

Land and Housing management

Week two

Land tenure systems

By

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Last week

- Recap
 - Understood major concepts
 - Land, housing, land management and administration; land development; housing management and administration; housing development; land tenure and tenure systems.
 - Detailed background of the tenure systems in Uganda guided by three periods
 - The pre-colonial period (before 1900)
 - The colonial period (1900 -1962)
 - The post colonial period (1962 – 1995 and 1995 – date)

This week ...

- Objectives ...

- To get a deeper understanding of the functioning of the existent tenure systems in Uganda
- To get a comparative glimpse into tenure systems in other countries

This week ...

- **Land tenure systems in Uganda**

- Customary tenure
- Mailo tenure
- Freehold tenure
- Leasehold tenure
- Public land

- **Land tenure systems in other countries (case studies)**

- Kenya
- South Africa
- United states
- The Netherlands

Land tenure systems in Uganda

- The way land is owned, occupied, used and disposed of – **land tenure**
- Land tenure – an important part of economic, social and political structures
- Properly defined and managed tenure system – essential for sustainable development and balance
- Land tenure systems differ across Uganda
- Land tenure practices – a mixture of **traditional practices, colonial regulations** and **post-colonial legislation**

Land belongs to the people – **Article 237 of the Constitution, 1995**

According to this constitution, existent and recognized tenure systems are;

- 1) Customary land tenure
- 2) Mailo land tenure
- 3) Freehold land tenure
- 4) Leasehold land tenure
- 5) **Public land tenure**

Description

Coverage

Operation

**Administration, management
and Development**

Customary land tenure system

- Land ownership based on customary rules – formed from norms and cultures of clans, tribes, communities or families for which the rules apply
- Rights to control, use and own – derived from being a member of a clan, family, tribe or community

Description

- Customary currently is distinguished into;

1. Communal land system

Land owned by the community. User rights are guaranteed for farming, pastures, access to water, other community activities

No specific ownership rights to users, control and ownership are through the community or clan

2. Individual/family or clan tenure system

Land ownership by family or clan, not entire community.

Land normally allocated to boy children ...

Operation

Customary land becoming more individualized, high incidents of sale

- Wide spread through Uganda, most dominant tenure system
- Biggest part in east and northern parts, traces in the western
- Covers more than half of the country (according to Wabineno) -

68.6%

Coverage

Administration, management and Development

- Principles of customary land tenure system
 - No private ownership
 - Security of tenure guaranteed – if laws and customs are obeyed
 - Every member guaranteed right to use
- Utilization controlled by clan heads or elders
- No land titles, Certificate of Customary Ownership (CCO) can be issued
- Efforts to formalize customary land tenure – introduction of the Certificate of customary ownership (CCO)

- Certificate of Customary Ownership – can be acquired by customary land owners on formerly public land
- Customary land on formally public land can be converted to freehold
- Individuals getting ownership rights of customary land

**Administration, management
and Development**

Freehold tenure system

- Land tenure that grants absolute ownership of land for an indefinite period of time – **Freehold tenure system**.
- Land owned by an institution - registered on the certificate of title as owner for life

Description

- Grants full ownership rights, hence most preferred tenure system
- Owners are holding registered land for an unlimited period of time subject to statutory and common law

Operation

- Spread through out the country – mainly eastern and western Uganda
- Covers a portion of **18.6%**

Coverage

- Freehold titles can be separated from customary and public land – crown land ordinands 1903 gave Colonial administration power
- Customary land can be converted to freehold tenure and a freehold land title issued
- Registration of land under this system is governed by the Registrar of Titles' Act
- Suffers effects of population pressure – land fragmentation

**Administration, management
and Development**

Mailo land tenure system

- Mailo – mile, the basic unit of division of the land at that time – 1900
- About 9000 square miles divided
- Mailo tenure - holding registered land in permanency
- Initially – private Mailo and official Mailo
 - Official Mailo – given by virtue of office, no subdivisions allowed
 - Private Mailo – freedom to give away and sub divide – rights of freehold
- Official Mailo later transformed into Public land - 1967
- Hybrid system – traditional customary and modern freehold

