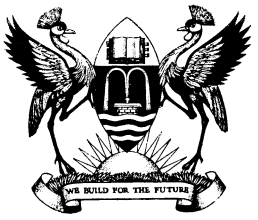


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# THE DYNAMICS OF THE LAND MARKET AND THE ISSUE OF COMPENSATION IN UGANDA

by

**Elizabeth Troutt, Mark Marquardt,
W. Kisamba-Mugerwa, and Richard Barrows**

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RESEARCH AND POLICY DEVELOPMENT PROJECT**

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All views, interpretations, recommendations, and conclusions expressed in this paper are those of the authors and not necessarily those of the supporting or cooperating organizations.

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Of course, we as the study team accept full responsibility for any errors or deficiencies within this report.

The research team: W. Kisamba-Mugerwa; John Kigula; Nagujja Zam-Zam; Samuel Kayabwe; E. Nsamba-Gayiiya; Richard Barrows; Mark Marquardt; Elizabeth Troutt.

# I. BACKGROUND

Uganda has a long history of a spatially diverse set of laws and social systems governing land tenure. While technically a uniform system of land rights exists de jure under the Land Reform Decree (LRD) of 1975, at present, complex de facto land tenure systems continue to function throughout the country. In recent years, the Government of Uganda has taken interest in unifying and simplifying the nation's land tenure system, both de jure and de facto. Goals for a new land tenure policy include low cost administration of land matters and promotion of agricultural investment and productivity. Following concern by the Agricultural Policy Committee beginning about 1987 on how land tenure arrangements in Uganda affect agricultural practices, and particularly the extent to which they inhibit the undertaking of desirable improvements in the structure of farming, a series of studies was launched.

As a result of investigations on land tenure, transition to a uniform freehold land tenure system was recommended as a land reform measure. Specifically, the report *Land Tenure and Agricultural Development in Uganda* (Makerere Institute of Social Research [MISR] and the Land Tenure Center [LTC], 1989) advised that the 1975 LRD be repealed and that all land in Uganda eventually be converted to freehold tenure.

In May, 1989, most of the recommendations contained in the MISR/LTC report were adopted at the Land Tenure, Resource Management, and Conservation Studies workshop held in Jinja (see Agricultural Policy Committee, 1989). At the close of the workshop, in recognition that the MISR/LTC study had been confined to Uganda's central region, a Technical Committee was appointed. Charged with visiting the other sections of the country to collect Ugandans' views on the MISR/LTC report's recommendations, the Technical Committee submitted drafted land policy legislation to Government.

In *The Report of the Technical Committee on the Recommendations Relating to Land Tenure Reform Policy* (October, 1990), the Technical Committee presented, first, its findings regarding people's propensity to accept a freehold land tenure system, and, second, its proposed land tenure policy, entitled "Tenure and Control of Land Bill, 1990." The draft legislation raises a broader set of compensation issues surrounding tenanted *mailo*[1] land than that originally addressed in the MISR/LTC report. In its report, the Technical Committee acknowledged the need for a continuing program of applied research on land access and tenure to inform further policy decisions, to plan for implementation, and to monitor the impacts of implementation. The Technical Committee identified priority areas for research which included land values as they related to compensation issues, and constraints upon the operation of the land market (p. 73).

In the central region of Uganda, the conversion (or return) to freehold ownership of land would introduce unique issues due to the longstanding landlord-tenant relationships stemming from the

[1] With the Uganda Agreement of 1900, a form of freehold tenure for political notables was created, and this land was allocated in square-mile blocks termed *mailo* (ed.).

region's history under, primarily, the mailo land system, but also the scattered areas of freeholds. Tenanted mailo land has long demonstrated the deadlock between landowners, who possessed de jure freehold over the parcels, and their tenants, who enjoyed de facto freehold.

One such issue arising under the MISR/LTC report's land policy reform recommendation is: which person, the owner or the tenant, shall receive the freehold title to a currently tenanted mailo parcel? The MISR/LTC report recommended that tenants be upgraded to freehold owners and that owners retain ownership of their nontenanted land. The draft Tenure and Control of Land Bill, 1990, however, allows either an owner or a tenant to obtain freehold title through purchase or any other mutually agreeable negotiation (see section II for discussion and Appendix A for a draft of the bill).

A second issue with respect to tenanted mailo land is that of determining and paying appropriate amounts of compensation to various parties for any interests in the land they lose under a new policy. Compensation questions were raised but not answered by the MISR/LTC report. Furthermore, the questions raised assumed a legislated transfer of land rights from mailo owners to mailo tenants. Under the drafted legislation, the questions surrounding the compensation questions become more multi-faceted because the bill allows for either an owner or a tenant to gain freehold interest. Questions about compensation remain largely unanswered.

MISR fielded a team of researchers to study the issues highlighted by the Technical Committee as priority areas for research in light of the drafted legislation. The research team sought to investigate the dynamics of the land market throughout much of Uganda, focusing particularly on areas of tenanted mailo land, with the goal of generating information relevant to the compensation issues that would arise in those areas under the drafted bill.

The purpose of this report is to present the findings of a rapid rural appraisal (RRA) in southern and central Uganda on the functioning of the land market and its implications for government's anticipated need for land values data. The land market will be discussed in general for areas both within and outside Uganda's central region. However, because compensation issues, by definition, will be confined to areas of tenanted mailo land, discussion will focus on the central region of the country.

The next section of this report briefly reviews the drafted Tenure and Control of Land Bill, 1990, concentrating on the sections which address tenanted mailo lands. Subsequent sections of this report discuss compensation both conceptually and with specific reference to the questions raised under the drafted bill, define the objectives and method of the study, present and discuss findings, and outline issues and options for further policy design and implementation.

# II. REVIEW OF THE (DRAFTED) TENURE AND CONTROL OF LAND BILL, 1990

The drafted Tenure and Control of Land Bill, 1990 (see Appendix A) repeals the 1975 Land Reform Decree and introduces the freehold ownership of land throughout Uganda[2]. The bill specifies various means by which the tenures existing in Uganda may be converted to freehold.

As explained in clause 1 of the memorandum to the bill, the process of allocating freehold titles would consist of two phases. In the first phase, "the State as a sovereign entity is vested with the ownership before grants of land can be made." All land shall be administered by the Uganda Land Commission on behalf of the state.

In the second phase, land would be transferred in freehold tenure to appropriate parties. The timing and procedures involved in carrying out the second phase may vary by tenure type, and many of the articles of the bill outline the process by which the various tenure types would be converted to, and reallocated as, freeholds.

Of the mailo lands, those that are tenanted would be treated differently from those that are not tenanted. Ownership of nontenanted mailo land areas would be automatically reallocated to their current owners. Ownership of tenanted mailo land is addressed in sub-clauses (9) to (15) of clause 2, which specifically outline the process by which freehold ownership rights over those lands would be allocated. The proviso to sub-clause (9) simply states that tenanted mailo lands are to be treated differently from those that are not tenanted. Sub-clauses (10) to (14) define the way tenanted mailo lands are to be treated, and sub-clause (15) clarifies which lands are to be considered tenanted mailo.

According to the drafted bill, the allocation of freehold ownership over currently tenanted mailo land would, as with other tenure types, proceed in two phases. In the first phase, interests in the tenanted mailo lands would be vested in the Commission in freehold (sub-clause (10)(a) of clause 2). The state will be seen to be exercising the allodial title it has always possessed; therefore, the phase I vesting of tenanted mailo land in the Commission for the state would not be viewed as a compulsory acquisition of land requiring the payment of compensation to former owners and tenants by the state.

In the second phase, freehold ownership of the lands would be reallocated by the Commission to (1) the former tenant, or (2) the former owner, or (3) any third party, in that order of priority (sub-clause (10)(b) of clause 2). Thus, the second phase introduces the issue of compensation, regardless of whether the owner or the tenant, or some third party, eventually receives freehold interest in the land.

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[2] The exception to universal freehold tenure throughout Uganda is the implementation of leasehold tenure in selected urban areas.

Compensation could flow in any of several directions and amounts, depending on who (former tenant, former owner, or third party) receives freehold ownership. If a former tenant received title, the former owner would be entitled to compensation for his lost interest in the land (sub-clause (12) of clause 2), though the drafted bill does not specify who should pay for the compensation. Likewise, if the Commission allocated the freehold to the former owner, the former tenant would be entitled to receive, for his lost interest, compensation from the former owner (sub-clause (13) of clause 2). Lastly, although the drafted bill is silent on this point, it is presumed that if a third party received the freehold interest from the Commission, both the former owner and former tenant would be entitled to compensation for the loss of their respective interests in that land. If the drafted bill is enacted, then, for compensation to be assessed and implemented, it is necessary to define and value both a former owner's and a former tenant's interests in tenanted mailo land.

# IIIA. COMPENSATION: GENERAL CONCEPTS

An economic definition of full compensation is that amount of money that restores the income or wealth position of an individual affected negatively by the action of a second party, so that the individual is neither better nor worse off than before the action. The compensation can be paid by the second party or some third party not involved in the initial transfer (removal) of income or wealth. Partial compensation is any amount of compensation greater than zero but less than the value of income or wealth surrendered.

As applied to land, compensation usually means the transfer of a quantity of money sufficient to offset the loss of value resulting from the transfer of one individual's land to another individual (including corporations) or government. Many national constitutions have provisions that compel government to compensate individuals fully for land taken by government. Additionally, in many cases the taking itself must be justified by necessary public use or by the protection of health, safety, or welfare of the general population.

## A. ECONOMIC DEFINITIONS

An economic definition of compensation is based on indifference theory. In economics, the concept of utility may be generally translated as the well-being of an individual. Higher utility means a higher level of well-being. In an initial state, an individual is presumed to enjoy a certain level of satisfaction or well-being (that is, to have a certain level of utility) derived from income (in money, goods, and services) and property wealth (in land and other forms of real property). Different bundles of income and property will provide a given individual with different levels of utility. However, it is always possible to substitute more of one item (for example, money) for less of another (for example, land) such that the individual's utility levels before and after the substitution are equal.

Thus, while the removal of an individual's land from his/her endowment will reduce his/her level of utility, the substitution of money in compensation for that land can maintain the individual's utility at its original level but with a different bundle of income and wealth than the individual originally possessed. The value of the land lost by the individual is compensated by increasing the individual's money income. By this definition, full compensation means restoring utility to its previous level; the individual is compensated for the full value to him/her of the land lost, which may be more or less than the price of land on the market. If the individual is compensated according to the market price of land, the individual should, in theory, be able to enter the market and purchase an identical or equivalent parcel of land using the money received in compensation. If this full value is equal to the market value of the land, then the re-exchange of money for land would leave the individual's utility exactly equal to its level before the original land parcel was removed.

The task is to determine the value of land that is removed from the individual's bundle of income, wealth, and property. Several alternative valuation methods may be pursued:

replacement cost, income capitalisation, and comparable sales. None is perfect, but all are useful depending on the circumstances.

The **replacement cost** method of estimating value assumes that the value of an item of real property is equal to the cost of replacing it. This approach works best with structures where current construction costs can be used to generate an estimate of value. The approach is less useful when land itself is the item to be replaced.

In valuing land, the **income capitalisation** method is used more often. In theory, the value of a parcel to an individual is the present value of all future net returns from use of that land. The net present value of a land parcel will be equal to the sum of all years' value of production (including ground rents) less costs, discounted by the rate of interest.

Income capitalisation is especially useful for an individual buyer contemplating a land purchase because the individual knows the intended use, the expected costs of production including labour costs, and an anticipated rate of return on capital that represents the opportunity cost of capital for the individual. The income capitalisation method is generally less useful for governmental purposes. The net present value of land can be greatly affected by differences in assumptions made in calculating gross returns (for example, yields, prices), in assumptions in calculating costs (for example, wages), and in the choice of a discount rate. For an individual, these assumptions can be based on the individual's experience and expectations in the specific use of the property. Government, however, has no such benchmarks to use in making the necessary assumptions, so that the net present value figure calculated is the "true" net present value plus all of the errors introduced by the various assumptions.

The most common method used by government in valuing land is the **comparable sales** approach. Actual sales data are examined to estimate the price at which a particular parcel of land might sell if offered on the market. Clearly, the parcel to be valued must be compared to land parcels with similar characteristics: good, well-watered coffee or banana land will have a much higher market price than the same area of land suitable only for grazing. To value a parcel using the comparable sales method, at least some parcels sold on the market must have similar physical characteristics to the parcel to be valued. The difficulty is that no two parcels are exactly alike and even a good statistical analysis of the effect of various characteristics on price requires many sales observations. If the land market is "thin," with relatively few sales in any given local area, the comparable sales approach is difficult to use. Nevertheless, the comparable sales approach has the great virtue of reliance on the prices that buyers and sellers are actually using in transactions, rather than the manufactured values used in the replacement cost and income capitalisation methods. Most governments use comparable sales for estimating the value of rural land.

## B. LEGAL DEFINITIONS

The economic definition of compensation lies in the market value of the land. Economists faced with a compensation question will immediately refer to estimates of the monetary value of the land. The legal profession approaches compensation issues with a slightly different perspective, asking first what rights are affected when an individual loses property and then asking the value of those rights. The legal profession is more concerned with **just compensation**—that amount required under law—which may vary from **full** or **market compensation** as viewed by economists.

The 1967 Constitution of Uganda specified that property could not be taken by government without compensation (Article 13). The Public Land (Compensation for Resumption) Act (1965) and the LRD also provide for some form of compensation in particular circumstances. If the rights taken are the full rights of use, exchange, bequest, pledge, and all rights usually associated with freehold, the courts and government estimate the compensation that is deemed just as the equivalent of the market value of the property. The legal profession, like the economics profession, is then faced with the problem of estimating the market value of a given land parcel.

Thus, both lawyers and economists ultimately refer to the market value of land as the appropriate amount for compensation. Market value means the price that will prevail in an open market, resulting from an "arms-length" transaction between a willing buyer and a willing seller, both well-informed, neither forced to sell, neither subject to any undue influence from the other, and both trying to obtain the best possible terms for themselves in the transaction.

## C. SOCIAL DEFINITION

In political affairs, it is often neither the economists' nor the lawyers' version of compensation that is important or decisive, but the public's notion of what compensation is fair. **Fair compensation** is simply the public's idea of the amount that is acceptable within the norms and values of the society. Fair compensation may equal zero or the full market value, or may even exceed the market value in some cases. The definition of what constitutes fair compensation results from a political process that reflects the views of the citizens. In some cases it may be shaped by legal or economic principles; in others, not.

## IIIB. COMPENSATION: UGANDA'S CURRENT CASE

The drafted Tenure and Control of Land Bill, 1990, introduces compensation issues quite distinct from those arising in cases of compulsory acquisition of private land by the state for the public good. In cases of compulsory acquisition, land rights transfer from a private entity to the state, and compensation flows from the state to the private entity. These cases are relatively straightforward.

Under the drafted policy, all the land in Uganda would eventually be placed under freehold ownership. This poses a unique problem in areas where sitting tenants have occupied and farmed owners' land for, sometimes, generations. In these instances, which exist primarily in the central region of Uganda due to the existence of the mailo land tenure system there, who should become the freehold owner under the new policy, the former owner or the former tenant? The drafted legislation leaves the answer open to either of those parties, or to a third party who is neither the former owner nor the former tenant of that land. Furthermore, given that compensation is required for any transfer of rights, how should compensation be estimated in these instances? The answer depends on the direction of the transfer of rights and the precise rights transferred.

### A. LAND RIGHTS TRANSFERRED FROM TENANT TO OWNER

If the former owner gains access to the land and all interests in the land, then compensation is due the former tenant. The loss to the former tenant is the market value of the tenant's interests in the property. The value could be estimated by using a replacement cost methodology to value structures and other land improvements and using income capitalisation to estimate the value of the land itself (since the tenant has access), and then summing them together with the value of standing crops, to arrive at a compensation amount. However, since, first, there is an active market for mailo tenancies involving many willing and well-informed buyers and sellers, and, second, the rights transferred through this market are precisely those rights that would be lost by the former tenant if land goes to the former owner, then the market can be used to generate estimates for compensation to the former tenant. Observed market prices might be adjusted for factors that are not comparable among sales, such as the value of a standing annual crop.

### B. LAND RIGHTS TRANSFERRED FROM OWNER TO TENANT

If the former tenant gains title to the land, the interests of the mailo owner must be considered. The issue can be approached from essentially two perspectives—legal and economic—although the two converge.

In the **legal** view, if the former tenant gains title, the former owner must be compensated for his lost rights in the land. Thus, the question is: what rights are lost by the former owner? The interest of the former owner in mailo is not totally clear, but as great an understanding as possible of the rights lost by the former mailo owner is critical to the estimation of compensation.

First, the former mailo owner does not lose the right to collect rent by allowing others to use the land. Historically, tenants paid rent and tribute (*busuulu* and *envujjo*) to the owner. Yet, for at least 60 years the rents have been fixed, and in the aftermath of the 1975 LRD the rents disappeared entirely. Most mailo owners today derive little or no rental value from their land.

Second, the former mailo owner does not lose any use rights in the land because the use rights have been guaranteed to the former mailo tenant since the 1920s. The former mailo owner cannot use the land and, in practice, cannot evict the former mailo tenant because of strong social pressure against eviction, even though eviction may be strictly legal under the LRD. Thus, the former mailo owner loses no effective use rights if the former mailo tenant receives title. In addition, even if eviction were socially acceptable, the compensation due the former mailo tenant would be high because prices of mailo tenancies are high in most places.

Third, the former mailo owner loses none of the other rights typically associated with land use. While in theory the former owner possesses the right to mortgage or pledge his land, he is unable to exercise this right on tenanted land because neither formal nor informal lending institutions accept tenanted land as collateral due to the risk of not being able to free the land of the encumbrance of the tenants in the event the owner defaults on his loan repayment. Additionally, the owner can use the land in only very limited ways such as for the extraction of clay for commercial brickmaking. The value of such a limited use right as clay extraction is restricted to localities characterised by the presence of a brick and tile industry.

