

THE POLITICS OF LAND REFORM IN UGANDA

BY

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and the Graduate Faculty of the University of Kansas in partial fulfillment of  
the requirements for the degree of Doctor of Philosophy.

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## **Abstract**

When do citizens obey the law? What determines when people conform to or dismiss legal/institutional arrangements? Citizens pursue economic interests, and governments capture the productive potential of their citizenry through institutional incentives. Alternatively, governments incentivize that same potential into the informal economy with institutional failures. Savvy citizens know when they can prosper in formal and informal markets, and they choose between those markets to protect their interests. They evaluate risks and rewards, and they choose. Protecting property – whether government or non-government protection - is foundational to both types of markets, and can determine citizens' choice.

In this study, successive governments in Uganda have attracted mass participation in productive economic sectors, and they have also repelled investment. My longitudinal study investigates land laws and policies throughout Uganda's colonial and post-colonial history in order to distill lessons about when citizens partake in formal market institutions. Citizens adopt laws when the governments make it in their interest to adopt them, and they shirk new institutional arrangements when those arrangements are too costly. However, because secure property rights are so fundamental to market transactions, Ugandans around the country create their own local institutions that are accessible, efficient, cheap, and that reflect community relationships.

While these land relationships have problems, they illustrate a fundamental demand for secure property rights. Establishing and defining property rights are political choices, they go through political processes, and they subject to the influence of politically powerful groups. The workings of these informal institutions, and the relative failure of government programs, provide lessons for political scientists, policy experts, and Ugandan legislators.

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## Table of Contents

Abstract	
Acknowledgements	
List of Figures	
List of Tables	
CHAPTER ONE – PROPERTY RIGHTS IN UGANDA.....	1
1.1 Introduction.....	1
1.2 Question and Study .....	6
1.3 Case Study Selection .....	10
1.4 Methods: An Empirical Study Using Rational Choice .....	10
1.5 Overview of the Argument .....	13
CHAPTER TWO - PROPERTY RIGHTS AND RATIONAL CHOICE .....	17
2.1 Introduction.....	17
2.2 Rational Choice Approach to Land Law Design .....	18
2.3 Politics of Property Rights.....	23
2.4. Politics and Laws in Africa.....	27
2.5 Conclusion .....	29
CHAPTER THREE - BARGAINING IN THE 1900 UGANDA AGREEMENT .....	31
3.1 Introduction.....	31
3.2 Background: Political Unrest in Pre-Colonial Buganda .....	32
3.3 Interests of the Buganda Kingdom and the British Colonial Government .....	37
3.4 The 1900 Uganda Agreement: Winners and Losers within New and Old Institutions .....	43
3.5 Outcomes: Adjudication, Allotment, and Implementation .....	48
3.6 Conclusion: The Buganda Kingdom and the British at the Turn of the Century .....	54
CHAPTER FOUR – EVOLVING INSTITUTIONS: LAND LAW IN THREE REGIMES.....	58
4.1 Introduction.....	58
4.2 Uganda Land Law under the British Colonial Government .....	61
4.2.1 Background to the British Colonial Government Changes.....	61
4.2.2 Buganda and British Interests .....	62
4.2.3 Strategies of Colonial Government.....	64
4.2.4 Outcomes in British Colonial Administration: Populist Policy .....	66
4.3 Land Law under Milton Obote: A Clash of Interests .....	68
4.3.1 Background .....	68
4.3.2 Milton Obote’s Consolidation of the Uganda State: Interests .....	71
4.3.3 Strategies in Obote’s Land Policy.....	72
4.3.4 Outcomes: Economic Decline and Political Upheaval .....	75
4.4 Property Rights under Idi Amin: Insecurity in Chaotic Uganda .....	77
4.4.1 Background to the 1975 Land Reform Decree .....	78
4.4.2 Competing Parties in an Unstable State .....	79
4.4.3 Land Strategies in Amin’s Military Dictatorship.....	81

4.4.4 Outcomes .....	82
4.4.5 Summary .....	84
4.5 Analyzing Success and Failures in Land Law .....	84
4.6 Conclusion .....	89
CHAPTER FIVE - MODERN LAND NEGOTIATIONS .....	91
5.1 Introduction.....	91
5.2 Interested Parties in Uganda's Parliament .....	93
5.3 Uganda Political Economy in Land Law .....	96
5.3.1 State Retrenchment: Parliament's Populist Politics and the Neglected Kingdoms .....	101
5.4 Analysis: Explaining Modern Land Law .....	112
CHAPTER SIX - IMPLEMENTING LAND LAW IN UGANDA: LEGAL SPACE FOR PREDATION .....	117
6. 1. Introduction.....	117
6.2 Evidence from the Field.....	121
6.2.1 Regional Diversity and Bureaucratic Breakdown.....	121
6.2.2 Informal Institutions as the Rule, Formal Mechanisms the Exception .....	124
6.3 The Ugly Side of Institutional Change: Rules for Predation .....	134
6.4 Predatory Actors in a Permissive System: Social Control in Land Law .....	139
6.5 Analysis .....	141
6.6 Conclusion .....	144
CHAPTER SEVEN - CONFLICT AND INTERESTS IN THE BUGANDA KINGDOM .....	147
7.1 Introduction.....	147
7.1.1 Case within a Case Study.....	148
7.2 Uganda's Land Infrastructure at a Glance: Urban Laws, Rural Reality .....	150
7.3 Central Districts' Land Value .....	153
7.4 Messy Institutions and Contemporary Land Politics .....	160
7.5 Buganda's Political Kingdom in Daily Land Law.....	165
7.5.1 Informal Institutions: Active and Not Always Welcome .....	167
7.6 Analysis .....	170
7.7 Conclusion .....	171
CHAPTER EIGHT – LAND AND POWER IN THE PEARL OF AFRICA .....	173
8.1 Introduction.....	173
8.2 Summary of Evidence and Arguments .....	175
8.3 Property Rights Lessons from Ugandan Land Law .....	180
8.3.1 Land Rights .....	183
8.3.2 Politics of Disorder and the Institution of Patronage .....	185

Methodological Appendix .....	188
Analyzing Qualitative Data .....	188
Theoretical Basis for Archival and Interviews in Comparative Politics.....	188
Interviews Methods and Procedure for Archival Research .....	189
Interview Process and Analysis .....	189
Archival Research .....	192
Sample Interview Questions .....	195
Descriptive Statistics – Farmers, Land Officials .....	196
Demarcating Property: Three Traditional Methods.....	201
WORKS CITED .....	203



## List of Figures

Figure 1 Interests of Negotiating Bodies .....	42
Figure 2 Negotiation in the 1900 Buganda Agreement .....	46
Figure 3 Buganda Kingdom Administration, Circa 1880 .....	50
Figure 4 State Authorities and Interests in Land Law and Policy .....	60
Figure 5 Uganda’s Busuulu and Envujju Law of 1928.....	66
Figure 6 Obote’s Move to the Left .....	73
Figure 7 Rising Agriculture .....	76
Figure 8 Private Investment in Obote's Uganda .....	76
Figure 9 Amin’s Land Reform Decree of 1975 .....	82
Figure 10 Inflation and GDP in Amin's Uganda.....	83
Figure 11 Rising Agriculture in Amin's Uganda .....	84
Figure 12 Contracting Uganda’s Modern Land Law .....	92
Figure 13 Uganda’s Modernizing Economy .....	93
Figure 14 Uganda's Modern Demographics .....	94
Figure 15 Negotiating Modern Land Law .....	111
Figure 16 Four Historic Regions of Uganda, 5 Districts .....	149
Figure 17 Districts Affected by War, 1985-2005 .....	152
Figure 18 Ethnic Map of Uganda.....	197
Figure 19 Map of 56 Districts – Farm Locations.....	197
Figure 20 Farms, Land Centers, and Land Offices .....	198
Figure 21 Map of 112 Districts – Farm Locations.....	198

## **List of Tables**

Table 1. Property Owners and Asset Rights	29
Table 2. Regional Education	61
Table 3. The 1995 Constitutional Definitions of Land Rights	99
Table 4. Typology of Land Buyers	129
Table 5. Price Quotes for Land, 2010	156
Table 6. Kampala Land Value Change, ¼ Acre	158
Table 7. Interview Geography	190
Table 8. Selected Districts	199

## **CHAPTER ONE – PROPERTY RIGHTS IN UGANDA**

### **1.1 Introduction**

The king had just been restored to the kingdom after decades of turbulent civil war. The roads, bridges, and farmland had been destroyed during the battles, thousands had died, and the economy was in shambles. The king and a cadre of elite chiefs promised to help the new government restore stability and grow the economy, something that was in the best interest of both parties. The two could work together and prosper or undermine each other in internecine conflict. The new government promised to respect the autonomy of the kingdom, knowing that the kingdom was a potent institution and a permanent political force, one that held the allegiance of most of the country's economic and political elites. To solidify this relationship and formally recognize the kingdom, the government acknowledged the king's claim over his territory and consented to his cultural authority over his subjects. However, the peace between the parties did not last. In about a decade, each side claimed that the other was overstepping its bounds and not living up to their agreements. It had become clear that both parties felt threatened by the other party's expanding authority.

This is the story of Kabaka Daudi Chwa, the child-king who the British colonial government and the Buganda Kingdom<sup>1</sup> aristocracy empowered as sovereign circa 1900. This is also the story of Kabaka Mutebi II, the king whose kingdom was restored in 1993 when President Yoweri Museveni recognized his return to Uganda, witnessed his coronation, and returned many of his lands and offices. Behind each story are underlying political crises that define Uganda's political economy, and at the root of these crises is the issue of land tenure.

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<sup>1</sup> I refer to the Buganda kingdom as 'the kingdom' throughout this project with the understanding that there are other ethnic groups organized as kingdoms.

In both cases, the government in Uganda (in the first case, the British as the new colonial authority and, in the second case, the Museveni government) sought to consolidate its authority with entrenched elites by restoring property to the Buganda kingdom. In both cases, a powerful authority tried to establish secure land rights in Uganda, imposing international economic standards onto groups of people that had already developed their own institutions to serve communities' needs. These economic standards in turn liberalized markets in some respects by opening land sales to national and international interests. However, they were implemented unevenly across the country, empowering an elite few at the expense of others and alienating local community members.

The similarities between contemporary Uganda and early colonial Uganda illustrate three facts in Uganda's land law: 1) that historically defined cultural claims to property remain unresolved, 2) that land laws can only succeed when community members voluntarily adhere to the policy, and 3) that stakeholders and the targets of land law and policy will comply when it is in their interest. These facts are especially critical when the government has few resources and new laws conflict with the inherited knowledge that citizens have about property rights.

In both cases, new governments – the British colonial administration and President Museveni's National Resistance Movement – began a campaign of building political coalitions and improving the Ugandan economy. In some ways, these campaigns uprooted entrenched political actors. Both the Museveni regime and the British government used incentives and punishments to dislodge political opponents, and both fought costly wars in order to subdue armed rebellions. However, the most lasting and most critical policy for both governments has been their treatments of the Buganda kingdom, while the priority for the Buganda kingdom continues to be control over its historic territory.

While this specific historical and modern comparison is unique to Uganda, property rights and the evolution of land law are both fundamental and problematic institutions in African countries, as well as other post-colonial states (Boone 2007, Deininger *et al* 2008, Wily 2010). British, French, Belgian, Italian, and Portuguese colonial governments negotiated with local chiefs, tribes, kingdoms, and clans in order to govern their protectorates and colonies on every continent. In Africa, newly independent governments had to negotiate between contending domestic powers and international pressure to modernize, democratize, and in many cases, create functioning state governments.

This constellation of domestic and international pressures persists: the puzzle for African governments and development organizations is how to modernize an economy and create a representative government while respecting the legal claims of individuals and communities to control their property. Scholars maintain that establishing secure property rights may be the most vital and viable strategy for economic development in Africa (Robinson 2010). The legal basis of this property, though, is often muddled in pre-colonial claims, promises made by the colonial governments, or binding agreements that contemporary governments created in modern laws.

Like other market-based economic reforms, land law reform has been an avenue for patronage in Africa (Palmer 1990, Mamdani 1999, James *et al* 2005, Onoma 2010). This relationship is well-documented in the Ugandan media, and land reform is a significant source of patronage in other local and national African governments. For example, Michael Aronson, the vice-chairman of the Kenya Land Commission, asks “how can you possibly trust the Ministry of Lands when they're so busy grabbing land?” (*Time* 2010). Likewise, in Ghana, State Attorney Rebecca Nartey fought against the Director of the Forestry Commission, Samuel Afari, who allegedly seized her property and built a series of structures (*Ghana Chronicle* 2011). Mugabe's

Zimbabwe has been notorious for this, allocating land to loyal military factions after chasing white farmers out under the guise of colonial reparations (Palmer 1990, Brett 2008). South Africa has been arguably more democratic after the end of apartheid, making land redistribution more representative and transparent (Moyo 2000, Cousins 2009). This form of patronage also has been documented in cross-continental studies (Klopp 2000, Cotula *et al* 2004, Onoma 2010, Rincon 2010, Omobowale 2011) as well as in Uganda.

Patronage and land-grabbing comes from sources outside the continent of Africa as well. Agrofuel projects have complicated international interest for African land, and states/firms have already leased vast areas of land from African states. These firms export agricultural products as food or convert it to agrofuel (*Bloomberg 2010*). Likewise, African land is attractive to investment firms, individuals, and foreign governments in the global effort to feed growing populations and reduce food prices. Independent organizations report that 50 million hectares in Africa are under the control of foreign governments and wealthy international investors, with at least 15 million of that land changing hands between 2006-2009 (IFPRI 2009, GLP 2010). Asian and Middle Eastern governments invest in sub-Saharan African land, but so do Texas oil conglomerates, United States universities, and international hedge funds (IFPRI 2009, *Economist* 2009, Oakland 2010, *Guardian* 2011). Overall the potential for immense wealth and the poor state of records/regulations in developing countries led the World Bank to conclude that the global demand for farmland in Africa and developing states will lead to a “race to the bottom” to attract investors (World Bank 2011, xxxii). This trend is so pervasive that the United Nations adopted international guidelines for responsible land transactions (CFS 2012).

In addition to this environment of growing international interest in African land, there is also a growing domestic demand for the same scarce resource. Africa’s population has surpassed

one billion people and is expected double by 2050 (UN 2001, 11), with East Africa, West Africa, and Central Africa far outpacing the growth of South or North Africa (UN 2007). Uganda's population has grown from roughly 10 million people in 1970 to 34 million in 2012, with most of this growth occurring in rural areas. The country's population is projected to more than double again by 2050, approaching 70 million people. Nutrition and disease prevention are improving, and rural birth rates remain high. Overall, the population growth rate is above 3%. Both the population in urban areas and population density has doubled in the last 30 years, from .84 to 3.0 million and from 64 to 123 people per square kilometer, respectively (Uganda Bureau of Statistics, 2002). This population pressure has increased the demand for farm land and, with it, the price of that farm land. Nearly half of the population is currently below 15 years old, and these Ugandan children are looking for opportunity. Like farmland everywhere, land that is arable and close to consumer markets is the most valuable to farmers, but it is also in high demand by urban developers.

In this historical, political, and economic context, Uganda's National Resistance Movement (NRM) government shaped land law and defined land ownership in both its 1995 Constitution and 1998 Land Law. These laws were designed to help owners protect their assets through titling, developing land markets, and providing a rational-legal process for land adjudication. However, defining property rights is fundamentally a political decision and reflects the constellation of political power in the country. This project seeks to explain the evolution of land law in Uganda and, more broadly, to understand property rights institutions in developing countries.

## 1.2 Question and Study

What determines land law success? In the context of property rights, a successful institutional change will encourage citizens to alter their behavior in accordance with the new rules. How have regimes in Uganda fared in creating successful institutions? To answer this question, it is necessary to understand important actors involved in creating the law, their preferences, their strategies, and the outcomes of their negotiations. It is also important to find the elements shaping and conditioning successful implementation of a law. In this study, I argue that individuals comply with land institutions when it is in their interests. In many developed countries, land dispute adjudication and titling are vital institutions in the implementation of land law. In most of Uganda and in most transactions, individuals do not use state institutions to complete land sales; they do not title their land, and they do not use courts to adjudicate their disputes.

Creating a law and implementing it are two steps of the same process: interested parties debate the law in parliament, and the government implements the new law. Equally important to the rules that the law delineates is the “law behind the law” (Wunsch 2001), or the way that the government implements policy within the existing political environment. In response to government implementation, individuals accept and reject policy based on their cost/benefit analysis. The way that the new rights conform to existing rights helps to determine their legitimacy (Libecap 1999). Additionally, incomplete contracting – room for informal negotiation that buttresses all institutions – gives political opportunists the freedom to subvert the law, effectively negating the certainty that the institution is meant to provide. New laws may also imperfectly fill the political space already occupied by informal institutions, leaving citizens to decide between the law and uncoded, cultural norms.



While land law at the national level reflects the interests of salient political actors with access to the government, most political and economic activity in Uganda and the developing world takes place outside of formal institutions. Uganda's peasant farmers have superficial ties to formal markets and rely on cultural institutions for dispute resolution, asset security, and rule enforcement. In this study, I find that Uganda's NRM government selectively engages the entrenched traditional institutions, pragmatically accepting traditional institutions' claim to land rights and recognizing them only when it is necessary. In Uganda's Parliament and in government practice, political elites dismiss or circumvent cultural claims to land and property rights. At the national level, cultural institutions band together to dispute unfavorable laws. At the local level, these institutions help protect farmers from predatory and corrupt national actors. While these cultural institutions are imperfect – lacking in institutional checks and progressive social policies – they tend to be more responsive to local demands for asset security.

In my study, I investigate when land institutions succeed in Uganda in both the formal and informal economy. As explained by North and Thomas, it is necessary to clarify two facets of a theory of institutions, namely 1) a theory of property rights that describes the individual and group incentives in the system; 2) a theory of the state, since it is the state that specifies and enforces property rights (1973, 7). Throughout this project, I address individual actors' incentives through a rational decision framework. In Uganda, each historic and contemporary government acts as an interested party in politics, but they also explicitly shape the 'rules-of-the-game' (North and Thomas 1973).

A rationalist perspective of property rights helps to illustrate two important concepts in Ugandan land law. First, institutions are a tool to overcome uncertainty in transactions between individuals. In short, this means that land law (rules for titling, adjudicative bodies, and

administration) is meant to secure land rights and improve land buying, selling, use, and transfer. However, defining property rights is a political process, governing access over a scarce resource. While there is an imperative for individuals to seek property rights and for a government to secure them as a public good, the process is politicized, and the outcome has clear winners and losers.

Secondly, successful institutions – including land laws – elicit coordinated and uncoordinated responses from citizens and organizations. Institutions coordinate behavior when individuals, pursuing their own interests, act in accordance to the rules. Land law in Uganda is meant to standardize adjudication and titling. Citizens are able to secure their interests with a formal title. Several of the costs of formal market activity are explicit and formal in land rights: the fee for filing titles, the 1% tax on a formal transfer, and the costs incurred by demarcating the land. When these costs are acceptable to farmers, the institution is successful. When they prohibit access to formal titles and adjudication, they are unsuccessful. In this project, both coordinated and uncoordinated responses are important.

Like other rationalist literature, I treat groups of individuals as organizations when they work toward a common goal with similar interests. However, uncoordinated, individual-level responses are just as important in explaining institutional success. When governments set policies and create institutions to foster economic development, individuals' uncoordinated responses may be in citizens' best interests and against government initiatives (Bates 1981, Eggertson 1990, Yap 2003, Baland and Robinson 2008). Hence, a comprehensive study of property rights in Uganda needs to incorporate the actions and incentives for both individuals and organizations.

Land laws fail when stakeholders (farmers, land officials, land holders) remain

uncoordinated by the law. That is, a land law fails when it inhibits economic development and encourages stakeholders to circumvent the law (e.g., through perverse incentives). One problem with Uganda's land law is that formal tenure is cost-prohibitive: most farmers lack access to formal institutions because attorneys, titles, and land-value assessment are very expensive.

However, there are additional costs outside of the law: bargaining to remove informal tenants, side payments to be sure land administration officials process the paperwork, and extortion paid to land assessment officials who help to define property value. When the government neglects the law and/or the government lacks the capacity to implement the law, it creates an environment where these additional fees and other illegal activity expose all buyers and sellers on the market to heightened levels of uncertainty. Who must a buyer bribe to transfer the land? Will the title be recognized by the buyer and seller? Are there any liens on the property, or does it even belong to the seller? This uncertainty subverts property rights in different ways: it can reduce incentives to develop the land, inhibit sales and land transfers, and may lead farmers to leave their land idle for fear of losing any investment. In short, successful laws can coordinate behavior to increase productivity. Failed land policy can inhibit productivity.

The demand for secure property rights persists, even when the state is incapable of providing it or negligent in implementing the law. In Uganda, where the state fails to protect valuable assets, local authorities help to create local markets to secure property rights. Groups organize to protect their interests. At the local level in Uganda, these authorities predate the current government and have greater local legitimacy. Historically, these relationships are also more robust than Uganda's governments, surviving through wars and economic upheaval. They are reliable and well known to the community members. In order to replace these already functioning authorities, the government must make compliance to its laws attractive to encourage

owners to engage these new institutions. The state must protect the assets, adjudicate fairly, and make the new institution accessible at a reasonable price.

### **1.3 Case Study Selection**

Uganda's property rights reflect British colonial policies of economic development within a colony through marketization and indirect rule. British and French colonists guaranteed rights to kingdoms, clans, and chiefs in order to gain local support for their expanding empires. Frederick Lugard, one of the chief architects of the British colonial policy of indirect rule, helped bring both international markets and British trade to Uganda in the 1890s. The international context of British rule in Uganda shaped how they administered the colony in much the same way that Uganda's international relations continue to shape how the current administration courts economic and political support.

While the details of Uganda's history are unique to that country, its current and past governments face many of the same domestic and international pressures for liberal markets, secure property rights, and political stability that many governments in developing states face. Uganda's particular history may be unique, but as a country it shares in the same patterns of patronage politics and economic contraction as other states on the continent (Bratton and van de Walle 1994, Berman 1998, Tangiri 1999, van de Walle and Bratton 2002, Southall and Melber 2006, Bates 2008). Understanding the linkages between local and national markets and politics in one country provides a basis to inspect similar patterns in other post-colonial states.

### **1.4 Methods: An Empirical Study Using Rational Choice**

This study relies on two sources of empirical data: archival research and interviews. The historical records that I use are from colonial/post-colonial economic surveys and qualitative data in the form of letters and autobiographical accounts of events. Economic surveys and letters are

useful records of quantities and policies, and they give evidence to how stakeholders relate to policy. In this dissertation, I am interested in land laws in 1900, 1928, 1969, 1975, as well as contemporary land law. Comparing the successes and failures of Uganda's land law in historical perspective provides a reasonable explanation as to when land institutions succeed and fail.

To understand modern land law debates and their outcomes, I conducted archival research at Makerere University of Institute of Social Research (MISR), Uganda's Parliamentary Library, Uganda's Bureau of Statistics, and at Uganda's National Archives. MISR houses historical issues of *The Journal of Uganda*, an academic journal published by the Ugandan Society, as well as historic newspaper articles from Ugandan newspapers that are difficult to find electronically. The National Archives stores personal letters between colonial officials, orders from the Foreign Office and local colonial officials, and different colonial economic and political surveys. Both records offices were invaluable for their records concerning pre-colonial and colonial Uganda and their records of social, political, and economic history.