Description

- During the subdivisions, peasants with previous customary use rights were not recognized, hence became tenants – had to pay rent
- Later (1972) – ground rent (Busuulu) and tribute (Envujjo) law introduced to protect tenants. Security of plots
 - Resulted into inheritable permanent occupancy with a fixed meagre annual payment
- Those who settled with consent of land owner – **Plot (kibanja) holders**
- Subject to occupiers – Kibanja holders / owners
- Many tenants as occupiers compared to landlords

Operation

- Those who had settled unchallenged for more than 12 years – **Bonafide tenants**
- Has lawful and bonafide occupants
- Permits separation of ownership of land from the developments made on land – by lawful and bonafide occupant
- System has dual interests on the land – there must be consultation before decisions on land are made

Operation

- Distributed in the central region (Buganda), and some parts of Ankole, Bunyoro kingdoms
- Covers a total of **9.6%** of Uganda's land
- Mailo land Subject to statutory qualifications, also customary rights
- Proof of ownership
 - Certificate of title to land owner
 - Certificate of Occupancy to occupant

Coverage

**Administration, management
and Development**

- Number one challenging system – multiplicity of interests and dual ownership
- However, it provides security of tenure – long term developments
- Good part still owned by the Kabaka (King) and chiefs – administered under the **Buganda Land Board**
- Recognizes occupancy by tenants. Plot owners' relationship with their overloads is governed under the 1998 Land Act
- Holder of a title has absolute ownership

**Administration, management
and Development**

Leasehold tenure system

- Lease is land which the land owner allows another person to take exclusive possession of for a specific period of time in exchange for rent
- Holding land for a known timeframe – based on conditions stated in the agreement between the tenant and the registered land owner

Description

- Leases are usually 3 years and more
- The person granted a lease is obligated to use the land for the specific reason agreed upon

Operation

- Mostly seen on public land
- Also can be granted on Mailo, Customary and Freehold land
- Leasehold has the list coverage with only about **3.6%**

Coverage

- Two lease types – **public** and **private** lease
- Leases on public land are granted by the **District Land Boards (DLB)** and the **Uganda Land Commission (ULC)** – on behalf of government
- Leases granted for 3 years or more are entitled to a certificate of title
- Uganda's non-citizens can acquire leases but for a period not more than 99 years
- Leased land can sometimes be transformed into freehold

**Administration, management
and Development**

Therefore ...

The different tenure systems

- In various ways affect land use and land management
- Have various environmental implications
- Have varying housing development implications – contribute to housing disparities in different ways

Land tenure systems in other countries

- Case studies
 - Kenya
 - South Africa
 - United states
 - The Netherlands

Land tenure systems in Kenya

- **Background**

Kenya originally - customary

Movements as a result of trade introduced different races and settlements and subsequent races.

- Including Arabs settlement at the coast and intermarriage – Swahili

reforms and transitions

- Ten mile coastal stripe: The first major land reform – the Islamic tenure (**Ten mile coastal strip**)
 - Private, informal, customary and public tenure
- **British colonization**
 - Leases
 - Public land – British occupied
- **Native reserves** (alienations – British settlers; creation of reserves – Confinements)
 - Leases
 - Native reserves

- **Trust Lands creation** (native Lands Trust Ordinance 1930, 1938; Native Lands Trust board; Trust Lands Act)
- **Individualization of tenure** in Native Lands (decongestion; individualization ...)
- **Registration of Native reserves** (land adjudication; registration; resettlement; sub-divisions)
- **Independence** (settlement schemes)

According to Gordon Wayumba, A historical review of land tenure reforms in Kenya

Existent tenure systems

- **Customary land tenure**

Unwritten land ownership practices by communities under customary law

Kenya – ethnically diverse country – multiple customary tenure systems

Systems characterized by;

- Guaranteed rights of access to the land and other natural resources
- Rights of control – rested in political authority of the community or unit
- Rights accrue to a member out of their investment of labor - harnessing, utilizing & maintaining the resource
- Resources managed and controlled by relevant political authority

- **Freehold**

Confers absolute ownership for an indefinite period

Governed by the Registered Land Act (RLA) Cap300 of Kenyan laws

Freehold titles generally have no restrictions, but there are conditional freeholds

Principle for privatization laid down and implemented from 1956 – agricultural areas

Different registration system instituted in 1968 in lower Agric areas – arid and semi-arid areas.