Fourth, the former mailo owner does not lose the exchange right to sell the land. There is little or no market in tenanted mailo land, so an owner can hope to gain little at most from the sale of such land.

The former mailo owner does lose the right to bequeath the ownership rights in the land to his or her children or to others. However, since the right to bequeath is virtually the only right of ownership of tenanted mailo land, the bequest effectively conveys rights that cannot be exercised until very old age or death.

The former mailo owner may suffer a loss of status, because mailo ownership still carries with it the respect of other community members. This respect is derived from the position of the original mailo owners as very important leaders in the traditional society. The value of this status is not totally clear and most likely varies from one location to another.

Given the paucity of rights lost by the former mailo owner, one logical conclusion is that the compensation should be low or zero. The former mailo owner simply does not lose any major rights if the title to land is given to the tenant.

However, the mailo owner does clearly possess the reversionary right to the land. Ultimately, tenanted mailo land is the property of the former owner, and it may be unconstitutional for it to be taken from him/her without payment of compensation. Given the importance of property in the protection of individual freedom, recognition of and respect for individual property rights as

a matter of national policy is critical. This suggests that compensation to a former owner if a former tenant received ownership of formerly tenanted land would have to exceed zero, although by what amount is unclear.

An economic view of the same phenomena will arrive at slightly different conclusions. Mailo tenants typically have a strong interest in purchasing the full rights to their parcel. They have sometimes been willing to pay relatively large sums to acquire the residual ownership rights to the land they have farmed as tenants. Yet the tenant is buying some rights that the owner is not losing. For example, the former mailo tenant gains access to a land title to use as collateral for loans from commercial lending institutions. While the former mailo owner did have the right to borrow money using the tenanted land as collateral, he/she was generally unable to exercise that right. Thus, the value of the gain in the former tenant's rights is not equal to, but exceeds, the value of the loss in the former owner's bundle.

Thus, compensation cannot be estimated by using the price a former mailo tenant pays to buy the full title to land from a former owner. First of all, as just discussed, the price paid by a former tenant to a former owner, at best, values the rights added to the former tenant's bundle. This is greater than the value of the rights removed from the former owner's bundle.

Second, the prices in such transactions are probably not good indicators of market values because the buyer and seller are usually neighbours, they have an unequal power relationship socially, and the seller is a monopolist while the buyer is a monopsonist. Prices in such transactions may not be the "arms-length" transactions required by the definition of an open market. Even if such prices are not influenced by the personal relationship between buyer and seller, the fact that there is only one possible buyer and one possible seller makes the transacted price more reflective of relative bargaining positions and skills than of the value of the rights transferred in the exchange.

It might be possible in an area with a very active land market, however, to observe enough transactions of land with comparable characteristics to estimate market-based values of the rights transferred from a former mailo owner to a former mailo tenant. The price of non-tenanted mailo land measures the value of the full set of rights in mailo land. Likewise, the price of a tenancy on mailo land represents the value of all rights other than those associated with mailo ownership, essentially the rights of access and use enjoyed by tenants (but absent from an owner's bundle of rights in tenanted land). The difference between the price of nontenanted mailo land in full ownership and the price of a mailo tenancy therefore represents the value lost by the former mailo owner if title is given to the former mailo tenant. Such a calculation is possible in principle, but in fact the rural land market is not sufficiently active to produce reliable indicators of these values, at least at the national level. However, it is possible in many cases to gather reliable data at more local levels.

A strictly legal view concludes that the bundle of rights a former owner would in fact lose if a former tenant received title to land is very small and that just compensation is therefore close to zero. Alternatively, combining land prices for the tenant's and owner's different bundles of

rights to arrive at a market-related value for what an owner would lose if he or she lost ownership of tenanted land suggests that the **full** compensation amount exceeds zero. **Fair** compensation will be the result of decision-making by the political body with various parties' views adequately represented and heard.

# IV. Rapid Rural Appraisal of the Rural Land Market

## A. Objectives

With the goal of beginning to meet government's anticipated need for rural land values data, a research team from MISR conducted an RRA of the land market in districts of Uganda south of Lake Kyoga during January through April, 1991. The driving objective of the RRA was to discover land values (prices) at the grass roots level. Associated with this main objective was the goal of beginning to understand how local land markets function in parts of rural Uganda. An understanding of the way the land market behaves is desirable primarily to assist in determining the relationship between prices and values, and secondarily to begin to identify any trends in and effects of the land market as it allocates a scarce resource among users.

## B. Research Design and Method

### 1. Area of Study

The study area comprised all districts thought to be subject to the compensation issue arising between a landlord and a sitting tenant in the event of adoption of the drafted Tenure and Control of Land Bill, 1990. This area included all former mailo districts (mainly Rakai, Masaka, Mpigi, Mubende, Luwero, Mukono, and parts of Hoima, but also Mbarara and Bushenyi) and districts in which freehold land schemes were thought to exist (Mbarara, Bushenyi, Rukungiri, Kabale, Mbale, Jinja, Iganga, and Kamuli).

### 2. Site Selection

The Lands Office of each study district was visited. At each Lands Office, a group of employees, usually including a staff surveyor, was assembled and interviewed about such things as agricultural activities, population distribution, the means by which people gain access to land, and the functioning of a land market throughout the district. Each group of Lands Office employees was also asked to name several sub-counties which they believed represented their district and which contained at least some freehold and/or mailo land. Two to four of the sites listed by Lands Office staff were visited.

The central region has a substantially longer history of a developed land market than elsewhere in Uganda. Population density and commercialisation of agriculture were identified as two factors that may strongly influence the emergence and/or functioning of a market in rural land, and it was desired to select local interview sites to allow for investigating the effects of these two variables. Accordingly, in central region districts, each Lands Office group was asked to name several sub-counties representing varying degrees of these two variables. Thus, while in study districts outside Uganda's central region study sub-counties were selected on their representation of the district and their containing mailo and/or freehold land, in central region study districts, the additional criteria of population density and degree of agricultural commercialisation entered into the selection of study sub-counties.

In districts within the Central Region, each group of Lands Office employees was asked to name one sub-county corresponding to each of the following four categories:

1) high population density, high commercialisation of agriculture;
2) high population density, low commercialisation of agriculture;
3) low population density, high commercialisation of agriculture; and,
4) low population density, low commercialisation of agriculture.

It was later possible to calculate the actual population densities of the selected sub-counties from data provided by the 1991 Population and Housing Census. In most cases, Lands Office employees' relative ranking of their district's study sub-counties on the basis of population density was accurate. There is no way to verify the rankings of sub-counties according to their commercialisation of agriculture.

Both within and outside the central region, sub-counties identified by the Lands Office staff were usually confirmed with the district agricultural officer. Specific sites visited are listed by district in Appendix B.

### 3. RRA INTERVIEWS

In each district, RRA interviews were conducted at District Lands Office and each sub-county selected. A general questionnaire was used to guide the fairly unstructured group discussions, which centred on the types of land in the district or locality, peoples' access to land, and land prices and the functioning of the rural land market.

At the Lands Offices, following the completion of site selection, the same group of employees was interviewed. At the sub-county level, the research team attempted to assemble spontaneously a group of three to seven local people who were likely to be knowledgeable about the sub-county, its agriculture, and its land matters. Sub-county interviews often took place at *gombolola* headquarters, where interview groups were likely to include RC officials of various levels from around the sub-county. Otherwise, sub-county interviews were held in trading centres, and an effort was made to have at least one older resident present. Whether at the gombolola headquarters or at a trading centre, an attempt was made to interview a group of well-informed respondents. No explicit effort was made to interview women either alone or as part of the spontaneously assembled group of respondents. Lands Office staff were asked to answer questions from the point of view of the district as a whole, while local groups were asked to speak about their specific sub-county.

### 4. INTERVIEWS WITH MAILO OWNERS

Because of an expectation that former tenants will in most cases gain titles to tenanted mailo lands under the proposed bill, the more general RRA interviews described above were supplemented by interviews with mailo owners. The overall purpose in interviewing mailo owners was to collect information on actual sell-outs to former tenants. Specific goals in interviewing mailo owners included: (1) to find out, if possible, prices for actual examples of

tenants buying the owner's set of residual rights; (2) to discuss what factors influenced price in that specific type of transaction.

To find mailo owners who had sold their interest to their (former) tenants, registrars at the District Lands Offices in Masaka and Mukono Districts were asked to identify such owners, and the research team then went in search of the owners named. In the interviews, mailo owners were asked how they got their land, how much of it is tenanted, whether they have ever sold out to any of their (former) tenants and, if so, at what price and how they determined that price, and what things of value they would lose if they lost ownership of their tenanted land. Thirteen mailo owners were interviewed. Of them, eleven were willing to discuss their mailo land matters in a fair amount of detail.

Masaka and Mukono Districts were selected for mailo owner interviews for their probable ease in finding the desired type of land transaction (mailo tenants buying out the owners' interests). The fact that Masaka and Mukono are two of the most urban districts in the central region should induce caution in generalising from the specific prices noted.

## 5. LIMITS OF THE STUDY

RRA methodology is a system of informally interviewing groups of individuals by an iterative process. It is usually conducted when data are needed relatively quickly, preliminary information is desired to assist in the design of a more rigorous study, or when hard statistical data permitting inference are either not needed or not warranted. Because RRA is an iterative process, a research team's technique improves as it proceeds through the appraisal, using past learning to guide and focus future interviews.

Data collected through an RRA, as those gathered through any other collection method, can be of varying quality depending on the study team's preparation and circumspection and the use to which the data are put. While every effort was made to make this RRA as sound as possible, the information cannot be accepted as conclusive. First, study sites may or may not accurately represent each district. Second, data collected were not standardised to such an extent so as to permit broad comparisons. Thus, caution must be used in drawing general district-wide or region-wide conclusions. However, the information collected in this RRA will be useful in suggesting further answers to some of Uganda's upcoming compensation questions, and especially in informing policymakers about the functioning of the rural land market.

# V. FINDINGS

## A. ESTIMATED PERCENTAGES OF LAND TENURE TYPES

### 1. DISTRICTS OUTSIDE THE CENTRAL REGION

Table 1a (Appendix C) presents percentages of land in various tenure categories by district, as estimated by local respondents. Districts visited outside the central region were Rukungiri, Bushenyi, Mbarara, Kabale, Jinja, Iganga, Kamuli, and Mbale, all of which were suggested by district officers and district land office employees as possible locations for mailo and/or freehold land. Respondents in Jinja, Kamuli, and Iganga Districts, including district administrative officers, reported that there is neither freehold nor mailo land in those districts. Rukungiri, Bushenyi, Mbarara, Kabale, and Mbale Districts reported some freehold land. Rukungiri District respondents reported the highest percentage (65-80 percent) of freehold land. Other districts reporting the existence of freehold land gave estimates ranging from 20-25 percent. In none of the areas reporting freehold land did respondents estimate a substantial proportion of it to be tenanted.

Outside the central region, only Bushenyi and Mbarara Districts reported some mailo land. Respondents in those districts estimated that from five to 20 percent of the land there is, or was, under the mailo tenure system. In Bushenyi and Mbarara Districts, the mailo owners are absent, and it is the mailo tenants who are cultivating or otherwise using the land. All respondents in Mbarara and Bushenyi Districts estimated that all of the mailo land is occupied by mailo tenants, except for respondents at one sub-county in Bushenyi District which reported that 75 percent of mailo land was tenanted.

All districts outside the central region, except Kamuli, reported that some land is under leasehold tenure. However, in each of these districts respondents estimated that very little land is under leases. Iganga and Jinja District respondents estimated that, at most, one percent of their land has been leased, while the remaining districts estimated that from five to 20 percent of their land area fell into the leasehold tenure category. It does not appear that the leasing of land has become very widespread in these districts.

By far, the dominant form of tenure in the districts visited outside the central region is the customary tenancy (*kibanja*[3]) on what is now public land. Naturally, Rukungiri District, which reported the highest proportion of freehold land, also reported the lowest proportion of customary/public land, at 20-40 percent. The remaining districts all estimated that from 70-100 percent of their land is customary/public land.

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[3] *Kibanja* (of which *bibanja* is the plural) is a Baganda term for a tenant's landholding. Though it initially related to a tenant's holding on mailo land, it is now also popularly used to refer to the customary holdings on public land outside Buganda (ed.).

## 2. DISTRICTS WITHIN THE CENTRAL REGION

In addition to the land area percentages estimated by local respondents and displayed in Table 1b (Appendix C), Table 3 (Appendix E) presents the percent and area of each central region district that is under mailo land, as estimated from various published documents (see explanation and sources given in footnote to Table 3). At the Lands Offices in all but four sub-counties, respondents expressed that well over 50 percent of the area is private mailo land. In fact, under the 1900 Agreement, 9,011.5 square miles (equal to 581.5 square miles of official and 8,430 square miles of private mailo land), or approximately 51 percent, of Buganda's total of some 17,556 square miles were placed under the mailo system[4]. The by-district estimates presented in Table 3 reflect this fact, while those in Table 1b generally do not. However, since the central region sub-counties included in this study were chosen partly on the basis of their having a prominent amount of mailo land, it is logical that local respondents might indicate that greater than 50 percent of their area is mailo.

A substantial part of the area of the central region which is former mailo land appears to be occupied and cultivated by mailo tenants. Local respondents in all the sub-counties interviewed in the central region except Ntuusi (in Masaka District) reported that at least 60 percent of mailo land is tenanted. There are no documented or published data on the proportion of mailo land that is tenanted to use as a comparison.

While respondents at most central region sites reported that most of the land in their area is mailo, some did report significant amounts of other tenure types. Respondents in three of the four sub-counties visited in Mukono District estimated about half their area to be customary/public land. This is an expected result due to the tsetse infestation in the Bugerere area at the time of the mailo allotments. A number of sub-counties in other districts also reported a substantial amount of customary/public land. Additionally, most of the sub-counties in the study reported some freehold land, mostly church or mission land.

## 3. COMPENSATION: THE MAGNITUDE OF TENANTED LAND

The objective in estimating the percentage of land under different tenure and occupancy situations was to define a quantitative range of the area of land which would potentially involve compensation between a mailo or freehold landowner and a sitting mailo or freehold tenant under the drafted legislation. One important component of the total cost of implementing the proposed land legislation will be the cost of any compensation program. One important determinant of the total cost of compensation is the area of land which would enter the program. In the mailo areas, the land involved would be tenanted mailo land. Outside the mailo areas, the land involved would be freehold land occupied by tenants.

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[4] These figures are taken from Richards, Sturrock, and Fortt (1973), pps. 68-9. The total area of Buganda has been constructed by summing the areas given on those pages. The figures given by Mukwaya (1953) are comparable. Mukwaya states that the mailo lands comprised 9,003 square miles, or 52 percent, of Buganda's total area (excluding open waters) of 17,295 square miles.

The data collected in this RRA suggest that, outside the central region, compensation is not likely to be a wide-reaching issue or component of cost in the implementation of the proposed land tenure policy change in terms of the land area under the mailo tenure system. The picture differs considerably in the central region, due to that area's history of the mailo land tenure system. About half the area of the central region is mailo land. Furthermore, the mailo lands are, for the most part, tenanted. This implies that the area of land involving the compensation issue within Uganda's central region is sizeable. Therefore, the amount of compensation to be paid, depending on the unit cost of land, is potentially large, and the total cost of compensation and the distribution of that cost will need to be carefully considered and planned.

## B. INHERITANCE

Inheritance is still a very important means of access to land or bibanja for both men and women. Most men inherit at least a token amount of their father's land, although they might find it necessary to secure access to additional land or bibanja by other means. To a lesser extent, women also inherit land and bibanja, and they indirectly gain access to land and bibanja through inheritance since they have access to their husband's land or kibanja, at least part of which is likely to have been inherited.

Inheritance appears to remain the most common means of gaining access to land or bibanja in the districts visited outside the central region. Aside from a single site in each of Jinja and Mbale Districts (both of which reported that purchase was the primary means of access to land), respondents at all sites indicated that inheritance is the main way in which people acquire land and bibanja. At all sites in the central region, inheritance ranked first or second in importance as a means of gaining access to land and bibanja.

Inheritance frequently occurs in the form of a gift given while the father is still living. This practice might serve two functions. First, it permits young adults access to land or bibanja which they would otherwise have difficulty obtaining. Second, it reduces the incidence of inheritance disputes among heirs.

People at all sub-counties reported fairly large average family size. The average family has at least six or seven children, and often more. In general, all sons expect to inherit land or a kibanja. Most sub-counties said that "only sons inherit," and most expressed that all sons must inherit some of their father's land or kibanja. Daughters are expected to marry and gain access to land or bibanja through their husbands. In a few places, however, people said daughters sometimes do inherit land or bibanja. Daughters are also sometimes given part of their father's land or kibanja through gift or inheritance if their marriage fails and they return to the home in which they grew up.

### 1. INHERITANCE AND THE LAND MARKET

Inheritance may affect the land market in various competing ways. First, it can encourage or facilitate a land market by supplying land for sale. Respondents at several of the sub-counties visited reported that sometimes a son will inherit such a small piece of land that it is not sufficient to support him in agriculture. He will turn immediately to the land market to sell his

inheritance, using the money he gets from selling that land to purchase a larger kibanja elsewhere or to begin a business. Second, and also fuelling the land market, one of the most common reasons someone buys land is to expand his bequest to his children. Third, a father's traditional duty to bequeath land or bibanja to his sons may discourage the land market from functioning to transfer unused land to another owner who will bring it under cultivation. Fathers with extra land, rather than selling that land, thereby releasing it through the market to a potential user, retain it in order to bequeath it later to their children. The net effect on the land market of adherence to inheritance traditions is a subject for future research.

