative to support individualization, which would hasten transfer of resource ownership to more efficient and productive producers. To this effect the **East Africa Royal commission** set up in 1955 to look into land use rights in East Africa and how these impacted on agricultural production recommended registration of individual ownership rights that later resulted into the Pilot Land Adjudication Schemes in Ankole, Bugisu and Kigezi (Kisamba-Mugerwa 1991).

From the above we can conclude that during the colonial regime the overall trend was to encourage private ownership or to advance individual rights in possession and use of land. For instance both freehold and leasehold concessions were made on the crown land both in Buganda and else where in the country (Hunt 2004). More important to note is that Buganda clearly enjoyed a unique position (Byarugaba 1998), as it did seem to have been used as a model to apply to the rest of the country. For instance where as salaried Baganda chiefs could still control their land and extract some nominal rent from their tenants, it was not the case for non-Baganda chiefs. These only depended on state salary since their tenants had become tenants of and paying tribute directly to the state (Mamdani 1976). The

¹³The system was in favor of former (ruling class) than the latter (subjects)

Baganda chiefs, according to Mamdani became 'a "loyal" class of bureaucrats, junior partners in the colonial enterprise'. Further to note is that policies during this era aggravated further problems of inequality¹⁴ in land and insecurity of tenure of some categories of people. These problems were never solved if not increased by the subsequent governments and their policies, problems that remain live in the current land question in Uganda as will be discussed later.

3.3 Post Colonial Era

Uganda achieved its independence from the British in 1962. To the many who had been despondent with the way land issues had been handled during the colonial era thought that the situation would improve. Unfortunately land access and ownership remained unequal between different classes working in favour of the powerful and well connected and against the large poor tenant peasantry. The postcolonial policies went further to enhance private interests that had been reinforced by the colonial regime (Bikaako 1994). The abolition of kingdoms in 1966 by the Obote I government had implications for land ownership relations especially in areas like Buganda where private mailo had taken strong roots. Buganda was largely affected because it had at the time of independence unlike other kingdoms enjoyed substantial autonomy from the central government. It enjoyed a federal status guaranteeing a unique political and legal position in controlling its economic base (Mamdani 1976).

At independence Sir Edward Mutesa II who at the same time was the king of Buganda kingdom became the first president of Uganda (head of state) and Obote became his Prime Minister (head of government). The struggle for power led to the overthrow of the former by the latter but this is believed to have been facilitated by the land problem of the lost counties¹⁵ that had been created during the colonial era (Byarugaba 1998). Byaruhanga points out that the unresolved land problem of lost counties re-emerges every time there is a change of regime, in the hope that the new government solves it.

Following the 1967 Republican constitution the **1969 Public Lands Act** was enacted. Although public land could still be alienated into freehold and leasehold the rights of customary occupants on this land

¹⁴Mailo land is characterized by high land inequality because of the initial larger holdings allotted to the owners.

¹⁵These were tracts of land that belonged to Bunyoro before the onset of colonialism, but were given to Buganda for assisting the British to defeat Bunyoro. In the 1964 referendum organized by Obote the majority vote supported return of these counties to Bunyoro; a result unpleasant to the Kabaka.

were protected. It was required that their consent be sought and notification of six months notice given before any evictions and were entitled to compensation or resettlement (Bazaara 2002). It also limited the amount of land an individual could hold to not more than 500 acres (Xavier 1997). However this was to change with the coming in of a new government.

The Amin government issued the **1975 Land Reform Decree**, a decree that enhanced individualization through registration of private/ individual ownership rights in form of leaseholds. By this decree all land in Uganda became public land and was vested into the state as the sole owner through ULC. The main objective of the decree was to abolish private individual tenure such as mailo in the central region and all freeholds by converting them into leaseholds of 99 years to individuals up to 199 years to public bodies, religious and other charitable institutions (Ssekumba 1993, Kisamba-Mugerwa 1991). Ssekumba (1993:7) however argues that the 1975 LRD which in theory nationalized land but in practice opened it up for grabbing and acquisition by bureaucrats and urban speculators had its roots in the perception that landlordism was prohibiting government acquisition of mailo land. By this decree mailo owners were immediately turned into lessees of the state and tenants who had formerly been protected by Busulu and Envujjo law of 1928 now became sub-lessees of the landlords and exposed to evictions. The position of customary landholders¹⁶ on public land was also weakened since land could now be alienated without their consent. Practically speaking however the decree was ignored by both the administrators and the land occupants (Kisamba-Mugerwa 1991, Hunt 2004).

From the above it remains clear that even policies after colonialism were aimed at facilitating individualization in the guise of enhancing capitalist production for increased agricultural production. The 1975 LRD was meant to encourage tendencies of individualization by uprooting all the obstacles inherent in customary tenure such as land fragmentation¹⁷. In this era we see policies aimed at abolishing mailo tenure but as a matter of fact there was not much change because the previous relations remained de facto operational. In Central Uganda mailo owners still considered themselves as owners despite acquisition of leaseholds from the government (Place & Otsuka 2002).

¹⁶Here I refer to all those who had occupied crown land that had originally been customary land before colonialism and were expected to acquire leases from the state as did mailo owners.

¹⁷Lessees were required to amalgamate their small plots and develop them within 8 years or else would relinquish their plots to either the government or other potential developers (Kasfir 1985, Bazaara 1994 as cited in Xavier 1997).

3.4 Since 1986 to Date

Since the declaration of the 1975 LRD there had not been any other land reform attempt until the promulgation of the 1995 Constitution and the enactment of the 1998 Land Act by the NRM government. Nevertheless Uganda up to today does not have a comprehensive land policy to follow in implementing the various laws guiding land administration (Hunt 2004, MoWLE 2004). The existing policies are rather a piece meal and inconclusive in many respects, as we shall see later. The influence of political interests is one factor contributing to this situation including the positioning of Buganda kingdom and its demands derived from the 1900 Buganda agreement.

In 1986, the NRM government through armed struggle came into power and found a confusing and contested land situation; de facto operations vi-s-visa the de jure 1975 LRD. For instance in Central Uganda the government inherited a crisis in land characterized by conflicts between the tenants and the landlords. In bid to solve these problems the government made attempt by trying to simplify and unify the land tenure system both de jure and de facto (Troutt et al 1993). The goal of the government has since been to institute policies that promote better land use, and stimulate agricultural investment and productivity. An agricultural committee set up by the government around 1987 observed that the agricultural crisis in Uganda was inherent in the nature of tenure systems. Several studies have been going on since to substantiate these claims.

In 1989, the government of Uganda under the advice and funding of the World Bank and USAID carried out research (MISR-Wisconsin study) whose major objective was to analyze the land tenure systems that were operating in the country and to make recommendations for change in the land tenure policy. The study argued that the complexity and ambiguity of land tenure systems is one of the factors behind the agrarian crisis. The study recommended among other things decentralization of land registration and repealing of the 1975 Land Reform Decree; a uniform tenure of freehold type and a free land market as the mechanisms for transferring land from inefficient to efficient farmers; conversion of all other forms of tenure (customary, freehold, and leasehold) to freehold automatically or through the process of titling; and those solely dependent on land for their livelihood not to be evicted (Bazaara 2000, Xavier 1997).