- Group ranches registration (registered under group representatives)
- Each member with rights in the ownership

- **Lease hold**

Interest in land for a defined period of time

- Can be granted by a freeholder or government or local authorities
- Is subject to certain conditions – relating to use and development

Maximum term of government leases

- 999 years for agricultural land
- 99 years for urban plots
- 33 years (few cases) on urban trust lands

- **Public tenure**

Land owned by the government for her own purposes

Vested in the president

- Has powers to allocate or grant through commissioner of Lands

Administered under the government Lands Act Cap 280

Includes;

- Forest reserves
- Alienated and nonalienated government land
- Other reserves
- Open water bodies
- National parks
- Townships and other urban centers

Land tenure systems in South Africa

- Background

Customary tenure system – dominant before colonialism

- Currently
 - Customary tenure system
 - Statutory tenure system
 - Freehold
 - Leasehold
 - State land

Existent tenure systems

1. Customary tenure system

Governed by unwritten traditional rules and administered by traditional leaders

Active occupation / usage – main evidence of ownership

- Land not alienable from community trust
- Covers **14%**

- **Statutory tenure system**

Governed by the law, supported by documentary evidence – title deed or lease certificate

Often built on **freehold** or **leasehold** entitlements

Offers exclusive rights to owners

- Currently statutory tenure covers

- Private, freehold and leasehold tenure systems – **72%**
- State / public land – **14%**

According to the United Nations Economic Commission

Land tenure systems in the United States of America

- Background

Tenure systems revolve around;

1. Fee simple
2. Leasehold

Existent tenure systems

- **Fee simple**

Most common and complete form of land ownership

Owner with absolute ownership rights – use, sell, lease etc.

Absolute rights on improvements on the land

Land is subject to zoning laws and other government regulations

- **Leasehold**

Land owner grants rights to use land for a specified period of time to another party – lessee / tenant

Transactions through a lease agreement

Can vary in length – short term to long term

Can be granted for residential or commercial use, or for agricultural or industrial purposes

Land tenure systems in the Netherlands

- Background

Systems primarily characterized by various forms of ownership and land use rights

- common lands

- Netherlands had common land in some areas historically
- Multiple individuals or communities held shared land rights –use for Agric, grazing or forestry

- However – due to changes in land use practices and property rights, common lands have largely diminished over time

- Current systems

- Freehold ownership
- Long term lease
- Agricultural tenure

Existent tenure systems

- **Freehold ownership**

Most common form of land ownership

Individuals or entities with absolute right over land and developments on it

Owners can use, sell, transfer, or lease as wished

Land is subject to zoning regulations and other legal requirements

- **Long term leasehold**

- Land owned by government or other entities – leased to individuals or entities
- Lessees pay an annual fee to land owners
- Common in urban areas
- Leased for a long term period – usually 50 to 100 years, or more
- Terms and conditions regulated by the law
 - May vary according to municipality

- **Agricultural tenure**

Land owned by individuals, families or entities – for farming purposes

Rights and responsibilities of land owners and tenant governed by agricultural tenancy agreements

- Lease agreements
- Crop sharing agreements

Conclusion

- Varying tenure systems in the different countries
- Tenure systems have varying impacts on the development process
- Varying outcomes on the development outcomes
 - Especially housing development outcomes
- countries at varying levels or under different categorization of economic and human development

Reflection: Could the tenure systems be used to justify the variations in development in these countries?

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