### 2. FRAGMENTATION AND SUBDIVISION

It is important to distinguish between fragmentation and subdivision of landholdings. Fragmentation means an individual's landholding consists of a number of spatially separate units of land rather than one contiguous piece. The level of fragmentation in an area is often discussed both in terms of the numbers of pieces of land an individual has as well as the size of these individual pieces. Fragmentation becomes a concern when the numbers of pieces rise and the size of pieces fall to the extent that land use is inefficient and production on individual pieces becomes sub-economic.

Subdivision means the division of a piece of land into two or more smaller pieces of land. Subdivision eventually leads to individual pieces of land becoming sub-economic. However, it does not necessarily increase the level of fragmentation. For example, if a man has a single piece of land and four sons, subdividing that land among his four sons does not lead to a fragmentation of land if each son receives a single piece of land. If, however, the father has four pieces of land and gives each son a portion of each, then the subdivision leads to greater fragmentation. If each son receives one of the four pieces, then fragmentation is reduced. Both fragmentation and subdivision can be the result of sale, exchange, inheritance, or some other type of land transfer.

Fragmentation, the data suggest, is not a problem in Uganda's central region. Respondents at most sites reported that the typical family's landholding comprises a single parcel. The largest number of parcels making up an average family's landholding was given as three, and that was stated at only two of the locations, one of which said that the younger generation would have only one parcel while older men might have two or three. Respondents at another of the sub-counties who said that two parcels usually comprise a household's landholding also said that one of the parcels (the "plot") is for the house only, while the other (the "kibanja") is for the family's cultivation. Additionally, families with multiple parcels for cultivation are often polygamous. It is not clear from this RRA what role, if any, the land market is playing in influencing fragmentation. The conclusion, though, is that fragmentation of land holdings is not a problem in the central region since in the majority of cases a family's cultivation is confined to one parcel, or at most two.

This finding is in keeping with the findings of previous authors on land tenure in Uganda. In a 1966-67 study conducted by Hougham (see chapters 5 and 6 of Richards, Sturrock, and Fortt, 1973), of the 74 rural landholdings included in the sample, only 38 percent comprised more than one parcel of land. Of those, three-quarters comprised two parcels, while the remaining quarter

comprised three parcels. Hougham even thought that the number of cases of fragmented landholdings in the sample was "increased by the inclusion of dairy farmers who tend to acquire land away from their main farms" (p. 131). Additionally, West's field observations suggested that fragmentation was not a significant problem in Buganda in the early 1970s. West believed that the land market was assisting in consolidating landholdings over time (pp. 161-2).

At all sub-counties visited, subdivision is either already a problem or will soon become one. Parcels, on average, are small, ranging from two to 15 acres, with the majority of sub-counties interviewed reporting two to three, or at most five acres as the size of the average kibanja. Family sizes tend to be large on average. The traditional attitude toward inheritance is that all children, or at least all sons, can rightfully expect to inherit some of their father's land or kibanja. If present inheritance patterns continue, the parcels will get even smaller with coming generations. Depending on the minimum size farm needed to support the average farm household, such subdivision, if present patterns continue, could have dire consequences for households two or three generations from now.

It is unknown whether and how inheritance practices will evolve in the future to deal with the subdivision problem. It appears that in some areas people are altering inheritance rules or practices to guard against further subdivision. In Miteete sub-county in Masaka District, for instance, a clause for joint ownership by heirs of inherited land may be inserted in a will in order to guard against further subdivision. The fact that in some areas a primary or sole heir to the father's land is named so that the land is not split up may also reflect an evolution in inheritance traditions designed to alleviate the subdivision problem. The market has a potentially important role to play in such an evolution. If only one son inherits land, the non-inheriting children must have somewhere to turn to gain access to land. The land market could be the mechanism by which such people acquire land.

## C. LAND MARKET

### 1. LAND MARKET ACTIVITY

Throughout the districts visited outside the central region, purchase of land or bibanja was usually listed just behind inheritance as the most common means of accessing land. In central region districts, purchase was usually ranked either first or second in importance for gaining access to land or bibanja.

In all areas, the land tenure type most commonly transacted through the market is the tenancy (kibanja). Outside the central region, the customary/public kibanja is the tenure type of land most commonly transacted. This could be merely because customary/public land is the predominant form of tenure outside the central region. Whatever the reason, its frequency of market transaction suggests that people associate a high level of tenure security with customary/public land.

Within the central region, transactions in land are overwhelmingly in mailo bibanja, according to information from almost all sub-counties[5]. People do not generally purchase ownership interests in tenanted mailo land. Since much of the central region is mailo land and most mailo land is tenanted, a substantial proportion of the area of the central region is ruled out of the market a priori. Few prospective buyers are interested in purchasing tenanted mailo land because it is not usable (due the encumbrance of the tenants) and because of potential ongoing conflicts with the mailo tenants. When people do purchase tenanted mailo land, it is most often with the intention of mortgaging the title for a bank loan, but even that is difficult because banks realise the riskiness of tenanted land. As a result, the price which potential buyers are willing to pay to purchase tenanted mailo land falls below the potential seller's reservation price for that land, and thus there are very few or no transactions of tenanted mailo land. Accordingly, a strong argument can be made that ownership rights in tenanted mailo land have a very low value.

Alternatively, tenanted mailo land can also appear to be of significantly greater value. There is genuine interest among mailo tenants to purchase mailo owners' residual interests and become owners themselves. Furthermore, tenants are often willing to pay substantial amounts of money to do so, which suggests that there may be a real value to the set of residual rights that a mailo owner retains in his/her tenanted land. These different perspectives—that tenanted mailo land has a low or a high value—have important implications for the amount of compensation to be paid to a mailo owner in the event that he/she does not receive title to tenanted land under the proposed legislation.

Nontenanted mailo land (including leasehold land) enters the land market much less often than do bibanja. However, this is not surprising given the generational nature of land use and transfer. For example, a landowner might acquire his/her land when he/she is 25 years old and hold it until bequeathing it at the age of 60. In the intervening years, people seem much more reluctant to part with bits of their nontenanted mailo land than with their bibanja and tenanted land. Every 35 years, according to this example, we would expect a given parcel of mailo land to transfer by some means. Looking cross-sectionally, as this study did, we would therefore expect only about three percent (1/35) of nontenanted mailo parcels to transfer in a given year. Thus, observing a thin market in nontenanted mailo land in this study is not surprising. The determination of the amount of nontenanted mailo land parcels changing hands annually is a subject for future research.

It is difficult to be certain of the actual level of land market activity in the rural areas. People at most sub-counties in the RRA said "there is buying and selling of land here" or "there is a land market here." Additionally, purchase was listed ahead of borrowing and renting in importance in providing access to land and bibanja in almost all sub-counties in the RRA, and even ahead of inheritance in about a third of the sub-counties. However, respondents at most sub-counties reported surprisingly few actual transactions during the previous year. Respondents at many sub-

[5] Observe in the price table (Appendix D) that numerous central region study sites reported an absence of sales or price information for land tenure categories other than mailo bibanja.

counties reported fewer than ten sales in the last year. It is hard to know what constitutes an active land market. "Active" may be a relative term, over time or over space.

It is clear, however, that land market activity is constrained by rural Ugandans' general lack of money. Even in areas where there may be willing sellers of land, often out of a need for cash, there is no effective demand for land. Thus, while there is potential for the land market to be fuelled from the supply side by sellers who need money, it is constrained on the demand side by a widespread lack of purchasing power.

In a few areas, a compounding constraint limits land market activity. In areas with especially extreme population pressure, including parts of Kabale, Mbale, Rakai, and Masaka Districts, landholdings are so subdivided and small that people are very reluctant to part with what little land they have. In Mbale District, people are additionally very opposed to the idea of selling land to any stranger, especially a member of a different clan, and even selling to a fellow clan member without the clan elders' consent is strictly forbidden. In these areas, the land market is essentially frozen by lack of supply, notwithstanding a possible underlying demand constraint from a lack of money.

Thus, the RRA's three main findings about the general level of land market activity are: (1) the land market is mostly in mailo bibanja in the central region and customary/public bibanja outside the central region, (2) the degree of land market activity in many areas may be low, and (3) land market may be substantially restricted by lack of effective demand in some areas, and by supply constraints in others.

## 2. BUYING AND SELLING

The main reason people sell their land or kibanja, according to respondents in this RRA, is problems which require cash. People sell off part of their land to raise money primarily for paying their children's school fees, paying for an illness, and raising money to start a business, usually a small shop. Other cash needs for which people sell part of their kibanja are to get money for developing their remaining land, for paying a son's bride price, for subsistence, for paying debts such as poll tax or legal fees (not necessarily land-related disputes), and for purchasing bikes, radios, and, occasionally, alcohol. Respondents at one site said that people sell their land or kibanja because of poverty.

The second most often mentioned reason to sell land or a kibanja was to rid oneself of inferior (drier, less fertile, or smaller) land in order to obtain better (more water, more fertile, or larger) land elsewhere. In these cases, people sell their entire holding and purchase a full new one within the same locality or even in a different district. Respondents in a number of sites in the central region mentioned that people are interested in moving to Singo to acquire land or bibanja. Outside the central region, selling all of one's land for emigration is most common in Mbarara and Bushenyi Districts, where many people have livestock for which they need larger areas of grazing land.

Other reasons also motivate owners to sell part of their land or kibanja. If a person's kibanja is too large for him/her to cultivate, particularly if he/she is older and has few or no children, he/she may sell the part he/she is unable to manage. A mailo owner, especially if a high proportion of his/her land is tenanted, might sell to the mailo tenants because he/she is unable to evict them, and he/she wants to realise at least some return from that land. Heirs often sell just after inheritance because the land or kibanja they inherited was too small to constitute a viable farm unit. Except in cases of heirs selling off small inheritances and people selling to "migrate", the trend is to sell part, rather than all, of one's land or kibanja.

The land market is desirable in that it allows transactions such as selling land to get money for a business or selling off land of unmanageable or subeconomic size. In these instances, the land market is playing an important role in the re-allocation of land. When someone sells his/her land or kibanja to raise money for another, not directly subsistence-related, endeavour, he/she has made an economic decision that his/her time, money, and energy bring the greatest return when invested in some activity other than farming that particular piece of land. When someone sells his/her surplus, unmanageable land or kibanja, the market is carrying out the transfer of land from a low-productivity user to a higher-productivity user, potentially allowing for land to be brought under more intensive agricultural production.

The land market may also permit some unwanted effects. If the very poor turn to the land market to sell progressively more and more of their only income-generating asset in order to pay school fees, taxes, and bride prices, then they may eventually become landless. The land market may permit the emergence of a landless group of families by allowing an easy and tempting short-term access to cash at the expense of property with long-term income potential.

The information gathered in this RRA does not indicate that landlessness is as yet a widespread problem. When first asked whether anyone in the sub-county lacks access to land, respondents at almost all sites replied that "there are so many landless people." Further questioning, however, revealed that most people have access to some land through some means (borrowing, for instance), and that the main group of landless people is young men who have just inherited a small piece and sold it or who have not yet inherited. If they can get money, they can find land or a kibanja to purchase. However, the youngest generation, along with the very poor who are subsisting on small holdings, may be considered either effectively or imminently landless. Although there is not as yet a large landless class in rural Uganda, the possibility of widespread landlessness is not a condition to ignore. Given current trends, the next generation may face severe problems in gaining access to land for farming.

People buy land or bibanja primarily to expand their area of cultivation. This was generally the only reason given for a land or kibanja purchase, by all respondents, at all sites outside the central region. Within the central region, the main reason, by far, for purchasing land or a kibanja is to expand one's landholdings, either to increase one's area of cultivation, or to increase the amount of land to bequeath to one's children. Common buyers are neighbours who are trying to expand their holdings without fragmenting them. Other reasons that central region respondents buy land or bibanja are to gain independence from one's parents, to take advantage

of an expected increase in land values, and to acquire land or a kibanja in a new place after having sold off one's inferior land or kibanja. Additionally, respondents in one sub-county reported that people sometimes purchase ownership rights in mailo land in order to obtain a title with which to apply for a loan from a bank or other formal lending institution.

Respondents reported wide variation in openness to outside buyers of land and bibanja. Respondents in Kabale, Jinja, Kamuli, and Mbale Districts expressed some reluctance to sell land to an outside buyer. People in Kabale said sellers often sell land or bibanja only to a friend or relative; people at Jinja still appear to be fairly closed to the idea of alienating "clan land" to non-clan members; and respondents in Mbale said that buyers are usually related to the seller and are always from the seller's village.

Outside Kabale, Jinja, Kamuli, and Mbale Districts, respondents reported that outsiders "are free to buy land" there, as long as they have money. Often an outsider will be required to reside in the area for some time before purchasing land so the community can determine that he/she is not a detriment to the society, or the buyer will be required to show letters of reference from the RCs in his/her former locale will be required to have a local intermediary who vouches for his/her integrity. Sometimes outsiders are not common buyers because bibanja are immediately bought by a seller's neighbours or others within the locality as soon as they become available for sale. In other cases, outsiders are preferred buyers because they are perceived as having greater need or demand for that land (since they are willing to move to a new place to get it, or are coming from a place where land is known to be scarce and expensive) and hence will pay a higher price for it. Overall, it appears that in most areas, particularly in the central region, outsiders are not overtly barred from participating in the land market. People generally sell out of cash need, and hence are willing to sell to anyone with money.

The degree of openness to outsiders buying land and bibanja seems to influence the way in which an intending seller will advertise. In some places, a seller will advertise by word of mouth among his friends and their networks. In the more closed places, a seller will either: (1) not advertise his/her land for sale, waiting instead for a prospective buyer to approach him/her and inquire; or, (2) advertise very privately among his/her closest relatives and neighbours.

Respondents at all sub-counties in the RRA said that a woman is free to buy land or a kibanja, at the same price as a male buyer, if she has money. The land market is not explicitly closed to women's participation, as inheritance customarily is. However, women may be kept from acquiring land and bibanja through the market, not through outright gender discrimination, but through lack of access to the money with which to make purchases. Yet lack of money also bars men from the market. The conclusion is that the land market does not reduce women's access to land below its current level, and it may even improve women's well-being by providing them a seemingly gender-blind means of gaining access to land or bibanja.

However, one major concern is that, under conversion to freehold ownership of land, a woman may not be able to title land in her own right, but only under her husband, brother, son, or father. Other concerns are related to a conversion of land tenure: Will registration fees be affordable to

women? Can a widow inherit her late husband's land? The methodology used in this study of the land market did not pursue the gender issues of the land market sufficiently to draw conclusions about women's access to land through the market. Unless an outspoken woman was present in the group interviewed at a given sub-county, only men were asked about women's access to land. The issue of women's access to land, particularly through the land market under freehold ownership, is clearly a topic for further study and, perhaps more importantly, for serious consideration in any design of land tenure policy.

### 3. A LAND MARKET TRANSACTION

The way in which a market transaction is carried out reveals the transactions costs to the parties involved in the transfer of property rights. Transactions costs include information, contracting, and enforcement costs. These costs may be monetary costs (such as surveying costs) or nonmonetary costs in terms of negotiations, time, or frustrations, which are borne in addition to the selling price in carrying out a transaction. Transactions costs may befall the buyer or the seller, or both, in a single transaction. Such costs increase the costs of carrying out a transaction relative to the benefits, and therefore can discourage market activity.

A land market transaction follows a fairly regular pattern in all districts in the study. Occasionally, a seller will seek a specific buyer, a neighbour for example, instead of advertising, and a buyer might inquire about available land if he/she has not heard of any for sale. However, sellers and buyers of land and bibanja typically find out about each other through an informal network of friends or other contacts. Often, this networking occurs through casual conversations held in some central location.

Publicity by sellers might be very secretive, purposely excluding selected parties, such as neighbours in favour of outside buyers who may pay a higher price for the land or kibanja. In some places, a seller advertises through a very close friend so that only other close friends have a chance of learning that land or a kibanja is for sale. Alternatively, publicity may be very openly spread by word of mouth through a wide network of friends, family, and acquaintances. Sometimes a seller will go to a chief or RC official and ask them to help publicise that he/she is interested in selling some land or a kibanja, or will post a public notice or roadside chit advertising the sale. Buyers usually approach their friends and families announcing their interest in purchasing a kibanja and asking whether their contacts know of anyone selling.

Publicity and inquiry about land and bibanja for sale constitute information costs. The greater the difficulty in finding a buyer or seller, the higher the transactions costs of transferring land through the market. It is rare that a formal real estate broker is involved in rural land transactions in Uganda. The closest thing to a broker is the intermediary or familiar figure without whom an outside buyer typically cannot enter into a land transaction. However, it is only in some areas that such an intermediary expects to be paid. If he/she does, that can increase the buyer's, and possibly the seller's, cost of conducting the transaction. Even in those areas, however, payment is usually a token amount rather than a fixed percentage of transaction price.

Often, some approval of a proposed sale is required before the transaction may occur. A need for consent to sell is another form of transactions cost. Acquiring consent to sell increases the cost, in terms of time and effort, of participating in the land market. It may also increase the monetary cost of transacting if the seller must make any purchases, such as a *kanzu* (traditional garment), for the person whose consent he/she seeks.

Most sites reported that a mailo tenant selling part or all of his/her kibanja must obtain the mailo owner's consent before going through with the sale. This consent requirement takes a variety of forms. In its most extreme form, the consent requirement gives the mailo owner a chance to screen the incoming mailo tenant, and empowers the mailo owner to deny permission for the sale because he disapproves of the prospective buyer. Additionally, in most cases, the mailo owner must receive a kanzu at the time of the mailo tenant's transferring ownership of the kibanja. The kanzu is paid for by the buyer, the seller, or both, and can therefore increase either or both parties' total cost of conducting the transaction.