Critics of the 1989 study (Bazaara 2000, Ddungu 1994) have argued that the study was narrow in scope and its results could therefore not have been generalized for the whole country since it only covered the central region. Moreover even those areas covered were not representative of central region. Following this criticism a technical committee was appointed to get views from other areas and the committee proposed a land tenure policy entitled **Tenure and Control of Land Bill, 1990** (Troutt et al 1993). In agreement with the MISR/Wisconsin study, the committee recommended repeal of the 1975 LRD and introduction of freehold tenure in the whole of Uganda except for some selected urban areas where leasehold could uphold.

The main objective of the Bill was to establish a good land tenure system that would steer the country to development. In particular its objectives were (i) to encourage smooth functioning of a land market so that those with rights in land could voluntarily sell to those who wanted to extend or enter agriculture or undertake any other form of development; (ii) discourage evictions from land particularly for those with no other source of livelihood¹⁸; (iii) a uniform land tenure (freehold) throughout the country (ibid.).

In order to achieve these objectives the Bill proposed repealing of the 1975 Land Reform decree (just like the previous study) and amendment of the 1969 Public Lands Act¹⁹. Clause 2 of the memorandum of the Bill specifies justifications of promoting freehold viz. (a) individuals are offered maximum protection for their rights (b) it recognizes the reality of land tenure system that has de facto existed in the former mailo/freehold areas for decades (c) government resources and manpower become less restrained²⁰ (d) gives individuals maximum ability to transfer land through the market (e) gives farmers the greatest degree of security in their land (f) results into increased credit for agriculture (see Appendix A of Troutt et al study).

The recommendations of the Bill were adopted in the promulgation of the 1995 constitution and later on in the enacted 1998 Land Act- the latest body of legislation on land issues in Uganda. The main objective of the Act among others is to provide for, amend and consolidate the law relating to tenure,

¹⁸i and ii appear trade offs and contradicting because selling of land may result into landlessness.

¹⁹As already noted above this act was limiting the amount of land an individual could hold and protected the security of tenants against eviction.

²⁰This does not turn out to be the case for Uganda given enormous amount required to facilitate freehold tenure (titling).

ownership and management of land (The Land Act 1998). It is meant to operationalise the land reforms made in the 1995 Constitution. The Act grants both the registered land owners and tenants by occupancy rights to land in perpetuity which has resulted into conflicting and overlapping rights in land especially in Buganda where such relationships are more pronounced because of large scale mailo tenure. Despite the enactment of the Act the tenurial relations between tenants and landlords have remained difficult to solve and currently constitute a major area of debate. This illustrates the complexity involved and has re-awakened the political position and significance of Buganda in Ugandan politics²¹. Rather than resolving the problem both the Land Act and the Constitution seem to be straining further these relations (MoWLE 2004, Bosworth 2002, and Hunt 2004). The land Act gives the ownership of the land to the landowners but not the control and at the same time gives tenants control over land without ownership (Bazaara 2000). Although mailo tenure owners retain their freehold title they lose virtually all effective rights of ownership in the land (Platteau et al. 2000). This becomes a threat to freehold, which is one of the goals of the Act and may prove potential disincentive for land market development and land improvements in the region.

The circumstances under which Museveni (current president) advanced his political career put Buganda at a further advantage. Given the poor political relations between Obote I government and Buganda, it was easier for Museveni to get the Baganda support to oust Obote. But they also used this position to advance their interests. In 1993, Museveni in bid to meeting the demands and interests of his political allies who helped him in the war reinstated Buganda kingdom (Muhereza and Otim 1998) and later on other kingdoms. This positioned the Baganda well to demand for more.

In **conclusion**, we have shown that the evolution of tenure systems in Uganda has resulted into complex tenure relations, brought inequalities in land ownership and production relations and the regional imbalances reflected in the country today. We also note that historical developments specifically in Buganda show the influence of politics and class in shaping the current outcomes. It has been argued that if colonialism had not started in Buganda possibly the situation would be different today (Doornbos 1978). In the line of efficiency/equity debate we note that efficiency benefits may be

²¹ It is apparent that the special treatment that has been given to Baganda is coming out explicitly in their demand for federal. As the country prepares for presidential elections for 2006 and given the grievances of the Baganda landlords over their undermined position by the Land Act, every possible way is being exploited by the Baganda to repossess their independent status enjoyed at independence (see Sunday Vision of 15th Aug 2004, The Monitor of 25-30th Aug 2004).

far too fetched because of unresolved unequal relations of land access which impact on production and out put and that in case of Buganda it becomes difficult to dichotomise individualised and customary tenure.

Chapter Four- Land Tenure, Land Titling, Efficiency and Equity in Central Uganda

4.0 Introduction

This chapter gives the analysis of the various studies done in Central Uganda on Efficiency and Equity concerns. The central argument here is that to be able to interpret the results of the various studies on this subject we must attend to the different theoretical positions held by the respective authors of these studies. We also argue that these positions indeed affect the kind of questions these studies ask and most probably the findings they get. At the end of each question of a particular study we attempt to draw conclusions of the study itself and where possible we attend to how other positions might interpret the findings basing on the evidence provided and the analyses in chapters 2 and 3. However, to be able to understand the outcomes of this chapter it is imperative that we first explain and clarify some concepts as applied to Uganda's complex land tenure relations.

4.1 Background to the Analysis

This section is purposely included to link the historical chapter to the analytical chapter. Here we attempt to review and clarify those concepts normally used inconsistently in literature of Central Uganda studies. To be able to do this we explain the different tenure systems and modes of land access from the point of view of what happens in reality despite the legal prescriptions in the 1995 Republic of Uganda Constitution and the 1998 Land Act.

4.1.1 Land Tenure Systems in (central) Uganda (*de facto vi-s-avis de jure*)

The Ugandan Constitution recognizes four types of land tenure systems viz. mailo, freehold, leasehold and customary (Constitution of the Republic of Uganda 1995). In reality however, other categories of land relations exist *de facto* as shown in the tables below; Tables 1 and 2 show the distribution of tenure systems from some 26 selected districts in Uganda and table 3 shows distribution of tenure categories in some selected districts of Central Uganda.