The other half of this research involves interviews with farmers, land officials, and officials from the Buganda kingdom. I also conducted interviews to understand how the law coordinates or fails to coordinate behavior. I am interested in the choices that political/economic actors make, the outcomes of those choices, and the effect of this behavior on the institution of property rights. To conduct this investigation, I selected 9 districts from the Northern, Eastern, and Western Regions of the country and 12 districts from Uganda's Central Region. I selected these districts based on two criteria: their population density and their historical importance. I chose dense and sparsely populated districts in an effort understand how farmers on relatively inexpensive or relatively expensive land conform to land law. In each of these 21 districts, I spoke with 4 farmers. In the land office of each district, I spoke with Registers of Title and

District Land Officer, the two officials in each district's land management office who work directly with farmers.

I conducted interviews with land technocrats, Buganda kingdom officials, and farmers from June 2010 – February 2011. I used purposeful snowball sampling in 21 districts of Uganda, recording a total of 104 interviews in different districts of the country. The interviews were semi-structured. I let the Buganda officials and the land technocrats decide where we would meet, and these interviews typically took place in their offices behind closed doors. When I interviewed the farmers, the interviews were primarily on their farms and sometimes included members of their family. To conduct the interviews, I brought an interpreter that was familiar with the local language and an assistant who was able to introduce me to local farmers in the community. The farmers trusted this assistant, and I benefited from their relationship. We conducted the interviews in the farmers' local languages. To ensure consistency, my local guide would read back the translated questions from the local language into English so that I could verify that the questions, the preamble to the interview describing my research, and their acknowledgment of consent were all clear.

Each of these groups contributed different perspectives to my study because they have played different parts in adopting and implementing land law. The land technocrats that I interviewed were able to reflect on Uganda's land laws from a bureaucrat's perspective. They understand how they influence farmers' actions and are close enough to the communities that they serve to comment on how farmers use/neglect state initiatives to formalize land tenure. Buganda kingdom officials, on the other hand, were able to describe the kingdom's interests as expressed by an assorted set of lobbyists and the presence of the kingdom's political opinion on land issues. Finally, the farmers themselves were instrumental in my research because they

related their stories working within the land tenure systems, their logic for accepting and neglecting government policies, and their experiences protecting their interests.

## **1.5 Overview of the Argument**

In Chapter Two, I first ask when land institutions succeed in changing people's behavior by using a rational approach. Property rights, as institutions, emerge because people want to reduce risks and other costs in transactions. When property rights already exist and a government proposes new laws, these new laws must provide incentives for people to adopt them. If there are already functioning institutions, if the new laws create inaccessible institutions, or if the government lacks legitimacy, citizens will be reluctant to adopt them. In each chapter, I am interested in examining when property rights emerge, the form that property rights take, and the way that national politics affect and are affected by local politics. I develop an analytical framework to inspect the most important stakeholders in property laws, their interests, their strategies, and the outcome of their negotiation. As a final step, I offer a perspective of how to evaluate the success of land law, given the preferences of each party. In each following chapter, I use this analytical process to inspect different land laws with the aim of explaining when land laws succeed and fail.

In the third chapter, I explain the 1900 Buganda Agreement as the outcome of negotiations between the British colonial government and the Buganda kingdom. The Buganda kingdom's monarchy and nobility were at war at that time, and the British chose to support one faction. After the outcome was decided, the 1900 Buganda Agreement formally established the relationship between the Buganda kingdom and the British government. Most importantly for this study, the 1900 Buganda Agreement allocated land to Buganda kingdom officials and other dignitaries, illustrating a new status quo and a fundamental restructure of property rights. Today,

the kingdom continues to assert its claims over the land it legitimized in the 1900 agreement which sums to 9,000 square miles. Though it is not contiguous, this urban and rural property is densely occupied, and it is some of the most valuable land in the country.

Chapter Four bridges the historic agreement and contemporary Ugandan politics, comparing the development and implementation of land laws in three different regimes. In effect, these land laws illustrate contemporary political power arrangements in each period. The British colonial government, Milton Obote's regime, and Idi Amin's dictatorship each restructured property rights in Uganda. Each of these attempts failed for the same reason: they failed to win the support of local traditional leaders, and they most notably failed to win the support of the Buganda kingdom. The Ugandan governments and the colonial government were similar in how they use land allocation to reward/punish political opponents and allies. Because they abused this power, they undermined the rational-legal authority of the state. Short-sighted political calculations and ethnic favoritism engendered popular contempt for each government, and formal land institutions served as a referendum on state legitimacy.

The fifth chapter investigates contemporary land law and explains the law/policies as the outcome of a process wherein the NRM regime was forced to reconcile the demands of the Buganda kingdom, NRM's elite constituents, and demands from disparate communities all within a new democracy with a new constitution. Uganda's Parliament began to define modern land law in the 1995 Uganda Constitution, and this process continued in the 1998 Land Bill, 2004 Land Amendment, and an additional amendment in 2010. Just as in Chapter Three, in this chapter I argue that land rights represent existing political and economic arrangements and in some cases acknowledge a *fait accompli*. Opposition members win some concession in parliament, but these concessions are only minor victories. The government essentially circumvents these concessions



by not funding them.

The sixth chapter inspects a different dimension of land rights in Uganda. Here, I investigate the influence of formal land institutions on the political and economic activities of agricultural workers. Interviews with farmers, land officials, and Buganda kingdom officials describe the degree to which land laws actually shape farmers' behavior and change conditions in the land market. Instead of protecting farmers and increasing the certainty of their tenure, land laws have helped to erode the power of local authorities and the guarantees that they could provide buyers and sellers. In short, the laws that create a standard, national market for land sales also foster conditions for predatory behavior by well-connected urban elite. This finding in Uganda accords with other research inspecting land sales in Africa (Firmin-Sellers 1996, Onoma 2010) and other accounts of neo-patrimonial abuses of market liberalization in post-colonial states (Bratton and van de Walle 1994, Reno 1999, Weyland 2003, Peppelenbos 2005).

Chapter Seven narrows my research question even further and compares political and economic behavior in Uganda's Central Region to that in the rest of the country. Interviews and contemporary economic/land records provide evidence to suggest that, in comparison to other districts in Uganda, scarcity of prime land in Central Uganda has led to more disputes and more defined land rights. The Central Region, home to the Buganda kingdom, also has the best-organized defense for traditional land claims. Overlapping cultural and state institutions have protected landholders in Central Uganda since the 1900 Buganda Agreement. Individual title holders, informal settlers, and political opportunists conflate formal and informal laws, leading to more land crises and less secure property rights.

## *Conclusion*

When do land institutions succeed? Land institutions succeed when individuals have the incentive to comply with the law. Individuals have an incentive to comply with the law when they have helped to craft that law or when the law takes into account their interests. Uganda's land law has had more success when it has accommodated the interests of major stakeholders; historically, the major stakeholders belonged to an elite class of landholders. In order to succeed, modern land law must accommodate landholders that have benefited from their historic relationship with the government but also must accommodate untitled and landless peasants. Secure property rights are impossible without addressing both groups. However, this balance has been difficult for successive governments and remains at the heart of contemporary conflict. Uganda's NRM government also has a vested interest in courting public opinion while protecting its wealthy and powerful allies. In order for Uganda's land institutions to succeed, the law must create incentives for land owners and farmers by protecting property. The government must guarantee secure property as a public good, and it must create institutions that restrain even its most politically powerful.

## **CHAPTER TWO - PROPERTY RIGHTS AND RATIONAL CHOICE**

### **2.1 Introduction**

Property rights define what a person can own and what they can claim to own as part of community. Property rights help to define who is a member of the community and what their political rights are. They define how a person can transfer the things that they own to another party, as well as what claims a government has over individuals and communities. In short, property rights define a person's or a group's access to the economy. Historically, though, they have gone beyond this economic perspective: property rights also determine membership in a community and, therefore, also determine political rights. Property rights, as political and economic rights, legally include and exclude people and actions. Philosophers, economists, sociologists, geographers, and political scientists study property rights because they are at the core of the social contract between other citizens and between citizens and the state.

Land rights are a type of property rights. This dissertation asks when land laws work by investigating land law and application in Uganda: where the law has worked and when it has failed. I use a rational choice approach to answer this question because every individual in this puzzle matters: people organize in to groups, such as in government and cultural institutions, but they also act individually. The government creates and implements laws. Individuals petition the government and either comply or evade the law. In this puzzle, rules and history also matter. They explain the choices that citizens and the government can make and the consequences of those choices.

With a rational choice approach, we are able to understand why the government and private citizens create specific laws, how stakeholders respond to those laws, and ultimately why land law succeeds or fails. Individuals' interests, strategies, and choices are a product of their

history, environment, and relationships. While historically rational choice approaches tended to ignore culture and “thick” context, more recent rationalist approaches understand that without these details, rational choice application lacks explanatory value.<sup>2</sup> When social scientists model behavior, we need to know people’s choices and strategies. Individuals make choices, decide strategies, and cultivate their interests within a cultural and historical context. To understand the elements of decisions, it is necessary to understand their contextual elements.

## **2.2 Rational Choice Approach to Land Law Design**

Land laws are designed by individuals. A rational choice analysis of property rights, therefore, begins by identifying the people that make the law and their interests. Since I am interested in answering the question “when do land laws work,” my goal in this project is to understand the (1) interests, (2) strategies, and (3) outcomes of land laws. It is necessary to understand how people react to laws. Therefore, I expanded my research to understand how individuals are affected by the law; the stakeholders, the law’s designers, and the citizens all contribute to explaining institutional success and failure.

Citizens, in this case farmers and land title holders, make individual choices within a specific social, economic, and political contexts. When groups of individuals chose to follow the law or neglect it, based on their own personal interest, we then know if the law succeeds or fails. The law either changes individuals’ behavior through incentives or it does not.

While it is important not to conflate individuals with a group of people,<sup>3</sup> individuals’ behavior has enormous power when people act together or independently (but in the same general pattern). This commitment to individual choices with collective outcomes grounds my

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<sup>2</sup> See Levi (2002) and Greif (2006).

<sup>3</sup> For a discussion of this important distinction in the land rights literature, see Wolford (2010).

dissertation in a rationalist approach to politics.<sup>4</sup> Individuals chose to comply with the law or disobey it, and cumulative patterns of compliance and disobedience determine when laws work and when they do not.

Beginning from these assumptions of rationality and individualism, this chapter explains the theoretical basis of my research question and defends it against alternative explanations. I outline the analytical building blocks that I use to inspect individual land laws in Uganda through a rational choice approach: (1) the interests of salient actors, (2) their strategies, and (3) the outcome of their negotiations. In each case study of Uganda's land laws in the chapters that follow, I analyze the interests of politically-salient Ugandans, their strategies, and the outcomes of land laws (both politically and economically) in order to explain when land laws work. In short, I find that land laws are successful when they coordinate major stakeholders' interests.

### *Interests: Actors' Preferences in Specific Environments*

Farmers, government officials, and elites pursue their interests when they obey the law, but they also pursue their interests by forming new laws. Likewise, actors pursuing their personal interests actively shape land law when they do not comply with the law because they force legislatures and politically active citizens to create or change laws. Again, they do this by their participation in politics but also by withdrawing from politics. Rational actors withdraw from politics when they see themselves as losers in a system that is biased against them. Farmers and members of parliament have different abilities to affect land law, but both actively affect the economy. Where parliamentarians and political elites change laws, the reaction of individual

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<sup>4</sup> Beginning at the individual-level, rational explanations are aimed at explaining choices among alternatives, see Pettit (1993); likewise, rationality is a "consistency condition" where people reflect and chose among options, see Ferejohn (2002).

farmers determines whether those legal changes persist or if the government must react to that failed law.

In this comparative-rationalist approach to land law, actors' preferences may be economic, political, or cultural. One important aspect for the rational approach is defining the interest of each actor, and understanding the strategies to pursue those interests. This dissertation analyzes each of these potential interests – political, economic and social – as interests of Ugandans, because these interests motivate the legislators, farmers, land title holders, and other salient political actors. For example, Uganda's land law has been shaped by domestic and international mandates for liberal markets, ethnic claims to territory, and public outcry for land redistribution. Rationalist approaches are responsive to each of these types of interest. While this holistic approach to interests has not always characterized rationalist approaches, modern rationalist studies logically include different explanations of peoples' interests.

### *Strategies: Capturing Interests and Relating Interests in Law*

An individual's strategy depends on his/her status in politics and in the economy; legislators, farmers, and ethnic elites may have the same interests but go about pursuing those interests in different ways. Given their interests, individuals devise strategies based on laws and the behavior of other individuals. Effective laws coordinate the interests of stakeholders so that obeying the laws is the best strategy – this is as true in land law as it is in tax law. Governments can also use the coercive power of the state to align interests (with fines and incarceration, for example). Laws work better when individuals voluntarily follow them because governments do not have to spend resources to enforce the law and monitor its citizens. Sometimes political

action is the best strategy to affect land politics,<sup>5</sup> but sometimes citizens withdraw from politics to show their assent or dissent.<sup>6</sup> Likewise, governments make laws to illustrate the governments' preferences (to tax for example), but legislators also create laws that are in the best interest of their constituents and/or party.

When legislators and citizens strategize, they evaluate the present political and economic environment and translate their interests into action; they also remember lessons from their past actions. Comparative rationalists account for these histories and preferences by introducing counterfactual options; for example, they may ask, "what other choices do people have?" I make use of this counterfactual logic: to understand why individuals and governments chose one law or policy over its alternatives, I weigh the costs/benefits from that law/policy against possible competitors.

### *Outcomes: Sometimes Laws Work*

When do land laws work? Laws work when individuals comply with them, and they fail when individuals do not comply. There are several reasons why people follow laws, but three are important in this study. First, people follow laws because they were doing so anyway, and so the law reflects a status quo. Secondly, laws invoke the coercive power of the state so that individuals can overcome collective action problems (for example, they lower transaction costs and facilitate more efficient trade). Laws work when it is in an individual's interest to obey the laws. Finally, people follow laws because they consider their compliance an important part of group membership. They follow the law because they are good group members.

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<sup>5</sup> For example, see Burgess (1997)

<sup>6</sup> Lambright and Bratton (2000) and Kuenzi and Lambright (2001) give examples of political withdrawal in the face of repression and political exclusion in Uganda.

When the laws work, they can reduce transaction costs in the market and improve the legitimacy of the government.<sup>7</sup> Markets improve because secure laws tell everyone in the market the costs and benefits of participating in the market: for instance, participants know what they can expect in taxes, have the government's assurance that goods are not tainted, and know what penalties cheaters receive. In viable land markets, governments protect property from encroachers and land-grabbers, protect against discrimination and unfair trade practices, guarantee fair adjudication mechanisms, and otherwise facilitate trade. These kinds of assurances reduce the risk to individual investors: in Uganda, this means that people can plant crops, raise cattle, and build on their property with the confidence because the government will protect their interests. Government's credible commitment to secure property rights gives individuals and organizations incentives to develop their interest without fear of losing it. A successful institution is designed and implemented to encourage economic development through secure property rights.

However, these same laws can also alienate citizens. They can have destructive effects to states' politics and economics when they divide people ethnically or by class.<sup>8</sup> Laws that are perceived as biased can encourage revolt against the state, but they also encourage citizens to disobey the law by breaking it or withdrawing into the informal economy.<sup>9</sup> When land laws fail, they can hinder economic growth and reduce the legitimacy of the government. These outcomes matter when you examine the success and failure of land law. When the outcomes of negotiation contradict the interests of the law's designers, salient political actors, or Uganda's farmers, they are unlikely to succeed in changing people's behavior. Organizations and/or individuals may withdraw from institutions and economies that they perceive to be biased against them; when

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<sup>7</sup> See Eggertsson (1990), Weingast (1993), and Eggertsson (1997).

<sup>8</sup> For example, see O'Laughlin (1995) and Moyo (2000).

<sup>9</sup> See Bates (1981), Meagher (1990), Polishcuk (1997), Yap (2005), and Boone (2007).



governments seize property or redefine rights to sanction individuals or groups, it alienates them. Alienated citizens may choose to break or circumvent the law.

### **2.3 Politics of Property Rights**

Governments are not necessary to secure property rights. Individuals can do it. Without governments, individuals and groups of people organize to protect their property.<sup>10</sup> However, as a social choice, governments are better to protect property rights as a public good because they lower costs. They use economies of scale to monitor property against encroachers, defend it, and adjudicate disputes. Governments can offer secure property rights more efficiently than individuals, so it makes sense for individuals to demand this of their government.

Defining property rights has the power to divide or develop a community. No law is without history, and land law is no exception. Property rights are always a political choice, and land law is a perfect example of this.<sup>11</sup> Competing parties debate the nature of property rights because they define the access to scarce resources, whether that resource is intellectual property, mineral rights, or land. Once a community decides the laws that will govern how it treats property, the government must commit to those laws.

#### *Defining Property Rights*

When a community defines property rights, it fundamentally defines the communities' economic and political basis. Gender and ethnic relations are embodied in property rights laws, but so are political relationships and economic class relationships. Women and ethnic minorities have historically had fewer property rights. Similarly, groups of citizens with fewer property

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<sup>10</sup> Some examples include Ostrom (1990), Ellickson (1991), Malik and Schwab (1991), Ostrom (2000), Brasselle (2002), and Fafchamps (2004).

<sup>11</sup> Hobsbawm and Ranger (1983), Berry (1992), Firmin-Sellers (1996), Klopp (2002).

rights and access to property have less efficacy in government. Land ownership exemplifies this trend in both developed and developing states.

At its core, defining property rights is a political activity.<sup>12</sup> In this dissertation, I examine the politics behind property rights definitions in historic and modern Ugandan land law. I argue that property rights are a political choice in Uganda, and they attract some community members and repel others. Where people are repelled, neglected, or insecure in land laws, they seek informal land markets to secure their property. Using the formal land tenure laws and complying with formal markets is a political decision. Individuals make this choice: pursue formal or informal means to secure their property. Individuals' choices are interesting because they occur in patterns, and those patterns can shape economies. Ugandan farmers are as savvy as Ugandan politicians and Ugandan industrialists, and they seek secure property rights just like anyone else.<sup>13</sup>

Individuals (elites and common citizens) do not create property rights out of thin air. They use existing histories and logic to negotiate these rights.<sup>14</sup> Creating new property rights gives people in government and salient political actors the opportunity to reinterpret history and tradition in such a way as to legitimate new, favorable laws with historical law. In 19<sup>th</sup> century Uganda, this negotiation included a colonial authority, and in modern land law this negotiation has included international donors. To understand property rights in Uganda, it is necessary to ground any analysis in the history of property rights. Pre-colonial land relationships predate British colonial rule (by definition) and persist into modern landholder /small farmer

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<sup>12</sup> See Libecap (1990) and Firmin-Sellers (1996).

<sup>13</sup> See Scott (1976) and Bates (1981).

<sup>14</sup> Hobsbawm and Ranger (1983), Firmin-Sellers (1996), and Williams (2007); for community members who ignore laws that do not have informal equivalents, see Atkinson (1994) and Green (2010).

relationships. Knowing the economic, political, and historical roots of these relationships are the only way to understand modern law.

We know that governments do not always use utilitarian calculations to choose the best law that helps the most people. Governments have their own interests and strategies, e.g. staying in power. Uganda's government, like all governments, also responds to immediate political and economic imperatives. While protecting private property is important to all governments because it fosters a healthy economy, even capable governments sometimes create property rights that deliberately exclude productive members of the economy.

### *Getting Property Rights Right*

Secure property rights may be better for Uganda's economy than having efficient property rights. A credibly restrained government does more to improve a country's overall economic development than a government that makes perfect economic policy but does not implement it. Theoretical and applied economic studies illustrate the benefit of secure property rights.<sup>15</sup> However, these same studies disagree as to whether or not those rights must accord with a national policy: indigenous land reform systems are frequently the best (most secure, efficient) systems.

Where governments credibly commit to property rights<sup>16</sup> and stakeholders demand that the state use its coercive power to enforce their rights, individuals may invest in productive economic ventures, and in turn allowing the state to foster a taxable economic sector.<sup>17</sup> Where governments do not commit, economies suffer. Governments that lack legitimacy or lack

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<sup>15</sup> Contracting and defining property rights follows traditions of theoretical economics as in Coase (1960), Demsetz (1964), Williamson (1980), Libecap (1989), and Barzel (1989); foundations of property rights are also found in the works of applied economics, such as Ostrom (1990), Frye (2004), and Humphries and Bates (2005).

<sup>16</sup> Literature on credible commitments in property rights begins with North and Thomas (1973).

<sup>17</sup> For a discussion on legitimate state authority and rent, see Olson (1990), Wolf (1993), and Bates (2001).

coercive force suffer from corruption. Post-colonial states often have additional hurdles. They can decide to use existing, “traditional” land institutions (adjudicating and administrative bodies) that may be relatively inefficient but that satisfactorily secure rights. Alternatively, they can chose to create national policies that may better fit neo-liberal economic models of market transactions and that benefit from government’s bureaucratic economy of scale but are difficult to implement nationally. Where patronage networks exist, as they do in Uganda, land politics favor outcomes that give more distributional power to the central government.

The first step to getting property rights right is creating secure property: secure from both government and predatory individuals. The reason laws work is because they are enforced and protect citizens against each other and against the government. To secure property rights, governments need to make credible commitments to their citizens. A government creates credible commitments to private citizens when it negotiates a pact with those citizens and does not have an incentive to renege on that pact. It is credible not because the government has signed a pact, but because the government would cause injury to its interests if it broke its pledge. Citizens cannot trust in the government when the government makes concessions; citizens can trust in government when it has no good reason to neglect its promises. Without this credible government commitment, citizens have cause to worry about their property.

My approach incorporates this logic because individuals withdraw into the informal economy when the government creates policies that 1) are not in favor of the farmers, 2) do not reconcile the farmers’ losses with some sort of compensation, and/or 3) cannot punish illegal actions. In historic and modern Uganda, the government has driven farmers into economies of self-preservation because of wars but also because policies that formalize ethnic favoritism or

impede economic success. Farmers withdraw their investment and circumvent the law when it is not in their interest to obey it.

## **2.4. Politics and Laws in Africa**

Determining what makes land laws work is a fundamental question in developing states with large agricultural populations, including most African states. Economic politics on the continent have historically favored international interests and/or a cabal of elite domestic political actors. These interested groups frequently clash with local groups in legislatures but also in rice paddies and cattle paddocks. These clashes are sometimes violent. This rationalist study of land law interprets the interests and strategies of salient political actors in an effort to better understand when land laws work. Understanding when laws succeed or fail grants insight to law-makers and activist citizens about how to pursue their mutual interest and about when it is necessary to compensate political losers. New institutions are successful when they incentivize investment and coordinate productive economic behavior, but the government can also compensate losers in order to encourage their participation in the new regime.

Both governments and individual citizens benefit when economies grow, and secure property rights foster this growth. Privatization and developing liberal markets were once the mantra for economic development, but recent scholarship has been skeptical of privatization and/or liberalization where it tries to redefine functional existing markets.<sup>18</sup> Indeed, scholars point to secure property rights as a more fundamental determinant of economic success than any other factor. Guaranteeing secure property rights is more important than determining rights

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<sup>18</sup> For international examples, see Gambetta (1993), Deiniger (1999), Klopp (2000), Manji (2001), and Boone (2007).

through formal titles.<sup>19</sup> African governments need to create comprehensive laws that empower bodies capable of enforcing secure property rights.