At other sites, the mailo owner simply desires to be introduced to the incoming mailo tenant but has no power to prevent the transaction. Respondents at some sites said that while a mailo tenant may not sell a kibanja without the mailo owner's knowledge, the mailo owner's consent is not needed to conduct the sale. At still other sites, the consent requirement simply gives the mailo owner a chance to buy the kibanja, thereby recovering access to that land from the mailo tenant.

Respondents at some sites reported that although a mailo tenant in theory is not supposed to sell a kibanja without the mailo owner's consent, in practice mailo tenants often sell without consulting the mailo owner, and such sales are sanctioned and backed by the community. This may represent an evolution in the consent rule, which in time would decrease transactions costs of market transfers of mailo bibanja.

The consent requirement is not always confined to transactions in mailo bibanja. Sometimes a seller of land under any type of tenure must inform the RC officials so they can screen the proposed buyer. In some areas, an intending seller must meet with his neighbours to inform them of the new occupant of his land and to agree with them as to the boundaries of the land to be transferred in order to avoid later boundary disputes. While this increases the contracting costs to the seller, it decreases the subsequent enforcement costs to the new owner.

The strongest requirement for consent was found in Iganga District, where a seller must obtain the clan elders' permission in order to sell his land. It is common for clan elders to refuse their consent to the proposed sale because of fear that if people are given the freedom to sell there will be no land left for future generations of the clan. In some cases, a wife has come forward to object to her husband's selling (his) land and has succeeded in preventing the sale.

The requirement for consent also has weaker forms. In Mbale, someone with problems that would cause him/her to sell some land or kibanja will first report his/her cash need to the clan elders. If the elders have sufficient money, and if they deem the person sufficiently creditworthy, they will extend a loan to him/her, thereby saving the owner from having to sell land or kibanja.

Similarly, in Kamuli District, the clan elders consider an intending seller's reason for sale in deciding whether to grant consent. Often, the clan elders will help the person to meet his/her cash needs. If the elders are unable to assist the person, they will permit him/her to sell land or kibanja.

Still milder forms of this consent requirement appear in Jinja and Rukungiri Districts. In Jinja District, the clan's consent is not really required for someone to sell his/her land or kibanja, but the seller still must assemble the clan elders and convince them of his/her need to sell. Neither the intending seller's family nor the general public, including the clan elders, have the power to intervene in preventing a sale of land. In Rukungiri District, a seller must first see the RC officials, consult with his/her family, and settle on boundaries with his/her neighbours before the sale is transacted.

Once the buyer and seller have met, the next step in carrying out the land or kibanja transfer is to negotiate the price to be paid for the land. Respondents at all sites reported that land prices are highly influenced by the bargaining skills and the pressures (for example, cash need or desire for land) that different buyers and sellers bring to the bargaining table. However, those factors aside, the main three land-price determinants are the fertility of the land, the developments in the form of coffee and/or banana plantations on that land, and access to the main road or proximity to a trading centre or produce market. Other important factors include the size and location of the land, the land's access to schools, dispensaries, and hospitals, and water and electricity sources available to that land. Additionally, respondents at one site (Kangulumira in Mukono District) stated that undeveloped or vacant land would be desirable for establishing pineapples. Less important factors that were only mentioned a few times include the presence of bushes or trees around the land for conservation, the quality of the neighbourhood, and the existence of trees for charcoal burning.

Payments for land transactions are most often made in cash. Since one of the main reasons for selling land is cash need, cash is usually demanded as payment. Cash instalments are almost universally acceptable, especially for buyers who are familiar to the seller. Cash in full is more likely to be demanded as payment from an outside buyer.

There were no reports of any buyer ever financing a land purchase with a bank loan, and even borrowing money from family, friends, and neighbours may be fairly uncommon due to a general lack of surplus cash. No respondent mentioned the possibility of paying in kind until specifically asked about it. When asked, respondents said that payment in kind is occasionally possible and usually is made in cattle and sometimes bicycles. Respondents at several sites said that in-kind payment would not be accepted.

Sales of land and bibanja are finalised in virtually the same way at all sites visited. The buyer and seller sign a written agreement in the presence of RC officials, chiefs, friends, neighbours, and/or the mailo or freehold owner, if applicable. Payment is likely to have been made in advance of this gathering, and the selling price is usually kept secret from those present. For sales of ownership interest in mailo land, the buyer and seller might go to the Lands Office to

transfer the land title, but most often this is not done because it is expensive and time consuming, and the titles are not up-to-date anyway.

Respondents report that family members, while not generally empowered to bar a sale, usually feel bad or dislike it when a member of the family sells his/her land or kibanja. The family especially disapproves of sales of inherited land or bibanja and in some cases has the power to prevent its sale. However, if the kibanja (or land) was purchased, then the family must usually remain silent even if they do not like the idea of its being sold.

## D. PRICE FINDINGS

Table 2 (Appendix D) presents rural land prices for the central region in April, 1991, which were given by the lands office and sub-county respondents for the various tenure categories. All prices, unless otherwise indicated in the table, are expressed in shillings per acre. The table also presents, by sub-county, the average number of land parcels held by a resident family, the average total size of a resident family's land holdings in acres, and the number of land market transactions (including both bibanja and mailo) in the last year. It is important that the accompanying notes (presented directly following the table) be read along with the price table.

The price data presented in this report have important limitations. First, it is difficult to be sure of the accuracy of the land prices presented in the table. Rural residents may not be very oriented to thinking of land areas, particularly of bibanja, in terms of acres, so they may have had difficulty expressing land and bibanja prices per acre. The figures in the table, especially those for bibanja on customary and mailo land, may be lump sum prices for an average sized kibanja in a given sub-county. In some cases, respondents even stated that they either could not or would not express land prices in per acre terms, usually asserting that bibanja are not bought, sold, and paid for by the acre, but rather as a full, quite possibly multi-acre kibanja. Also, due to the low number of land sales, prices are generally estimates of price ranges given by people who have not recently purchased or sold any land. These prices may be largely hypothetical rather than based on actual happenings.

Second, significant spatial variation is observable in the land prices. Not surprisingly, land prices appear location-specific. The price of a given tenure category appears to differ greatly across sub-counties and districts. Land prices are most likely highly localised, meaning that policy implementation, in terms of assessing and carrying out compensation payments, will require the collection of price data at a very local level.

Third, in an attempt to standardise the price data somewhat, respondents were asked to give the prices of "developed" land. Respondents were first asked to describe developed land in their area. They always said that developed land (or bibanja) would be planted with coffee and/or bananas (that is, perennial crops). Sites that mentioned a permanent house were asked to report developed land prices without the house value included. Therefore, while it is understood that the concept of developed land might very well differ across land tenure categories within a given site, it is thought that the land prices collected in this study should be roughly comparable. Even so, readers should review the price data with caution.

Several expected relationships show in the table. In Rakai, Masaka, and Mubende Districts, the price of nontenanted mailo land given by the district lands office is considerably lower than the prices given by sub-county respondents. The same pattern holds for the price of a mailo kibanja in Masaka and Mubende Districts. This is not surprising, considering that in most land transactions that are actually registered at the lands office, price is understated for fear of the high stamp duty which was five percent of value. (Effective from July, 1991, with the reduction in the stamp duty from five to one percent of value, one might expect land prices expressed by lands office officials to more closely approach those stated by more localised respondents.)

A few expected relationships between the prices of different land tenure categories are also present. It is logical to expect relationships between tenure categories to vary according to a given tenure type's bundle of rights relative to the complete ownership bundle. In other words, all other things being equal, land under a tenure akin to freehold ownership would be expected to have a higher value than land possessing less tenure security or a lesser bundle of rights.

The price of a mailo kibanja is often roughly equal to that of a kibanja on customary/public land. A number of sites reported that "a kibanja is a kibanja" regardless of the tenure of the land it is on. This is not surprising given that the two types of bibanja have fairly equal degrees of security of tenure. In some places, customary bibanja may be perceived to be somewhat less secure than mailo bibanja. Additionally, customary bibanja may not always be considered saleable, while mailo bibanja generally are. All in all, it should be expected that the price of a customary kibanja should be equal to or less than a mailo kibanja, and the price data collected in this RRA are in line with that expectation.

Likewise, the price of a mailo kibanja should be less than that of nontenanted mailo land due to the differences in the bundle of rights each type of tenure comprises. A complete set of ownership rights accrues to mailo land, whereas a mailo tenancy lacks some of those rights, such as the right to mortgage the land or carry out selected permanent activities on it. In many of the sub-counties visited in this study, this relationship holds. However, in several study sub-counties, the price of a mailo kibanja exceeds that of nontenanted mailo land. One possible explanation for this is that bibanja prices may have been given in terms of a kibanja as a whole, while prices for nontenanted land may have been stated on a per acre basis. Additionally, it could be that recently there have been more sales of bibanja than of land in any of the other tenure categories, and that the current mailo kibanja price exceeds the much older price of mailo land.

The price at which a mailo tenant buys the owner's residual interest (the tenant thereby achieving the full set of ownership rights in that land) is typically the lowest in the price table. Not surprisingly, this price varies according to whether the tenant or owner initiates the transaction. The price, naturally, is higher if the tenant approaches the owner with the desire to purchase the land from the owner because the owner can resist selling, driving up the price somewhat. The often longstanding and usually positive relationship between the tenant and owner clearly influences prices in these sorts of transactions. In most cases, either the tenant or

the owner is in a position to extract some amount of surplus from the other, driving a wedge between actual selling price and the price that would be observed for that same bundle of rights in an open market were there many buyers and many sellers of equal bargaining positions. For this reason, these price data do not reflect pure market forces.

The price data collected in this study can help define formulae to use in later assessment of compensation amounts. If the proposed legislation is enacted, compensation will have to be paid to whoever does not receive freehold title to previously or currently tenanted land. It is desirable that compensation levies be based on some market-generated figures, as market prices are widely accepted as indicators of value. If a tenant is to be compensated, the appropriate baseline price will be that of a mailo kibanja, which expresses the value of a mailo tenancy, with considerations of both developments on land and access to land.

If a former owner is to be compensated, it might at first seem sensible that compensation be equated with the price at which a mailo tenant buys out an owner. However, this is not a market price, as it is subject to such non-market factors as buyer-seller relationships and bargaining power imbalances. As such, it cannot be trusted to reflect actual market value. Truly market-generated prices need to be used, and they are available. If the market price of a mailo kibanja is subtracted from the market price of nontenanted mailo land, the resulting figure should approximate the value of an owner's interest in his tenanted land. The data from this study suggest that this value is greater than zero but not extraordinarily large, reflecting a limited value to an owner's interest in his tenanted land.

## E. Main Points from Interviews with Mailo Owners

Almost all mailo owners interviewed said that at least 80 percent of their land is tenanted. This tenancy rate is very comparable to estimates given by respondents in the RRA interviews. While owners acknowledged the lack of economic return from their tenanted land, they all placed a high value on ownership per se, both for the prestige they gain as landowners (for example, their tenants must tip their hats to the mailo owner as they pass by his/her house) and for the inherent quality of being an owner. It is primarily this ownership interest that owners feel they would lose if title to their tenanted land transferred to tenants.

In addition, some mailo owners who obtained their land through purchase distinguish between themselves and mailo owners who inherited their land. When asked what they would lose if they lost ownership of their tenanted land, mailo owners who had purchased their land mentioned that they would lose the money they had paid out to acquire that land, even though it was tenanted. It appears that there might be a relationship between agricultural investment (or maintenance) and the means by which a mailo owner acquired land. Within the group of mailo owners interviewed, those who had purchased their land appeared more prosperous than those who had acquired their land through inheritance. However, mailo owners included in this research were neither selected in any statistically representative manner nor asked specifically about this link, so no concrete conclusion on this can be drawn without further research.

It seems that most tenant buy-outs occurred in the 1960s, and certainly predominated prior to enactment of the LRD in 1975. Since the LRD, mailo tenants have felt more secure in their tenancy, mainly because they perceive that the LRD weakened mailo owners. This increased security might lead mailo tenants to reduce their estimate of the net benefit from obtaining an ownership interest in the land and thereby reduce the incidence of buy-outs of mailo owners. Recently, because of depressed coffee prices and severe economic conditions, tenants may lack the money with which to purchase the owners' residual interests.

According to the mailo owners interviewed, not many factors play a significant role in determining the price a mailo tenant pays to purchase the ownership interest in his/her kibanja. According to the mailo owners interviewed, the most important factors, by far, are the market price of non-tenanted mailo land and the quality of the relationship between the owner and tenant. The mere existence of the relationship automatically reduces the price below the market price of nontenanted mailo land, with the amount of the decrease being strongly influenced by the quality of that relationship. Other factors are the tenant's economic standing (ability to pay), the mailo owner's cash need, and, in rare cases, the location of the land.

The prices that former tenants pay to purchase owners' residual interests are expressed predominantly per acre, rather than per kibanja. The few examples of actual recent prices that it was possible to collect during the interviews with mailo owners are generally of the same order of magnitude as those collected during the regular RRA interviews in sub-county areas.

# VI. ESTIMATING TOTAL COMPENSATION PAYMENTS

By making several assumptions based on the data and information collected in this study, it is possible to calculate a rough estimate of the range into which the total amount of compensation payments might fall. This figure will represent the total amount of money that would transfer between tenants and owners exclusive of any administrative costs involved. It will be necessary to make decisions about who should bear the costs of compensation, about what measures will be taken to supply the necessary funds, and about design and implementation of the compensation scheme.

It is important to distinguish between "total compensation payments or cost" and "cost to government of compensation." Total compensation payments refers to the total amount of money (or other assets) that would transfer if the drafted bill were implemented in areas of tenanted mailo land. The cost government incurs in the compensation scheme will not necessarily equal the total compensation to be paid. Cost to government will depend on the decision made about how to fund the compensation program.

Total compensation payments will equal the area of land for which compensation is claimed multiplied by a unit value of that land. Since the value of land for purposes of compensation varies according to which person—former owner or former tenant—loses rights in that land, the proportion of cases in which tenants and owners are allocated the freehold ownership interest is also important. Thus, there are three main determinants of the total amount of compensation payments, exclusive of administrative costs: the area of tenanted mailo land, the unit value of that land depending on the party to be compensated (owner versus tenant), and the proportion of situations in which title is received by former tenants versus former owners.

Data collected in this study demonstrate that rural land prices are highly localised and variable. Thus, it is not advisable to use overall region-wide average prices in calculating total compensation because this would obscure local price variations virtually completely. The most desirable calculation of the total amount of money that would change hands as payments of compensation would be derived by matching highly localised land values with their corresponding land areas and summing these localised costs to arrive at a total amount for the regional level. However, the local land market is characterised by very few transfers per year. Estimating an average value at very local levels is difficult in these thin markets.

Besides, while some localised price data are available from this RRA, there is no way to obtain equally localised land area estimates without establishing a system to collect data at the sub-county level on a regular basis. Therefore, the farthest it is possible to localise the total cost estimate here is the district level. Price data collected in the RRA can be used in a district-by-district way, but there are no data on the amount of mailo land by district. However, it is possible to derive estimated areas of mailo land in each district by combining information gleaned from various publications (see Table 3).

It is known that the total area of mailo land allocated is approximately 9,000 square miles. Generating district-level areas from this region-level area involved three steps. First, total land areas of the relevant districts were taken from Langland (1974) (refer to the second column of Table 3 [Appendix E]). Second, West's map delineating areas of mailo land (see fold-out map in West's *Land Policy in Buganda*) was used to estimate the percent of each district that is mailo land (refer to the third column of Table 3). Third, the figures in columns two and three (Table 3) were multiplied together to compute the estimated area of mailo land in each district (refer to the fourth column of Table 3). The total of the areas in the fourth column, 9,078 square miles, is comparable to published areas of mailo land (9,011.5 square miles and 9,003 square miles) which are cited respectively in Richards, Sturrock, and Fortt (1973) and Mukwaya (1953).

What are necessary for estimating compensation amounts, however, are not mailo land areas but areas of tenanted mailo land. Because there exist no published data on the incidence or area of mailo tenancy, the amount of mailo land which is tenanted was derived using the RRA respondents' estimates, which are presented in the third column of Table 1b. The estimated tenancy percentage listed for each district in the fifth column of Table 3 is an average of the four or five estimates given in the third column of Table 1b. These average percentage figures are then used to calculate the estimated area of mailo land contained within each district. Estimates of tenanted mailo land areas are listed in the final column of Table 3.

The process of combining the estimated district-level areas of tenanted mailo land with land values data to arrive at an estimate of total compensation payments is presented in Table 4 (Appendix F). The first column of the table simply re-lists the areas of tenanted mailo land listed in the last column of Table 3. The second, third, and fourth columns of the table contain RRA price data from Table 2. The prices presented in Table 4, however, provide a simple range of the prices for each district listed in Table 2, with only prices from areas with five or more sales within the past year being considered.

The total compensation payments that would flow between former mailo tenants and owners were calculated by multiplying columns two through four by column one, and are listed in the last three columns of Table 4. Column totals indicate the range into which the total amount of compensation payments is likely to fall. Each column assumes that compensation would flow to either former owners or former tenants in all cases. Thus, the total in the fifth column (0-976 billion shillings) is the range of total compensation payments to the former owners if the titles to tenanted mailo lands are received by former tenants in all cases. The sixth column represents the same thing as the fifth column but with a different value applied to a mailo owner's residual interest in tenanted land. The last column in the table shows the total compensation payments (343-1098 billion shillings) that may flow to former tenants if former owners receive land titles in all cases.