Table 1: Number of Parcels by Type of Tenure

Unregistered freehold	Registered freehold	Leasehold	Customary	Kibanja	Squatter	Other
136907 (5.0%)	122848 (4.5%)	23055 (0.8%)	572572 (21.1%)	1761483 (64.6%)	41102 (1.5%)	67255 (2.5%)

Total number of parcels was 2725222 (100%)

Table 2: Area of Parcels by Tenure

Unregistered freehold	Registered freehold	Leasehold	Customary	Kibanja	Squatter	Other
254205 (6.9%)	230808 (6.2%)	175088 (4.8%)	637684 (17.3%)	2177877 (59.1%)	1448706 3.9%	62756 (1.7%)

Total area of Parcels was 3683288

Source: Xavier (1997) pp.27&28; as extracted from the Uganda National Census of Agriculture and Livestock 1990-1991

Table 3: Distribution of Tenure Categories in some Selected Districts in Central Uganda

District	% Private mailo	% Mailo tenancies	% Customary	% Leasehold	%Freehold
Luwero	38	48.0	7.2	0.53	6.27
Masaka	40.3	43.2	10.9	3.7	1.9
Mpigi	39.7	45.5	6.7	2.3	5.8
Mubende	42.5	46.0	5.9	3.6	2
Mukono	28.9	44.6	21.5	3.1	1.9
Rakai	39.9	45.3	5.4	8.2	1.2

Source: Own computation from Troutt et al (1993) pp. 71-72

The tables above show that despite non legal recognition of some tenurial arrangements they are nevertheless de facto recognised by society. These include among others *kibanja* holdings, squatter holdings and unregistered freehold. What is even more interesting is that for *kibanja* holdings not only do they de facto exist but also do they dominate as a form of land tenure. For tables 1 and 2 mailo tenure which is legally recognized is excluded and in Table 3 where it is included a large percentage of mailo land is under tenancies.

a) Mailo tenure; This tenure is largely confined to Buganda (Rakai, Masaka, Mubende, Mpigi, Luwero, Mukono, Sembabule, Wakiso, Kayunga, Nakasongola, Kiboga and Kalangala districts²² and some parts of Bunyoro (Hoima, Masindi and Kibaale²³ districts), Toro (Kasese, Kabarole, Bundibugyo, Kamwenge and Kyenjojo) and Ankole (Mbarara, Bushenyi and Ntungamo). This tenure has its origin in the 1900 Buganda agreement but later extended to Ankole and Toro in the subsequent

²²Although Kampala district (capital city) is geographically located in Buganda, it does not belong there constitutionally and is currently a hot issue of debate as the Baganda continue to press for federal.

²³This I would say is a district of controversy, created recently, it contains the former Bunyoro lost counties of Buyaga and Bugangaizi that had been given to Baganda landlords but returned legally to Bunyoro after the 1964 referendum. However the owners of most land there remain absentee Baganda landlords yet largely occupied by Banyoro tenants (see Bazaara 2000).

agreements of 1901 and 1902 respectively and much later to Bunyoro. However the latter areas did not receive large parcels as it was in Buganda (Doornbos 1975) explaining the limited scale of mailo tenure in those areas. The beneficiaries were issued with certificates of claims granting them absolute ownership of land (Xavier 1997). Since the mailo owners did not have the ability (labour) to till such large areas of land, they created tenancies from which they extracted fees and rents from the tenants. These tenants are what came to be referred to as *kibanja* holders and the land they occupy *kibanja*²⁴ and or *bibanja* (if many).

An emphasis here is made on the fact that *bibanja* holdings though not legally recognized are a significant tenure and take the largest share of mailo tenure as illustrated below using data from selected districts in Central Uganda. It is also noted from the table that mailo tenure is the dominant land tenure in Buganda as shown by the proportion of land under mailo in relation to the total land area.

Table 4: Distribution of Tenanted Mailo land as Percentage of Mailo Land in Central Uganda

District	Land area (sq. miles)	Mailo land (sq. miles)	Tenanted area (sq. miles)	Percent tenanted
Luwero	1,988	968	862	89
Masaka	2,476	1,134	998	88
Mpigi	2,065	1,427	1,156	81
Mubende	3,979	1,974	1,618	82
Mukono	3,479	2,112	1,668	79
Rakai	1,621	601	487	81

Source: Own computation from Troutt et al. (1993) pp.77.

Under mailo tenure, there has come up two categories that require mention as we clarify what is what viz. Lawful and *bona fide* occupants. Section 30 of the 1998 Land Act defines these terms. **Lawful occupant** refers to any person who had occupied land as a customary tenant, had entered the land with the consent of the registered owner including a purchaser but whose tenancy was not compensated for by the registered owner at the time of acquiring the leasehold certificate of title. Former laws governing landlords and tenants' rights protect this category (Bosworth 2002). **Bona fide occupant** on the other hand refers to a person who had acquired occupancy rights through transfer of tenancies and had occupied, used or developed land unchallenged by the registered owner or their agents for a

²⁴ Although initially referring to a tenant's or peasant's holding on mailo land in Buganda, or private holding of a chief in Bunyoro, it is now popularly used to refer to the customary holdings on all former public land outside Buganda and on all land on which occupants have only usufruct rights.

minimum of twelve years. This minimum period should have been before the promulgation of the 1995 Constitution. It also applies to those who had been settled on that land by the government or its agent. Both categories have perpetual rights to occupy land provided they pay a statutory rent to the landowner of 1,000 Uganda shillings per annum. They are also permitted to acquire certificates of occupancy and the rights defined there in can be tradable and mortgageable²⁵ (ibid.). This illustrates the contradictions of the rights of both tenants and landlords on mailo tenure.

b) Freehold tenure; This tenure is mainly found in Ankole, Bugisu, Kigezi and Toro and some parts of Buganda. It came mainly as a result of the pilot registration schemes carried out in the 1950's but also from the agreements reached in Ankole, Toro and Buganda. Land titles were given in accordance with the crown land ordinance of 1903. Freehold involves issuing and obtaining of certificates and the interest in land goes on in perpetuity.

In reality however freehold tenure may be held either as registered or unregistered (Xavier 1997) as shown in Tables 1 and 2 above. The former is where land is owned and registered in accordance with the Registration of Titles Act. The ambiguity involved in defining the latter constitutes a big problem in dealing with Uganda's land question.

c) Leasehold tenure²⁶; This involves making of a contract between a lessor and a lessee to use or occupy a piece of land for a specified period of time in return for rent in cash or kind. Since the 1975 Land Reform Decree all land became public land and its access was through leasing from the state as the sole owner. For all public land in rural areas the ULC presided over issuing of land lease titles where as urban authorities did the same for land in urban areas.

As we analyze the effect of individualization in present Uganda, it becomes rather worth while to acknowledge that the above tenure systems all have the same aim although they differ in their evolution and operation. Freehold land in Buganda is often referred to as mailo land because of use of miles as a measure (Mamdani 1976). Leasehold is more or less the same as freehold. They both involve the issuing of titles and share other similar characteristics- large owners, the majority of whom

²⁵This in practice has been difficult to achieve because of bureaucracy involved and those who have managed to secure them have not been able to mortgage them. The same effect applies to certificates of customary occupancy (see Hunt 2004).