Two points are important. First, there are ways for governments to create more efficient property rights, thereby allowing individuals to securely transfer property between each other. If there are “perfect” property rights and markets with negligible transaction costs, the first step is to create a system of secure rights. Secure property rights, meaning establishing property that is safe from both government seizure and private citizen predation, are paramount to economic development.

#### *Uganda Politics Defined by Land Access*

Property rights are, by themselves, one of the fundamental reasons why individuals create the state. They are also a perennially important question in Uganda’s political economy. In Uganda, property rights undergird day-to-day political activity in the national government and local politics. Uganda is a country where over 80% of its citizens are farmers. Since most of these farmers do not own their property with a title, it is vital for them to understand and define their access to and ownership over their only asset. Likewise, titles and property rights are important to every Ugandan, whether or not they own plots of farmland. Ugandan property rights debates tend to focus on defining the relationship between the land owner and his or her tenants. Schlager and Ostrom (1992) usefully stratify control over an asset in Table 1:

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<sup>19</sup> See Ostrom and Nagenda (2007).

**Table 1. Property Owners and Asset Rights**

	Bundles of Rights Associated with Positions			
	Owner	Proprietor	Claimant	Authorized User
<b>Access and Withdrawal</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Management</b>	<b>X</b>	<b>X</b>	<b>X</b>	
<b>Exclusion</b>	<b>X</b>	<b>X</b>		
<b>Alienation</b>	<b>X</b>			

*Recreated from Schlager and Ostrom 1992, 252*

Property rights owners have the power to determine who has access to their asset, how that land is transferred, and the right to sell or lease both the management and alienation rights. Tenants, on the other hand, only have control over land management (i.e., to make improvements) and control over the asset's products/resources (tenants, in Table 1, are represented by Schalger and Ostrom's "Claimant").

This dissertation inspects property rights under Uganda's different regimes: a colonial bureaucracy, an autocratic government, a military dictatorship, and a constitutional democracy. Throughout Uganda's history, land has been the most important asset for Ugandans. Defining tenure, then, delineates the assets of most people and the largest part of the economy. Where the state is able to include the preferences of its major stakeholders through credible commitments to property rights, it is able to inspire investment and development. When the state abuses its coercive authority, citizens withdraw into the informal economy or participate in revolutions.

## **2.5 Conclusion**

Property rights are fundamental social contracts in political and economic communities. Effective governments create laws and implement laws that guarantee property rights as a public good, but defining the public good is essentially a political decision. Property rights can be legal tools for communities to include or exclude women, economic classes, ethnic groups, age groups, and non-nationals. They define what people can own and what they can do with it:

whether they own objects (such as land, commodities, or motor-vehicles), living things (including people), or ideas (like computer programs or prescriptions). Secure property rights can help people to prosper and insecure property rights can impair development. Property rights – both the laws that guarantee rights and the government’s behavior in implementing those laws – are cornerstones in political and economic communities.

Rational approaches to law and politics illustrate how people engage their community. Individuals, in this approach, are shaped by community norms and expectations, and they make choices within these given norms and expectations. Post-colonial governments in Africa inherited markets and land relationships from their predecessors, whether these governments were colonial, post-colonial, or modern. However, interpreting and writing these relationships has always been a political decision. This dissertation investigates that decision in different time periods.

In the following chapters, I explain when land institutions work by comparing the interactions of salient political actors in Uganda in different time periods. Explaining when land laws work is impossible without historical context, because that context informs decision makers’ choices. I use a rationalist approach to evaluating land laws because it maximizes individuals’ agency within this context. In Uganda, the same individuals and strategies have historically determined land law. In order to understand choices in one time period, it is necessary to understand the political and economic contexts of those choices and the history of previous choices. At the same time, individuals choose what history / legal precedents to cite. For this reason, a rationalist explanation trumps historical institutionalism or any other explanation for legal design, implementation, and success in Uganda.



## **CHAPTER THREE - BARGAINING IN THE 1900 UGANDA AGREEMENT**

### **3.1 Introduction**

When does land law have traction? In this chapter, I ask why the 1900 Uganda Agreement created a successful institution. That is, neither the Buganda kingdom nor the British government tried to alter their new relationship and both complied with the terms of the agreement. By all accounts, the British and the Buganda kingdom were satisfied with the 1900 Buganda Agreement, and both adhered to the basic principles that it created for most of Uganda's colonial history. The Buganda Agreement of 1900 also led the British government to develop its policy of indirect rule, under the leadership of Frederick Lugard. Lugard's success negotiating with one of central Africa's most powerful kingdoms, the Buganda kingdom, helped prove the potential power of indirect rule in Britain's colonies.

Land rights, like other property rights, are the product of negotiation between competing political forces. When land rights are successful, the government and individual stakeholders comply with the law. This compliance leads to secure property rights and long-term investment, and it can benefit both the government (through increased tax revenue) and individual farmers who can pursue economic activities. In terms of the early treaties between the British and the people of central Africa, land rights from treaties also reveal interests and preferences of important political actors. There were no significant infractions by either party for the two decades following the agreement. One reason that the 1900 Buganda Agreement had traction and both parties were able to commit to it was because it satisfied the interests of Uganda's political elite as well as the interests of the British colonial government.

To study the interests, strategies, and outcomes of the 1900 Buganda Agreement, I conducted archival research in Uganda's National Archives in Entebbe. At the archives, I

surveyed reports from the *Lukiiko* and the British colonial government as well as personal and professional communication between government administrators, military officers, private citizens, and religious figures. These documents, written between 1890 and 1910, were written in English, Luganda, Kiswahili, and a variety of other languages. These archival documents reveal the preferences of the different negotiating parties, and they describe how each of the stakeholders responded to the 1900 Agreement.

### **3.2 Background: Political Unrest in Pre-Colonial Buganda**

In the 1880s, sectarian divisions between Baganda chiefs – political at first, later taking on religious dimensions – emerged as a result of exogenous economic influences and domestic political undercurrents. Hanson (2003, 93) cites increased slave trade and increased ivory trade as two catalysts that changed the social structure of the Baganda. Likewise, Rowe (1966, 153) argues that increased economic independence and the increased ability for individual chiefs to wage war destabilized the relationship between the *kabaka* and the chiefs.<sup>20</sup> While a chief's territory remained the central and most important part of the economy, chiefs with or without the support of the *kabaka* began to accrue wealth and buy imported goods like cotton, textiles, and fire arms.

Political divisions existed in the kingdom before this economic shock, and the relationship between the *kabaka* and the chiefs had shifted through time. In the early 1800s, the *kabaka* enjoyed a considerable amount of power over his chiefs and sub-chiefs. As Reid explains, the power of the *kabaka* of Buganda had expanded for 300 years vis-à-vis the *bataka* land owners, *bakopi* peasants, and the chiefs that relied on the monarchy for patronage. During the rule of Kabaka Mawanda in the mid-1700s, the monarchy became more centralized and the

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<sup>20</sup> For an overview of Swahili/Arabic trade influencing the Buganda kingdom, see Ingham (1962), Hanson (2003), Lonsdale (2010).

*kabaka* gained the ability to remove clan heads from hereditary land holding.<sup>21</sup> According to Low, “the increase in the authority of the *kabaka* over the clans and the reduction in the hereditary of certain clans over territorial jurisdictions into which the kingdom was divided was already well advanced” (1971, 15) before the British came to Uganda.<sup>22</sup>

Reducing hereditary claims to land increased the authority of the *kabaka* because it allowed him more liberty in terms of rewarding and disciplining his chiefs. The *kabaka* had the ability to grant land to individuals, but he also could replace chiefs that he considered unfavorable with loyal ones. Land control was connected to an individual’s title, and administering titles was the authority of the *kabaka*. This relationship created fierce competition between rival factions at the *kabaka*’s court (Reid 2002, 3). Indeed, the relationship between the *kabaka* and his chiefs was such that political intrigue defined the relationships between the different classes of chiefs and sects within those classes. The *katikirro* and other upper echelon chiefs (those from prominent *amassaza* and those with special cultural responsibilities, such as the *kimbugwe*) helped to decide who became the next *kabaka*. Aspirants to the *kabaka*’s throne thus had reason to petition chiefs. The chiefs were still subordinate to the *kabaka*, though, and the *kabaka* could assign the chiefs to wealthy counties or poor ones.<sup>23</sup>

In the latter half of the 19<sup>th</sup> century though, Reid notes that, “the *kabaka* was almost a marginal figure, at least after 1890, and the pomp and glory of the capital in many respects only the façade of a machine organized and driven by countless chiefs and sub-chiefs throughout the kingdom” (2003, 102). This change can be traced directly to the emerging export/external

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<sup>21</sup> See Kiwanuka (1970) and Apter (1995) for a detailed description of the rise of *bataka* families within the Buganda Kingdom.

<sup>22</sup> Women were frequently traded domestically as slaves. Women were also given as tribute to the king and as sexual objects, and men were honored when the *kabaka* selected their wives and daughters. Women who were given as gifts to the *kabaka* also served to advance a clan’s right to the *kabaka*’s throne: the matrilineal kingship meant that clans also competed to produce the *kabaka*’s heir (Kiwanuka 1970).

<sup>23</sup> Richards (1960), Sathiyamurthy (1986), and Twaddle (1993) give a detailed explanation of the politics within the Buganda kingdom.

markets as a source of wealth within Uganda. The power of the *kabaka* vis-à-vis chiefs had changed, and greater economic independence allowed for the chiefs to press for greater political independence.

The shifting economy of the Buganda kingdom created an environment wherein Buganda kingdom chiefs were able to be financially independent enough from the *kabaka* to challenge him politically. Long distance trade brought with it wealth from trade in slaves, ivory, and weapons.<sup>24</sup> *Saza* markets were independent of the *kabaka*, and the local *saza* chiefs were able to exert their own taxes locally on domestic and international traders. Many chiefs did not want to be beholden to a *kabaka* that might replace them for chiefs that he perceived to be closer to him. The economic change in the Buganda kingdom helped to reduce chiefs' dependence on the *kabaka* (Rowe 1966).

The domestic economy also changed due to declining local crops and the influx of *Merican* (United States-sourced) cotton. Reid's study of the pre-colonial interlucustrine economy shows that with the Buganda kingdom's territorial expansion into the regions of Mawokota and Buddu in the late 1700s and early 1800s prospered tremendously from regional bark-cloth trade (Reid 2003, 72 – 76). Trade and production were disrupted by the civil wars that plagued the Buganda kingdom and also by consumer trends that began to favor American cotton. American cotton, traded by coastal merchants and British explorers, displaced locally-produced bark cloth, in part because of cotton's scarcity and in part because cotton textiles were exotic. Wilson explains that the once-popular bark-cloth clothing began to be replaced by shirts, pants, and dresses that the British imported (1907, 129). Disease, war, and the new trend of American cotton reduced the demand but also reduced the supply of locally-made bark-cloth.

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<sup>24</sup> For a discussion of Uganda's slave trade, see Twaddle (1988), Twaddle (1988); while Beachey (1967), Hartwig (1970), Uzoigwe (1972), and Hanson (2003) give an overview of the expanding ivory trade in Uganda.

The Buganda kingdom also feared Egyptian influence threatening the kingdom from southern Sudan. Emissaries from southern Sudan had made peace with the Bunyoro kingdom in the late 1870s, and the Buganda were threatened enough that Kabaka Mutesa asked the Sultan of Zanzibar for aid to prepare against a possible Egyptian advance (Ingham 1958, 35). Mutesa had sought the Khedive of Egypt's assistance against the Sultan of Zanzibar (Low 2009, 40) – evidence that he was seeking outside support and recognized that the Buganda kingdom might be unable to stand alone as an independent power in the region.

A further sign of the kingdom's insecurity was the force with which it defended its "back door." Traders, missionaries, and explorers from Europe or the coast were not allowed to travel through the Busoga kingdom on their way to the Buganda kingdom. Directly to the east of the Buganda kingdom, the Busoga kingdom had succumbed to the Buganda kingdom and became, essentially, tribute-paying vassals. Though this route may have been faster and more direct to the Buganda kingdom, outsiders were not allowed to travel this way, as Anglican Bishop James Hannington of England discovered in late October, 1885, when he and his English companions were killed by Buganda kingdom agents for traveling this route.

Mutesa invited religious authorities into the county, in part, to draw British support against Buganda's enemies to the North, the Bunyoro kingdom and Egypt (Ingham 1962, 112). As missionaries arrived and converted the Baganda to Catholicism and Protestantism, Kabaka Mutesa began to understand that these religious groups were providing a medium for political alliances against the monarchy but was unable to check this growing political power. Instead, he was able to use his power as *kabaka* to balance powerful religious factions against one another, thus dividing the chiefs into four competing groups: traditionalist pagans, Muslims, Catholics, and Protestants.

His successor, Kabaka Mwanga, inherited the kingdom's cascading problems, but he lacked the political support that his father enjoyed from long-time allies within the kingdom. Mwanga, a young *kabaka* in 1888, compounded these existing issues with a new problem: his diminutive status as a new *kabaka*. Mutesa was able to prove himself as a strong *kabaka* by conducting raiding campaigns and by rewarding political allies by making them *saza* chiefs in the best counties or in new counties. Mwanga was unable to do this and ascended to the throne in a tense political climate defined by internal and external threats. Indeed, as Low explains, "for thirty years or more the forward-looking elements at the *kabaka's* court had been looking for the creation of a new order: this now seemed to be the beginning" (Low 1971, 34). Mwanga inherited a kingdom with shrinking military power, thus a reduced ability to wage war for spoils and a shrinking domestic economy as a result of human and animal diseases.

Mwanga attempted to consolidate his power by directly challenging many powerful political actors in the Buganda hierarchy. One such episode was Kabaka Mwanga's decree to expand the palace's lake. Instead of ordering slaves or peasants to complete this work, Mwanga, "kept the chiefs and their sub-chief pages hard at this work for a very long time. He made the great chiefs build huts on the spot and refused them to go to their homes to sleep or refresh themselves" (E.C. Gordon, 7 November 1888, cited in Low (1971)). Perhaps his most provocative step was to try to maroon leaders of the Roman Catholics, Protestants, and the Muslim communities on an island in Lake Victoria. However, this plan failed when the leaders learned of Mwanga's plan, and, instead of eliminating the leaders of potent political groups in Buganda, Mwanga gave them cause to ally against him (Low 1971, 31).<sup>25</sup>

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<sup>25</sup> Reid (2002, 112) explains, "these abuses of taxation and state labor systems undoubtedly contributed to the overthrow...of the *kabaka*. There were, of course, additional tensions and strains to those outlined above which influenced the actions of chiefs at this time; religious persuasions and emerging political and pseudo-military culture which encouraged the ambitious to challenge the status quo were also contributory factors...but these were no more

### 3.3 Interests of the Buganda Kingdom and the British Colonial Government

#### *Buganda Kingdom's Interests with the British*

Prior to the 1850s, the Buganda had very little contact with communities that did not border them or their immediate neighbors. In the second half of the 19<sup>th</sup> century, trade with Zanzibar and other distant markets increased, and this trade with exogenous communities brought new wealth to lower-strata members of the Buganda hierarchy. Ultimately, the political and social relations that existed while the Buganda kingdom was focused on peasant farming shifted to reflect this new economic power. In order to maintain its autonomy vis-à-vis its external neighbors, the Buganda kingdom allied with the British government.

On the other hand, Kabaka Mwanga struggled against other Baganda elite within the monarchy. Mwanga's opposition mobilized according to religious identity. Opponents to his rule followed Mutesa's lead in gaining external political alliances and soliciting international trade partners, so much so that Mutesa had begun to worry that they would eventually circumvent the monarch's authority.<sup>26</sup> Religious wars erupted within the kingdom. This civil war in Uganda reached its height between 1888 – 1892, with the British ultimately siding with the Protestant Ugandans, including the sitting *katikirro*, Apolo Kagwa. Their opposition included the *kabaka*, who had gained the support of the Catholic Ugandans. The Catholics had the most Ugandan soldiers, but were far from the majority.<sup>27</sup>

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important than the perception that the *kabaka* was acting far in excess of his prerogatives and legitimate authority in taking money, goods, and labour in the name of the state, thus threatening the very framework by which the state and society functioned.”

<sup>26</sup> As Reid argues, (2002, 201), “Mutesa feared what were perceived to be growing pockets of alternative authority, in the form of ambitious young men, often identifying with one or other of the religious factions at the royal court, armed with guns, the weapon which had become to symbolize power, freedom, adventure, and escape from inhibiting tradition.”

<sup>27</sup> For a detailed description of the changing alliances between religious factions and British military support see J.A. Rowe's “Lugard at Kampala” (Makerere Institute for Social Research, University of East Africa Social Science Council Conference 1969), and J.R.L. MacDonald's Report, 7 April 1893, Foreign Office 2/60.

The Buganda monarchy was forced to fight to retain control, but ultimately one faction of elites won more political power against the monarchy. Kabaka Mwanga struggled against other Baganda elite within the monarchy as well as the growing influence of religious groups. These elites had followed Mutesa's lead in gaining external alliances and trade partners, so much so that Mutesa had begun to worry that they would eventually circumvent the monarch's authority. In decline, the Buganda monarchy struggled to control a shrinking economy and a class of elites that grew stronger and more demanding. Mwanga's insecurity forced him to lash out at Christians in Buganda (white and African) and participate in a civil war, which ultimately led to his forced exile. After the civil war, the rulers of the kingdom – now three regents and an infant *kabaka* – brought the Buganda kingdom and British into a close relationship, and the regents personally benefited from their work.

The British government promised the Buganda kingdom an expanded role in the new Protectorate, as well as security against its enemies on all sides and increased trade for Western goods. Perhaps most important to each of the Buganda kingdom leaders, though, was a promise for greater domestic stability against domestic opposition.

### *British Interests in Uganda*

The Buganda kingdom was a political and economic power in the region, drawing tribute from its neighbors and conducting successful wars for plunder and imperial expansion. However, the Buganda kingdom was also recently weakened by an unstable economy and a series of civil wars. Though weakened from the height of their power perhaps a century before the British arrived, the Buganda kingdom remained the most powerful kingdom in central Africa.



The Buganda kingdom offered the British a relatively strong market for British goods, local soldiers to help pacify the surrounding rebellious people, and a strategically attractive location for the British military. The Buganda kingdom is located on Lake Victoria, at the source of the river Nile, in an especially fertile part of the country.

Because the Buganda kingdom had a strong military, bureaucracy, and political structure, it was an attractive ally for the British. The kingdom utilized a form of parliament for decision making, the *Lukiiko*, and so had a government amenable to the British political system. The Buganda kingdom also had a system of taxation and local government before the British arrived, as well as an impeccable road system and imperial supremacy over some of the surrounding communities. Though they appeared cruel and primitive to the British at times, the Baganda were the British's best option to rule the new territory.

The British government had suffered considerable economic and military losses in Nigeria, South Africa, and Sudan before beginning to colonize Uganda. One of the officers responsible for the colonial administration in Uganda, Captain Lugard, was also the architect of indirect rule in Nigeria. Lugard used a similar strategy of indirect rule in Uganda as the one he developed in Nigeria, which was designed to reduce the cost of ruling.<sup>28</sup>

In Britain, the political power between the Liberals and Conservatives fluctuated. While the Liberal party was divided, fighting over William Gladstone's successor and some foreign issues, Conservative Prime Minister Salisbury took office (1895-1902). However, the principle goal of lobbyists for the colonies in the British Empire remained constant. Thompson (2003) explains that domestic political organizations in Britain fought for developing the domestic economy, protecting it from threats from abroad and expanding trade. These domestic interest

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<sup>28</sup> Lugard's *Dual Mandate* (1922) helped to define British colonial rule, especially in Northern Nigeria. Indirect rule, in short, means governance-by-proxy; for a discussion on British indirect rule, see Perham (1956), Atanda (1973), and Nwabughuogu (1981).

groups took opposing sides and argued over policies in the colonies, but they did not problematize the expanding empire. Colonial expansion – at a low cost – was a common interest to most of the parties influencing British foreign policy.

The “Scramble for Africa” was, in part, the result European mercantilist/internally liberal economic policies. Lugard, a former military administrator and architect of Britain’s policy of indirect rule, explained that areas that were formerly under Britain's sphere of influence turned into protectorates when “corporations decided to send merchant adventurers” (1922, 14). These entrepreneurs helped the British to develop their colonies by bringing British settlers and commerce to new territories.

In Britain, religious forces enforced public demand for colonial expansion. Uganda had long been a recipient of missionaries from Britain, but the French had sent Catholic missionaries as well. Throughout much of the pre-colonial history of Uganda, missionaries faced physical threat, but this was perhaps the most pronounced when Mwanga ascended to the throne and killed converts to Islam and both sects of Christianity. Mwanga asserted his authority by killing Ugandan converts, famously the now-sainted Uganda Martyrs in 1886, but also by harassing European missionaries in the country. The British continued to support the Ugandan converts against the *kabaka* and demanded that the British government remain active in Uganda.

At times, Buganda and other East African British holdings seemed too costly to retain. The first firm chartered to expand trade inland to Buganda, the Imperial British East Africa Company, failed to make the venture lucrative and in just a few years stopped operating (Pakenham 1991).<sup>29</sup> However, the Chambers of Commerce of the United Kingdom unanimously urged the retention of East Africa on the grounds of commercial advantage. The presidents of the London and Liverpool chambers attended a deputation to her Majesty’s Minister for Foreign

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<sup>29</sup> See Galbraith, (1972) and Wolff (1974) for an overview of venture capitalism in British East Africa.

Affairs to urge “the absolute necessity for the prosperity of this country that new avenues for commerce such as that in East Equatorial Africa should be opened, in view of the hostile tariffs with which British manufactures are being everywhere confronted” (Oct 20, 1892, quoted in Lugard (1893)). This point is echoed in the *Uganda Gazette*, reporting a speech made by Sir Arthur Harding, High Commissioner in Uganda, on behalf of William Mackinnon at the unveiling of a statue for him in Kampala.<sup>30</sup> These sentiments are also reiterated in Munro's (1976) overview of the mercantilist turn in the late 1800s.<sup>31</sup>

Because the European trade policies became protectionist against European rivals, domestic businessmen lobbied to expand markets in the colonies (Gukiina 1972, 17). Lugard made similar remarks, arguing “Spheres of influence turned into protectorates when corporations decided to send merchant adventurers...and following Belgium’s example the Europeans took treaties with natives as right for nationals to take land” (1922, 14-15). In short, the British were restrained from trading in Europe, so they sought to trade in expanded colonies.

As important as the new markets were, British national security also remained a pivotal issue in British colonial policy. In the years following World War I, the British government

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<sup>30</sup> Sir Arthur Harding explains that, “It was by men like Sir William Mackinnon that public opinion was gradually educated up to an appreciation of the necessity of protecting and finding outlets for our trade through a vigorous foreign and colonial policy. Such a policy he carried out in East Africa by the Agency of administrators and employees of the Imperial British East Africa Company...many people thought at first that East Africa would be a second India but it was soon seen that conditions were very different in the two countries and that though the former would doubtless eventually yield a handsome revenue it could only be after years of patient industry” (*Uganda Gazette* October 5, 1900).