It is also possible to incorporate into the calculation of total compensation payments an additional assumption about the relative proportions of cases in which former owners and former tenants will receive land titles. It is anticipated that most tenants will be interested in gaining ownership of their land if they are financially able to do so. The drafted bill gives tenants the

first priority to receive title. Therefore, in the vast majority of the cases of transfer of land rights, it is expected to be the tenant who derives these rights. For illustrative purposes it is assumed that ownership rights to 90 percent of the tenanted mailo land will flow to tenants while rights to 10 percent of such land will revert to owners.

A calculation can then be made of total compensation payments, again utilising the price data presented in Table 2. Table 5 (Appendix G) summarises these calculations. The first column presents the area of tenanted mailo land. The second and third columns show the areas of land which will flow to tenants and owners, respectively. The fourth and fifth columns present price data taken directly from Table 4. The sixth column lists the amount of compensation to be paid to mailo owners for the 90 percent of the tenanted mailo land which would flow to former tenants, while the seventh column lists the amount of compensation to be paid to tenants for the 10 percent of tenanted mailo land being retained by mailo owners. Total compensation payments are listed in the eighth column.

# VII. POLICY CONSIDERATIONS

As discussed in section II of this report, the drafted Tenure and Control of Land Bill, 1990, allows for an eventual conversion to freehold land tenure throughout Uganda. In the former mailo areas, such a conversion will raise unique issues relating to the reallocation of titles to tenanted mailo lands and, specifically, to compensation. The procedure laid out in the drafted bill substantially strengthens tenants' positions by giving them first opportunity (ahead of owners and which owners must honour) to acquire title to the land areas they currently occupy as tenants. Should a tenant decide to acquire title, the former owner will be entitled to compensation for his/her lost interest. In the event that a tenant chooses not to acquire the title to the land, the option then passes to the mailo owner. If the owner chooses to acquire title, the mailo tenant is entitled to compensation. If neither the tenant nor the owner opts to acquire title to the land, then the opportunity passes to any third party, with tenants and owners being compensated for their lost interests.

Several important considerations arise relating to implementation of the proposed policy. The key issues are:

1) How to implement a titling and registration process?
2) Can government set compensation amounts?
3) Who should bear the costs of compensation?
4) How can compensation be funded?

Clearly, these policy questions are interrelated. A decision on one question may influence the relevant options or the important issues in considering another question. For example, the administrative method of titling chosen will affect the timing with which various costs are incurred. This is also the case for decisions about who should pay for compensation payments. These decisions will therefore influence the magnitude of total compensation expense at any given point in time, pushing compensation costs into future years (making compensation cheaper in present value terms), lumping them to the present (where they are felt more heavily), or spreading them evenly over time. If the policy is implemented fully and rapidly after its enactment, and if all payment occurs immediately, then a larger amount of funds can be expected to be needed immediately for payment of compensation. Additionally, the decision about who should shoulder the cost of compensation payments will necessarily eliminate some choices from the available funding alternatives for the compensation program. Other interrelations exist among the issues and will become more apparent as the discussion proceeds. Thus, the questions must be answered together rather than independently, even though the discussion here must necessarily treat each question in sequence.

## A. IMPLEMENTING TITLING AND REGISTRATION

In areas outside the central region of Uganda, very little land is now titled, surveyed, or registered. In the central region, the mailo land registries are out-of-date. In all parts of the country, a relevant question is how to proceed with the implementation of freehold tenure. The options are: (1) systematic, comprehensive conversion of all land in an area at the same time, beginning as soon as possible; (2) gradual conversion, upon demand of individuals (or corporate groups); and, (3) initially gradual conversion until demand levels make systematic conversion more cost effective. In the central region, registration and conversion to freehold tenure are inseparable from the compensation issue.

### 1. SYSTEMATIC AND COMPREHENSIVE REGISTRATION THROUGH ADJUDICATION

The drafted Tenure and Control of Land Bill, 1990, provides for the formation of a Land Adjudication Committee in each sub-county. It also empowers the Minister of Lands to declare a given area to be a Land Adjudication Area. The proposed bill states that in such an area, the Land Adjudication Committee would systematically and comprehensively conduct the land titling process for land in that area.

The primary advantage of a systematic registration scheme is the degree of control the state would have over its progress. It would be possible to register all land in desired areas at specified times. Government could opt to adjudicate areas of Uganda where the need for up-to-date land titles and a land registry is most pressing, such as areas with a high incidence of land disputes or where land values are highest. Additionally, the land registry for a given area would be completely updated all at once.

However, the main drawback of systematic registration is its very high administrative cost. In fact, it is questionable whether existing administrative structures have the capacity in staffing and equipment to carry out this option. Systematic and comprehensive registration would be extremely expensive and might be administratively impossible without large investments in personnel, facilities, and equipment.

Perhaps most important, the cost of systematic registration would be high relative to the benefits. The benefit of registration accrues to the individual in the form of increased tenure security, increased land value, and, perhaps an enhanced ability to transfer or mortgage the property. Any resulting increase in agricultural investment or productivity, or reduction in the incidence of land disputes, will generate national-level benefits. The major national-level benefits therefore occur through aggregation of benefits that accrue first at the individual level.

If all land in an area is registered, it is likely that, at least for some parcels considered at the national level, the benefit will be less than the cost. This could occur because the landholder does not wish to expand or intensify his agricultural operations because of age, availability or cost of labour, or other reasons that are economically rational for that individual. Aggregated to the national level, much spending will be targeted at registration of parcels for which there is no immediate benefit. If government had excess reserves of foreign exchange or a large operating

budget surplus, the investment in low-benefit registration might be more easily justified than when government's budget is in deficit and the opportunity cost of capital is quite high.

Systematic comprehensive registration of land would present an additional obstacle in the areas in the central region where tenanted land involves the issue of compensation. If government intervenes by legislating that at a given time, either the tenant or the owner must be awarded title, government must be prepared to monitor the assessment of compensation. That means that, at a minimum, government must be prepared with localised rural land price data in order to ensure that appropriate compensation payments occur during the mandated conversion to freehold. This would add to the costs (both monetary and logistical) of implementing the proposed bill. If government directly or indirectly provides compensation, the costs would be even more dramatically increased.

### 2. GRADUAL REGISTRATION COINCIDENT WITH LAND MARKET ACTIVITY, AND/OR GRADUAL CONVERSION UPON DEMAND OF INDIVIDUALS (OR CORPORATE GROUPS)

The land market offers a mechanism to achieve almost the same benefits as more systematic registration, but at a potentially lower cost. Registration could proceed only at the time of a transaction in land, and only for landowners who specifically request registration. A "transaction" might be defined as a negotiated transfer of ownership interest between a mailo owner and tenant, a purchase of all rights in a parcel under customary (or any other) tenure, or any of several other possible types of actions. Most likely, land registration would proceed in a spatially scattered manner, although many parcels in an area with high demand might be registered at about the same time, so that pockets of registered freehold might naturally evolve around the country.

The primary advantage of this option is its lower cost to government. People would be prompted to register their land when they have a need for secure tenure but only when the benefits of gaining title outweigh the costs to them. Outside the central region, these costs would include the costs of the registration process, but in the central region the costs to the individual might also include all or part of the costs of compensation, depending on policy adopted on sources of compensation funds. Registration would be more likely to occur on a wider scale in areas where land values and productivity in agriculture are sufficiently high to make it valuable to people to title their land or to seek to buy titled land. Costs to government would be significantly reduced from the high level associated with the systematic registration option, and would be much more in balance with aggregate benefits. Additionally, individuals would retain the freedom to choose to register a parcel or property interest they have purchased.

Furthermore, relying on the land market to guide the process of land registration in areas of tenanted mailo land would provide a built-in means of collecting data to guide land valuation. This would be especially useful in areas of tenanted mailo land where land values may need to be estimated for determining compensation levels in cases where voluntary negotiation fails. The data would also be useful in the longer run in establishing a national land values data bank.

### 3. Initially Gradual Conversion Followed by Systematic Conversion

Gradual conversion provides the most cost effective method of conversion when few landholdings are being converted. As presented above, the majority of costs are borne by the landholder with minimal administrative costs borne by government.

However, as the number of conversions in a given area increases, the total administrative cost of bringing holdings onto the cadastre increases substantially. At a certain point in the process it becomes more cost effective to declare an area an adjudication area and proceed with a systematic registration program.

This option would allow the government to take advantage of the benefits of both programs. By delaying the introduction of a policy of systematic land registration the government forces the costs of land registration to be borne by the landholder and at the same time gives itself the time to build up the administrative capacity to manage a systematic registration program. It could also introduce an education program about land registration which could include a program for the demarcation of boundaries which would make a later systematic registration program more efficient.

## B. Government's Role in Setting Compensation Amounts

Regardless of whether registration and titling are systematic and comprehensive or gradual and sporadic, government can set the amount of compensation to be paid, or can leave that determination to private negotiation between the rights-buyer and rights-seller. Any governmental involvement in setting compensation amounts would require the government to establish a procedure for estimating the value of the rights transferred when, for example, a former mailo tenant buys the residual rights of the former mailo owner.

This study illustrates that it is possible to gather rural land price data at the local level, which could be used in the assessment of compensation amounts. However, this research also found the rural land market in the central region to be: (1) "thin," with relatively few sales occurring in any study sub-county in a one-year period of time; (2) primarily in mailo bibanja; and, (3) constrained by a general lack of cash with which to conduct land transactions.

This study also illustrates that the RRA methodology for collecting land price data yields a wide range in land prices for transactions within a given tenure category. In fact, land values do vary widely due to the unique characteristics of each land parcel transferred and unique characteristics of the buyer-seller interaction. The goal in assessing compensation amounts is to capture all the existing uniquenesses inherent in a transaction in order to determine precisely the value of a given set of rights in a land parcel to a specific individual.

Clearly, the RRA methodology carried out at the sub-county level did not and cannot give precise case-by-case compensation amounts. Data collected in this fashion could be used to establish some very general rule of thumb for determining compensation amounts. Examples would be setting a minimum appropriate amount of compensation or calculating some average

amount of compensation. However, then all cases would be driven to the formulaic amount, removing the case-specific precision desired and reflected in the land market by the wide ranges in land prices.

Furthermore, the land market might not yield reliable or mutually consistent indicators of land values. In some locations in this study, the prices between tenure categories did not vary in the expected direction. For example, in some locations the price of a mailo tenancy exceeded that of nontenanted mailo land in the past year. It has been theorised (section IIIB) that if a former tenant receives title to land, the former owner should be compensated by the constructed value imputed by subtracting the market price of a mailo kibanja from that of nontenanted mailo land. This value should never be negative since a negative value would imply that a former tenant should be compensated for receiving title—a clearly preposterous conclusion. However, as can be seen in Table 4, in three of the central region districts, the lower bound on the range of "mailo land price less mailo kibanja price" is negative. These unexpected findings could arise from inaccurate information being reported, from an unusual pattern in the land market, or from normal variations in transaction prices due to differences in bargaining power or the personal relationship between buyer and seller. In any case, this study demonstrates the dangers that government would face in using RRA methodology to collect data about rural land values that are used to make compensation decisions.

As an alternative, government might pursue a different methodology for collecting data. One option would be to require that the details of all land transactions be accurately reported to some appointed person or place. This process would come closer to capturing the uniquenesses inherent in the values of specific parcels to specific individuals and would equip government with some baseline data on which to base statements about appropriate compensation amounts in cases in which negotiations between mailo owners and mailo tenants fail. However, this has not worked in the past, as indicated by the extremely out-of-date land registries and by suspicions that land prices reported to lands offices are understated. Another option would be to organise price data collection at the RC-I level where land transactions are formalised. This might work and could potentially be combined with a demarcation process. Yet the cost of establishing this system might be high, and even the most accurate and complete data on land values might show the same type of variation found in this study, due to the thinness of the rural market and the price variation caused by individual buyer and seller characteristics. The use of the data for compensation might still pose problems.

## C. Distribution of Compensation Costs

The drafted Tenure and Control of Land Bill, 1990, provides that, in areas where tenants occupy land previously under freehold or mailo tenure, compensation should be paid to the owner (if the tenant receives full freehold interest), to the tenant (if the owner receives full freehold interest), or to both (if the freehold interest in the land passes to a third party). The options for compensation are: (1) full compensation paid by government; (2) full compensation paid by the party receiving the rights in the land; or, (3) combinations of payments by both government and the rights-receiver. The option of a partial compensation to the individual who transfers the

rights, paid by any combination of government and rights-receiver, so that the costs are divided three ways, is effectively foreclosed by the proposed bill.

Full compensation paid by government could be justified by the argument that the policy is in the interest of national economic development, which would benefit all Ugandans, so that all Ugandans should absorb the cost through government. Clarification of rights in tenanted mailo land will contribute to increased tenure security which will stimulate some additional investment in agricultural enterprises since the market is the primary mechanism through which land is transferred to high-productivity farm households, and converting mailo to freehold will ensure that the land market can function unimpeded by title uncertainty. The anticipated productivity effects of converting a mailo tenancy to freehold are positive, with both the direct and indirect impact on national income also expected to be positive.

However, it is also true that conversion to freehold will create benefits for those individuals receiving title. Since the drafted bill correctly anticipates that in most cases the mailo tenant will seek to acquire the interest of the mailo owner, the net effect of government funding of full compensation would be a transfer of resources to mailo tenants from those contributing to the general revenue of government. The net effect is also a transfer of resources from areas with no tenanted mailo or freehold to areas in which such lands are located. The decision of whether such a redistribution would be fair must be made by government—the question of fairness cannot be answered by economics or science.

General economic principles could be used to argue that those who receive benefits should pay the costs, so that compensation to the individual who forfeits his rights in the land should be provided by the individual who receives those rights. Thus, the second major option for distributing the costs of compensation to the rights-receiver is that the individual receiving the rights would pay the compensation to the individual transferring the rights.

Several arguments support this option. First, payment of compensation by the rights-receiver ensures that the benefits of conversion to freehold outweigh the costs. A single individual weighs both the benefits and the costs and makes an informed choice given the specific physical characteristics of the land and the specific economic characteristics of the individual's household or general situation. A rational individual will not choose to convert to freehold tenure until his/her benefits from doing so are at least as great as his/her costs. (Note that this excludes governmental administrative costs. Including the full cost of registration would drive a wedge between individual benefit and cost, so that individual costs plus government administrative costs would equal individual benefit at the margin.) If government pays all compensation, the individual receiving the rights has no incentive to consider whether the benefits to him/her exceed the costs to the rights-giver, because the costs are paid by a third party (government), and conversion is therefore essentially cost-free to the individual rights-receiver. An inefficient use of governmental resources would result because many transfers would occur where the total benefit, although positive, is less than the cost to the rights-giver, even assuming government administrative costs were zero. Positive administrative costs simply increase the degree to which costs would exceed benefits.

Second, full compensation payment by government will require that government construct reasonably accurate estimates of the value of various types of interests in land. Relying on individual estimates of value would simply encourage the rights-giver and the rights-receiver to collude, establishing an artificially high value for the transferred land rights, since government will pay the cost. Even requiring the rights-receiver to pay a share of the cost does not solve the problem because both parties can inflate the value of the transferred rights to the point that the rights-giver can pay the cost share of the rights-receiver and still enjoy excessive compensation. Therefore, if government pays compensation costs, government would have little option but to establish a procedure for estimating the value of mailo owner interests transferred to tenants, or mailo tenant interests transferred to owners. This could be administratively difficult and costly.

Third, an additional major problem with government payment of full compensation is the large amount of funds that potentially could be required. Total compensation requirements are difficult to estimate because of the thin markets and wide variation in prices due to differences in negotiating skills and social relationships between buyers and sellers. Based on the assumption that total compensation requirements are best reflected by current transactions as tenants buy out mailo owners' interests in land, the aggregate compensation would be USh 105 to 314 billion, in April, 1990 prices (see Table 4, Appendix F). However, this level of government compensation could be paid over several years, unless government decided to implement title registration both systematically and immediately, an option that is probably not administratively feasible.

Assuming a gradual transition to freehold according to land market activity, the total amount of compensation funds required on an annual basis would be greatly reduced. Currently, in most sub-counties, less than one percent of the mailo land is sold each year. Assuming that this transaction rate triples (to three percent per year) with announcement of a compensation program, total annual compensation would range from USh 3.1 to 9.4 billion per year (see Table 4, column 6). For each percentage increase in the rate of conversion of mailo to freehold through tenant purchase of owner interests, roughly USh 1.0 to 3.1 billion will be required in total compensation. Thus, if 10 percent of the tenants purchased the owners' interests in the first year, approximately USh 10 to 31 billion would be required for total compensation.

Government must decide if this use of scarce public sector revenues should take highest priority. Alternative funding schemes, such as borrowing, could reduce the annual cost to government. The costs to government would be further reduced if those receiving new rights in land pay the cost of compensation. In this case, government costs would be limited to administrative costs and any annual interest or principle costs of the debt that are not covered by annual payments from those receiving freehold interests in land.

## D. Options for Funding Compensation

Several alternatives for the funding of compensation payments can be identified. Different approaches may change the timing, amount, and distribution of benefits and, especially, costs. In areas of tenanted mailo/freehold lands, some options are more likely to facilitate faster implementation of the proposed bill than others.

### 1. DIRECT CASH PAYMENT

This option is the simplest. Cash payment would flow directly from one party (the rights-receiver) to the other (the rights-giver). Payments could be made in instalments if that were mutually agreeable to the parties involved. Since this research has found that rural farmers have little money available for land purchases, it would probably be necessary to provide them with cash funding in order for compensation to be paid in a lump sum. Government could provide the funds to rights-receivers for compensation payments to rights-givers. Such funds could come either from external grants or loans or from the internal source of a bond issue or commercial bank loan and could take the form of either grants or loans. Who ultimately bears the cost of compensation (private individuals or government) would depend on whether government mandated repayment of the compensation funds by the individual recipients (the rights-receivers). The initial cost to government might be high, but could be financed with borrowing. If the beneficiaries pay the compensation costs, annual government expenditures would be greatly reduced. This option would require administrative overview, either to establish compensation amounts if government pays, or to monitor and receive repayments of loans if the beneficiaries pay.