²⁶Although often argued that the provisions of the 1975 LRD remained in theory than in practice, there is need to appreciate that actually some individuals leased land from the state which they still hold up to date.

hold titles to the land they own and often lease land to tenants (Place and Otsuka 2000). According to Bruce (1998) lease and tenancy are synonyms for leasehold and in Uganda tenants are a common characteristic of both mailo and leasehold tenures.

d) Customary tenure; This is most probably the oldest form of land holding in Uganda. Here society customs and rules govern access to land and this varies from one society to another. It does not involve issuing of titles²⁷ and inheritance is an outstanding characteristic. Customary tenure has since colonialism undergone many changes due to the various policies instituted in the country; it changed from customary to crown land during colonialism; to public land in post-colonial era and back to customary tenure since the 1995 constitution. A lot of confusion has thus resulted in as far as this tenure is concerned. Most literature in using the term crown land often identifies it with Buganda as if it was exclusive to it. Yet in fact crown land was created in the whole of Uganda but is more pronounced in Buganda because the 9000 sq. miles that had become crown land in Buganda and like in other areas vested in her majesty the Queen of England was at independence unlike in other areas returned to the Kabaka in the name of Buganda Land Board. However, when the NRM government reinstated the Kabaka in 1993 without returning the 9000sq.miles it grieved the Baganda resulting into their current popular demand of '*ebyaffe*'.

From what has been said above, it should be noted that both the 1969 Public Lands Act and the 1975 LRD converted all land to public land and this created a new class of occupants called **customary tenants**. These were people who occupied land without lease titles and had originally been the owners of the land under customary tenure (crown land) before the decree declared all land public. These tenants are entitled to certificates of customary occupancy. Usually this category has been confused with **squatters**. Where as both could be treated as tenants the former were tenants under the sufferance of the state where as the latter are 'tenants' of the lessees of the state. They both originally had been customary occupants but the squatters became unfortunate because their lands got leased to individuals or corporations as per the ruling of the 1975 LRD.

²⁷In pretext of recognizing and protecting customary tenure and its occupants, the Ugandan constitution together with the 1998 Land Act stipulate that customary occupants can acquire certificates of ownership an indication of promoting individualization since it allows the occupant to hold land in perpetuity.

The above explains why customary and **public tenure** have often been used interchangeably. A point of emphasis thus is that since the 1995 Constitution which repealed the 1975 LRD there is need to shift the usage of the term public tenure to **former public tenure**. This should be so since the LRD that had declared and required that all other tenure systems become public land did not take full effect. It is because of this confusion that the NRM government decided to vest all land in Uganda to its 'citizens'. But without rectifying problems created by history it is of little wonder that not much difference is realised.

4.1.2 Modes of Land Access in Buganda

Ssekumba (1993) describes four major categories through which land is accessed on mailo land in Buganda viz.

a) Purchase; as a mode of market access refers to a mutual understanding between parties to transfer land from one party to the other at an agreed price. The transferred rights here are absolute and in most cases the transaction is recorded in form of agreement and a proof of transfer may later be issued. The price is dependent on such factors as size, location and fertility of land. This form of access is what has been popularly referred to as **purchase** and or **sales market**.

b) Renting; This is another means by which people get access to land. In this case the tenant enters into a contract with the landlord for usufruct rights for a specified amount of land and for specified period for its use. The landlord determines the rent and unlike in purchase market where rights transferred are absolute, rights of the tenant on rented land remain temporal and much controlled by the landlord. The tenant is not allowed to sell or to transfer land to other tenants without the owner's consent²⁸ but can sell the developments on the land. Renting leads to the development of markets popularly known as **rentals** or **leases**. Renting is not same as borrowing (emphasis mine) because borrowing is usually done by those who cannot afford to pay rent. This however is not to say that they get land free of charge. They actually get subjected to harsher conditions such as payment in terms of labour or being allocated the most infertile lands since they are vulnerable.

²⁸This in reality remains theoretical since in Central Uganda tenants have often made transactions in land without the landlords' approval.

c) Donation (Gift/Given); This involves the landlord/owner giving out of his/her own freewill part of his/her estate to a relative or a friend without reciprocal money consideration on part of the beneficiary. It may be formalised in writing but in most cases it is sealed by introducing the beneficiary to the elders and chiefs by the landlord. This transfer is not absolute because at the death of the landlord the beneficiary has to be re-allowed by the new landlord who even has the powers to terminate the offer. Consent of the landlord has to be sought before the beneficiary can re-donate, sell or lend part of the land to a third party. This category of access is also referred to as **inheritance**. Troutt et al. (1993) point out that inheritance frequently occurs in form of a gift given while the father is still living. This is one of the main ways through which women in Buganda got access to land (Sebina-Zziwa 1995).

d) Borrowing; This is a form of market access involving a mutual agreement between the borrower and the owner who specifies the size, use and duration for which land is being borrowed together with the mode of payment. This should not be confused with donation because here some sort of payment is specified where as in donation there is no obligation for payment. Some people also get access to land through **custodianship** where one takes care of the land on behalf of the (absentee) landlord in order to guard against intruders.

In **conclusion**, we emphasise that in Buganda the various tenure systems are a consequence of struggles to gain access to land and therefore discussions should not be about moving from 'communal'/customary tenure to individualised tenure because the creation and operation of mailo tenure has facilitated evolution of other tenure systems. We also conclude that access to land in Buganda is a complex phenomenon and reflects the unequal pathways of access for different groups of people.

4.2 Analysis of the findings

4.2.1 Theoretical Approaches and Their Leading Authors

In trying to sort out the Central Uganda studies we need to recognize that different approaches make different assumptions hence different questions and may slightly have different understanding of the key concepts. As already indicated in chapter two four theoretical positions are considered viz. the Neoclassical theory, the NIE, the Class-based historical political economy approach and the Gender critique approach which criticizes all the above on both efficiency and equity grounds. From the

studies under analysis Place and Otsuka are taken leading authors of the neoclassical approach, Platteau for NIE, Mamdani and Ssekumba for the class-based (Marxist) approach and Sebina-Zziwa for the gender critique approach. The main studies under analysis are detailed in appendix A.

4.2.2 Questions for Analysis

The analyses below are made on the basis of the questions posed in section 1.4 of chapter one. Question one is answered through the sub-questions provided under efficiency and equity. Question 2 is answered while making conclusions for this chapter. We note that it is difficult to strictly categorise these questions into the efficiency/equity strands as there is often an overlap in the variables while answering the questions.

4.2.2.1 Land Tenure, Agricultural Investment and Productivity

There is a common belief among the neoclassical proponents that customary tenure institutions distort the farmers' incentives to make substantial investments that would lead to increased agricultural productivity (Place and Otsuka 2002). They maintain that freehold/individualised tenure offers the best environment for agricultural investment since it gives farmers greater security. In mailo areas of Uganda tenure security of tenants rests upon the mercy of the owners. However the law requires that before eviction is done the occupant should be adequately compensated for any investments made on the land (Mugambwa 2002a, Place and Otsuka 2000, Troutt et al. 1993).

According to a study by Troutt et al (1993), compensation issues constitute a major concern of land problem in Uganda especially in mailo tenure areas. Mailo land owners limit their tenants' rights in as far as growing perennials is concerned because they fear that this would give tenants firm claims over land. Contrary tenants on mailo land grow perennials particularly coffee as a way to increase their security on the land as this has implications for compensation (ibid.).