<sup>31</sup> J. Forbes Muro explains, “A retreat from the liberal free trade and laissez faire policies, which permitted the relatively free flow of commodities, labor, capital, technology and entrepreneurship between economic regions into that of tariff protection and subsidy of national autarky, became the hallmark of post 1870s Europe. Behind protection barriers erected by Austria (1875), Spain (1877), Italy (1878), Germany (1879), Switzerland (1884), and France (1881, 1892), cartelization of domestic markets appeared as an attempt by producers to restrict competition and reduce market instability. British metropolitan politicians and businessmen, the mid-century apostles of free trade and the open economy, remained largely removed from the neo-mercantilist idea and influences spreading through continental Europe. The direction of their efforts, rather, turned outwards in a defensive posture – to ensure that, as barriers to British trade arose in Europe, they should not also be raised to the detriment of British trade with the peripheries on the international economy” (1976).

considered the colonies a source of necessarily war materials as well as a source of soldiers. The colonies represented physical and economic security for Britain (Lugard 1922, 609).

The British government spent a considerable amount to rule Uganda, but it was able to reduce these costs by ruling through local leaders instead of trying to conquer the Buganda kingdom and the surrounding kingdoms and ethnic groups. The British were drawn to Uganda because of their imperial imperative to control the Nile River and lay claim to more resources, such as economic markets and agricultural land. The British government had to answer to its own constituents, and so it reduced the costs of colonizing Uganda, first by chartering firms to colonize and then through indirect rule. The British government also courted British popular support by linking Ugandan colonization to 1) Christian evangelism, 2) expanding commerce, and 3) an imperative to spread civilization (Packenham 1993). The interests of the British and the Buganda kingdom actors are summarized below in Figure 1.

**Figure 1 Interests of Negotiating Bodies**

British Colonial Interests	Buganda Regents' Interests
Politically control territory at low cost	Consolidate political power
Expand British markets	Institutionalize gains from revolution
Establish Christian missions	Retain British support
"Civilize" Africa	

The Buganda kingdom and the British were both compelled by international and domestic security interests and trade interests. For the Buganda, the British represented a powerful ally against invading forces, but also it represented a stabilizing agent for the winners of its civil war. The British would benefit from the compliance of the Buganda kingdom in central Africa, and it

could secure its prominence on the upper Nile at little cost, once commercial development made the colony financially independent.

### **3.4 The 1900 Uganda Agreement: Winners and Losers within New and Old Institutions**

H.H. Johnston and the Regents of the Buganda kingdom negotiated the terms of the 1900 Buganda Agreement. Johnston was directed by the British Foreign Office to obtain powers of administration, taxation, and granting land titles (Mugambwa 1988, 247). The regents, with Apolo Kagwa as the lead negotiator, sought as much autonomy as possible under the new government (Twaddle 1969). While Johnston had written most of the agreement before arriving in Uganda, the negotiations were basically amiable. The Buganda regents acted with deference and the British colonial representatives appeared to closely consider alternatives (Twaddle 1969, Apter 1995).

The 1900 Buganda Agreement established the supremacy of the Buganda kingdom in Uganda, but it also empowered a few members of the kingdom much more than others. The British also gained vast amounts of territory in the country, but more important than *the amount* of territory was *its location*: in the East, the British secured a route for a railroad to the coast, they secured the banks of the Nile River, and they designated a strategic seat for government in Entebbe. The British were free to collect taxes through the Buganda kingdom collection agents, in addition to marshaling Baganda subjects to fight on the behalf of the British under the local authority of their existing chiefs.

#### *1900 Buganda Agreement in Brief*

The Buganda Agreement formalized the political and economic relationships in Uganda in 1900. The agreement between the British and Buganda oligarchy illustrates the status quo political arrangements within the kingdom and between the kingdom and the British government.

A clear test of this symbiotic relationship is its durability. The British and the Buganda elites worked within this framework until an economic shock elevated another set of actors, the Ugandan peasantry. Until the 1920s, the relationship between the Buganda kingdom and the British satisfied the interests of both parties. The British gained control of territory at the source of the Nile at relatively low expense. The Buganda retained some autonomy, the chiefs that negotiated the agreement with the British made significant personal gains, and the land in the Buganda kingdom was portioned to other chiefs who worked well with the British.

The Uganda Agreement allocated wealth and property to specific monarchy officials and defined the new political hierarchy. The *kabaka* of Uganda was formally recognized by the British government as an elected position. The *kabaka* had to win a majority of votes in the *Lukiiko* and had to be selected from among the descendants of Kabaka Mutesa (Buganda Agreement 1900, Article 6).<sup>32</sup> Additionally, the British and Baganda elite divided land among themselves. The area of the Buganda kingdom became larger in the agreement, with the addition of five new counties and parts of two other counties transferred from the Bunyoro kingdom (Gukiina, 1972, 54).

In Buganda, nearly all of the 19,600 square miles were allotted to the British Crown, the *kabaka*, his family, the regents, or different levels of Buganda kingdom chiefs. The group that attained the most land, after the British, was the chiefs. The chiefs, as a group, were awarded

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<sup>32</sup> The *kabaka* also was to receive £500 a year after he reaches the age 18, but before then the three regents will receive £400 each, chiefs from the 20 *sazas* will earn £200 a year. The chiefs report to the *kabaka* on administrative affairs aside from allotting and collecting taxes (Article 10). According to the agreement, the *kabaka* can select the *Lukiiko* members, and the function of the *Lukiiko* will be to discuss native administration in Buganda. The 1900 Agreement also established the Hut Tax (3 rupees) and a gun tax (3 rupees) per year. The regents, *kabaka*, *namasole*, chiefs of each *saza* were all exempt from Hut Taxes (Article 12); likewise, this group was exempt from gun tax on a limited number of guns. Additionally, Uganda citizens with land over 500 acres were exempt of the tax for one gun. Finally, as was customary before the agreement, road maintenance remained the responsibility of *saza* chiefs (Article 14) through mandatory labor of the citizens of the counties.

8,000 square miles, which was then given to the 1,000 chiefs.<sup>33</sup> The allocation was under the authority of the *Lukiiko*, and the overall amount of land was set within this agreement. This land would be allocated by *Lukiiko* and with the discretion of the *kabaka*. The *kabaka*, however, was still an infant at that time, so land management was the responsibility of the regents, the *katikiiro*, the *abasasza*, the clan heads, and the other chiefs that sat at the Bulange. The British Crown was awarded 9,000 square miles that the Buganda kingdom and the British deemed “waste and uncultivated land” to be controlled by the British Administration. Specific Buganda kingdom officials were allotted vast amounts of land in the kingdom to hold as part of their office and as individuals.<sup>34</sup>

The Baganda peasants, known as the *bakopi*, were largely left out of negotiations in the 1900 Land Law. The *bakopi* class of farmers occupied and worked the land in Buganda. They were the backbone of the economy and the primary source of tax revenue for both the British Crown and the Kingdom of Buganda. Under the monarchies that ruled prior to 1900, the *bakopi* were landless peasants working chiefs’ land, and in return the *bakopi* would give the chiefs produce, part of the tax, service in the military, and unpaid labor. The chiefs would owe part of this to the *kabaka*. The 1900 Buganda Agreement continued this system in some respects, but now many more individuals owned the property that they administered. Still, these chiefs were responsible for collecting taxes and maintaining the road network, along with implementing other mandates passed down from the *Lukiiko* and the British government.

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<sup>33</sup> The total number of local leaders claiming territory would swell to over 4,000.

<sup>34</sup> The monarchy retained the largest single parcels: the institution of the *kabaka* retained 350 square miles, the mother of the *kabaka* retained 26 square miles, each prince retained 8 square miles, and all other *kabaka*’s relatives retained 90 square miles. The chiefs of the counties were awarded 8 square miles each of private property and 8 square miles of property attached to their office. Likewise, the three Buganda regents were awarded 16 square miles individually and 16 square miles attached to the office of the regent. Two other chiefs (the chief of the Koki, Kamswaga, and a Muslim chief, Mbogo) were each awarded 24 and 20 square miles, respectively.

The other kingdoms were excluded from this first treaty, but the British signed treaties with the other large kingdoms soon after. Many smaller communities were incorporated into the largest five kingdoms in Uganda and administered by kingdom elite. However, the other kingdoms and cultural leaders would remain as second-class partners throughout the British rule of Uganda.

## **Figure 2 Negotiation in the 1900 Buganda Agreement**



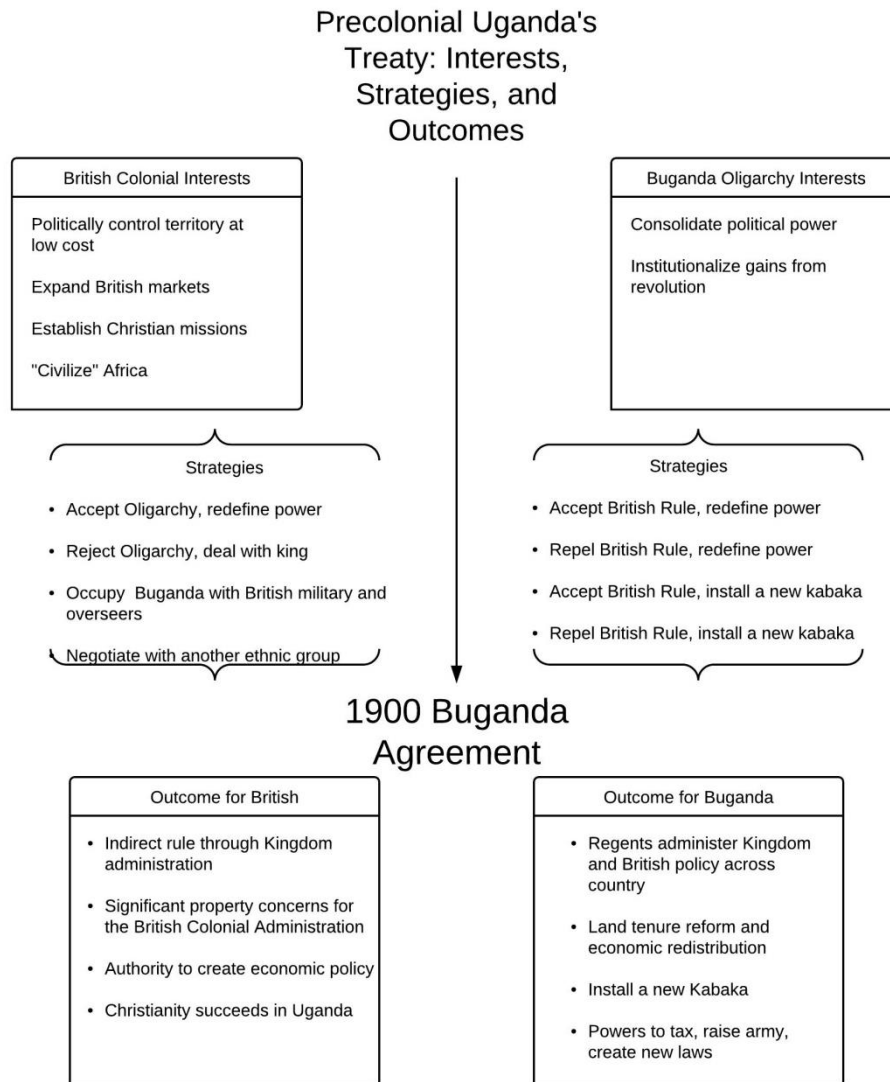


Figure 2 illustrates the interests, strategies, and outcomes of the 1900 Buganda Agreement. The figure shows the strategies of the British and the Buganda kingdom, the two primary groups considered in the negotiation: the *bakopi* peasants were not calculated in this initial agreement, at least not explicitly. Both the chiefs under the Buganda kingdom and the British wanted the *bakopi* to increase production because it would result in higher tax revenue for both. Likewise, it was in the interest of both the British and the Buganda kingdom to sign the agreement between the two parties: the Buganda preferred allying with the British because the

British offered safety against external threats and had helped stabilize the kingdom during the civil war. More to the point, the British offered to buttress the political claims of the winners of that war.

The British, on the other hand, were happy to sign a treaty with the best organized kingdom in central Africa: such an alliance could quickly achieve its goals of a low-cost, stable colony. Missionaries had already made contacts and allies, spreading Christianity and recruiting an army to combat Muslim rulers further north down the Nile River. Partnership with the Buganda kingdom, in the form of a colony or protectorate, could be mutually beneficial to both parties.

### **3.5 Outcomes: Adjudication, Allotment, and Implementation**

#### *Adjudication and Allocation in the 1900 Land Agreement*

Both the Buganda kingdom and the British government benefited from the 1900 Uganda Agreement. H.H. Johnston, as the representative for the British Colonial Office, negotiated the final agreement within a matter of months. The Buganda *Lukiiko* debated issues concerning taxes and allotments, but ultimately they conceded to most of Johnston's requests. The regents of the *Lukiiko* were eager to solidify their power, and they recognized the importance of the British as an ally, though the British were far from dominant in central Africa in the early 20<sup>th</sup> century.<sup>35</sup>

The Buganda kingdom, as an institution, continued to be the largest land owner in Buganda (aside from the British Crown) after the 1900 Agreement allotted land to individual chiefs. However the 1900 Buganda Agreement "established the chiefs for the first time as a landowning class in the kingdom" (Thompson 2003, 44). Individuals already knew the value of land, and the 1900 Buganda Agreement fortified the Protestant victors from Uganda's civil wars

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<sup>35</sup> Pakenham (1993) and Thompson (2003) give vivid accounts of British losses politically, economically, and militarily in Uganda and East Africa.

as the ruling elite for the next twenty years. The regents, especially Katikiiro and Regent Apolo Kagwa, were also eager to help themselves to native land in Buganda.<sup>36</sup>

While this upper tier of Buganda kingdom elite benefited from the 1900 Agreement, the rest of the *bakungu* class of chiefs benefited as well. The *bakungu* had been the part of the monarchy that was responsible with to local authority throughout the 1800s. Subordinate to the *kabaka*, this class of chiefs (including the *abassaza* and their subordinates) were responsible for collecting taxes, raising the army, building and restoring roads, and legal adjudication. The *bakungu* was also “both the personal representatives of the *kabaka* and the supporters of his throne” (Low and Pratt 1960, 47). The *bakungu* chiefs had subordinate chiefs on whom they relied and who also owned land.

In the 1900 Agreement the British essentially created the land market, redefining the relationship between the monarchy, the chiefs, and the people working the land. The *bakungu* retained the administrative authority that they held. According to Low and Pratt, pre-colonial land ownership in the mind of the Baganda was concerned with jurisdiction: chiefs over male peasants, and the male peasants over their wives, who actually farmed the land (1960, 49). When territorial authority remained with the *bakungu* class, they retained their ability to secure gifts from landowners that needed favors and to siphon a portion of the taxes that they were still in charge of collecting.

The 1900 Buganda Agreement did not automatically change all of the institutions in Buganda, and both Buganda political authorities and peasants in Buganda circumvented the

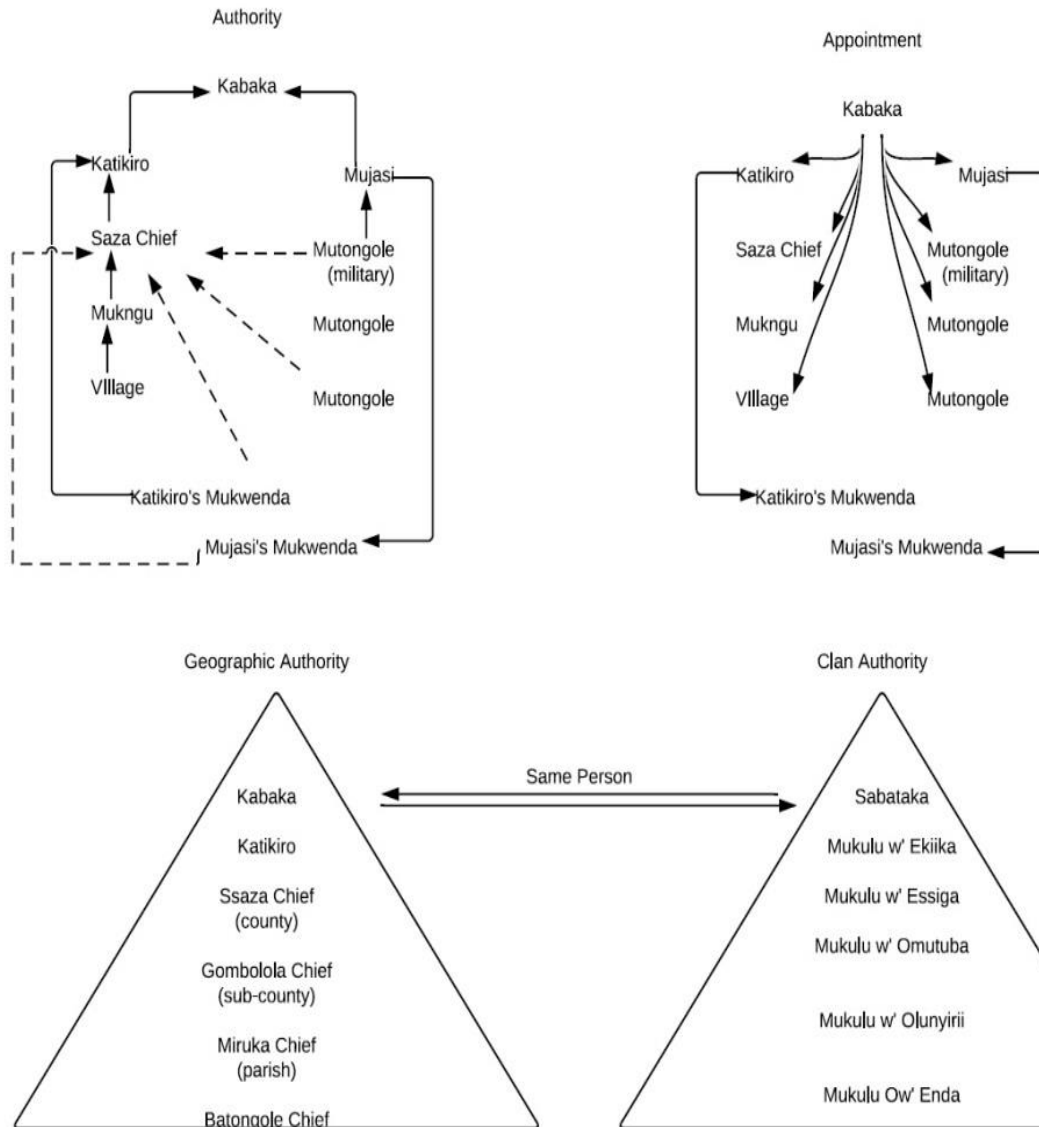
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<sup>36</sup> Kagwa in 1904 alone asked for the titles that bought on 20 square miles of property promised to him by former Colonial administrator H.H. Johnston (Kagwa June 30, 1904) and 62 square miles that he bought from Kabaka Mwanga as he was exiled (Kagwa June 9, 1904). Regent Stanislaus Mugwanya also registered 15 square miles in 1904, having received them from H.H. Johnston in 1900 for services to the empire (Fowler, October 20, 1904). Using his authority as regent, Apolo Kagwa ignored a ruling by then Buganda Chief Justice and Regent Stanislaus Mugwanya over 15 square miles that was in dispute between himself and a prominent muganda, Lule Kijubii. While Mugwanya ruled that Kagwa had to pay 500 rupees for the land in question, Kagwa removed Kijubii from the land without penalty (Lule Kijubii Oct 28, 1904).

British authority to suit their interests. In particular, the British relied on local authorities to levy taxes on the subjects of the Buganda kingdom. However both the chiefs and the peasants disrupted the British's plans by overtaxing and evading taxes. The British also relied on soldiers from Buganda to fight enemies around the country. Again, individual Muganda and Buganda chiefs frequently disturbed the British plans when their interests and the interests of the British government clashed. Finally, the system of political corruption that was alive when the British arrived continued to exist long after they had signed a treaty with the Regents of Buganda. The three regents in power, Apolo Kagwa, Stanislaus Mugwanya, and Zakariya Kisingiri, continued a system of patronage and kleptocracy that had existed under Mwanga and Mutesa.

The groups that suffered the most from the new land agreements were the *bataka* and the *bakopi*, the culturally defined land-administers and peasants. This outcome, however, was quite perverse in terms of what the British government had intended. The 1900 Buganda Agreement gave land to the chiefs, but it also established individual property rights for people to buy and own land – in part, qualifying the authority of the Buganda monarchy to allocate land. The *bataka* chiefs as a class lost much of their land to *saza* chiefs and other members of the *bakungu* who registered it as *mailo* land in the initial agreements. Like other Baganda, the *bataka* were frequently evicted from parcels of land in favor of the *bakungu* chiefs, with the *bakungu* explaining that the 1900 Agreement gave them authority over this land. Early British administrators relied on local chiefs to demarcate land within the 8,000 square miles that they had attained in the agreement.

### **Figure 3 Buganda Kingdom Administration, Circa 1880**



*Adapted from Apter 1995, Uganda Political Kingdom*

### *Implementing Laws – Credible Winners and Compensating the Losers*

The 1900 Agreement formalized the relationship between the Buganda kingdom and the British government setting aside land for each monarchy. However, the institutions under the previous monarchs did not disappear. Patronage had existed during the period of the strong monarchy, and it continued while the regents ruled under the British. First, the new regents

benefited from their agreement with the British and were keen to abuse their authority in the new political arena. Namely, the regents acted as emissaries with the clan heads and upper class Baganda, thereby extracting tribute. Regents allocated property to themselves in the new system.

Chiefs also continued to reap the benefits from a weakened central government. They remained responsible for collecting taxes and organizing state-sanctioned unpaid labor. On the surface, their responsibility to tax the *bakopi* seemed like a logical and inexpensive structure for the British to collect the Hut Tax and the Gun Tax. Low (2009) explains the debate to choose local Baganda or expatriate British administrators was a decision that balanced cost with control: British colonial administrators were likely to cost more and have less control over local Ugandans, but they would most likely be loyal to the British government. Baganda, on the other hand, were likely to be able to implement policies and were cheaper to hire, but they might not closely follow British colonial directives. In the end, the British opted to practice indirect rule in Uganda, employing just 25 British officials in Uganda during the 1890s (Hyam 1993, 310). Chiefs were already in place, and/or the British could replace the existing chiefs with other chiefs more sympathetic to the regents/new order.

The British quickly found that they were unable to effectively tax the Baganda, even with the help of local officials. First, the *bakopi* peasants did not want to be taxed – either in service or in specie – and knew how to avoid taxation. Baganda peasants, unhappy with the taxes, moved to areas controlled by chiefs that refused to tax their subjects (Leahy Sept 7, 1903; Regents, March 23, 1905) or would immigrate out of Buganda all together (Martin, August 27, 1901; Yorke, December 2, 1903; Ormsby, Feb 1, 1904). Others outsmarted the Hut Tax by cohabiting. British collectors reported that 4 or 5 young men might live together or live with an old couple, paying taxes for just that one hut where the spirit of the law would be to tax each individual (Tompkins

November 12, 1903). The British also concluded that there was little specie to collect among the peasants and therefore issued the edict that taxes could be collected in rupees, cowrie shells, ivory, rubber, labor and wild animals (Johnston, Oct 20 1900).