### 2. ESTABLISH A CREDIT SCHEME

Three different types of credit schemes are possible. First, rights-buyers could be extended credit by commercial lending institutions. Second, government could facilitate private-sector credit by establishing a loan guarantee program. Third, government could directly provide credit to those purchasing rights in land (either tenants or owners).

First, it is possible that a low-interest loan program could be arranged with commercial banks so that a rights-receiver could borrow in order to pay compensation. The rights-receiver would borrow from a bank to pay compensation in full to the rights-giver at the time of the transfer of rights. The responsibility for repaying the loan would rest entirely and directly on each individual borrower. The major advantage of this option is the minimal cost to government—the costs are borne by the individuals who benefit, and government is removed from the process altogether, thereby avoiding both compensation and some administrative costs. The program might strengthen the commercial sector and introduce mortgage concepts to the new freehold landowners. The major disadvantage is that the program may entail too much risk to interest commercial lenders. Suitable forms of collateral for these loans would have to be identified. If the land itself were to be used, it would necessitate registration of title to that land.

Second, government could provide loan guarantees to private lenders who would lend to rights-receivers, or could directly provide the credit itself. Government guarantees of privately-provided loans would greatly lower the cost to government of a credit program. The costs to government would be repayment of loans on which the rights-receiver defaults, but in this case the government could receive possession of the land which could be resold to recapture the costs of the loan. Alternatively, government could allow the rights-receiver to stay on the property but assume the role of the collector of the loan, an option that would entail significantly higher administrative costs.

Third, government could provide credit directly to the purchaser of rights, such as a mailo tenant. Assuming that government borrows to finance the loan scheme, government could use its ability to borrow at low interest to provide concessional loans to rights-receivers for compensation. The repayment could be amortised over a sufficiently long period to effectively reduce the annual cost to the rights-receiver. Payments from borrowers to government should offset the annual cost of interest and principal. A gradual transition to freehold will further reduce the costs. The costs of administration could be recaptured through a higher interest rate to borrowers, but government would incur the administrative costs from the beginning, while repayment would be spread over several years. Thus, the cost of administration of the scheme would be paid by government, at least in the early years.

### 3. COMPENSATION IN BONDS REDEEMABLE AT SOME FUTURE DATE, CARRYING COUPONS FOR ANNUAL INTEREST

The state could compensate rights-givers in the form of government-issued interest-paying bonds. Each rights-giver would receive bonds whose face values total the amount of compensation deemed appropriate in his/her case. These bonds would be redeemable at some future date. This option would reduce the annual payment required from government and would allow the compensation to be amortised over time. Rights-givers who desire immediate compensation in full could sell the bonds on the private market. This alternative is feasible only if government strictly honours the payment schedule stipulated on the bonds. Otherwise the value of the compensation is greatly reduced or eliminated. If government requires that the beneficiaries repay the compensation amount to government then, in effect, government assumes the role of the commercial bank in the previous option, with the additional feature of spreading the payment over time.

### 4. COMPENSATION IN STOCKS IN ENTERPRISES

The value of compensation is paid in the form of stock certificates in state owned enterprises. These enterprises could be government-owned, such as a utility or a basic industry, or could be new industrial or commercial enterprises financed by government or financed by international donor agencies. The state share in the equity of a given company could be calculated, and stock certificate values in relation to that equity could be issued and distributed on the basis of the level of compensation previously determined. Rights-givers could be given ownership shares in economic enterprises. They would then have a strong incentive to insure that these enterprises were successful because the amount of their compensation would depend on the success of the enterprise. A similar program was extremely successful in stimulating economic development in Taiwan. This divestiture would serve as a mechanism to privatise state industries. If the beneficiaries do not pay government, the net effect is a transfer of resources from government to the rights-receivers, probably most often mailo tenants, with mailo owners losing rights in land but gaining rights to the income produced by the industry, if any. Rights-givers would have a strong incentive to demand efficient management of the industry, but in the end would receive no compensation if the industry proved unprofitable. If rights-receivers repay government, then the net effect is that government receives revenue but gives up industries, rights-receivers receive freehold but make payments, and rights-givers receive rights to industrial income but lose land rights.

## 5. COMPENSATION THROUGH LAND EXCHANGE

In some cases it may be possible for the rights-receiver to compensate the rights-giver by transferring some of the land back to the rights-giver. For example, a mailo tenant might compensate the mailo owner by transferring a small part of his kibanja area to the owner in exchange for full freehold rights over the remainder of the parcel. In this scenario both parties would incur some cost to receive a greater net benefit. The mailo tenant would give up a portion of land to secure full freehold title to the remainder of his holding; the mailo owner would lose title to some of his land in exchange for tenant-free land on the remainder of his holding. Although these options might not be applicable in all areas there may well be selected local regions in which the land redistribution and reorganisation would be a viable option for payment of compensation.

This type of in-kind compensation might be of little interest to an owner if: (1) the parcel received from the tenant would be too small for any effective use; or (2) the parcels received from many tenants would be both small and scattered. However, as noted earlier, given the amount of mailo land occupied by tenants, the total amount of tenant free land retained by the mailo owner could be significant. If the mailo owner's holding is quite large, it may be possible to redistribute land among tenants so that the owner would receive a contiguous parcel that would be large enough for agricultural operations. Or, an entire village may be able to organise a land redistribution scheme.

The mailo owner will then be left with tenant-free agricultural land. If the mailo owner does not wish to engage in agriculture he would have tenant-free land which appears to be readily marketable. If he wishes to engage in agriculture or needs cash for other investment activities tenant free land would be acceptable to lending institutions as collateral for loans.

# VIII. SUMMARY AND POLICY CONCLUSIONS

The drafted Tenure and Control of Land Bill, 1990, would provide the structure for a transition to a single land tenure policy for the nation. The drafted bill recognises the need to protect the rights to land of those people who are dependent on the land for their livelihood. The drafted bill also recognises the need for flexibility and clarity of land rights, so that land tenure can evolve as the economy changes and commercially-oriented farm households need access to more land or increased certainty of their rights to the income from fixed-place investments in land. The main issues not resolved in the drafted bill are: (1) how to implement the conversion to freehold (including titling and registration); (2) who should pay for compensation to those who lose rights in land; and, (3) how the compensation program could be funded.

Recognising that each of these issues has many possible solutions, and that each solution has its own advantages and disadvantages, the results of this study suggest the following policy conclusions:

## A. TITLING AND REGISTRATION SHOULD BE GRADUAL

Several arguments support gradual land registration. First, land sales are important to register because they are most likely to result in disputes, because the new owner is most in need of registration to provide security of tenure, and because the land market is critical in enabling progressive farmers to obtain the quantity of land they need to develop agriculture. Second, relatively few parcels are exchanged through the land market in a given year. If a parcel is not sold, an up-to-date land record is of much lower value. Third, many land transfers take place through inheritance. The rules for succession are well-established in customary law and practice. Disputes are usually handled through the family so that there is little use for a land register in determining who has rights in that land. Registering successions is important in keeping an up-to-date registry but is not generally critical in providing security of tenure or resolving disputes. These arguments hold in the central region as mailo or customary land is converted to freehold, and in all other areas of the nation as customary land is converted to freehold through titling and registration.

## B. THE COSTS OF COMPENSATION SHOULD BE BORNE BY THE BENEFICIARIES

Several strong arguments support this conclusion. First, requiring the rights-receiver to compensate the rights-giver will ensure that the conversion to freehold will occur only if the benefits to the rights-receiver outweigh the costs to the rights-giver. If government pays the costs of compensation, the conversion is "free" to the rights-receiver and will be demanded by many, even though the benefits would be small and far outweighed by the costs, thus increasing the possibility of the occurrence of inefficient transfers of rights.

Second, cases in which tenants and owners arrive at a mutually agreeable settlement without needing state intervention will be virtually costless to government except for the administrative costs of registering titles. In the central region, it appears that both mailo owners and mailo tenants are eager to settle the deadlock that has existed between them for so long. Therefore, it is

expected that mailo tenants opting to acquire title to the lands they occupy will not meet with strong resistance from mailo owners, especially when adequate compensation is offered. In most cases, tenants and owners should be encouraged to negotiate to reach a mutually agreeable settlement where the tenant would acquire the ownership interest with a payment schedule that is both manageable to the tenant and acceptable to the owner, thereby eliminating the need for government intervention and thus reducing the administrative cost to government.

Third, the cost to government will be greatly reduced if beneficiaries pay the compensation costs. Fourth, if government decided to pay the full costs of compensation, government would be forced to establish a system to obtain accurate estimates of the value of various interests in land, a difficult and expensive undertaking.

## C. CREDIT SHOULD BE ARRANGED FOR COMPENSATION

Conversion to freehold can proceed in areas outside the central region, and for customary land within the central region, with government administration of the titling and registration process. However, for mailo land in the central region, an additional impediment is the provision in the drafted bill for compensation.

It is likely that rights-receivers and rights-givers would be able to negotiate a mutually agreeable compensation amount, probably most often with the tenant buying the owner's interests in the tenanted land. Relying on this market solution will guarantee that the benefits of conversion outweigh the costs and will greatly reduce the need for government expenditure. Yet this market solution cannot occur if rights-receivers do not have access to the funds with which to compensate rights-givers. If the benefits of conversion to freehold outweigh the costs, then, in theory, rights-receivers should be able to borrow against the land's future increased income stream to finance compensation to rights-givers.

A government credit scheme could help relax this capital constraint which might otherwise prevent conversion to freehold even when the net benefits of conversion are positive. The mailo owner and tenant would agree on the compensation amount to be paid by the rights-receiver. The tenant and owner could also negotiate a payment schedule, but, failing that, government could provide for the rights-receiver to receive credit to finance the purchase of the rights-giver's rights, either through a loan guarantee to a private lending institution or through direct provision of credit by government. A credit program would allow the rights-receiver to compensate the rights-giver immediately.

Allowing market forces to help determine and transfer suitable compensation payments is a reasonable way to implement the proposed legislation. If an educational campaign were launched to notify people of their options and the procedures they should follow, tenants and owners could negotiate to reach a mutually acceptable figure for compensation. Any transactions that occur can be accepted as having transferred adequate compensation to the appropriate party. This eliminates, or at least reduces, the need for and cost of state intervention and regulation in determining compensation amounts and procedures. The market could effectively assist both the registration and the compensation processes.

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# APPENDIX A: DRAFT OF THE BILL

## TENURE AND CONTROL OF LAND BILL, 1990

### Memorandum

The object of the bill is to establish a good land tenure system that will optimally steer the country to development. Three main objectives were considered which a good land tenure system must satisfy, namely:

1. That a good land tenure system should support agricultural development through the functioning of a land market which permits those who have rights in land to voluntarily sell their parcels to those who want to extend or enter agriculture or undertake any other form of development.

2. That a good land tenure system should not force people off the land, particularly those who have no other way to earn a reasonable living or to survive.

3. That a good land tenure system should be uniform throughout the country. This should be allowed to evolve over a period of time.

This bill addresses the above objectives. It introduces, with some exceptions, freehold throughout the country and repeals the Land Reform Decree, 1975. The following observations on each clause of the bill will further show that the above objectives have been addressed.

**Clause 1**

The clause is intended to achieve effective administration of land by making it public and administered by the Uganda Land Commission on behalf of the State. What this means is that the State as a Sovereign entity is vested with the ownership before grants of land can be made. For the purpose of land administration the Uganda Land Commission may delegate any of its functions to the Commissioner of Land Administration or any other person.

**Clause 2**

1. The conversion of existing titles into and the alienation of land in freehold is the most fundamental change caused by this bill. It will be recalled that by virtue of the Land Reform Decree all former mailo and freehold land is deemed to be held in leasehold out of public land. The following advantages of freehold tenure are advanced:

a) Individuals are offered maximum protection for their rights.

b) Freehold tenure recognises the reality of the land tenure system that has so far de facto existed in the former mailo/freehold areas for many decades. Even former mailo/freehold tenants and customary tenants have had virtual freehold for many years. This system has worked very well for the development of agriculture because individuals have shown a great willingness and ability to respond to profitable opportunities in farming and other development projects.

c) The demands on Government are less from freehold than leasehold, especially as relates to enforcement of development conditions. Freehold tenure will free government resources and manpower to use in other tasks that contribute to the social and economic development of the nation.

d) Freehold tenure gives individuals maximum ability to transfer land through a land market. Under leasehold, Government is a party to land transactions, particularly if the lease contains lease conditions that restrict the use of the land. Under freehold tenure, transactions are normally between the buyer and seller.

e) Freehold tenure gives farmers the greatest degree of security in their land.

f) Freehold tenure is most likely to result in increased credit for agriculture.

The argument in favour of a leasehold system is that Government maintains some control over the use and ownership of property through the ability to renew or not to renew leases and the imposition of development conditions. This system is discredited on several grounds, some of which are that development conditions have not been effective in causing development of property especially in developing countries and continue to fan corruption, one of the biggest hindrances to development.

The system is also expensive to administer and puts much strain on the country's meagre resources. In order to allay fears of people who argue that without the imposition of development conditions, development will be retarded, attention should be drawn to the Town and Country Planning Act where there is a machinery in place which can ensure development on land even where there is freehold tenure.

2. Leasehold system is retained in urban areas in order to facilitate re-development. Provision is also made to enable the Commission to lease for short periods Government land not immediately needed for the purpose for which it was ear-marked or set aside. This is a departure from the proposed freehold system but is justified on grounds of effective development. Land earmarked or set aside as mentioned above should not be let to lie idle if it can be leased for development purposes on a short term basis.

3. With regard to sub-clauses (2) and (3) of clause 2, while it is generally accepted that the urban authorities should own land to be able to steer development, Kampala and Jinja are treated as exceptions. It is submitted that Kampala being the capital city and Jinja being the industrial

capital of Uganda, and because of the cosmopolitan nature of the two centres, it is advisable that the land be vested in a national body (that is, the Uganda Land Commission) rather than in the local authorities.

4. Under sub-clause (6) of clause 2, there shall be no payment of fresh premium on a converted interest. This is to avoid double payment on the same interest which may create financial hardship to the owner. Under sub-clause (7) of clause 2, it is considered desirable to charge some fair amount of premium in respect of customary tenure which is converted into freehold tenure. This serves to generate revenue for Government and eliminates the undesirable notion of free grants.

On the other hand, under sub-clause (8) of clause 2, the Commission is left to charge high premium for grants in freehold out of land which is not held under customary tenure. This is devised partly to raise revenue for Government and partly to minimise chances of a rush for or pressure on public land, which phenomenon may otherwise encourage land maladministration.

The proviso to sub-clause (8) of clause 2 is intended to give the Commission discretion to levy such charges that it deems appropriate for grants of statutory freehold.

5. Under the proviso to sub-clause (9) of clause 2, holdings on former mailo and freehold land shall not convert into leases like other estates purchased, derived or otherwise held by grant under the interests so converted. Under paragraph (a) of sub-clause (10) of clause 2, the said holdings are deemed to be separate interests from the said mailo and freehold interests and to vest in the Uganda Land Commission in freehold. The purpose of these provisions and the others on the same subject that follow thereafter are to enable a systematic end to the controversial dead-lock that has hitherto existed between the former mailo/freehold tenants and their former landlords.

**Clause 3**

This clause provides for the continuance of customary tenure. This system of land tenure is the most widely used in the country and difficult to entirely get rid of. Its legal recognition is therefore very important in short run.

Under sub-clause (2) of clause 3, sub-section (2) of section 24 of the Public Lands Act, 1969 which was deleted from that section by the Land Reform Decree, 1975 is reinstated. This is important in as far as it re-introduces the requirement of consent of a customary tenant before his block may be given away by a controlling authority. This will ensure elimination of premature evictions.

**Clause 4**

The requirement for the Minister's consent under this clause is a protectionism manoeuvre. The law as it is now exposes land in Uganda to acquisition by all black Africans without restriction, which is a luxury that no nation can afford.

All citizens of Uganda should be treated equally as far as acquisition and transfer of land is concerned. The majority of the indigenous people are now fully aware of the essence of holding land (that is, as a social/economic security for livelihood), and thus there is little fear, if any, that they will lose their land to fellow Ugandans hitherto regarded as sophisticated and wealthy non-Africans.

Under sub-clause (3) (a) of clause 4, churches religious or other societies are subjected to the same provision of obtaining the Minister's consent. This provision is necessary since more often than not it is very difficult to tell who is behind such religious or other societies.

Under sub-clause (3) (b) of clause 4, the fine for contravention of any of the provisions of the Land Transfer Act is increased to make it more deterrent.

Under sub-clause (3) (c) of clause 4, for the expression "one half hectare" occurring in section 2A of the Land Transfer Act, is substituted the expression "0.1 of a hectare". The reason is that the current planning standard for average size of plots is 0.1 of a hectare. To leave the law as it is would exclude most property from being used as security since it would be rendered unattractive to the mortgagees.

Sub-clause (6) of clause 4 contains amendments to the Public Lands Act, 1969. Members of Resistance Committees and District Resistance Councils in addition to those specified under section 3 of the Act, shall not qualify for appointment as members of Uganda Land Commission, Land Adjudication Committee or Lands Adjudication Tribunal. The reason for this is that to ensure that there are checks and balances with regard to processing applications for land and resolution of land disputes, the RC officials or executive should remain outside the membership of the said land bodies and serve as a watch dog.

Under sub-clause (6) (b) of clause 4, the post of Secretary to the Uganda Land Commission should be filled by a public officer of the rank of Permanent Secretary. This is to avoid low-calibre officers occupying this post and to ensure better performance.