A study done by Place and Otsuka (2002) concluded that farmers used investment in coffee tree planting to enhance their tenure security regardless of the kind of tenure regime. This was evidenced by the fact that 89.2 % of the farmers in Nabalanga (mailo area) had planted coffee compared to 81.4% of the farmers in Bupadengo (customary area). They however concluded that since the mean farm size was higher in Nabalanga than in Bupadengo, the absolute area devoted to coffee was

generally higher in Nabalanga where land rights were more secure. This means that from the neoclassical point of view a large farm size of a commercial crop reflects a higher level of investment.

A related study by the same authors in (2000) established that trees were more intensively planted on mailo resident lands than on mailo land occupied by tenants. This means that indeed trees were planted where rights were more secure as proved by the fact that tree densities were higher in mailo land (where owners are residents at 2.06) and lowest in customary and mailo tenanted lands where insecurity was more felt at 0.62 and 1.46 respectively. On the other hand tree extraction was more active on both customary and on mailo lands especially where there were absentee landlords than on mailo resident lands. Thus to them productivity is higher in tenure areas where ownership rights are more secure than vice versa.

We note from the above findings that support for efficiency of individualization by the neoclassical approach is backed by these findings. In their findings (and much less to their interest) was that in the total land area under mailo only 34% was under mailo resident owners and the remaining two-thirds were under absentee landlords. However, a Marxist would view absenteeism as an equity issue in as far as land distribution between absentee landlords and hired labour/tenants that work or keep watch of formers' lands is concerned. From my own point of view and in support of the evolutionary theory of NIE the above finding would make us conclude that as long as the problem of absentee landlordism is not solved it will remain difficult to ascertain the efficiency argument associated with individualization. As already pointed it is a common practice for absentee landlords to leave their lands under the custodianship of some care takers to guard against intruders and in most cases these are the landless that use this chance to access land; who in most cases do not have the capacity to put that land to use efficiently (Ssekumba 1993, see also Xavier 1997: 24). In the end the land which legally belongs to the "efficient" producer remains underutilized and mismanaged.

Place and Otsuka (2000) established that the duration of time for which the parcel had been held had a significant effect on investment behaviour to the extent that tree planting was found less frequent on parcels acquired for a short period such as through renting and or borrowing than when the parcel had been held for a longer time or the owner had secure rights in it. The same authors again in 2002 established that the length of time since the parcel was acquired had a positive effect on the proportion

of coffee area planted. This would give us an impression that long-term ownership is same as individual titling. However from my point of view the two are not exactly the same but either gives an added advantage to a person (with access to either) in comparison with their counterpart.

A study done by Place and Otsuka (2000) established that customary tenure contained the largest percentage of land under agriculture in both years under the study as reflected in table below. They established a correlation between changes in agricultural land share with land tenure regime and found one between the former with customary tenure positive in comparison to public land. They concluded that this reflected the weak institutional management associated with customary tenure (failure to regulate land clearing) but also added that the reason could have been the difference in tenure security or the degree of individualization of land rights. To them the main factor explaining this unusual finding was the effect of population pressure that was found positively related to high levels of land use change under customary tenure.

Table 5: Area and Land Use by Type of Tenure in East-Central Uganda

Tenure type	% of parishes present	% of total land area	% of land in Agriculture (1960)	% of land in Agriculture (1995)
Customary	57.8	50.2	64.5	81.3
Mailo/lease	45.3	39.4	36.6	53.8
Public	37.5	10.4	19.1	28.0

Source: Place & Otsuka (2000) pp. 243

From the NIE and Marxist perspective this finding however would probably have led to a conclusion that customary institutions are rather effective in responding to the increasing demand for agricultural land in response to population increase. Marxists would also be interested in differentiating the classes under both mailo and leasehold tenures. To them the owner under either category is different from the tenant and this has different implications on production and distribution of benefits from that production.

4.2.2.2 Tenure Security, Land Titling and Land Markets

Some literature has often presented a causal relationship between these variables in such a way that granting of individual /private ownership rights enhances tenure security which in turn allows for the development of land markets. Several studies have indeed identified Central Uganda as having a more developed land market (both sales and rental) than any other region in the country (Troutt et al 1993,

Barrows and Roth 1990, Platteau et al 2000, Baland et al 1999, Deininger and Mpuga 2003). A study done by Platteau et al. (2000) established that land markets were extremely active as evidenced by the fact that 47% of the total land area owned and 45% of the total farm size had been purchased. They also established that half of the households had at least one purchased parcel in their holdings.

Evidence provided by Barrows and Roth (1990) indicates that the active land market in Central Uganda is responsible for the breakdown of the original granted mailo parcels into small ones. They cite the study done by Mukwaya (1953) in two counties in Central Uganda, which indicated that 58% of the landholders had purchased their land. Of 415 parcels of 20 acres or less 67% had been acquired through purchase and only 9% through inheritance. Of the 14 parcels of over 600 acres, only 21% was acquired through purchase while 80% was inherited or still held by the original owners (Barrows and Roth 1990: 282). This finding contrary to what Marxists believe shows that land markets can promote equity in breaking down feudal rights.

A study done by Place and Otsuka (2002) as indicated by the table below established that there were more holders of titles in mailo owner tenure than in any other form of land holding. This rhymes well with the neoclassical ideas given the evolution and provisions for each tenure category. However taking into account the number of parcel observations for each tenure category and having in mind that two uneven sized areas are under comparability it would not only be unfair to make such a conclusion but also misleading.

Table 6: Tenure Security and Title holding in the border area between Mukono (central) and Kamuli (east) Uganda

Tenure system	Has title (percentage)	Number of parcel observations
Mailo owner	64.3	14
Mailo long-term tenant	15.8	19
Public holder	14.3	14
Customary holder	14.3	56

Source: Place & Otsuka (2002) pp.114

The study carried out by Troutt et al. (1993) established that tenanted land had low price value because of the overlapping rights on it. However the same study established that transactions in land were

overwhelmingly active in mailo bibanja (tenancies) than non-tenanted land (refer to table 4). This means that despite the fact that mailo tenants do not own land they still manage to sell and buy some land under their occupancy at times with or without the consent of the landlord. Ssekumba (1993) established that tenants would if they wished to leave, sell their lands to other people under the guise that the buyer was a relative being left behind to take care of the crops for a short time during the tenant's absence. The Marxists would interpret this to be a pro-poor strategy since it can help the poor to also afford buying land on their own. It also prompts us to conclude that security of tenure may not necessarily be a prerequisite for development of sales and or rental markets.

In establishing the impact of tenure security on land purchases Baland et al (1999) established that land exchanges on mailo tenure tended to be less frequent because of the high transaction costs involved since it required consultations with both the landlords and tenants. In 2000 Platteau et al. also found that in mailo areas land purchases were less frequent because the rights of permanent occupancy granted by the 1998 land Act to both owners and tenants tended to make mailo land less attractive than lands outside mailo area.