Some chiefs confounded British efforts to collect taxes by selling the *bakopi* invalid tax tickets for previous years. In a report filed to the Commissioner on March 23, 1905, Stanley Tompkins reports four complaints from *bakopi* from his visit through the Buganda regions of Chagwe, Bugerere, Mruli, and Bulawezi:

1. the chiefs were taking hut taxes but not issuing tickets to say that the *bakopi* had paid
2. the chiefs were refusing to give tax tickets until the *bakopi* paid a certain amount of cowrie shells and sometimes not until they paid the two rupees that they owed as rent for the land lords
3. there was too much mandatory, unpaid work for the chiefs, the government and the Church Missionary Society
4. chiefs did not give a verdict against each other so that the *bakopi* were left without a way to redress grievances against them

(Tompkins, March 23, 1905)

The chiefs collected the revenue, but the individual peasant was left with no proof that they had paid their taxes for the current year (Ormsby, December 30, 1904). Additionally, in the same letter, Ormsby reports that the land owners “think it undignified to remain on their estates for any length of time” (Ormsby, December 30, 1904) and so it is complicated to use them as tax collectors.

The 1900 Agreement reflected the interest of a select group of Baganda elite and the British colonial interests. The agreement bound both parties to respect very few specific rules: general British oversight, land allocations, and the kingdom’s allegiance. The kingdom’s chiefs continued to draw revenue from peasants on their property and in some cases circumvented the

British authority when it served their interests. When they were caught, they were tried by the Buganda kingdom courts, and the relationship between the kingdom and the British government remained intact. The underlying institution, the 1900 Agreement, created a functional relationship between the Buganda monarch and the British government because it reflected the interests of both parties and did so in a manner where neither party had enough incentive to breach the agreement.

### **3.6 Conclusion: The Buganda Kingdom and the British at the Turn of the Century**

When do land rights create working institutions? Historically, land rights in Uganda created successful institutions when the goals of the contracting parties align and neither has an incentive to defect from the treaty. The Buganda kingdom had won a privileged position inside the new colony of Uganda in the 1900 Buganda Agreement. After the British had gained authority over the territory of Buganda, the Buganda kingdom's army became the core of British military alliances in the region, and the Buganda kingdom chiefs were able to enrich themselves by preying on the surrounding communities. Within the agreement itself, political and territorial chiefs gained the most wealth and power.

My central argument here is that land institutions succeed when they reflect the interests of stakeholders. While the Buganda kingdom as a whole benefited from allying with the British, specific chiefs and the Regents of the Buganda kingdom individually benefited from the 1900 Buganda Agreement. The 1900 Buganda Agreement cemented one set of relations of political power in Uganda emerging from years of economic change, revolution, and civil war. The series of events that removed Mwanga from power came as the end result of economic and political power shifts that he was unable to stymie, such that the monarchy gradually - and then quickly - evolved into an oligarchy, eroding the *kabaka's* political power to several individuals and giving



more local control to *saza* chiefs and village-level chiefs. Civil wars throughout the 1880s and 1890s were between religious factions that identified with the British, French, Arab, or traditional authorities, but the arguments were primarily over resources and not about tenants of the specific religions. The economic and political trends that predated Western European interests in Uganda had already changed the relationship between the *kabaka* and his chiefs. The British cared about the inner workings of the Buganda kingdom, but they were more concerned that the Buganda kingdom was able to enforce British law, collect taxes, and improve commerce.

The Buganda kingdom made significant gains, as a whole and for well-placed individuals in the Buganda government, but the British had also succeeded in their quest to secure the central African kingdom under their rule. The British brought stability to Buganda by acting as an outside enforcer to emergent local political powers. Not only did the British bring military support, they stabilized the market that had been disrupted by political and economic shocks. The British ended the slave trade in Uganda, normalized the ivory trade, restricted the gun trade, and rewarded the chiefs for their complacency with the new regime in the form of 1) land concessions and 2) administrative posts throughout the new colony. In effect, as Gukiina notes, “once the British were established in Buganda, their preferred method of consolidating their position on the upper Nile was simply to enlarge Buganda” (1972, 53). Enlarging Buganda worked well for the politically-connected Baganda elite and, at least initially, the British.

The 1900 Buganda Agreement was an accord between the political powers in Uganda: the politically victorious chiefs led by three regents and the British government. Each benefited from the other, and the 1900 Agreement led to peaceful relations between the colonial government and the Buganda kingdom. The local chiefs had awarded themselves land, largely taken from the *bataka*, by treaty. They exploited *bakopi* labor, and the *bakopi* were at times

forced to elude both the chiefs and the British government, reducing the rent for both. In the end, the British were able to promise the Buganda elite enough to keep their allegiance, and their abuses of the *bakopi* were not enough to lead to a rebellion until the 1920s. The 1900 Buganda Agreement recognized the political status quo at the end of the 19<sup>th</sup> century: a newly evolved oligarchy with external support by the British.

In terms of institutional change, the story of the 1900 Buganda Agreement is important because it provides an opportunity to compare politics within one African kingdom, before and after the international market reshaped the preferences of domestic economic actors. From the analysis above, it is clear that the *bakungu* chiefs in the Buganda kingdom hierarchy retained some of their administrative jurisdiction and sources of revenue. Low and Pratt (1960) argue that this group benefited the most and were the most powerful actors negotiating with the British, and it is clear from land allocations and the definition of land rights that they ensured that this class of chiefs defeated rivals within the kingdom. In previous regimes, the Buganda monarchy had had a secession of leaders that had centralized the kingdom and pooled political power in the hands of the *kabaka*. Now that power was dispersed among powerful chiefs.

If the 1900 Buganda Agreement reflects the preferences of an emerging set of political actors that international trade helped empower, it also shows what the British were willing to concede to those actors. The British achieved sovereignty, land rights, and cooperation with the Baganda and the Baganda hierarchy kept some autonomy. The autonomy in some respects served both parties: it lowered the costs for the British, and it allowed Baganda opportunists to continue to engage in economic activities that had enriched the emergent political elite. This elite was no longer restricted by a powerful *kabaka*, but instead it enjoyed the support of the relatively ignorant British Foreign Office and colonial administrators. It is clear that the British priority

was to secure access to the Nile and to keep that source relatively stable under their control. It is equally clear that the Baganda who negotiated the treaty with the British received special compensation, but they also took advantage of their position to seize more land and assets than they would have access to without the British.

The 1900 Buganda Agreement further opened political space wherein opportunistic Baganda could claim land and resources, thereby creating an additional avenue for patronage within the Buganda hierarchy under British control. In this way, the 1900 Buganda Agreement at once redistributed specific resources and redefined access to additional resources in a way that benefited the political elite. In short, the political and economic winners in Baganda negotiated with the British for a payoff and a means to continue winning.

## **CHAPTER FOUR – EVOLVING INSTITUTIONS: LAND LAW IN THREE REGIMES**

### **4.1 Introduction**

When do land institutions work? In the previous chapter, the British colonial government's success in negotiating the 1900 Buganda Agreement led to decades of economic growth and peace with the Buganda kingdom (the Central Region). With this stability, the British government was able to expand its control over neighboring kingdoms and people, and the Buganda kingdom was able to bring order to an administration that had experienced 20 years of political discord and civil war. This chapter explores land law under three regimes, asking "when do land rights create functional institutions?" I found that land institutions can succeed when land laws reflect the interests of salient political stakeholders. In each of the cases that I study in this chapter – the Busuulu and Envujju Law of 1928, the 1969 Common Man's Charter, and the 1975 Land Reform Decree – land law was created without a deliberative democratic process. Even without a democratic process, land law can still be successful if the actors give their support and have their interests represented. In the 1920s, the British colonial government drew support of the Buganda kingdom and landless farmers and was successful whereas the Obote and Amin administrations failed. This key difference explains land law success in historical Uganda.

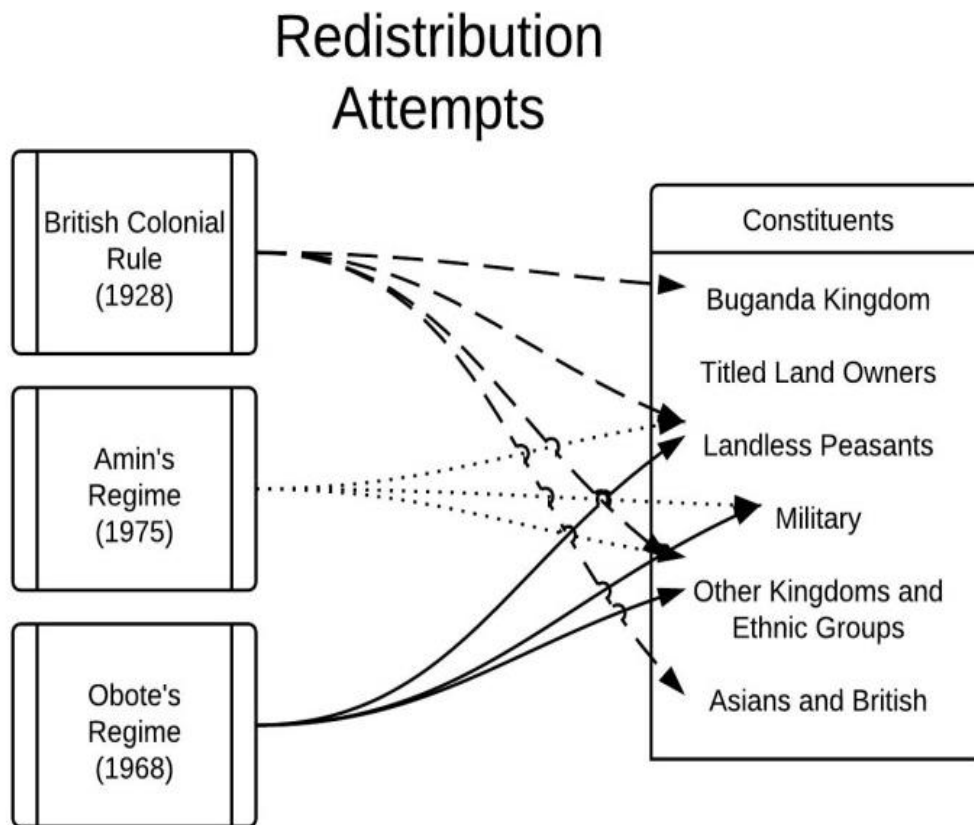
Each of these laws was designed to create or alter existing land laws and the relationship between farmers, land owners, and the government. The laws that succeed promoted development through incentives. The laws that failed precipitated disastrous consequences for the government and people of Uganda. In each case, the government adopted legislation that gave itself more power vis-à-vis private landholders. These laws affected land distributed in the 1900 Buganda Agreement, but the laws also affected the land that individuals bought as freehold after that agreement went into effect.

This chapter fulfills two purposes in terms of addressing my central argument about when land rights work. First, in this chapter I argue that land laws work when stakeholders have an incentive to obey the rules, whether or not they participate in creating those rules, using three laws in Uganda as examples and models. In Chapter Three, I described an emergent class of politically-connected land owners that helped to create a successful institution, the 1900 Buganda Agreement. The 1900 Buganda Agreement was successful because it created incentives for Uganda's major political and economic players to collaborate in one economy and government.

In this chapter, we learn that even though Baganda did not help to create the Busuulu and Envujju Law of 1928, they benefited from it. The landless farmers, the land owners, and British government each were better off after the law was passed, and so they continued to support it. Again, the law aligned the interests of enough of the key political and economic forces in Uganda to establish a stable institution. I contrast the success of the 1928 law with the failure of two other laws. Authoritarian governments passed both of these laws, forcing disinvestment and general panic. The Buganda kingdom and Baganda farmers were alienated by these other land laws, especially because the Uganda government did not offer secure property rights. Because of this alienation, the land laws failed.

Secondly, an overview of these three regimes and their land policies illustrates the evolution of land law that took place before the modern debates. It is necessary to understand this past because it frames the preferences, strategies, and outcomes that individuals have on land in present-day Uganda. Examining historic episodes in Uganda's land law allows me to understand what makes past laws succeed and fail and gives insight into what makes present land laws succeed and fail.

**Figure 4 State Authorities and Interests in Land Law and Policy**



The British Colonial government, the Obote Regime, and Amin's regime each drew their support from different constituencies within Uganda. While none of these authorities were elected, they needed domestic support to rule the country. As Figure 4 shows, each regime drew support from different groups (described briefly in sections 2, 3, and 4). The British colonial government differed from both the Obote and Amin regimes because it drew support from Baganda peasants and the Buganda kingdom, especially when it was unable to draw support from landed elites. Amin and Obote's economic policies failed in a large part because they neglected the interests of the Baganda, among other failed policy initiatives. Throughout the colonial and post-colonial period, the Buganda kingdom (the Central Region) remained the most prosperous and well-

educated population in Uganda (illustrated in Table 2). The Baganda proved to be too important in Uganda's economy to alienate.

**Table 2 Regional Education, 1960**

	Buganda (Central)	All Other Regions
Private Industry Employees	75,000	75,100
Public Sector Employees	109, 800	131,100
Secondary Education	29	71
Makerere College Education	46.6	53.4
Population	16.3 %	83.7%
Wealth*	174 per capita	44 (average)
Value of Cash Crops*	14.4 million	9.8 million

*Table recreated from Martin 1974, 105; and Zwanenberg and King, 1975, 71*

*\* 1959 UGX*

In each regime, political decisions directly affected the security of land tenure and the economic behavior of people on their property. Under regimes where individuals had more security, they had greater incentive to invest and develop their property. In contrast, when farmers were abused by the government in power, they retreated from the formal economy and either invested in subsistence agriculture or were discouraged from investment altogether – and both of these actions resulted in economic downturns.

## **4.2 Uganda Land Law under the British Colonial Government**

### **4.2.1 Background to the British Colonial Government Changes**

The interaction of the Buganda kingdom and the state government defines not only access to the scarce resource of land but the political and economic stability of both. The British colonial government successfully negotiated with powerbrokers in Uganda in 1900, and it did this again in 1928. Just like in 1900, in 1928 the British were in part responsible for installing and supporting Buganda kingdom officials that were responsive to British influence.

Even though the British had fewer soldiers and a smaller bureaucracy,<sup>37</sup> the colonial government was able to govern because it was willing to share power with local Ugandans and because it successfully aligned its interests with the Buganda kingdom. The Buganda kingdom was the most powerful ethnic group in the region: it already had dominion over parts of the Bugisu kingdom and the Bunyoro kingdom before the British arrived.<sup>38</sup> The British built on this success through the early 1900s. The British helped to extend the territory of the Buganda kingdom and employed Baganda elites as administrators in other parts of Uganda. The British recruited Baganda as the military backbone of early expeditions against rebellious groups and the British coordinated policies and laws with the Buganda kingdom's *Lukiiko* and *kabaka*.<sup>39</sup>

The British colonial government established the Buganda as the favored ethnic group in Uganda, opting to make Kampala (near the Buganda kingdom's capital), the protectorate's commercial and industrial center. While the administrative capital was in Entebbe (also in Buganda), Kampala remained the most important city in Uganda. Additionally, British policy had established Buganda as a center for cash crops while the rest of the country was intended for wage-labor (Zwanenberg and King 1974, 67). As Table 2 illustrates, the Central Region (a region based on the borders of the Buganda kingdom) continued to be the most important in terms of commerce, education, and administration.

#### **4.2.2 Buganda and British Interests**

Why did the Buganda and the British need to renegotiate land relations in 1928? By 1928 the relationships between farmers and landowners in prosperous Buganda had led to a spate of popular uprising against both the British and the Buganda kingdom. Uganda's cotton economy

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<sup>37</sup> Mamdani ((2004, 73), citing Buell 1928, 361) places the number of British administrative personnel as 1 for every 49,000 Ugandans, a figure that is roughly twice that of Kenya but half of that of Nigeria.

<sup>38</sup> Reid (2002) and Mutibwa (2009) give background to the Buganda kingdom's economic advantages; see also Thomas and Scott (1949).

<sup>39</sup> For a discussion of Buganda sub-imperialism, see Roberts (1962); Reid (1998).



was in decline, and the laws allowing for individual landowners to overtax their tenants led to decreased cotton production. In Uganda's peasant cotton industry, individual small-hold farmers had little incentive to continue to plant the country's major cash crop, inhibiting economic development for the farmers, land holders, and Uganda's protectorate government. Gowers, Governor of Uganda at the time, had to act.

The British colonial administration was interested in weakening a corrupt Buganda government that it had clashed with over important policy issues.<sup>40</sup> Buganda chiefs, abusing their taxation power, overcharged the landless farmers on their land, discouraging them from growing cash crops (Thomas and Scott 1949, 229; Low 1956, 311). Instead, they grew crops that were not subject to taxes. As a colony, Uganda provided a potential replacement for British dependence on American cotton (Wolf 1974, 81; Youe 1978). The British needed the colony to pay for itself, serve as a strategic holding of British imperial military, and serve as both a resource for primary products and as a market for British goods. In Uganda, the British colonial government responded to influential expatriate political interests. Most important among them was the Uganda Cotton Association and the Uganda Chamber of Commerce (Thompson 2003, 51). Both of these groups were heavily involved in the cotton and textile trades.

Contemporary scandals, including a case of embezzlement by the treasurer of the *Lukiiko* and a dispute between Sir Apolo Kagwa and Uganda's governor, created animosity between the ruling Baganda elite and the British colonial government. Aside from greater control over their protectorate, the British colonial government wanted to continue to develop Uganda so that it was no longer a financial burden to the empire. However, labor problems were inhibiting economic development: Baganda peasants reduced the amount of cotton that they cultivated on

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<sup>40</sup> See Thompson (2003) and Killingray (1986).

their property in response to growing exploitation and reduced wages.<sup>41</sup> Mamdani reports that the “estimated acreage of cotton fell from 27,380 in 1911-12 to 20,000 in 1916-17 in Buganda, whereas it increased from 29,720 to 97,961 over the same period in Eastern Province” (1975, 29). By 1920, cotton made up approximately 90% of Uganda’s export receipts. To maintain the colony, the government needed to improve its cotton production.

The Buganda kingdom was divided between an ‘old guard’ of rulers who had been in government since the 1900 Buganda Agreement and young, aspirant elites who sought to control the kingdom’s bureaucracy. Fallers describes the earlier class who benefited from the 1900 land law as a group with a self-conscious cultural unity and a sense of common purpose, giving them greater leverage against pretenders to the throne (1959, 26). Among the aspirant group was Kabaka Daudi Chwa, who asserted leadership against the oligarchy that had helped to create the 1900 Buganda Agreement. By the late 1920s, Kabaka Chwa led a group of ambitious, young Baganda who challenged the authority of the older generation of Baganda political elites (Summers 2009). Kabaka Chwa supported the position of landless farmers (Low 1956), a choice that made him and his followers, the Young Baganda Association, gain popular support.

#### **4.2.3 Strategies of Colonial Government**

The British were interested in creating incentives for individual farmers to plant cash crops while also wanting to restrict the influence of powerful, landed Baganda elite. To restrict these farmers, the colonial government had several choices. It could expand its direct control over the farmers by creating more colonial bureaucracy and side-stepping the abusive *bataka* land holders. Alternatively, the colonial government could police the *bataka*, ensuring that they do not over take the peasant farmers. To overcome the downturn in cotton production, the

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<sup>41</sup> Abusive local leaders in Buganda and the rest of colonial Uganda are analyzed in Wrigley (1959) and Tosh (1978).

government could also create more incentives for farmers to grow more or could switch production from cotton to another commodity. The government could also try to attract additional economic development from other countries, altering the farmer-landholder relationship by inducing a plantation economy to replace the existing peasant-planter economy.

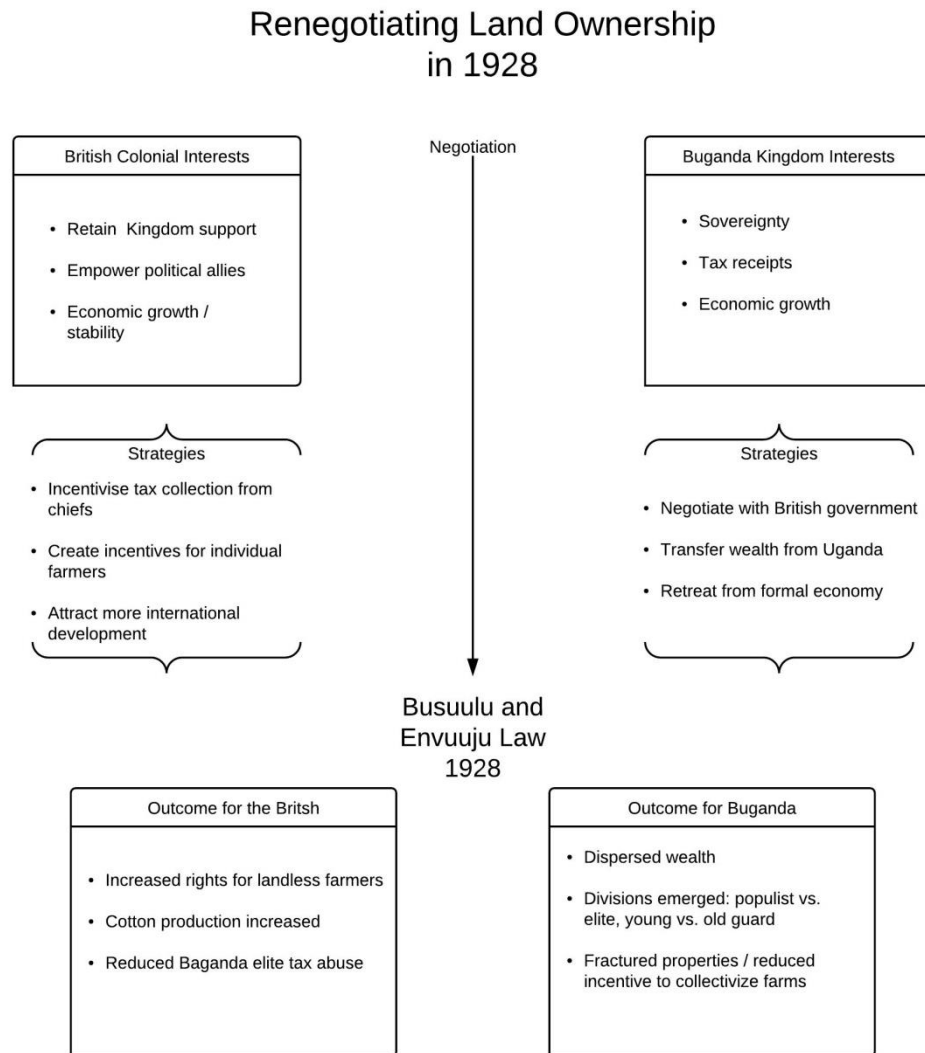
The Baganda elite, on the other hand, were restricted in what they could do as a group. *Bataka* landholders could negotiate and pledge within the *Lukiiko* that they would not force exorbitant rates on their farmers, but the *Lukiiko* lacked the enforcement authority of the state. *Bataka* landholders owned their land, and the *Lukiiko* would not pass binding laws on individual landholders. In short, this collective action problem required the state government to act.