Under sub-clause (6) (c) of clause 4, the Uganda Land Commission should at least meet once in two months. The present law is silent on the frequency of such meetings and the Uganda Land Commission may take long periods without meeting which may result in back-log of work and lead to fraud by some elements who are in a hurry to get land titles.

Sub-clause (6) (e) of clause 4 reinstates the power of the Uganda Land Commission to sell land held by it. Under sub-clause (6) (f) of clause 4, such sale shall be under such terms and

conditions as determined by the Commission. Sub-clause (6) (e) also reinstates paragraph (c) of sub-section (1) of section 19 in view of the fact that the bill introduces freehold tenure system.

**Clause 5**

Under this clause, District Land Committees under the Public Lands Act, 1969 are abolished and their functions taken over by land adjudication committees to be set up at sub-county level. The manner of operations and other matters connected thereto are to be provided for under subsidiary legislation. The purpose of this provision is to make the exercise cheap, convenient and, most important, to take services nearer to the people.

**Clause 6**

A Lands Adjudication Tribunal is established for each District partly to ensure that parties to land disputes do not have to travel long distances. There are considerations of taking services near to the people thus saving, among other things, time and money.

Another purpose of establishing a Lands Adjudication Tribunal is to encourage the disposition of land disputes with expedition. One of the important principles of land adjudication is that work should be completed in the field and submitted for title making as expeditiously as possible. This presupposes that any objections or disputes arising out of land adjudication should be entertained with minimum delay, if any.

**Clause 7**

This clause provides that new certificates should not be issued relating to conversion under clause 2. This makes the conversion exercise cheap and convenient.

**Clause 8**

This is an important clause of the bill which delegates power to the Minister to make Regulations for the better carrying into effect the provisions of the bill. The bill embodies the principal or substantive provisions while the Regulations should embody the details relating to implementation.

**Clause 9 and 10** provide for interpretation and commencement, respectively.

**Clause 11**

Apart from repealing the Land Reform Decree, 1975, the possession of Land Law of 1908 is also repealed. The Possession of Land Law is obsolete and hardly enforced. Some of its applicable provisions have, however, been incorporated in the bill.

## ARRANGEMENT OF CLAUSES

CLAUSE

1. Land to be public land
2. Land holding, and compensation for loss of interest
3. Customary tenure
4. Minister's consent; amendments to the Land Transfer Act and the Public Lands Act
5. Land adjudication committee
6. Lands Adjudication Tribunal
7. No new certificates to be issued relating to conversion
8. Regulations
9. Interpretation
10. Commencement
11. Repeal

# TENURE AND CONTROL OF LAND BILL, 1990

**BE IT ENACTED** by the President **and the** National Resistance Council as follows:

Land to be Public Land

**1** (1) All land in **Uganda shall** be public land and be administered by the Commission **on behalf** of the State in accordance with the Public **Lands Act,** 1969, subject to such modifications as may be necessary to bring that Act into conformity with this Statute.

(2) The Commission may delegate any of its duties relating to the administration of land to the Commissioner of Land Administration or any other person.

(3) Without prejudice to the generality of subsection (1) of this section, the following provisions of this Statute shall have effect with respect to tenure and control of land in Uganda.

Land holding, and compensation for loss of interest

**2** (1) Any estate in land to be alienated by the Commission shall be alienated in freehold, and all existing leases shall, from the date of commencement of this Statute, be converted into freehold:

Provided that existing leases granted controlling authorities in urban areas shall not convert into freehold: and provided further that all future grants in urban areas by controlling authorities shall be in leasehold.

(2) All existing statutory leases, except those of Kampala City Council and Jinja Municipal Council shall from the commencement of this statute be converted into statutory freehold and all future grants by the Commission to designated Urban Authorities shall be made as statutory freehold.

(3) Without prejudice to the generality of the foregoing provisions of this section statutory leases of both Kampala City Council and Jinja Municipal Council are hereby terminated and the land hitherto comprised therein is vested in the Commission in freehold.

(4) The Public Lands Act, 1969, shall with effect from the commencement of this Statute, be construed as if the references to the power by the Commission to make grants in leasehold is a power to make grants in freehold:

Provided that the Commission may make a grant in leasehold out of Government land for a period not exceeding five years on such conditions as the Commission may impose.

(5) For the purposes of this section the expression "government land" includes land which is earmarked or set aside by the Commission for a specific purpose.

(6) Any estate converted under sub-section (1) of this section shall be deemed to be a freehold granted by the commission without the payment of a premium.

(7) Any future grant by the Commission in freehold in respect of customary holdings shall attract some premium.

(8) Any other grant by the Commission in freehold shall attract high premium:

Provided that grants of statutory freehold may attract such premium as the Commission may determine.

(9) Any other estate purchased, derived or otherwise held by grant under the estate so converted under sub-section (1) of this section are hereby converted into leases and sub-leases, as the case may be:

Provided that the following shall not convert into leases-

(a) any holding on former mailo land under the Busulu and Envujjo law; and

(b) any holding under the former freehold system created by the Ankole Landlord and Tenant law and the Toro Landlord and Tenant law.

(10) (a) All interests in land referred to in the provision to sub-section (9) of this section, shall be deemed to be separate interests from the said former mailo and freehold interests and shall vest in the Commission in freehold.

(b) Any interest vested in the Commission under paragraph (a) of this sub-section, may be granted by the Commission to-

i) the former mailo or freehold tenant or his legal representative;

ii) the former mailo or freehold owner or his legal representative; or

iii) any other person, in that order of priority

(11) In order for the commission to grant any interest in land vested in it under paragraph (a) of sub-section (10) of this section to any person, under sub-paragraph (iii) of paragraph (b) thereof, there shall be consent in writing by both parties referred to under sub-paragraph (i) and (ii) thereof.

(12) A former mailo or freehold owner shall be entitled to compensation for the loss of his interest in land under paragraph (a) of sub-section (10) of this section provided that if he acquires the interest from the Commission, he shall not be entitled to that compensation.

(13) A former mailo or freehold tenant who loses his interest to his former landlord shall be entitled to compensation from that landlord.

(14) The parties concerned may mutually agree that the interest in land under which both have a claim, reverts to one of them on such terms or compensation as they may agree upon.

(15) For the avoidance of doubt, "former mailo or freehold tenant" under this section means any person holding an interest in land under any of the categories referred to in the proviso to sub-section (9) of this section.

Customary tenure

**3** (1) The system of occupying public land shall continue and no holding of a customary tenure shall be terminated except as stipulated by law and provided that upon such termination compensation shall be paid to the customary tenant.

(2) Sub-section (2) of section 24 of the Public Lands Act, 1969 which was deleted from that section by the Land Reform Decree, is hereby reinstated.

Minister's consent

**4** (1) No non-citizen of Uganda shall acquire land in Uganda without the Minister's consent.

Act 13 of 1969

(2) The relevant provisions in the Public Cap. 202 Lands Act and the Land Transfer Act on the acquisition and transfer of land where the Minister's consent is a pre-requisite, shall be read subject to the modification in sub-section (1) of this section.

Cap. 202

(3) The Land Transfer Act is amended,

(a) in section 1 by inserting the expression "church, religious or other society" between the words "agent" and "shall" occurring therein;

(b) in section 4,

i) by substituting for the expression "two thousand shillings" occurring in sub-section (1) thereof, the expression "five hundred thousand shillings."

ii) by inserting immediately after sub-section (1) thereof, the following new sub-section; "(2) In the case of a company, every Director or Secretary of that company

shall be deemed to have committed the like offence unless he proves that he exercised due diligence to prevent its commission or that the offence was committed without his knowledge".

(c) in section 2A by substituting for the expression "one half hectare" occurring in paragraph (a) thereof, the expression "0.1 of a hectare".

(4) A non-citizen of Uganda who fraudulently acquires land contrary to the provisions of the Public Lands Act, 1969, the Land Transfer Act, or any other law for the time being in force in Uganda commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a period of imprisonment not exceeding five years or to both such a fine and imprisonment.

(5) A person who aids or abets the commission of an offence under sub-section (4) of this section commits an offence and shall be liable on conviction to the same penalty as the principal offender.

Amendments to the Public Lands Act

(6) The Public Lands Act, 1969 is hereby amended,

(a) by inserting the expression "Resistance Committee, District Resistance Council" between the words "District Council" and "or" occurring in section 3 thereof;

(b) by inserting the expression "who shall not be below the rank of Permanent Secretary or equivalent" between the words "thereof" and "and" occurring in sub-section (2) of section 4;

(c) by inserting immediately after sub-section (3) of section 6, the following new sub-section; "(4) The Commission shall meet at least once in two months".

(d) by renumbering sub-section (4) of section 6 as

sub-section (5);

(e) by reinstating paragraphs (a) and (c) of sub-section (1) of section 19 which were repealed by the Land Reform Decree, 1975;

(f) by inserting immediately after sub-section (4) of section 19 the following new sub-section and renumbering sub-section (5) thereof as sub-section (6) "(5) A sale carried out under paragraph (a) of sub-section (1) of this section shall be under such terms and conditions as determined by the Commission."

(g) by deleting the word "statutory" occurring in the third line of sub-section (1) of section 36.

(h) by deleting section 38.

Land Adjucication Committee

5 (1) There shall be established for each sub-county a Land Adjudication Committee appointed by the Minister.

(2) A person shall not qualify for appointment as a member of the Commission, a land Adjudication Committee or a Lands Adjudication Tribunal provided for under section 6 of this Statute if he is a member of the National Resistance Council, District Council, District Resistance Council, Urban Authority Council or a Resistance Committee.

(3) The Minister may, in consultation with the Commission, declare an area to be a Land Adjudication Area.

(4) In areas declared to be Land Adjudication Areas, the Committees shall carry out systematic adjudication over land rights for purposes of land titling; and in areas not yet declared Land Adjudication Areas, the Committees shall assist the Commission in Advisory capacity on any matter relating to land which may be referred to them and to perform such other functions as may be delegated to them by the Minister.

(5) Section 11 to 16 of the Public Lands Act, 1969 are

hereby deleted.

Lands Adjutication Tribunal

6 (1) There is hereby established a Lands Adjudication Tribunal for each Tribunal District which shall consist of a magistrate grade I or above, or an advocate of not less than two years standing as Chairman and two other persons all of whom shall be appointed by the Minister in consultation with the Attorney General.

(2) An appeal shall lie from the decision of the Land Adjudication Committee to the Lands Adjudication Tribunal.

(3) The Minister may by Statutory Instrument in consultation with the Attorney General regulate the procedure of the Lands Adjudication Tribunal.

No new Certificates to be issued relating to conversion uncer section 2

7 (1) For the avoidance of doubt, it is hereby declared that it shall not be necessary for the Registrar to issue or any person to obtain a certificate of title to evidence any rights and interests under this Statute, but the Registrar shall whenever any deed, instrument, certificate of title relating to any land in respect of which the rights and interests have been so converted in next presented to him or produced before him pursuant to his summons therefor or in connection with any transaction or registration, stamp such deed, instrument or certificate, with such stamp bearing a memorandum about the conversion and at such a fee as may be prescribed.

(2) On the coming into force of this Statute, the Registrar shall endorse on the Registry copies of the relevant folio or volume of the register a memorandum to the effect that the piece or parcel of land has become subject to the provisions of section 2 of this Statute.

Regulations

8 The Minister may, by Statutory Instrument, make regulations prescribing anything that may be prescribed under this Statute and generally for the better carrying into effect the provisions of this Statute.

Interpretation

9 In this Statute, unless the context otherwise requires,

"Commission" means the Uganda Land Commission;

"Lands Adjudication Tribunal" means the Lands Adjudication Tribunal established under section 8 of this Statute;

"Minister" means the Minister responsible for Lands.

"prescribed" means prescribed by the regulations and made under this statute;

"public body" has the same meaning assigned to that expression in Schedule 4 to the Public Land Act, 1969.

"Registrar" has the same meaning assigned thereto in the Registration of Titles Act, Cap 205.

"Statutory freehold" means public land held by either a designated urban authority or a public body.

Commencement

10 This Statute shall come into force on such a day as the Minister may, by Statutory Instrument, appoint.

Repeal of Land Reform Decree, 1975 and Possession of Land Law, 1908

11 The Land Reform Decree, 1975 and the Possession of Land Law of 1908 are hereby repealed.

## APPENDIX B: LIST OF SPECIFIC SITES INTERVIEWED IN THE RRA

1. Central Region

a. Rakai District: visited 6-8 March 1991
   1. Buyiisa trading center, Kirumba sub-county, Kyotera County
   2. Kakuto trading center, Kakuuto sub-county, Kakuuto County
   3. Lwanda trading center, Lwanda sub-county, Kooki County
   4. Kaliiro trading center, Kaliro sub-county, Kabula County

b. Masaka District: visited 6, 8, & 14 March 1991
   1. Misanvu trading center, Kibinge (Buyoga) sub-county, Bukomansimbi County
   2. gombolola headquarters, Kaswa sub-county, Bukoto County
   3. Miteete parish, Mateete sub-county, Mawagola County
   4. Kawungede trading center, Ntuusi sub-county, Lwemiyaga County

c. Mpigi District: visited 19-20 March 1991
   1. Kibibi trading center, Kibibi sub-county, Butambala County
   2. Lukwanga parish, Wakiso sub-county, Busiro County
   3. Kabulasoke trading center, Kabulasoke sub-county, Gomba County
   4. Kiringente trading center, Kiringente sub-county, Mawokota County

d. Mubende District: visited 25-26 March & 10 April, 1991
   1. gombolola headquarters, Ntwetwe sub-county, Kiboga County
   2. Maanyi trading center, Maanyi sub-county, Busujju County
   3. gombolola headquarters, Bukuya sub-county, Kassanda County
   4. Ngabano trading center, Madudu sub-county, Buwekula County

e. Mukono District: visited 3,4 & 11 April 1991
   1. gombolola headquarters, Kangulumira sub-county, Ntenjeru County
   2. gombolola headquarters, Busana sub-county, Ntenjeru County
   3. gombolola headquarters, Nakisunga sub-county, Mukono County
   4. gombolola headquarters, Kayonza sub-county, Bbale County

f. Luwero District: visited 8,9, & 17 April 1991
   1. Butuntumula trading center, Butuntumula sub-county, Katikamu County
   2. gombolola headquarters, Nyimbwa sub-county, Katikamu County
   3. Nakaseke trading center, Nakaseke sub-county, Nakaseke County
   4. Kalungi trading center, Kalungi sub-county, Buruli County

2. Districts outside the Central Region

a. Hoima District: visited 26 March 1991
Concern was with Buyaga and Bugangaiza Counties, which were included under the 1900 Buganda Agreement. The Bugangaizi County headquarters was visited, where local government officials from the five subcounties (Bwanswa, Nkooko, Nabweyo, Kakindu, and Kasanbya) were interviewed. Interviews were not conducted in specific localities of Hoima District.

b. Mbarara District: visited 14 January 1991
1. Kinoni parish, Rugando sub-county
2. Kakigani parish, Ndeija sub-county
3. near gombolola headquarters, Ndeija sub-county

c. Bushenyi District: visited 14-15 January 1991
1. Kigarama sub-county, Sheema County
2. Itendero trading center, Kagango sub-county
3. Kanyamukando trading center, Shuuku sub-county

d. Rukungiri District: visited 16 January 1991
1. Nyakajeme trading center, Nakajeme sub-county
2. Buyanja town, Nyakayina parish
3. Kebisoni sub-county

e. Kabale District: visited 17 January 1991
1. gombolola headquarters, Bubare, Buganda County
2. Bufumbira village, Kisoro sub-district

f. Mbale District: visited 1 February 1991
1. 2 sites in Bumboi village, Bunkokho sub-county
2. Bubentse village, Wanale sub-county

g. Jinja, Kamuli, and Iganga Districts: visited 26-27 February 1991
1. Chairman of District Land Committee (shortly before his death), Jinja District
2. Butagaya gombolola headquarters, Jinja District
3. District Executive Secretary, Iganga District
4. District Administrative Headquarters, Kamuli District

The Regional Lands Office, located in Jinja town, informed us that there is neither freehold nor mailo land in the Region. This assertion was confirmed by officials in Iganga and Kamuli Districts.

## APPENDIX C: TABLES 1A AND 1B

Table 1a. Estimated percentages of land in tenure categories; selected non-central region districts.

| District | Location | percent private mailo (1) | percent of mailo tenanted[a] (2) | percent tenanted mailo[b] (3) | percent customary (4) | percent leasehold (5) | percent freehold (6) |
|---|---|---|---|---|---|---|---|
| Kabale | land office | - | - | - | 35 | 40 | 25 |
| | Bufumbira | - | - | - | - | "leasehold > | freehold" |
| Bushenyi[c] | land office | 5 | 100 | 5 | 60 | 5-10 | 25 |
| | Kigarama | 3-5 | 100 | 3-5 | 70-75 | 20 | 5-7 |
| | Kagango | - | 75 | - | 92 | 4 | 4 |
| | Shuuku | 0 | - | - | 15 | 5 | 80 |
| Mbarara[c] | land office | 5 | 100 | 5 | 40 | 55 | 0 |
| | Kinoni | - | - | - | 70 | 10 | 20 |
| | Kakigani | - | 100 | - | 75 | 5 | 20 |
| | Ndeija | - | - | - | 'most' | 1 | <1 |
| Rukungiri | land office | - | - | - | 20-30 | 5-20 | 60-70 |
| | Nakajeme | - | - | - | 15 | 5 | 80 |
| | Kebisoni | - | - | - | 30-40 | - | 65 |

(table 1a cont.)

| District | Location | percent private mailo (1) | percent of mailo tenanted[a] (2) | percent tenanted mailo[b] (3) | percent customary (4) | percent leasehold (5) | percent freehold (6) |
|---|---|---|---|---|---|---|---|
| Mbale | Bunkokho/Wanale | - | - | - | 67 | 13 | 20 |
| Jinja[d] | Butagaya | - | - | - | 99 | 1 | - |
| Iganga[d] | | - | - | - | 98-99 | 1 | - |
| Hoima | Kakindu | 70 | 90-95 | 63-67 | 26 | - | 3 (church) |
| | Bwanswa | >80 | 90-95 | 72-76 | 13 | - | 5 (church) |
| | Nkooko | 60 | 95 | 57 | 34 | - | 5 (church) |
| | Kasanbya | 70 | 90 | 63 | 27 | - | 2 (church) |
| | Nabweyo | 40 | 90-95 | 36-38 | 58 | - | 1 (church) |

Notes to Table 1a:

a. The figures in column (2) are the percent of private mailo land estimated to be occupied by tenants.
b. The figures in column (3) are equal to the product of columns (1) and (2).
c. Bushenyi and Mbarara Districts have the same district land office.
d. Jinja, Ignaga, and Kamuli Districts are all handled by the Busoga Regional Lands Office. While Kamuli District was visited, tenure information was not gathered.