A current study by MISR (2004) also established that where as the central region has the largest number of land transfers compared to other regions, nevertheless it has experienced a decline in land registration and the number of land transfers since the enactment of the 1998 Land Act, from 19,878 in 1992-1997 to 17,110 in 1998-2002. They attributed this trend to the fact that transfers in Kampala district which has the largest number of title holders (40,008) and where most mailo plots are now too small for further subdivision. In other areas of the region this trend was attributed to the perceived insecurity following the recognition of occupancy rights by the 1998 Land Act.

A study by Troutt et al. (1993) found that need for cash such as raising capital for business ventures, payment of school fees was the main incentive but also sale as a result of land being inferior in terms of size or fertility. Contrary people bought land to expand their landholdings so as to increase their area for cultivation or to increase the amount of land for bequeathing to their children (ibid.) or to get social and political advantages associated with land owning (ibid., Barrows and Roth 1990). In fact the Troutt et al study found that most buyers of land in Buganda were not farm operators. This is not surprising as we have already noted that in Buganda land ownership is highly associated with politics

and class to the extent that ownership of land becomes a political ladder or sine qua non of a political career (Barrows and Roth 1990: 282).

From the findings above we can observe that people get involved in sales market for both efficiency and equity reasons. But from my point of view and the point of view of the Marxist approach we can also argue that it may not always hold true as neoclassical proponents contend that land markets transfer land to more efficient/ progressive farmers thus leading to enhanced investment and productivity. Where as it can not be ruled out that land markets allow transfer of resources, to say that resources get transferred to those with high valued uses is not convincing since those who afford to buy from the market may not necessarily be interested in agriculture production (see also Xavier 1997).

4.2.2.3 Land Tenure and Tenure Security

One of the main arguments put across by the proponents of the neoclassical theory is that customary tenure systems discourage farmers from making proper investments on land because they are not sure of reaping the future returns since traditional practices of communal ownership and inheritance hinder land transactions that would allow potential producers access to land²⁹. Their argument instead is that for such achievements to be made farmers must have secure land rights through clear demarcation and registration of such rights to the extent that farmers should hold land titles to those lands (Barrows and Roth 1990). However Xavier (1997) in an interview with Assistant Administrative Chief Officer of Masaka district), noted that land titling does not necessarily rule out fragmentation because the officer reported several cases brought to him that involved dividing of titled land among sons.

A study done by Place and Otsuka (2002) established the relationship between various tenure systems and the ability of the occupants to exercise various land rights as shown in the table below. They found that the right to give without notification or approval was claimed on approximately 70% of all mailo parcels and slightly fewer on public land parcels. Conversely there were fewer than 30% of customary parcels enjoying the same status. The right to plant trees was claimed by most of the household regardless of the form of tenure but by fewer when trees of value such as timber were considered. As such they found such rights highest among mailo owners and least among mailo tenants because the

²⁹We argue that although communal and customary are used as synonyms, it should not be the case (see Bruce 1988).

former prohibit the latter from planting trees for fear that this would lead to loss of their land rights. As the table below shows the rights to plant timber trees are vividly lower among mailo tenants, relatively lower among customary farmers and highest among the more confident mailo owners.

Table 7: Relationship between Tenure System and Land Rights

Tenure system	Individual right to sale (%)	Individual right to give (%)	Individual right to plant timber trees (%)	Number of parcel observations
Mailo owner	28.6	71.4	78.6	14
Mailo long-term tenant	26.3	68.4	47.4	19
Public holder	28.6	64.3	92.9	14
Customary holder	12.5	26.8	57.1	56
Significance level of chi-square statistic	0.13	0.00	0.00	

Source: Place and Otsuka 2002 pp.114

However in their methodology they gave equal weight and assumed same effect for both mailo tenure and public holder tenure (Nabalanga) vs. customary tenure (Bupadengo). This I argue is not proper given the differences in the operations of each of those tenure categories. This indeed affected the outcomes of their findings. For instance it is rather unbelievable to find that the right to plant timber trees was highest in public tenure (92.9%) even higher than in mailo owner lands (78.6%). Moreover they do not provide any justification for this unusual finding.

A study by Place and Otsuka (2000) established that the unrestricted right of sale was completely absent in customary tenure and consultation with extended family members was a requirement. However less exclusive rights to land were reported for 32% of customary areas, 66% of mailo and 42% of public lands. The explanation they provided for the higher percentage within the mailo tenure was that large and often absentee owners are unable to enforce exclusion rights. To them failure to have full ownership rights deters the owner's incentive to protect the resources. Yet from the NIE and Marxist perspectives it would mean that customary institutions can be effective in enforcing usage rights against misuse and exploitation of resources.

A study done by Kisamba-Mugerwa (1989) in both mailo and non-mailo areas of Central Uganda also found that there was much uncertainty as to the future land rights in mailo areas because in Central Uganda the tenancies on mailo land competed with and weakened the rights of the owners. As such the study established that on mailo land occupied by tenants, the owners felt more insecure than in the surrounding non-mailo areas because of fear of possible government land tenure reform in favour of tenants. Also a study by Place and Otsuka (2000) found that tenure security appeared to be lower in mailo lands because of the unclear land claims associated with this tenure system (effect of tenancies).

The interpretation drawn from the above studies by the neoclassical approach is that ownership insecurity increases with unclear defined rights on either system of land holding. This means that despite people owning land as private property, their rights are not necessarily individualised. This prompts us to conclude that either the process of acquiring titles is so bureaucratic that people get discouraged or it is not necessary because no particular benefits are gained or that customs still influence individual ownership or provide them with enough security. However from the point of view of the NIE approach the interpretation would have been related to the role of customary institutions in enhancing people's rights to land, the very reason they would only wish to look to titling if such institutions have failed to play their roles effectively.

4.2.2.4 Land Markets and Access to Land

Scholars against the market argue that land markets are likely to enhance unequal land distribution resulting into a landless class on one hand and a land-rich class on the other. A study done by Platteau et al. (2000) however established that land markets correct initial inequality in land endowments derived from inheritance and gifts and as such concluded that land sales transactions had an equalizing effect on land distribution in two ways viz. people who did not inherit land were able to compensate their initial disadvantage through market purchases and for those who had inherited land the market partly corrected inequality in their initial endowments. The evidence provided is that a household which did not inherit land on average purchased 5.7 more acres than a household which inherited land. They also found that for a household that inherited land, an additional acre of land obtained upon bequeath reduced the amount of land purchased by 0.37 acres. This means that rather than discouraging those without land from buying, the market provides them an access avenue and on the

other hand reduces the need for those who have from buying and to them this results into a balanced distribution.

Baland et al. (1999) also concluded that rather than leading to a concentration of land assets in the hands of the minority, the activation of the land market accompanying tenure individualization had the effect of correcting initial inequality. They argued that although unequal initial distributions continued to be reflected in the final distribution of land owned, market purchases allowed poor households to considerably make up their initial disadvantage. This is in contrary to the Marxists convictions.

The evolution of Gini coefficients before and after land purchases was presented as evidence to the equalizing effect of land market transactions as indicated in Table 8. They also established that all the 97 (out of 300) who never inherited land had obtained access to land in some way or the other but more through market purchases. The distribution has been summarized in table 9 below.