The British colonial administration had already begun to supplant entrenched Baganda opposition, and they had the support of the monarchy of the Buganda kingdom. On top of this, the Busuulu and Envujju Law of 1928 was a populist measure designed to ensure that farmers had more rights and claims over their crops. The colonial government passed the Busuulu and Envujju Law of 1928, and the *Lukiiko* passed it for the Buganda region soon after. Within the Buganda kingdom itself, an old-guard of Baganda elites, who Mamdani refers to as landlord-chiefs (1976, 127), fought against the 1928 law. However, recently-appointed chiefs and the *kabaka* were willing to accept and pass the law in the Buganda kingdom's parliament, the *Lukiiko*.<sup>42</sup>

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<sup>42</sup> For an overview of Uganda's political and economic development, see Ibingira (1973)

**Figure 5 Uganda's Busuulu and Envujju Law of 1928**



#### **4.2.4 Outcomes in British Colonial Administration: Populist Policy**

What were the economic and political outcomes of the Busuulu and Envujju Law of 1928? The British colonial government, in coordination with the Buganda kingdom, renegotiated land rights, sided with public cries for equality, and sided against Apolo Kagwa's faction of landowners.

As Mamdani (1975) argues, the British colonial authority “at one stroke the state had undermined the landlords while giving the peasantry security of tenure, ensured the supply of

raw materials to the metropolitan bourgeoisie, and undermined the mass base of the Bataka Association” (30). Where cotton production averaged 132,554 cubic tons in 1922, by 1934 Ugandan farmers picked 293,313 cubic tons (Thomas and Scott 1949, 146-149). Indeed, while the price for cotton fell by over half between 1929 and 1933, the cotton output doubled between 1929 and 1937 (Zwanenberg and King 1975, 69). Between government incentives for farmers to produce crops and continued international demand for cotton, Ugandan farmers had an incentive to improve cotton production in the Buganda region.

Individual tenants got much more security and usufructuary rights over the property. To evict, landowners needed to secure a court order. The cause for eviction was limited to failure to pay rent, and their usufructuary rights became inheritable. Untitled farmers could not sell or otherwise transfer the land to parties outside of the family, but to their benefit their land rent was not tied to the economic value of the land. These provisions were a major strike against the *mailo* landowners who had been abusing peasant farmers, but they were supported by landless farmers and the *kabaka*.

Divisions within the Buganda kingdom allowed for the colonial government to pass the 1928 Busuulu and Envujju Law, creating incentives for individual farmers to increase their cotton production. In this instance, the *bataka* land holders lost control of their property insofar as the government created more limits. While unpopular with the *mailo* land holders, the law inspired greater production in Buganda.

In sum, a cotton crisis that originated in the early 1920s brought about an economic decline in Uganda, causing the colonial government to create incentives for farmers to grow and pick cotton. Working against a group of traditional chiefs, but with a cooperative *kabaka* and cabal of friendly chiefs, the British devised and implemented a land law that created incentives

for farmers to improve cotton production. Workers received more compensation for cotton production. Land law worked when it was in the interest of individual farmers and had the support of the Buganda monarchy.

#### **4.3 Land Law under Milton Obote: A Clash of Interests**

Milton Obote's first government, 1962-1971, was characterized by political upheaval and economic uncertainty. Obote's socialist policies, outlined in his Common Man's Charter and ensuing documents, did not spillover into his land policy: Obote ensured private land ownership for most citizens. However, Obote did attack a symbol of unity for the Buganda kingdom – the *kabaka* – and claimed the kingdom's historic territory for the states. He further undermined property rights by nationalizing successful commercial and industrial interests. In this way, Obote's regime offers two important lessons for land law. First, land is a unifying issue among the Baganda. Seizing the land of traditional kingdom will have both political and economic consequences. Secondly, insecure property rights will drive away foreign investment and will lead to economic decline.

##### **4.3.1 Background**

The majority of Obote's regime was characterized by division between the Obote government, led by his Uganda People's Congress (UPC) party, and the supporters of the Buganda kingdom, mostly in the Kabaka Yekka party (KY). One of the first divisions between the UPC and KY occurred when the Buganda kingdom was forced to end its administrative and cultural rule over counties contested by the Bunyoro kingdom.<sup>43</sup> These counties held a referendum to decide which administrative district to belong to, and the Buganda kingdom lost.

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<sup>43</sup> Lost counties of Buyaga, Bugangaizi, Buhekura, Buruli, Bugerere, North Singo, and North Bulemeezi; British awarded these to Buganda kingdom control. Steinhart (1967) provides a history of the Kitara region and the lost counties.

The KY party first openly challenged their partners in the coalition government, the UPC, by accusing its members of corruption. The Secretary General of the KY party, Daudi Ochieng, claimed that Prime Minister Milton Obote, Minister of Defense Felix Onoma, and General Idi Amin were guilty of smuggling gold and circumventing the constitution.<sup>44</sup> Ochieng demanded that Amin be suspended and demanded an inquiry into his bank account. Almost two thirds of Uganda's Parliament voted in favor of this motion, indicating Obote's weakness in the legislature and highlighting the fracture of the KY/ UPC coalition government (Sathyamurthy 1986, 432). Obote countered by consolidating the support of ministers close to him, confirming the loyalty of the military through General Amin, jailing a significant portion of his accusers, and announcing on the radio on February 24, 1966, that he had assumed the constitutional powers of the President.

By April 15, 1966, the Obote government had written a new constitution virtually nullifying the Buganda kingdom's autonomy and self-rule. The kingdom no longer had the right to appoint its own local chiefs, establish its own private budget, administer independent courts, or send its own representatives to the National Assembly. Obote's government passed the so-called "Pigeon Hole Constitution"<sup>45</sup>, a document meant to centralize state power in Uganda. The new constitution nullified the joint rule that Mutesa and Obote had over Uganda and made it a single-party state. The new constitution ended the policy of official lands for Buganda chiefs. This constitution struck at the heart of the Buganda kingdom and invited a fast response by the Buganda *Lukiiko*, which voted on May 20, 1966 for the government to remove itself from

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<sup>44</sup> For a discussion of Obote's and Amin's corrupt background, see Mittleman (1971), Martin (1974), Woodward (1978), Dinwiddy (1983), and Ingham (1994).

<sup>45</sup> The 1967 Constitution was termed the Pigeon Hole Constitution because there was very little deliberation within the party about its contents: legislators received the document as a complete text in their office mailboxes.

Buganda soil. Kabaka Mutesa was accused of contacting the British in an effort to raise arms (Tumusiime 1992, 8).

The *saza* chiefs responsible for tabling this motion, Lutaya and Matovu, were arrested by the Obote government. On May 24, Amin and a contingent of Uganda's military attacked the *kabaka's* palace at Mengo, by the order of Prime Minister Obote.

By 1967, Obote's government abolished the traditional kingdoms in Uganda, and by 1968 the UPC began to formulate its Move to the Left policy. In 1969, the Move to the Left and Common Man's Charter were officially adopted as policy in Uganda, ushering in greater state involvement in the economy. In a seemingly contradictory move, Obote's government also passed the 1969 Public Lands Act, reconfirming customary rights over private property. Instead of strengthening traditional institutions, though, the law empowered individuals to control their customary land and abolished the kingdom's claims over *mailo* land.

Obote attempted to reconcile his regime, the UPC party, the Baganda, and opposition factions within Uganda. In the series of documents that he wrote about his government's approach to democratize the Republic of Uganda, Obote suggested that parliamentarians be elected based in four geographically different constituencies in order to foster support from regions outside of their ethnic homeland (Document No. 5, Proposals for New Methods of Election of Representatives of the People and Parliament). Later in his pamphlet, The Common Man's Charter, and in the 1966 Constitution, Obote asserted a policy of uniting Uganda by downplaying ethnic identities and physically bringing the country together. A step toward this unity was building roads and airports in order to connect geographically-distant places and to bring together cities in different regions.



#### 4.3.2 Milton Obote's Consolidation of the Uganda State: Interests

However, Obote's interest in unifying support sometimes meant he would oppress the opposition. With Amin as general, Obote's military attacked the *kabaka's* palace at Mengo, forcing the *kabaka* into exile. After removing the *kabaka* from his palace in 1966, Milton Obote's party needed to consolidate political power in Uganda as a one party state. The government needed to expand to meet the needs of party officials and to attract foreign aid from socialist states. Obote's government also sought popular support inside and outside the Buganda kingdom, though had distanced itself from the KY party.

Obote had few choices. One option was that his regime could repair ties with the Buganda kingdom, though this was perhaps their most difficult choice given the recent enmity it incurred by removing the *kabaka*. The period preceding the *kabaka's* exile was also a period of KY/UPC political divergence. Not only had the government expelled the *kabaka*, but the UPC also abandoned its commitment to keeping Uganda a federal state with a privileged position for the Buganda kingdom.<sup>46</sup> Obote's second choice was to try to build alliances between populist undercurrents in Uganda and his largely wealthy and well-educated class of rulers. He chose this option and also drew in military support headed by Idi Amin. Amin had been loyal in the assault on the *kabaka's* palace and stood to lose much if Obote was removed from office.

The Buganda kingdom, now in exile, had little incentive to negotiate with Obote's government. Obote's attack on the Mengo further reduced the power of the KY party, and the Baganda had the choice to accept the UPC's authority, reject and revolt, or reject it and withdraw from public life. However, individuals within the Buganda kingdom could advance their careers by leaving the defunct KY party and joining the UPC. Kasfir explains that some Baganda did

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<sup>46</sup> For a discussion of the UPC / KY allegiance see Chick (1970), Kasfir, (1976), and Ingham (1994).

just this, and a number of opportunists became “middlemen” between Obote and the Buganda kingdom (1976, 171).

#### **4.3.3 Strategies in Obote’s Land Policy**

Obote’s Common Man’s Charter and Move to the Left both signaled socialist policy intentions but resulted in very little action (Chick 1972, 636). These documents outlined the UPC’s vision for socialism and nationalism in Uganda. While Obote’s policy started slowly and ended prematurely when he was removed from power, the imperatives that these documents outline point to the economic and political groups that his government meant to attract as supporters. First, by nationalizing industry, Obote signaled his intention to international businessmen, the Asian firm owners, and Baganda urbanites that successful companies may be subject to government control. By seizing large businesses, Obote spurned economic development. Secondly, the Common Man’s Charter’s nationalist rhetoric was meant to have mass appeal, uniting the country with a national identity against the “Royalists, Feudalists, and of course the capitalists” (Adoko 1970, 7). Finally, these policy initiatives were an attempt to discipline Obote’s party, the increasingly fragmented UPC party, which had been losing solidarity.<sup>47</sup>

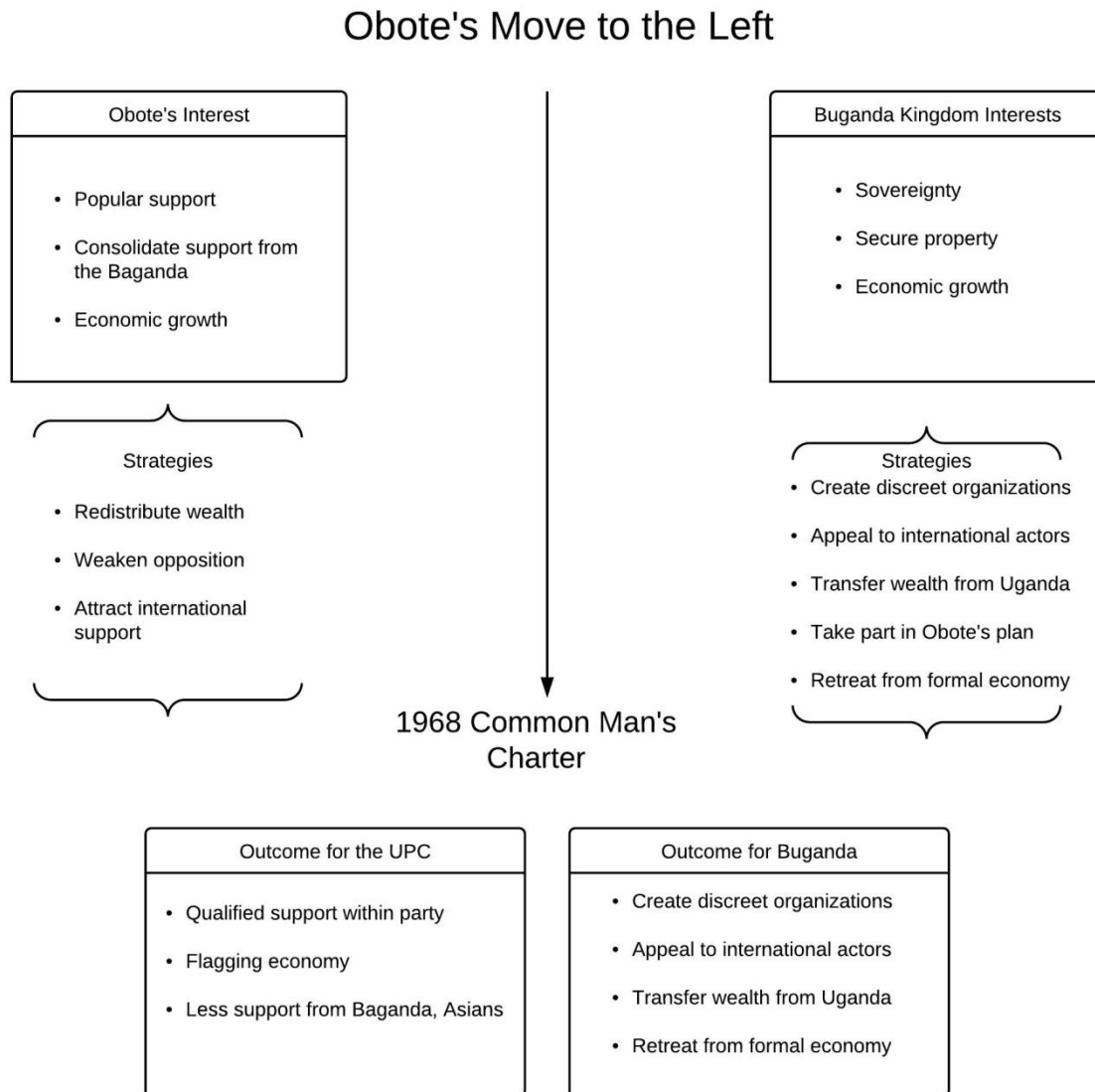
Of course, this resource distribution did not appeal to wealthy, urban Baganda or other wealthy urbanites. The Baganda, “were concerned about the allocation of government revenue in favor of the north whose backwardness, in the view of a former minister in the Buganda government...was a reflection of its ‘barbarianism’” (Glentworth and Hancock 1973, 240). Using the Buganda kingdom / Central Region’s resources to finance public works in other

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<sup>47</sup> See Mazuri (1975), Mamdani (1976), and A. Omara-Otunnu (1987).

regions was not popular among the Baganda of any economic class, and this initiative did not win the support of the Baganda.

**Figure 6 Obote's Move to the Left**



Directly after Milton Obote's government removed Kabaka Mutesa II from his palace in 1966, Obote abolished the Buganda kingdom's land privileges and redistributed its holdings. The distribution of this land and the UPC government's decision to focus on group agriculture schemes were political tactics to satisfy two groups: nationalist Baganda and UPC party constituents (Young 1966, Segal 1968). A major part of Obote's agricultural policy involved

clearing land in northern Uganda for cotton cultivation. This region was Obote's homeland, and much of his opposition viewed this as regional bias (Segal 1968, 84). Alternatively, Obote's Common Man's Charter was meant to appeal to Uganda's peasant majority nationally, promising to develop cooperative banks and open more lines of credit to farmers.

These initiatives to consolidate his base UPC support, accommodate Baganda disillusioned with the *kabaka*, and appeal to Uganda's peasants through a strategy of nationalizing firms drove away many Ugandans. International firms, Asian property owners, the military, and most of the Baganda and other ethnic groups regarded his regime as a threat to their economic wellbeing. Most important to Obote's Ugandan economy was his unwieldy agricultural policies and the Move to the Left's initiative to nationalize productive firms. The convergence of economic and political instability helped to convince Amin that Uganda was ripe for a coup (Woodward 1978).<sup>48</sup>

The Move to the Left was a policy explanation and proposal, but the Ugandan economy had already experienced economic collectivization. For instance, cooperatives and marketing boards were already responsible for marketing, collecting, and ginning major economic export crops. The Produce Marketing Board also collected and sold other crops (Sathyamurthy 1986, 503). The Move to the Left, embodied in Obote's symbolic speech, The Common Man's Charter, in essence began to rearrange the semi-capitalist market that the colonial government had left at independence. The ideological Move to the Left was meant to attract support, but instead it kept most Baganda alienated, did not inspire nationalism in other districts, and pushed away Asians and British expatriates. Much of the country understood this reorganization for what it was:

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<sup>48</sup> For example see Lofchie (1975) who explains the military and urban elite that were threatened by Obote's move to the left, whereas Ali Mazuri (1975) describes Amin's war against Uganda's educated elite - a group who also eventually fled the country.

patronage for Obote loyalists and punishment for his enemies, all at the expense of national economic development.

#### **4.3.4 Outcomes: Economic Decline and Political Upheaval**

State ownership and the Move to the Left failed under Obote's government because it alienated too many Ugandans. Obote did not successfully consolidate support with his Move to the Left and was forced to draw together a political alliance between a shrinking cadre of willing UPC leaders and the military. The region of the Buganda kingdom remained essentially under military occupation from 1966-1971, during which time Obote suffered an assassination attempt.<sup>49</sup>

Obote's economic policy drove away international and domestic capital, especially following his socialist policy shift and weakened relations with the United States and the United Kingdom. Industry in the late 1960s flagged, and the economy began to rely more on peasant farmers. In 1970, Obote's government issued the Nakivubo Pronouncement, essentially seizing a controlling interest in eighty four of Uganda's largest commercial, agricultural, and industrial firms. Foreign investment and commercial activity plummeted as Obote's economic reorganization empowered Ugandans as state-bureaucrats.<sup>50</sup>

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<sup>49</sup> Obote's militarization of Uganda's political system is outlined in Mazuri (1975)

<sup>50</sup> For an overview of Obote's political and economic failing policies, see Ryan (1971) and Woodward (1978).

**Figure 7 Rising Agriculture<sup>51</sup>**

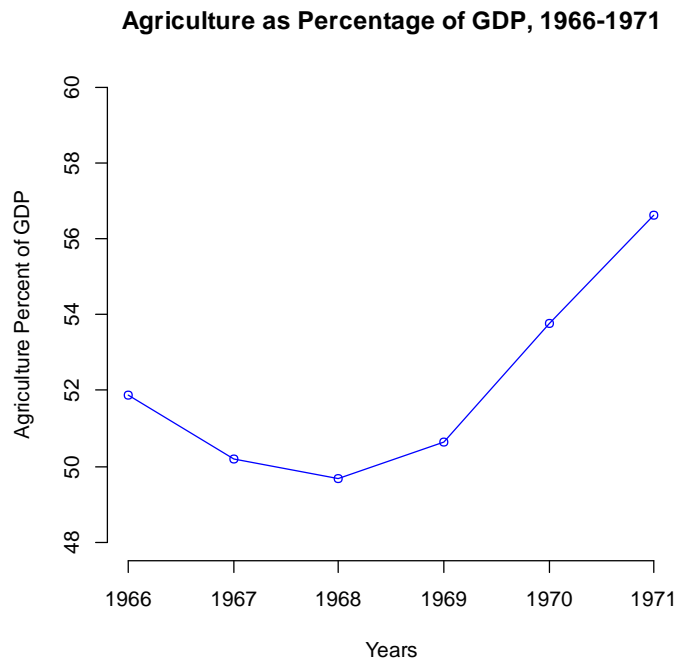
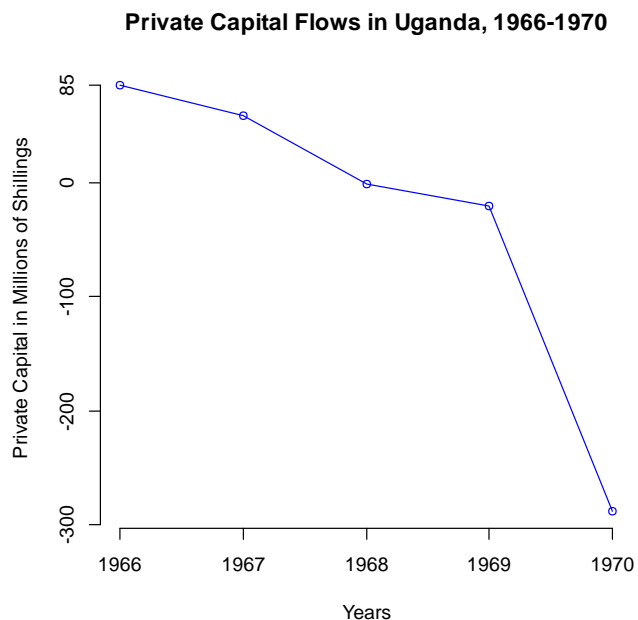


Figure 7 illustrates sectoral change in Uganda's economy. Agriculture increased during Obote's rule as a portion of Uganda's Gross Domestic Product, from 52% in 1966 to nearly 58% in 1971. This rise in agriculture represents a shift of individual investment from other productive economic activity to more secure, small scale farming. Small

farms in Uganda produce cotton and coffee, in addition to subsistence crops.

**Figure 8 Private Investment in Obote's Uganda<sup>52</sup>**



More evidence for this trend is evident in private capital flows from Uganda. The Government's economic and foreign policy – illustrated most dramatically in the years of *Obote's Move to the Left*, 1968 and 1969 - drove away foreign capital investment in Uganda. Again, Figure 8 illustrates Uganda's

<sup>51</sup> Source: *Ugandan Bureau of Statistics, 2002.*

<sup>52</sup> Ibid

changing economy. Instead of attracting investment for development, Obote's politics and economic policies drove away domestic and foreign capital. Without this capital to invest, Uganda's economy stagnated. Investors rightfully feared for their assets in Obote's Uganda.

Where did Obote's land policy go wrong? Obote did secure the private property of many individual landholders: most of the *mailo* farmers continued to have the same relationship with their untitled tenants as they had under the colonial administration. However, private investment shrank because the state seized private property of successful businesses and industries. Obote also made political enemies of the Baganda by expelling the king, seizing kingdom land, distributing it among his allies, and making agriculture policy into patronage.

#### **4.4 Property Rights under Idi Amin: Insecurity in Chaotic Uganda**

Amin's regime committed the same mistakes as Obote – making enemies out of ethnic groups and failing to guarantee secure property rights.<sup>53</sup> Amin's regime offers two lessons about failed land institutions. Failed land institutions can create room for predation: they not only empower individuals within the law, but state collapse empowers individuals to pursue their own interests in the wake of institutional neglect. In particular, Amin's 1975 Land Decree was meant to vest all land into state control, while in reality it created a situation where his political allies benefited from their personal connection to his government. The law was meant to create a socialist state, but instead it merely created a kleptocracy.

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<sup>53</sup> Amin's 18 grievances against the Obote regime, broadcast via radio the day of Amin's coup, are indicative of Amin's perception of popular sentiment concerning economic inequality, corruption, and class conflict. For an explanation of this, see Short (1971) and First (1971).

#### 4.4.1 Background to the 1975 Land Reform Decree

Immediately after coming to power, Amin suspended the 1967 Constitution. Instead, Amin established an Advisory Defense Council to rule the country.<sup>54</sup> He reorganized civilian courts and administrative offices to reflect the military's supremacy over civilian control. Amin ruled through fear: consolidating allies by appointing them to civil and military positions and imprisoning and killing his opposition. He made some conciliatory gestures to the Buganda kingdom, e.g. offering to repatriate the remains of the deceased Kabaka Mutesa II. However, he rejected the Baganda elders' petition to restore the traditional kingdoms. Generally, Amin failed to forge alliances with ethnic groups outside of the Kakwa, his mother's ethnic group from the West Nile District in Northern Uganda. Instead, Amin relied on the military, international aid from Islamic countries, and sporadic popular support to rule his government.