Source: MISR Rapid Rural Appraisal, January - April, 1991.

Table 1b. Estimated percentages of land in tenure categories; selected central region sub-counties.

| District | Location | percent private mailo (1) | percent of mailo tenanted[a] (2) | percent tenanted mailo[b] (3) | percent customary (4) | percent leasehold (5) | percent freehold (6) |
|---|---|---|---|---|---|---|---|
| Luwero | | | | | | | |
| | Butuntumula | 75 | 80 | 60 | 10 | - | 15(church) |
| | Nyimbwa | 70 | 92 | 64 | 14 | 1 | 13(church) |
| | Nakaseke | 75-90 | 90 | 68-81 | 7 | 1 | 10(church) |
| | Kalungi | 65-70 | 95 | 62-67 | 23 | 2 | 9(church) |
| Masaka | land office | 75 | 95 | 71 | 4 | 16 | 1(tea&ch) |
| | Buyoga | 70 | 70-85 | 49-60 | 9 | 1 | 15(church) |
| | Kaswa | 90 | 90 | 81 | 6 | 1 | - |
| | Mateete | 80 | 90 | 72 | 19 | - | - |
| | Ntuusi | 30 | 10 | 3 | 55 | 14 | - |
| Mpigi | DA's office | 75 | 75 | 56 | 10 | 5 | 2 |
| | Kibibi | 80 | 70 | 56 | 15 | - | 5(church) |
| | Wakiso | 75 | 85 | 64 | 9.5 | 0.5 | 10(church) |
| | Kabulasoke | 60 | 80 | 48 | 5 | 15 | 20(church) |
| | Kiringente | 65 | 97 | 63 | 20 | - | 15(church) |
| Mubende | land office | 70 | 80 | 56 | 5 | 20 | 5 |
| | Ntwetwe | 80-90 | 80 | 64-72 | 5 | - | 3(church) |
| | Manyi | 75 | 75 | 56 | 1 | - | 1 |
| | Madudu | 65 | 70 | 59 | 20 | 10 | 5(church) |
| | Bukuya | 75-80 | 80-90 | 60-72 | 19 | 1 | 3(church) |

(table 1b cont.)

| District | Location | percent private mailo (1) | percent of mailo tenanted[a] (2) | percent tenanted mailo[b] (3) | percent customary (4) | percent leasehold (5) | percent freehold (6) |
|---|---|---|---|---|---|---|---|
| Mukono | land office | 65 | 85 | 55 | 28.5 | 1.5 | 5(church) |
| | Kangulumira | 45 | 75 | 34 | 45 | 5 | 5(church) |
| | Busana | 30 | 70 | 21 | 54 | 14 | 1(church) |
| | Nakisunga | 80 | 80 | 64 | 11 | 1 | 5(church) |
| | Kayonza | 40 | 80-90 | 32-36 | 54 | 6 | 1(church) |
| Rakai | land office | 50 | 70 | 35 | 10 | 40 | 1 |
| | Kirumba | 98 | 90 | 88 | 2 | - | - |
| | Kakuto | 70 | 97 | 68 | 15 | 10 | 4(church) |
| | Lwanda | 80 | 75 | 60 | 13.5 | 1.5 | 5(church) |
| | Kaliro | 60 | 75 | 45 | 8 | 22 | 1(church) |

Notes to Table 1b:

a. The figures in column (2) are the percent of private mailo land estimated to be occupied by tenants.
b. The figures in column (3) are equal to the product of columns (1) and (2).

Source: MISR Rapid Rural Appraisal, January - April, 1991.

## APPENDIX D: TABLE 2

Table 2. Prices for developed land sold to a local buyer; Uganda Shillings; price per acre unless otherwise noted; April, 1991.

| District | Location | Land Holdings: no. of parcels | total acres | Sales last year | Nontenanted private mailo | Mailo tenant buys out mailo owner | Mailo kibanja | Customary kibanja |
|---|---|---|---|---|---|---|---|---|
| Luwero | Butuntumula | 1 | 5 | 20 | 200,000 (a) | 250,000/kib | 150-200,000 | no sales |
| | Nyimbwa | 1 | 3-4 | 30 | 200,000 | (e) | 30,000 | 20,000 |
| | Nakaseke | 1 | 3-4 | 20 | 100,000 | 80,000 | 50-70,000(h) | 50-70,000(h) |
| | Kalungi | 1 | 8-10 | 4 | sales rare | no sales | 15,000 | no data |
| Masaka | Land Office | 2 | - | 3 | 15-50,000 | 30-50,000(f) | 15-30,000 | 30,000 |
| | Buyoga | 1 | 2.5 | 150 | 300,000 | 50,000(g) | 250,000(h) | 150-250,000(h) |
| | Kaswa | 1 | 2-3 | 20 | 100-150,000 | 150,000 | 300,000 | 120-150,000 |
| | Mateete | 1 | 3 | 5 | no data | no sales | 250-300,000 | no sales |
| | Ntuusi | 1 | 1.5-2 | 3 | 5,000,000/sq mi. | 30,000 | 50,000(h) | 50,000(h) |
| Mpigi | DA's Office | 2 | 5 | 10-20 | 400-500,000(b) | (f) | 100,000(h) | 100,000(h) |
| | Kibibi | 1 | 7 | 1 | 150-300,000 | 200,000 | 70,000 | can't sell |
| | Wakiso | 1 | 3-5 | 3 | 1,000,000 | 300,000 | 400,000 | not sold |
| | Kabulasoke | 1 | 10 | 10 | 50,000 | 20,000 | 50,000 | not sold |
| | Kiringente | 1 | 3 | 5 | no sales | no sales | 100-150,000 | no data |

(table 2 cont.)

| District | Location | Land | Holdings | Sales last year | Nontenanted private mailo | Mailo tenant buys out mailo owner | Mailo kibanja | Customary kibanja |
|---|---|---|---|---|---|---|---|---|
| | | no. of parcels | total acres | | | | | |
| Mubende | Land Office | | | 1 | 30-50,000 | 10-20,000(f) | 10,000(h) | 10,000(h) |
| | Ntwetwe | 1 | 5 | 5-10 | 300,000 | 50,000 | 60,000 | value developments |
| | Manyi | 1 | 10-15 | 2-6 | 25,000 | 2-5,000 | 27,000 | no data |
| | Madudu | 1 | 5 | 2 | 150-300,000 | no data | 100,000/kib | no data |
| | Bukuya | 1 | 3 | 2 | 100,000 | 30,000 | 300,000/kib | 20,000 |
| Mukono | Land Office | 2-3 | 5-10 | 312 | 150-200,000 | 30-50,000 | 600,000/kib | few sales |
| | Kanggulumira | 1 | 3 | 20 | no data | no data | 350-500,000(h) | 350-500,000(h) |
| | Busana | 1 | 2-4 | 70 | no sales | no data | 300,000(h) | 300,000(h) |
| | Nakisunga | 1 | 2-3 | 20 | 80-100,000 | 30-100,000/kib(f) | 450-600,000/kib(h) | 450-600,000/kib(h) |
| | Kayonza | 1 | 2-3 | 100 | no sales(c) | 30,000 | 250,000(h) | 250,000(h) |
| Rakai | Land Office | | | | 10-25,000 | 150-200,000(g) | 100-150,000(h) | 100-150,000(h) |
| | Kirumba | 2-3 | 3 | 2 | >100,000 | <50,000 | 100-200,000 | few sales |
| | Kakuto | 1 | 2 | 0 | 1,000,000(a) | 50-100,000 | 400,000 | 100,000 |
| | Lwanda | 1 | 2-3 | 40 | 250-300,000 | 50-100,000 | 150-200,000(h) | 150,000(h) |
| | Kaliro | 1 | 10 | 11 | no sales | no sales | 80-100,000(h) | 80-100,000(h) |

Source: MISR Rapid Rural Appraisal, January-April, 1991.

Notes to Table 2

a. Nontenanted mailo land is sold in pieces that can be very big, even up to a square mile. One 20-acre piece is currently for sale for 2,000,000, implying a price of 100,000/acre.

b. This is if the land is not sold to the owner's neighbors. The price will be high (2,000,000/acre) if the seller asks his neighbors to buy it.

c. There have been no sales of mailo land in the last four years. Respondents thought 30,000-50,000/acre would be an appropriate price for *un*developed, nontenanted mailo land.

d. For mailo land, the price is 1,000,000/acre if with title. The price is less if the buyer will have to pay for the surveying and titling.

e. Usually it is the mailo owner who tells the mailo tenants to buy their interests. Generally a valuer is called in. The size, location, and developments are considered in determining the value (price). Respondents cited two real examples: (1) 3,000,000 for four acres located two miles from municipality, on which the mailo tenant was going to set up a health center; (2) 100,000 for five acres because the mailo owner knew he could not evict the mailo tenant.

f. When a mailo tenant purchases the owner's residual interest and himself becomes a mailo owner, the price sometimes depends on who initiates the transaction. The prices stated in the table are for when the sale is initiated by the mailo tenant. The prices for when the mailo owner initiates the transaction are:

| | |
|---|---|
| Masaka land office: | 20,000-30,000 |
| Mpigi DA's office: | no exact prices, but price is higher when mailo tenant initiates than when mailo owner initiates |
| Mubende land office: | price decreases |
| Nakisunga sub-county: | price decreases |
| Rakai land office: | 75,000-100,000 |

g. If the land is not yet surveyed and the mailo tenant will have to incur the expense of surveying, then the price is 20,000-30,000/acre.

h. "A kibanja is a kibanja" no matter what type of land it is on.

## APPENDIX E: TABLE 3

Table 3. Areas of land, mailo land, and tenanted mailo land in the central region of Uganda.

| District | Total area[a] (sq. mi.) (1) | Land area[a] (sq. mi.) (2) | percent mailo[b] (3) | mailo land (sq. mi.)[c] (4) | percent tenanted[d] (5) | tenanted area (sq. mi.)[c] (6) | tenanted area (mil acre) (7) |
|---|---|---|---|---|---|---|---|
| Luwero | 3,550 | 1,988 | 48.7 | 968 | 89 | 862 | 0.551 |
| Masaka | 6,302 | 2,476 | 45.8 | 1,134 | 88 | 998 | 0.639 |
| Mpigi | 2,401 | 2,065 | 69.1 | 1,427 | 81 | 1,156 | 0.740 |
| Mubende | 3,980 | 3,979 | 49.6 | 1,974 | 82 | 1,618 | 1.036 |
| Mukono | 5,497 | 3,479 | 60.7 | 2,112 | 79 | 1,668 | 1.068 |
| Rakai | 1,920 | 1,621 | 37.1 | 601 | 81 | 487 | 0.312 |
| Total | 23,650 | 15,608 | | 8,216 | | 6,789 | 4.345 |
| (Lost Counties) | | 1,661 | 51.9 | 862 | 82 | 707 | 0.452 |
| Total | | 17,269 | | 9,078 | | 7,496 | 4.797 |

Notes to Table 3:

a. Figures in columns (1) and (2) are taken from Langland.

b. Percentages of mailo land were estimated using the map in West's *Land Policy in Buganda.*

c. Areas in column (4) are the product of columns (2) and (3).

d. Figures in column (5) were obtained by averaging the percentages estimated by local respondents in the RRA and presented in column (2) of Table 1 (Appendix C). For example, the 89% for Luwero is the average of the 80%, 92%, 90%, and 95% listed for Luwero in Table 1.

e. Areas in column (6) are the product of columns (4) and (5).

Sources:

1. MISR Rapid Rural Appraisal, January - April, 1991.
2. Langland. 1974. "A Preliminary Review of Land Use in Uganda," pp. 103-182.
3. West, Henry. 1975. *Land Policy in Buganda.*

## APPENDIX F: TABLE 4

Table 4. Estimation of total compensation payments assuming 100% of tenanted mailo land transfers to either the tenant or the owner.

| District | Area of tenanted mailo land[a] (mil. acres) (1) | Rural land prices per acre[b] (ushs '000) mailo land less mailo kibanja[c] (2) | mailo tenant buys out mailo owner (3) | mailo kibanja (4) | Total compensation (ush bil) title to tenants; owners compen'd[d] (5) | tenants buy out owners[d] (6) | title to owners; tenants compen'd[d] (7) |
|---|---|---|---|---|---|---|---|
| Luwero | 0.551 | 0-170 | 50- 80 | 30-200 | 0- 94 | 28-44 | 17-110 |
| Masaka | 0.639 | -200- 50 | 50-150 | 250-300 | -128- 32 | 32-96 | 160-192 |
| Mpigi | 0.740 | 0-400 | 20 | 50-150 | 0-296 | 15 | 37-111 |
| Mubende | 1.036 | -2-240 | 2- 50 | 27- 60 | -2-249 | 2-52 | 28-62 |
| Mukono | 1.068 | -220-140 | 10- 50 | 60-500 | -235-150 | 11-53 | 64-534 |
| Rakai | 0.312 | 50-150 | 50-100 | 80-200 | 16- 47 | 16-31 | 25-62 |
| Total | 4.345 | | | | 0-868 | 104-291 | 331-1,071 |
| (Lost Counties) | 0.452 | -2-240 | 2- 50 | 27- 60 | -1-108 | 1-23 | 12-27 |
| Total | 4.797 | | | | 0-976 | 105-314 | 343-1,098 |

Notes to Table 4:

a. Areas of tenanted mailo land are taken from column (7) of Table 3 (Appendix E).

b. Land prices listed in columns (2) through (4) are computed from those listed in columns (5) through (7) of Table 2 (Appendix D). Prices listed here reflect the maximum range of prices in sub-counties with at least five land transactions in Table 2. For example, the price ranges listed here for Luwero District are the ranges of the Luwero sub-counties visited in the RRA excluding the Kalungi site since it had fewer than five land transactions.

c. The price ranges for mailo land less mailo kibanja are calculated from those given in columns 5 and 7 of Table 2. The maximum price differential between the two types of land tenure was calculated for each location. Column 2 reflects the maximum range of all prices in each district. Thus the three locations in Luwero had price differentials of 0-50,000, 170,000 and 30,000-50,000 per acre resulting in a maximum range for Luwero of 0-170,000 per acre.

d. Column (5) is the product of columns (1) and (2), column (6) the product of columns (1) and (3), and column (7) the product of columns (1) and (4).

## APPENDIX G: TABLE 5

Table 5. Estimation of total compensation payments assuming 90% of tenanted mailo land transfers to former tenants while 10% is retained by mailo owners.

| | Area of tenanted mailo land[a] (m. acres) (1) | 90%[b] (2) | 10%[c] (3) | Rural land prices per acre[d] (ush '000) mailo land less mailo kibanja (4) | mailo kibanja (5) | Total compensation (ushs bil) payments to former owners[e] (6) | payments to former tenants[f] (7) | Dist. Tot.[g] (8) |
|---|---|---|---|---|---|---|---|---|
| Luwero | 0.551 | .496 | .055 | 0-170 | 30-200 | 0- 84 | 2-11 | 2-95 |
| Masaka | 0.639 | .575 | .064 | -200- 50 | 250-300 | 0- 29 | 16-19 | 0-48 |
| Mpigi | 0.740 | .666 | .074 | 0-400 | 50-150 | 0-267 | 4-11 | 4-278 |
| Mubende | 1.036 | .932 | .104 | -2-240 | 27- 60 | 0-224 | 3- 6 | 3-230 |
| Mukono | 1.068 | .961 | .107 | -220-140 | 60-500 | 0-135 | 6-53 | 6-188 |
| Rakai | 0.312 | .281 | .031 | 50-150 | 80-200 | 14- 42 | 3- 6 | 17-48 |
| Total | 4.345 | 3.911 | .435 | | | 14-781 | 34-106 | 48-887 |
| (Lost Counties) | 0.452 | .407 | .045 | -2-240 | 27- 60 | -1- 98 | 1- 3 | 0-101 |
| Total | 4.797 | 4.317 | .480 | | | 14-879 | 35-109 | 48-988 |

Notes to Table 5:

a. Areas of tenanted mailo land are taken from column (7) of Table 3 (Appendix E).

b. Figures in column (2) are equal to 90% of the areas listed in column (1).

c. Figures in column (3) are equal to 10% of the areas listed in column (1).

d. Rural land prices in columns (4) and (5) are taken directly from columns (2) and (4) of Table 4 (Appendix F).

e. Figures in column (6) are the product of columns (2) and (4). Negative figures are set to 0 in the calculation of totals.

f. Figures in column (7) are the product of columns (3) and (5).

g. Figures in column (8) are the sum of columns (6) and (7). Negative figures are set to 0 in the calculation of totals.