Table 8: Gini Coefficients of Inequality in Land Distribution by Mode of Acquisition

Category of land	Gini index
Inherited	0.65
Inherited + purchased	0.52
Inherited + purchased + given	0.51
Total operational land	0.47

Source: Baland et al. (1999) pp.12

Table 9: Distribution of Land among Non-inheriting Households by Mode of Access

Mode of access	Number of households
Purchase	65
Rental	16
Purchase + Rental	13
Given (other persons rather than parents)	3
Total	97

Source: Own summary from Baland et al. (1999) pp.12

From table 8 it is evident that temporary acquisitions of land such as rentals were much less recurrent and less effective in mitigating the initial endowment inequalities than land purchases. They in fact established that where as, on average; the size of purchased parcel was 3.9 acres that of a rented-borrowed parcel was 1.5. These last two studies above confirm the NIE support of neoclassical theory as regards performance and role of markets in reducing unequal disparities in land distribution which is contrary to what a Marxist or a feminist would conclude.

From my own experience the question of how and for whom these markets develop and evolve is paramount. It has been an often phenomenon in Buganda for people to purchase land from tenant holders who claim to be rightful owners of those lands, only to be disappointed when the rightful claimants (mailo owners) emerge. In the local jargon this is referred to as purchasing *mpewo*³⁰. We need to appreciate that given the provisions of the 1998 Land Act³¹ together with the high levels of absentee landlordism, it is difficult to establish the genuine owner. This situation may result into sabotage rather than an incentive for increased production. As such it is likely that prospective buyers would be discouraged from buying land yet on the contrary this would not be the case with prospective tenants- most probably the very reason as to why sales market is active in tenanted mailo land.

4.2.2.4.1 Land Markets and Migrants' Access to Land

The usual belief on the above relationship has been that access to land through the market is difficult for the non-indigenous especially in areas where customary institutions are active. Platteau et al. (2000) study found that migrant farmers were not discriminated against in the market but rather tended to purchase more land than the indigenous ones. They in fact established that land purchases reduced in a significant and unambiguous way the initial inequality in land endowments for both the indigenous and migrant farmers but more so for the latter as shown by the evolution of the Gini coefficient in table below.

³⁰Mpewo literally means air since the buyers loose their money yet without owning land.

³¹The act gives both lawful and bona fide occupants right to occupy land in perpetuity.

Table 10: Gini Coefficient of Inequality in Land Distribution between Migrant and Indigenous Farmers

Category of land	Gini index for all farmers (n=294)	Gini index for migrant farmers (n=45)	Gini index for indigenous farmers (n=249)
Inherited land	0.57	0.50	0.57
Inherited land + purchased land	0.49	0.46	0.50
Farm size	0.47	0.48	0.46

Source: Platteau et al (2000) pp. 16

The above findings indeed support the NIE argument that institutions evolve towards granting individual rights when need arises. However from the analysis of the evidence provided to support their argument, I find their conclusion rather imprecise because of the difference in the sample size of both the migrant and indigenous farmers. From the Marxists point of view the above effect could be interpreted to accrue from the initial large endowments allotted to the indigenous people (which they keep passing on to their children) compared to the migrants some of whom could never have inherited any land from their parents. They in fact would be interested in knowing who the migrants are and for what reasons they are migrating.

4.2.2.5 Land Titling and Security of Tenure for Women

Proponents of the market look at land titling as a solution to women's land problems since this will allow them control of land and the proceedings there from. However, strong proponents of indigenous institutions have different ideas. Sebina-Zziwa (1995) emphasizes that the introduction of land titling together with the entrenchment of the market economy and commercialization of agriculture through cash crop production in Buganda spelt the beginning of the disappearance of women's rights in land.

Table 11: Distribution of Land to Women in Buganda in 1950's by Mode of Access

Size of land (Acres)	Allotted	Inherited	Given/gift	Bought	Total
1-20	2	20	12	11	45
21-100	1	10	1	4	16
101-300	1	2	1	-	4
301-600	-	2	1	-	3
Over 600	-	2	-	-	2
Total	4	36	15	15	70

Source: Sebina-Zziwa (1995) pp.9

From the table it is evident that inheritance provided a better avenue for women's access to land than any other mode. Troutt et al. (1993) concurred with Sebina-Zziwa that inheritance ranked first or second in importance as a way of gaining access to land and or tenancies for both men and women in Buganda. They pointed out that though on a lesser scale compared to men, women did inherit land and tenancies from their fathers and indirectly from their husbands. It was also established that daughters with failed marriages were also getting land from their fathers after returning home.

A current study done by MISR (2004) on patterns and trends of land registration and ownership in Uganda from 1980-2002 established that country wide the 'male only' category has the largest percentage of title holders at 63% compared to 16% for the 'woman only' category³². The table below shows percentages by region.

Table 12: Ownership of Titled Land among Men and Women by Region (1980-2002)

Category	Central	Western	Eastern	Northern
Man only	59%	72%	72%	78%
Woman only	18%	8%	11%	7%

Source: MISR (2004) pp.5

From the table it is evident that in Central Uganda just like in other regions men have greater access to titled land compared to women. But it is also evident that women in Central Uganda have greater access than their counterparts in other regions. The authors attributed this finding to the prevalence of mailo tenure in Central Uganda that allows easy buying and transferring of land since it is easier to convey mailo titles than initiating a survey process. This partly explains why markets are generally active in the region.

In conclusion, we learn from the studies analysed above that the way questions are posed and answered has been largely shaped by the theoretical ideologies of the respective authors of the various studies. We note that certain specific questions dominate specific studies-an indication that depending on the theoretical positions of the authors of a particular study, then so are the questions posed. We also note that most studies have probably been done by the neoclassical agricultural economists

³²The remaining percentage is distributed among other categories of title holders which have not been considered by this study

because they dominate the analysis in answering most of the questions. More important though is that in answering the questions each theoretical approach considers different aspects of the debate that fit it as reflected in the questions posed and as such they tend to compliment each other.

Secondly we also learn that it is difficult to contextualise the efficiency/equity debate in Buganda's case because of the complex land tenure systems. Therefore land tenure reform in Buganda is not about moving from customary to commoditised/individualised tenure. The situation is not that we have per se individualised tenure here and customary tenure there, it is a whole range of complex tenure arrangements which we have shown are a result of historical constructions. The reform should be about taking into account the needs of the land insufficient farmers who have not been able to own land because of the effect of politics and class that emanated from historical constructions.

Chapter Five- A synthesis of the Study Findings: Lessons and Conclusions

5.0 Introduction and Synthesis

This chapter gives a synthesis of the study findings. It brings together the research objectives, questions, findings and theories in order to be able to come to certain conclusions. This study was set to draw out lessons from different studies done in Central Uganda on land tenure systems and land changes in relation to the questions raised from both equity and efficiency perspectives and to assess these lessons in helping to sort out proposals on land tenure reform in relation to the needs of other small holder farmers in Africa. We pointed out that most studies in analysing the debate on African land tenure reform have tended to do so from either efficiency or equity perspectives. We later on argued that this kind of categorisation does not fit in Central Uganda's situation. We instead proved that to be able to understand and make effective proposals for land tenure reform in Buganda we needed to appreciate the impact of theoretical positions of the authors on the way questions are posed, evidence collected and results interpreted but also considering the fact that Buganda's land tenure systems are complex and embedded in the virtues of class and politics resulting from the historical constructions of colonialism beginning with the creation of mailo tenure system. We also attempted to clarify some terms often used inconsistently in Central Uganda studies in light of what is in reality.