Amin's regime was not characterized by detailed economic plans carefully implemented to foster rapid economic growth. Instead, Amin's land policies are best understood by two laws that affect land tenure in Uganda. First, Amin expelled the Asians, a name generally given to anyone of Indian descent, nominally to Africanize the economy and redistribute their holdings. Amin's regime announced that Asians (both naturalized Ugandans and noncitizens, nearly 80,000 people) were no longer welcome in Uganda. Amin proclaimed that the Asians must leave within three months of his August 7<sup>th</sup> announcement.<sup>55</sup> The property that the Asians left reverted to the state, and Amin's administration allotted or sold the Asian's former possessions.

The second, sweeping land reform change that Amin brought to Uganda was to nationalize all land. That is, all freehold land and *mailo* land became vested in the state. The state would issue leases for property owners, but the title belonged to the state. Amin's 1975 Decree

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<sup>54</sup> For a discussion of Amin's coup, see Ravenhill (1974) and Martin (1974)

<sup>55</sup> For discussion of the Asian expulsion, see Tumusiime (1992) and Twaddle (1975).



caused further concern in an already troubled economy. First, the seized property and interests (firms, industries, and others) frequently became the property of Amin's "army personnel and Muslims close to his regime" (Gertzel 1980, 479). The new owners were not as efficient or as economically savvy as the previous owners. Secondly, when Amin seized property all over Uganda, he reduced the certainty that individuals had in their assets. Amin expropriated property from the Asians. Then all property was redefined as state-owned. What investments could individuals make that was not subject to seizure, especially if that property or interest was a successful enterprise? Citizens' safety and capacity to support themselves were reliant on their personal relationships with the Amin regime and local strongmen.

In both episodes, Obote's Move to the Left and Amin's seizure of Asian property, the government threatened opposition members politically and economically. In general, the government reduced its credibility to protect the property of its citizens and could not credibly commit to creating a safe market. Removing ownership from individuals and placing it in the hands of the state did not engender secure property rights.

#### **4.4.2 Competing Parties in an Unstable State**

Domestically, Amin was immediately popular with the Baganda after he repatriated the remains of Kabaka Mutesa from the United Kingdom. He held a conference with the Baganda elders in an effort to calm unrest after the coup. The Baganda were eager to welcome an alternative to Obote's regime, even if it was led by the military officer immediately responsible for attacking the *kabaka's* palace at Mengo.

However, Amin's regime also made enemies with domestic forces. While Amin made initial attempts to attract support from the Buganda kingdom, he did not reestablish the

traditional kingdoms, per request of monarchists from these kingdoms. Likewise, Amin attracted the ire of religious figures, including Uganda's Muslim community.<sup>56</sup>

Amin's regime maintained domestic support from military elite and some ethnic elite, especially among his Kakwa and Nubian groups from Northern Uganda. Amin trusted these groups above others and promoted them to government and military positions. These groups tended to be less educated than Ugandans from the south or west.

In the mid-1970s, Amin chose policies to attract populist support and continually tried to attract a broader base.<sup>57</sup> Expelling Asians, redistributing their wealth, appointing educated elites who opposed the Obote regime, appealing to Uganda's Muslim community, and creating the Uganda National Forum were all attempts to quell opposition and gain support. These efforts did not work: Amin's public appeals were overshadowed by his regime's violence, domestic opposition, and international criticism.<sup>58</sup>

Farmers and landed elite generally retracted from Uganda's economy and did not assert their interests. Amin's regime did well to make examples of organized resistance: religious leaders, political opposition leaders, and military rivals were summarily killed. Police and military groups violently crushed mobilized labor, student groups, and military coup attempts.<sup>59</sup> Instead, individuals secured their property by retreating into the subsistence economy or by

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<sup>56</sup> For an overview of the rift between Amin and Uganda's religious figures, see Ward (1995) and Otiso (2006).

<sup>57</sup> The international community was mixed. Amin, a one-time soldier in the Israeli army, initially attracted British and Israeli support. Both considered Amin a suitable replacement for Obote and thought that Amin – inexperienced as a diplomat and uneducated – might be easy to persuade. By 1972, Amin was attracting investment and aid from Libya and in March of 1972, Amin warned the Israeli government that all Israel citizens would have to leave Uganda. In that same year, Amin's government consequently attracted Soviet Aid and welcomed military delegations from the USSR.

<sup>58</sup> Notable works discussing domestic opposition to Amin include Martin (1974), Gwyn (1977), Kyemba (1977), Gertzel (1980), Ward (1995), and Otiso (2006).

<sup>59</sup> Labor protests included the Lugazi Sugar Works Strike (1974), the Kilembe Copper Mines Strike (1975), the Kinyala Sugar Estate strike (1976); protests at Makerere University peaked in 1975 and 1976; military coup attempts from Uganda-based officers occurred in Feb. 1974 by Lt. Col. Michael Ondoga and in March 1974 by Brig. Charles Arube.

fleeing with their wealth.<sup>60</sup> Individuals maintained their interest in secure property rights and acted in the only ways available to them: joining with Amin, seeking political asylum outside of Uganda, or retreating from the formal economy.

#### **4.4.3 Land Strategies in Amin's Military Dictatorship**

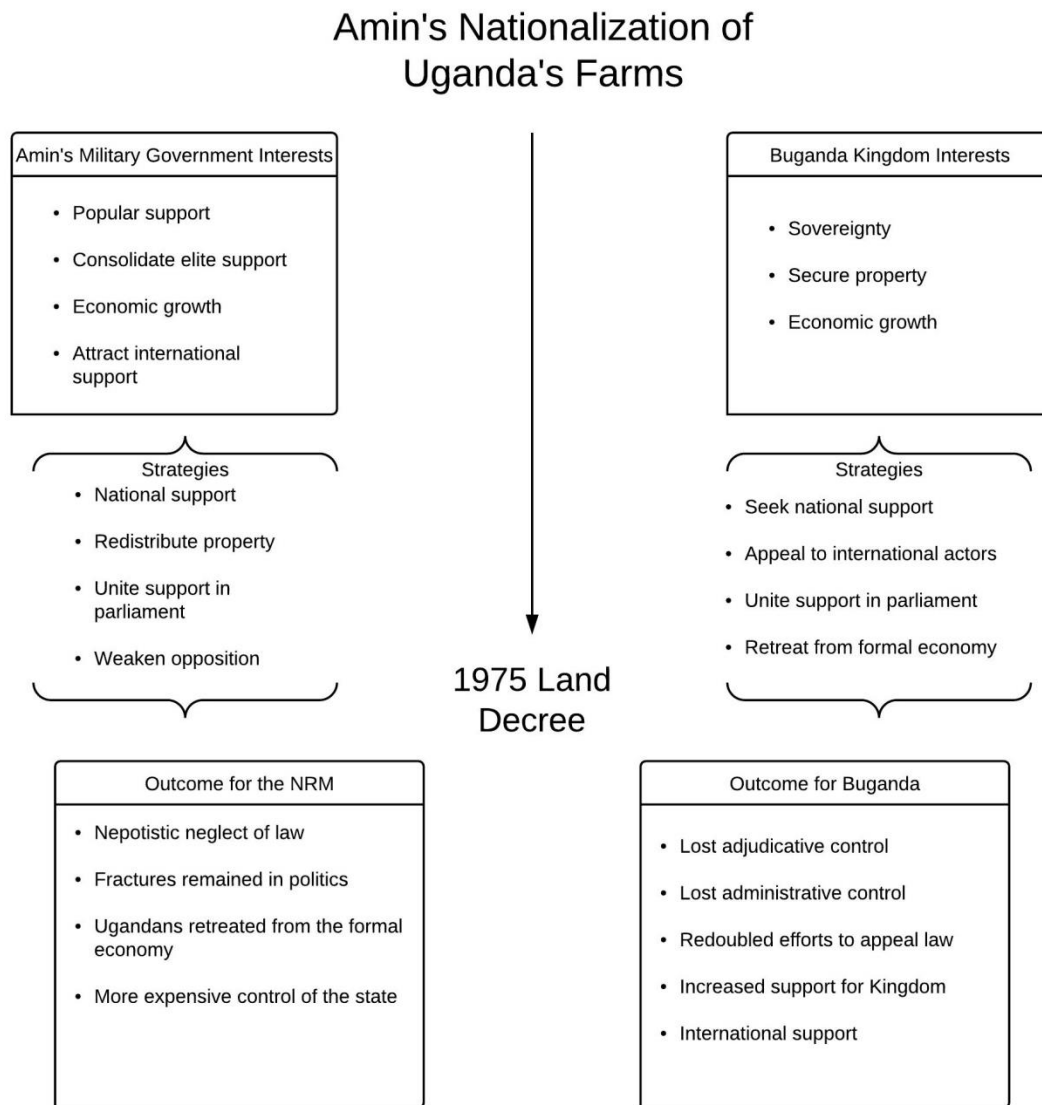
Ostensibly, reforming land law by vesting all public and private land in the state could reduce class and ethnic divisions since all citizens would have access to them. Ethnic and class animosity might subside without the land titles issued to the Baganda elites and without the property that other ethnic groups gained from their allegiance to the British government or Obote's regime. Nationalization was popular among other African states and was justified using Africanization and economic parity for the motives. However, nationalizing industries and farmers could – and did – empower people closest to the Amin's regime. Amin could claim he was defending public access to land, when in fact he was assuring legal access to his supporters.

Baganda landed elite could do little in Amin's regime. Property rights in general were under threat in Amin's mercurial government. The Land Reform Decree of 1975, which abolished ownership of land and removed the power of customary tenants, further alienated people from the property that they held. Individuals had little incentive to develop their property, especially industrial or commercial interests.

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<sup>60</sup> See Seers (1979); Schultheis (1975); Jamal (1991); and Collier and Pradhan (1998).

**Figure 9 Amin's Land Reform Decree of 1975**



#### 4.4.4 Outcomes

Amin's government, already plummeting in terms of international support, continued to drive away domestic investment.<sup>61</sup> Insecure property rights, imprecise economic policy, and haphazard implementation undercut all of Amin's development programs. Amin's brutal and

<sup>61</sup> Amin's foreign policy allowed him to draw political and economic support from the USSR, Libya, and Saudi Arabia. Evidence for this support lies in north African government's support of him winning the Chairmanship of the Organization of African Unity, 1975-1976. By 1975, though, the relationship between Amin and the USSR had cooled (Tatum 2002, 188).

nepotistic regime made economic success perilous. When the state seized all private lands in 1975, Amin in essence gave his already powerful political allies carte blanche power to seize property from productive sectors of the economy. Amin led the way with this in 1972 when he expelled the Asian community and divided their property; this policy was expanded in the Land Reform Decree of 1975. Insecure property led to declining Gross Domestic Product (GDP) and a general retreat – either to the countryside or to other states entirely – by Uganda’s farmers and capital owners.

**Figure 10 Inflation and GDP in Amin's Uganda<sup>62</sup>**

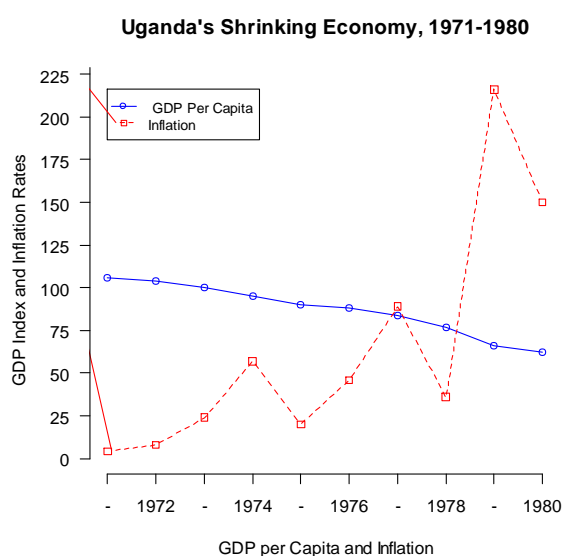
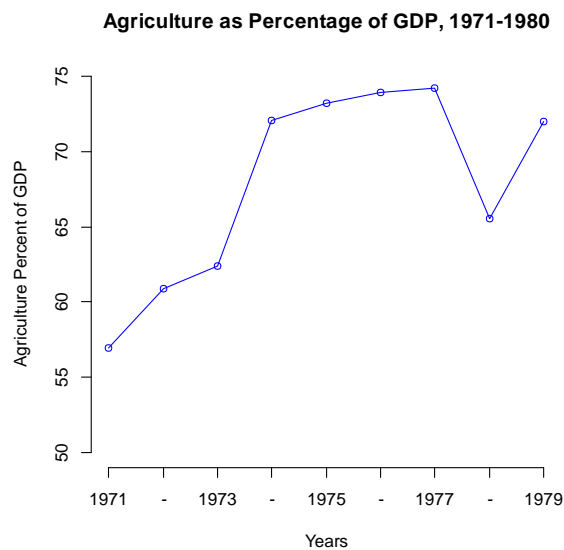


Figure 10 illustrates the declining GDP per capita in Uganda and Uganda’s increasing inflation rate through Amin’s rule. High and increasing inflation rates restricted consumption in Uganda, giving rise to an informal market and cross-border smuggling. This economic context led individuals to pursue safer investments inside and outside Uganda. Safe domestic

investments in such a turbulent political and economic climate meant subsistence agriculture.

<sup>62</sup> Source: Uganda Bureau of Statistics 2002.

**Figure 11 Rising Agriculture in Amin's Uganda<sup>63</sup>**



Just like Uganda's economy during Obote's rule, agriculture grew vis-à-vis other economic sectors during Amin's rule. Coffee prices grew during 1976 and 1977. However, Uganda's farmers historically relied on subsistence farms and used coffee as a cash-crop to supplement. Uganda's farmers sought to protect themselves from Amin's political and economic policies by insulating themselves in the informal economy

and in subsistence agriculture.

#### **4.4.5 Summary**

Amin's government did few things to attract and keep the powerful economic actors in Uganda. Expelling the Asians in 1972 sent Uganda into an economic tailspin that it could not endure, in large part because Amin could not guarantee property rights either to landless farmers or to successful urban interests. Amin's military government drove away its support in Baganda by feigning support for the Buganda kingdom, by attacking religious and ethnic opponents, and by creating a climate of ethnic distrust through nepotism.

#### **4.5 Analyzing Success and Failures in Land Law**

In the 1928 Busuulu and Envujju Law, Obote's 1968 Move to the Left, and Amin's Land Decree of 1975, the government in power at the time tried to fundamentally alter land law.

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<sup>63</sup> Source: 2002 Uganda Bureau of Statistics

Political upheaval in each case coincided with economic upheaval. In the politics of Ugandan land laws, these upheavals are closely connected. Land is important to the Baganda, and it is central to both the cultural and political positions within the kingdom. However, land is important to most of the other ethnic groups for the same reasons and as a type of social insurance. When Uganda experiences political upheaval, and especially when the political problem is rooted in disputes about property rights, Ugandans have historically relied on subsistence farming – their fixed asset.

In each regime, faulty land policy unhinged Ugandan's markets and helped to cause economic contraction. However, poor land law caused more sweeping problems: the government's lack of credibility caused insecure land rights. In each case, the government gained the lawful ability to seize land and lost credibility because it would distribute that land to its political allies.

So how did the British colonial government differ? The most important way that the government differed was that it gained popular support for its policies and was able to proceed with the support of the Buganda monarchy. While not every individual Baganda supported the 1928 Law, it had popular support and some level of elite support. Amin and Obote failed in this respect. In an effort to consolidate their power and appease their own ethnic groups, Amin and Obote seized property the Buganda kingdom and threatened the Baganda in general.

While they had many different economic failures, insecure property rights helped to discourage investment by different groups of people in Obote's and Amin's regimes. In Obote's Uganda, wealthy western donors were repelled by socialist policies and state industries, as evident in the retreat of international banks. Amin's government, having seized the property of

Uganda's Asians, redistributed it to his regime's political allies.<sup>64</sup> Contrasting these policies, the 1928 land law did little to affect investment: Uganda's economy was already built on peasant agriculture; the law encouraged those peasants by protecting their property.

We see a similar pattern in cash crop production, Uganda's major economic sector. When land tenure security is threatened, these markets reflect that insecurity and create incentives for producers to reallocate their wealth to more secure investments. In short, government threats to seize cash crop plantations cause the plantation holders to fear for their property.

Though the Obote and Amin governments both promised to promote ethnic unity and peace, both alienated the ethnic and political groups that they needed to retain state control. Obote and Amin sacrificed the support of the Buganda elite at the expense of soliciting support from their own ethnic groups and national mass appeal. Obote and Amin both concentrated on attracting support from Ugandan peasants that have historically been unwilling to mobilize and that have been a political minority (their own ethnic group) unable to replace the status quo. The British won popular support by soliciting the power of ethnic elites. When there was popular protest, the British were able to negotiate between the ethnic elite and the opposition through the Buganda Kingdom Lukiiko and monarchy.

Cash crops faced a dramatic downturn after both Obote's Common Man's Charter speech in 1969 and Amin's Reform Land Decree of 1975. In Amin's case, the economy was already declining quickly. This was, in part, because coffee production is different than either cotton or tea production: tea and cotton are produced on large plantation-style farms, while coffee was mostly farmed at individual small-hold farms. Neither the policies nor the economic downturn in coffee prices altered Uganda's output for this time period. The shift away from cash crop

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<sup>64</sup> Not unlike Zimbabwe President Robert Mugabe's seizure of white farmland in the 1990s, both in terms of political motivation (clientalist redistribution to military) and economic consequences (rapid inflation and declining investment).



production illustrates problems in Uganda's value chain, namely Obote's and Amin's nationalization projects. Seizing property, in these instances, reduced the efficiency of the organizations producing tea and cotton, and also pushed farmers into their default economic activity: subsistence farming.

Ultimately, Obote and Amin were unable to harness the potential of Uganda's agricultural or manufacturing sectors. Each fundamentally threatened the economy by undermining property rights, by both seizing productive assets and by restructuring the law in order to make future seizures lawful. Both Obote and Amin also attacked the Asian community in Uganda, by seizing their property. Two industrial groups founded and owned by Asians, the Mehta and the Madhvani families, controlled a significant portion of Uganda's light manufacturing and agricultural processing facilities. The Madhvani group alone employed over 20,000 (*Uganda Argus* 1972). Obote and Amin began initiatives to nationalize successful private firms, but these initiatives failed because they destabilized profitable businesses and discouraged other private investment.

In each of these examples of failed land policy, the regimes 1) created laws to seize land, and 2) could not credibly commit to laws that guaranteed private property holding against other economic actors, especially predatory actors with access to political support. Without this assurance, private citizens had little incentive to add value to their property. The individuals that did develop their holding had to seek political support for their economic success because rule-of-law did not govern all parties in the market equally. Land seizures directed against Baganda opposition members, against the Buganda kingdom, and against Asian business owners / industrialists, reduced property rights security. Less secure property rights impeded investment and encouraged individuals to retreat from the formal economy.

Historically, Uganda's economy was monopolized by agriculture. Throughout the colonial period, the British fostered economic growth through agricultural projects administered by local chiefs and *bataka*. The economy grew with cotton, coffee, tea, rubber, sesame seeds, and local staples, providing enough for domestic consumption and a positive international balance of trade. The British established marketing boards to collect and sell crops grown on individual farms, and this practice continued through each successive regime.

Each regime potentially could have lost its hold on government power and could have lost tax revenue if the Baganda had decided to rebel – not only because they would present a direct threat, but because a concomitant shrinking tax revenue would reduce the opportunity for the government to distribute resources to its political allies. Urban Baganda have historically rebelled: riots occurred in 1945, 1949, 1966, and 1969 especially. However, Baganda farmers more frequently protest poor economic policy.

The British colonial administrations under Governor Gowers had taken care to promote development in other regions, but they made the most investment in Buganda. When there was unrest among the farmers in the early 1920s, the British quickly adjudicated between the peasants, *bataka*, and the chiefs to mediate the dispute. After 1922, the British and the Buganda kingdom embarked on a new set of policies to encourage cash crop production. The Busuulu and Envujju Law of 1928 stabilized the relationship between the small farmer and their land lord, essentially redefining each party's interest in the land.

The Obote and Amin regimes pursued similar policies for land reform. Obote's 1966 Constitution and Move to the Left wrested authority over production from Uganda's most organized and productive class: the Baganda elites. Among these elites, the *bataka* and administrative structure of the *amasaza* ensured relatively cheap, decentralized productive

authority within the state, especially within the productive central region. Where capital-intensive industries decline, agriculture as a percent of national income increases. From 1966 to 1980, agriculture as a percent of Uganda's Gross Domestic Product soared from around 50% in the late 1960s to nearly 75% in 1980. This change illustrates the decline of all other sectors in Uganda rather than a dramatic increase in agriculture. Ugandans sought physical and economic security. When Ugandans could not change their government, they left the country or retreated to the countryside.

#### **4.6 Conclusion**

This chapter began by exploring when land policies succeed by asking, “what has caused land policies to fail in Uganda?” Each regime, colonial Uganda and post-colonial governments, redefined land rights. Each regime also had similar interests: to consolidate its political power, to weaken opposition members, and to improve Uganda's economy.

The Gowers, Obote, and Amin regimes yield three lessons. First, when land law failed under Obote and Amin's regimes, it failed because the government at the time lacked Buganda kingdom support. In the cases of institutional failure, the Buganda kingdom, the *bataka* land owners, and/or the chiefs were alienated from the land law and not inclined to voluntarily comply with the government's new laws. Equally as important, it was necessary to be confident that the Buganda kingdom reflected the interests of vital factions. Political upheaval within the kingdom might make parts of the kingdom more easy to manipulate but will not help in producing functioning institutions. Finally, Uganda's agricultural economics and land politics are closely related to political power constellations in the *Lukiiko*, the Buganda kingdom, and the national government. Secure property rights are necessary for the country to be productive, and

economic disasters result when a regime's political imperatives overshadow its responsibility to safeguard property and market transactions.

In comparison to the 1900 Buganda Agreement and the Busuulu and Envujju Law of 1928, which were between the Buganda kingdom and the colonial state, each of the 1969 and the 1975 laws were failures. The failing laws did not satisfy the interests of the government or the government's main opposition. The land laws failed insofar as they did not induce the intended behavior of their authors: each brought substantial political opposition and economic contraction. Instead of unifying Uganda, they created more fissures. Instead of reducing political opposition, they helped to galvanize it. One sign of a failed institution is the withdrawal of essential political and economic members. In 1900, though peasants attempted to avoid taxes and chiefs were guilty of extorting fees, the British colonial government was able to reign in this behavior using the Buganda kingdom and renegotiating land-use relationships. The *Lukiiko* and courts tried chiefs that were guilty of extortion and that were tax truants.