5.1 Lessons and Conclusions

The study has shown that the current trends in Uganda in relation to land, its administration and management draw from the colonial period in which the introduction of freehold in form of mailo tenure in Central Uganda brought changes not only in Buganda but in the whole country, which changes are still felt up to date. As a result, ownership of and access to land in Central Uganda has become a complex reality drawn from the historical constructions embedded in the virtues of politics and class. We learn therefore that the land question in Central Uganda cannot be separated from politics and class which tend to shape the relations of production and are a net result of historical processes.

What we particularly draw and learn from the Buganda case on land tenure reform and applicable to other contexts in Africa is that efficiency and equity have to be looked at as historical constructions and therefore should not provide a basis for sorting out proposals on land reform. Secondly we learn

that the opposition between customary/individualised tenure ignores the variety of historical forms of each and therefore does not provide the basis for sorting out proposals on land reform. In Africa land tenure systems are difficult to categorise into customary or individualised tenure because both systems did not start at zero but each involved complex arrangements. This consideration should not be ignored when taking care of proposals for land reform. The case of Central Uganda has shown that it is actually difficult to dichotomise the two. One cannot easily put a demarcation on what is individualised or customary tenure and doing so is rather misleading as Bazaara (2002) argues that because the dominant developmentalist ideology has been interested in individual tenure, customary tenure has been defined to be every thing else that is not individual tenure which is not appropriate.

In **conclusion** we can say that the studies done in Central Uganda may not directly apply to the rest of Africa given its political background that has shaped land relations in the region and it would indeed be inappropriate if we tried to impose or generalized Central Uganda's experience on even other Ugandan regions later on the rest of Africa. And what comes out explicitly is that even when it is clear that land has to be re-distributed it is not done because of political compromises resulting into unclear and somewhat confusing land policies. Thus from our discussions the land question in Central Uganda should indeed go beyond the efficiency/equity and the individualised/ customary dichotomies to realising that the solution lies in accepting that politics play a significant role and that land tenure reforms are inherently political processes.

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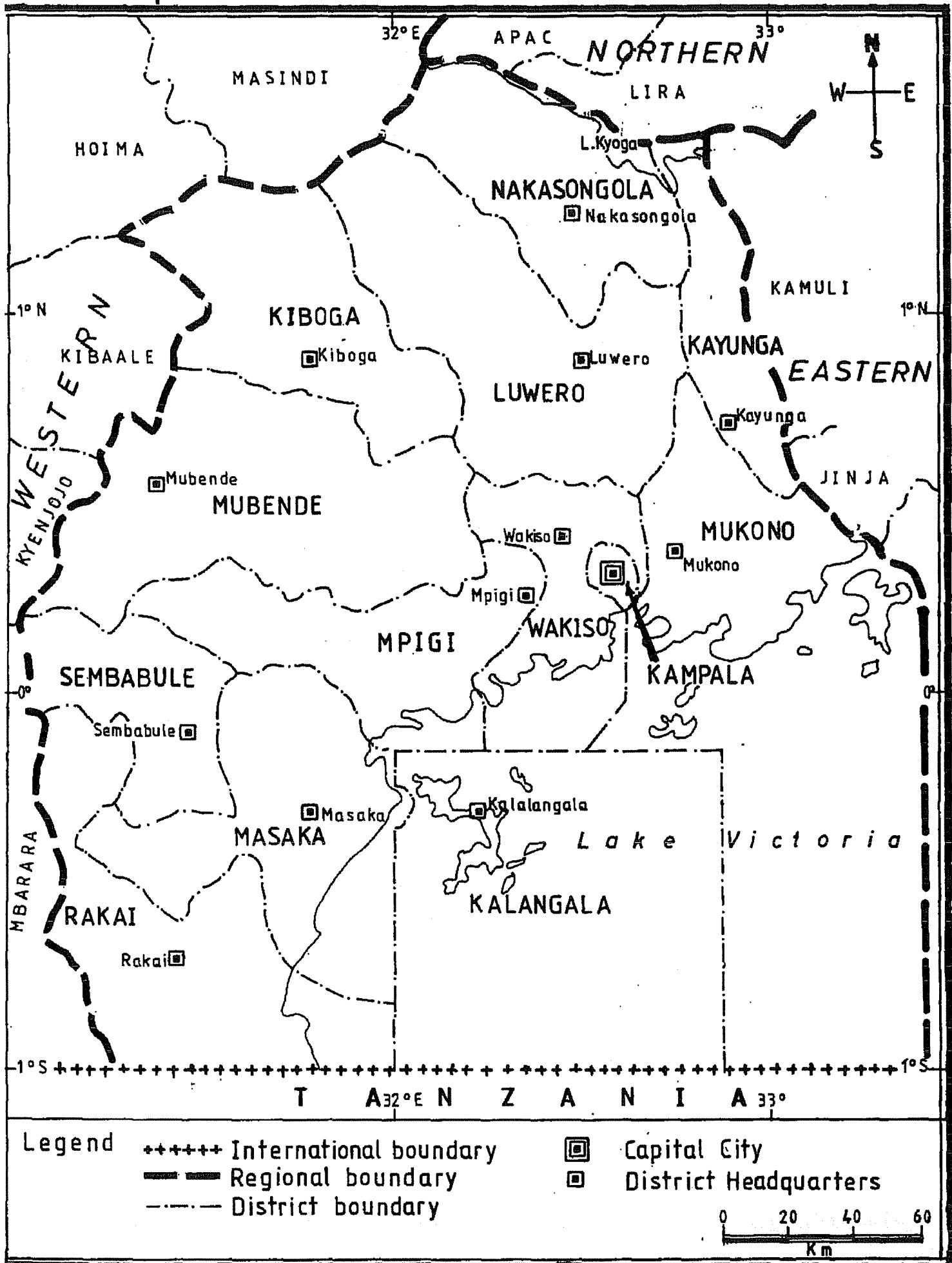
APPENDIX A

1. Patterns and Trends of Land Registration and Ownership in Uganda (for the period 1980-2002), authored by Makerere Institute of Social Research in 2004 in all districts for leasehold and in districts of Kampala, Masaka, Mbale, Mbarara and Mukono for Mailo/ freehold tenure.
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¹Number 4 and 5 under were carried out by the same authors in the same areas but in different years and for different interests.

APPENDIX C

Map 2. CENTRAL REGION DISTRICTS



Legend
 +++++ International boundary
 ——— Regional boundary
 - - - District boundary

☐ Capital City
 □ District Headquarters