## **CHAPTER FIVE - MODERN LAND NEGOTIATIONS**

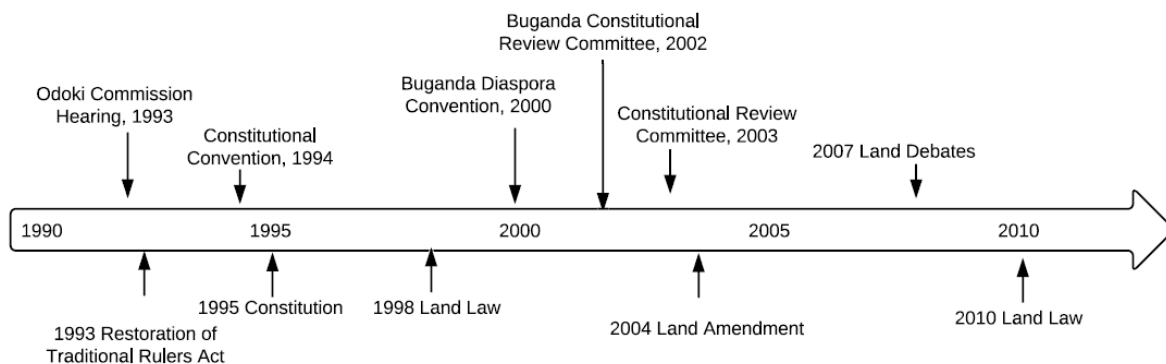
### **5.1 Introduction**

Following the Obote and Amin regimes, President Museveni came to power promising a representative and stable government. During his war to remove reigning President Obote, Museveni had forged an alliance with the Kabaka of Buganda and gained the support of the Baganda people. Much of this war took place within Buganda, in a region called the Luwero Triangle, and Baganda aid was important in securing supplies, conducting reconnaissance, and recruiting soldiers. The Baganda favored Museveni over Obote because he gained the support of the Kabaka, but also because he was fighting to remove a government which they had struggled against for the past twenty years. Museveni became president with the help and blessing of the Buganda kingdom and people, and thus he immediately drew together two important populations: Ugandans from the Central and Western regions.

Through his reign, the political alliance that Museveni had forged with the Buganda kingdom and with the Baganda became less important than it was when he first came to power. In the new land laws, the Buganda kingdom has been omitted. Instead, the laws tend to protect peasants who lack registered land and who constitute the majority of Uganda's electorate. The 2010 law resembles the 1928 Busuulu and Envujju Law, as examined in Chapter Four, insofar as it is popular with landless peasants. However, modern land laws closely resemble the unpopular laws of Obote and Amin that Buganda kingdom. When laws failed to accommodate the preferences of the population that they are meant to govern, the government has a choice to spend heavily to implement the law, abandon the failed law, change the law, or compensate the population in such a way that it has an incentive to abide by the law.

In this chapter I argue that the NRM government under President Museveni has alienated the Buganda kingdom through its land law policy. The Buganda kingdom's position, represented by the Baganda Caucus and other parliamentarians (a group that I call "Monarchists" in this chapter)<sup>65</sup>, has consistently lost ground in political debates on the floor of parliament since the 1995 Constitution. Instead, the government has passed populist land law that erodes the rights of titled landholders. Titled landholders and the Buganda kingdom are poorly represented in Uganda's NRM dominated parliament, discouraging Monarchists from participating in Uganda's government and titled landholders from investing in their property.

**Figure 12 Contracting Uganda's Modern Land Law**



To understand this growing political fissure between the NRM regime and the Buganda kingdom, I surveyed Hansard documents from 1992-2010 in Uganda's Parliamentary Archives. These debates illustrated a clear division between Monarchists and NRM regime supporters on the floor of parliament. Additionally, I analyzed documents from conventions, commissions, and

<sup>65</sup> Monarchists represent the land claims of traditional authorities in Uganda (both their preference for tenure laws and about parcels of land), particularly the five traditional kingdoms (the Buganda, the Bunyoro, the Toro, the Ankole, and the Busoga). In the debate, the most vocal traditional authorities are supporters of the Buganda kingdom. There are individuals who support both the NRM government and the Buganda Kingdom, but on the land issue I make the distinction between supporters of the NRM government's position and its opposition, the Buganda kingdom and Monarchists.

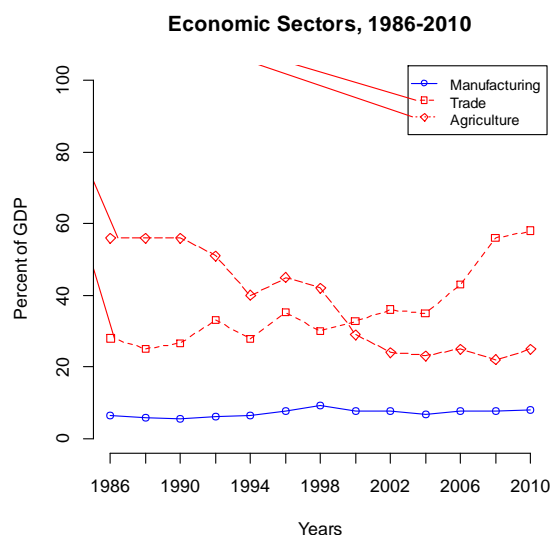
constitutional reviews sponsored by Monarchists and the Ugandan government. The findings in these documents show the preferences of the Buganda kingdom, the NRM government, major stakeholders, and popular opinion concerning land ownership in Uganda. This account of Uganda's evolving land law (from Hansard debates, policy studies, and their resulting land law – depicted in Figure 1) shows that the NRM government has become less conciliatory towards the Buganda kingdom in land law and land tenure. Land laws have favored a populist interpretation of land tenure, bolstering Museveni's rural support, but undermining the interests of the Buganda kingdom and the interests that they help champion, those of titled landholders.

## 5.2 Interested Parties in Uganda's Parliament

According to Monarchists, the state facilitates the redistribution of land from individuals that identify with the Buganda kingdom to non-Buganda kingdom sympathizers, especially to members of the National Resistance Movement regime (Uganda Land Alliance 2008).

The Monarchists were the losers of this debate because the NRM party rejected their

**Figure 13 Uganda's Modernizing Economy<sup>66</sup>**

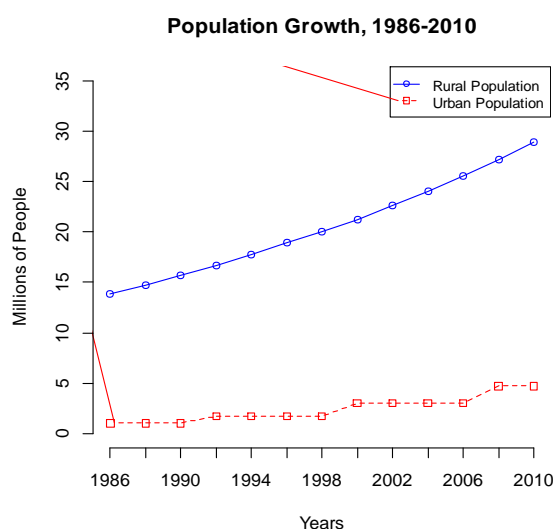


<sup>66</sup> Uganda Bureau of Statistics (2010)

claims, but also because the economy of Uganda has modernized, and Uganda's politics reflect this modernization. Traditionally, agriculture has been the most productive and reliable sector of the economy. Ugandans, even Ugandans who have wage-labor careers, own land as an (untaxed) asset. This land becomes a symbol of belonging and a

form of social security to rely on in case they lose their jobs. However, agriculture as a whole has declined relative to other sectors in Uganda's economy (see Figure 13), especially in President Museveni's rule. Commerce and trade has surpassed agriculture as Uganda's principle industry, even though most Ugandans live on farms.

**Figure 14 Uganda's Modern Demographics<sup>67</sup>**



Both Monarchists and NRM supporters knew that it was important to solicit the support of peasant farmers since Uganda is mostly small farmers. As Figure 14 shows, Uganda's population is mostly rural, and the rural majority continues to grow, albeit at a slower rate than the urban minority. However, to gain campaign contributions and policy support, it was

important for candidates to attract the support of wealthy urban Ugandans. Further, it was in both groups' interest to develop the country, and part of this development comes from secure property rights. Both groups had incentives to define and defend property rights, and both had an incentive to create land rights to favor their parties.

### *Kingdoms as Interest Groups*

Monarchists viewed the land dispute as an attack on traditional authorities as a whole. Redefining access to land has caused elites from these groups (namely, the most powerful monarchies in Uganda – especially the Baganda, Batoro, and Banyoro) to overcome historic

<sup>67</sup> Uganda Bureau of Statistics (2010)



animosity as well as collective action problems. These groups have unified through their opposition against land law reform. As Mutibwa (2009) argues, eroding the Baganda's historic claim to ethnic territory further erodes that kingdom's political initiative to establish a federal state in Uganda. Nkonya *et al.* (2005) illustrate that when there is a conflict between government policies and Buganda kingdom mandates concerning land use, Baganda farmers follow the advice of the *kabaka*. Customary rights, its geographic position, and the kingdom's wealth have buttressed the Buganda kingdom's political position and allowed it to challenge the way the NRM leadership has constructed political organization in the state of Uganda since 1986.<sup>68</sup>

Secondly, the way that cultural leaders have responded to the Land Act shows that many ethnic leaders were threatened by the new laws. The NRM government was unpopular with most cultural leaders because they understood the new land law as an absolute challenge to their land holdings and not as an opportunity to improve their communities or correct historic injustices. To account for these differences, it is helpful to classify the Buganda kingdom as part of an interest group, albeit one that creates strong ideational and organizational ties between its members. Like other interest groups, this organization has dissenting members and employs different mechanisms to maintain group loyalty.

In this debate, both the NRM and the Monarchists wanted to retain their members, and they pursued similar methods to do this: through populist rhetoric and by protecting their powerful constituents. The NRM, through nepotistic allocation or by circumventing local law enforcement, distributed state resources and land to its most important members. The party sought liberal land reform in part to improve the national economy and to appeal to landless farmers but also in part to economically weaken the agriculturally-based Monarchists and

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<sup>68</sup> Ethnic affiliations do not completely define how members of parliament vote. For example, several Baganda members of the National Assembly voted against the preferences of the Buganda kingdom in the 1998 Land Law; NRM party members and opposition party members both rally along ethnic lines.

empower its urban political allies. Although many of the Monarchists' supporters were large land owners, Monarchists claimed to be working in the interests of landless farmers. Monarchists argued that they protected the holdings and interests of the farmers who settled on their land and dealt fairly with these farmers, even though they do not hold a title to their property.

To analyze when land law has traction and when it fails to attract the most important actors in the state's political economy, I analyze parliamentary Hansard records and committee position papers that articulate the preferences of different stakeholders in Uganda's land politics. Since Uganda's parliament does not have roll-call voting procedures, Hansard documents offer an account of how parliamentarians organized and debated for their constituents. These documents evince the positions of the NRM party and the Monarchists, illustrating the preferences of each side and, eventually, the side that won the debates. In the land law narrative outlined below, it is clear that the NRM Party gradually abandoned its partnership with the Monarchists. Because the NRM had an interest in selectively applying the law and because the Monarchists had little incentive to comply with the land law, the land law in Uganda has largely failed to create a functional institution.

### **5.3 Uganda Political Economy in Land Law**

The NRM government recognized traditional institutions' claims in the Restoration of Property Act of 1993 and in the 1995 Constitution, granting them both rights and property. In the early 1990s, the NRM government was more responsive to the demands of Monarchists within parliament, returning some of the Buganda kingdom's historic territory in a 1993 law and recognizing the cultural authority of the kingdom in the 1995 Constitution. These concessions were both widely popular and responsive to the demands of the Buganda kingdom and Monarchist parliamentarians within the Buganda kingdom. The kingdom and the NRM

government were enjoying a period of political tranquility: their interests in land law and allocation partially aligned. The 1993 law and the 1995 Constitution were popular, and the 1995 Constitution was widely regarded as democratic and inclusive.<sup>69</sup> These concessions to Monarchist demands brought the NRM and the Buganda kingdom together during Museveni's early years as president.

### *Defining the Resource Restoration of Property 1993*

The Buganda kingdom publicly fought to restore the kingdom's cultural property beginning on March 30, 1992, when the Ssebataka's Supreme Council made a formal complaint to the government and argued that the NRM regime was not serious about returning Buganda kingdom properties (Mayiga 2009, 90). The NRM government had promised to return land to the *kabaka* during the civil war and while President Museveni was consolidating his authority in Kampala. In February of 1992, the Buganda kingdom's *Lukiiko* government organized demonstrations in support of the argument for restoration. These crowds, organized by clan, marched to Uganda's parliament building. By early March the government and the *Lukiiko* had concluded meetings to restore some of the properties that the Buganda demanded. To make this transition legal, the Ugandan parliament would need to pass a bill through its newly elected Constituent Assembly.

In 1993, the Constituent Assembly passed the Traditional Rulers (Restitution of Assets and Properties) Act in order to return land confiscated by the Obote regime in 1967. The primary recipients, mentioned by title in this act, were Buganda kingdom officials and the institution of the *kabaka*. In addition to returning ownership over the 350 square miles that the *kabaka* had

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<sup>69</sup> Scholars disagree about democracy and participation in the 1995 Constitution, see Furley and Katalikawe (1997), Odoki (1999), Moehler (2006), and Tripp (2010).

demarcated in the 1900 Buganda Agreement, the NRM regime also returned several administrative and cultural assets.<sup>70</sup> Excluded from this act was the restoration of the traditional 9000 square miles that the kingdom as an institution held prior to 1967, under the colonial and immediate post-colonial governments.

### *Concessions in the 1995 Constitution*

Immediately following the concessions to the traditional rulers, the NRM government commissioned a panel to draft a state constitution. The Constitutional Commission, nicknamed the Odoki Commission after its chair Supreme Court Justice Benjamin Odoki, assembled specialists and survey groups to tour communities throughout Uganda in order to draft the constitution. While the commission was geographically representative of the whole country, it was also composed almost exclusively of NRM supporters (Tripp 2010, 163). Nevertheless, the Odoki Commission suggested that new land laws include the de facto land tenure relationships that already existed throughout the country.

To this end, the Uganda constitution, enacted by the President Museveni and Uganda's Constituent Assembly on October 8, 1995, guaranteed the right of citizens and cultural institutions to possess property. Chapter 15 of the constitution defines the four predominant classes of land tenure in Uganda: customary, freehold, *mailo*, and leasehold (defined in Table 3). The constitution allowed citizens with customary tenure to obtain certificates of occupancy in order to protect their interest on the land and also allows them to convert their land

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<sup>70</sup> Among the assets that the government restored to the Kingdom of Buganda in the Traditional Rulers Act was the Bulange (Parliament Building) and the Lubiri (Palace) at Mengo, and other cultural buildings including the Butikkiro, the Buganda Court Building, the Namasole's (the Queen's) ten square miles, Banalinya's land, the Kabaka's lake, the residences of the Omulamuzi and Omuwanika at the Mengo, the Bassekabaka's tombs, land adjacent to Lubiri, the Buganda Works building, the Basiima House, and Naliinya's house at Lubaga (1993 Traditional Rulers Act, Section 2, 1-14)

**Table 3. The 1995 Constitutional Definitions of Land Rights**

	<b>Definition in 1998 Land Act</b>
<b>Free-hold</b>	<p>Involves the holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition;  Enables the holder to exercise, subject to the law, full powers of ownership of land including but not necessarily limited to</p> <ul style="list-style-type: none"> <li>i. using and developing the land for any lawful purpose</li> <li>ii. taking and using any and all produce from the land</li> <li>iii. entering into any transaction in connection with the land including but not limited to selling, leasing, mortgaging or pledging, subdividing, creating rights and interests for other people in the land, and creating trusts of the land</li> <li>iv. disposing of the land to any person by will</li> </ul>
<b>Customary</b>	<ul style="list-style-type: none"> <li>a. applicable to a specific area of land and a specific description or class of persons</li> <li>b. subject to section 28 of this Act, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies</li> <li>c. applicable to any persons acquiring land in that area in accordance with those rules</li> <li>d. subject to section 28 of this Act, characterized by local customary regulation</li> <li>e. applying local customary regulation and management to individual and household ownership, use and occupation of, and transaction</li> <li>f. providing for communal ownership of land</li> <li>g. in which parcels of land may be recognized as subdivisions belonging to a person, a family, or a traditional institution</li> <li>h. which is owned in perpetuity</li> </ul>
<b>Mailo</b>	<ul style="list-style-type: none"> <li>a. involves the holding of registered land in perpetuity</li> <li>b. permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant</li> <li>c. enables the holder, subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title set out in subsections (2) and (3) and subject to the same possibility of conditions, restrictions, and limitations positive or negative in their application, as are referred to in those subsections</li> </ul>
<b>Leasehold</b>	<p>a form of tenure created either by contract or by operation of law; the terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between parties; under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending; usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return; under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of freehold owners as are appropriate and possible given the specific nature of a leasehold tenure</p>

into freehold land by registering with the Land Board.<sup>71</sup> Similarly, occupants on leasehold, freehold and *mailo* land enjoyed security on the land that they occupy for two years (Article 237 (8)), but the constitution mandated that within two years the parliament would define the relationship of the lawful and bona fide occupants of the land and the registered owners of the land to guarantee the interests of both parties (Article 237 (9a, 9b)).

The constitution further created a Land Commission to manage government land and District Land Boards that were responsible for allocating land that did not belong to individuals or institutions, registering land claims, and administering laws passed by Parliament. Additionally, the constitution created Land Tribunals to adjudicate land disputes. The Uganda Land Commission was to be appointed by the president with the advice of the parliament. The District Land Boards were to be independent from the Uganda Land Commission and prescribed by parliament under its own rules. The Land Tribunals were to be appointed with the advice of the Judicial Service Commission and have mandates as prescribed by parliament.<sup>72</sup>

Along with securing the rights of individuals to land as registered owners and as occupants and creating adjudicating bodies to oversee land management and allocation, the constitution also protected the interests of cultural institutions with regards to land. First, the constitution acknowledged the legal entity of cultural institutions. Chapter 16 of Uganda's constitution established that "the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies" (Article 246 (1)). The cultural leader was considered "a corporation sole with perpetual succession and with capacity to sue or be sued and to hold assets or properties in trust for itself and the people concerned" (Article 247 (3a)). The

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<sup>71</sup> 1995 Constitution of Uganda, Article 237 (4a), Article 237 (4b))

<sup>72</sup> 1995 Constitution of Uganda, Articles 238 – 243

cultural leader was also restricted by the constitution insofar as he/she cannot join partisan politics (Article 247 (3e)) or exercise any executive, legislative, or judicial powers of the government.<sup>73</sup> As an institution and a ‘corporate sole’, the cultural leader had the constitutional right to land as an individual and through the cultural institution.

The 1995 Constitution did not resolve the arguments among titled land owners and land residents or among Monarchist parliamentarians and the NRM government. The 1995 Constitution did create a new document as a foundation for future law in the country and paved the way for a greater national debate on land policy in the new government. To begin this renewed debate, the government appointed several members to a committee to review land policy in Uganda and propose changes to the constitution based on their findings. Next, parliament began the process of creating a land law within the structure of the constitution.

### **5.3.1 State Retrenchment: Parliament’s Populist Politics and the Neglected Kingdoms**

After the 1995 Constitution, the Monarchists and other legislators battled in parliament to create a law in order to specify the administrative and adjudicative powers outlined in the 1995 Constitution. The 1995 Constitution was intentionally incomplete in its treatment of the land issue, and parliament promised to redress land reform in subsequent legislation. Many of the members of parliament that created the 1995 Constitution in the Constituent Assembly remained in parliament, and the debates that preceded the 1998 Land Act continued the argument about land law between Monarchists and NRM supporters. To begin this new debate, the NRM government appointed several members to a sessional committee to review land tenure in Uganda.<sup>74</sup>

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<sup>73</sup> Constitution of Uganda Article 247 (3e – 3f)

<sup>74</sup> Members of Parliament from the Lubaga South constituency and from Buikwe North constituency both voiced concerns that the debates were truncated to quiet opposition. Likewise, two members (Lt. Col. Mudoola (Kigulu

### *The 1998 Land Act*

The 1998 Land Act entrenched existing informal practices in law. The act gave more definition to the land ownership structure established in the constitution, adding strict definitions of freehold, *mailo*, customary and freehold ownership. However, the 1998 Land Act also defined ‘lawful occupant’ and ‘bona fide’ occupant. Lawful occupants became defined as 1) an occupant by virtue of the 1928 Busuulu and Envujjo Law, 2) an occupant by virtue of consent of the owner, or 3) a person occupying the land as a customary tenant but who was not compensated or disclosed by the registered owner at the time of the registration. Bona fide occupants are those people who 1) had occupied and utilized a parcel of land for 12 years and are unchallenged by the land owner, and 2) had been settled on the land by the government. These two classifications gave legal definition to two groups of people living and farming land in Uganda, but greatly angered registered land owners. Lawful occupants and bona fide occupants gained legal standing to pursue claims over their interest in land that they had previously lacked.

Additionally, the 1998 Land Law put in to effect a maximum nominal ground rent of 1000 Uganda shillings (UGX) paid by the tenant by occupancy to the registered land owner. This maximum rent severely restricts the titled land holder: whether the landless farmer grows subsistence crops or erects a restaurant, the titleholder can only charge 1000 UGX per year. Should the tenant fail to pay this 1000 UGX for a full year, the land owner can resolve his grievance with the land tribunal. Should the land tribunal find in favor of the registered owner, the tribunal has the power to issue an eviction order to the occupant but must give the occupant an additional six months to vacate the land. This law significantly favored the claims of the landless farmer against those of the landholder: not only was the rent ceiling fixed at an absurdly

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North, Iganga District) and Dr. Okulo Epak (Buikwe North, Mukono District)) of the sessional committee refused to sign the report because they did not agree with its findings or support the committee’s conclusions.



low price, but the only legal pretext for eviction was failure to pay this minimal fee. Even then, the resident was given an additional six months to vacate, thereby impairing any immediate plans that the landholder could have on his property. This law was contrary to the preferences of landholders and parliamentary Monarchists: those opinions were heard and ignored in parliament.

Additionally, the tenants could gain greater control over their holdings and interests by applying for a certificate of occupancy. This certificate allows for the holder's land to be inherited, sublet, and pledged. A tenant with a certificate of occupancy gained the right of first option of buying the registered owners' interest in the land. Again, these articles bolstered the standing of bona fide and lawful occupants by creating a low rent ceiling (at a contemporary exchange rate of less than \$.50 USD/year). The only legal means to evict a resident was if they failed to pay this low rent. This was a threat to the power of the titled landholders. They lost the right to reclaim their land for any reason other than a tenant's payment of 1000 UGX per year, and so the value of that land to individual titleholders remained very low. Yet, by bolstering the rights and power of the landless farmers, the Museveni government attracted the support of Uganda's expanding class of landless farmers.

The 1998 Land Law also established offices for administering the land law, including the Uganda Land Commission,<sup>75</sup> district-level land boards,<sup>76</sup> land committees,<sup>77</sup> and district land tribunals.<sup>78</sup> The Uganda Land Commission was established to hold and manage land held by the Government of Uganda, as well as allocate certificates of occupancy on that land. The Commission is beholden to the Parliament of Uganda for establishing the rules for management

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<sup>75</sup> Constitution of Uganda, Article 46

<sup>76</sup> Constitution of Uganda, Article 55

<sup>77</sup> Constitution of Uganda, Article 64

<sup>78</sup> Constitution of Uganda, Article 74

and the salaries of its members. Local administration and adjudication was more popular, and also was in the interest of traditional leaders

In the 1998 Land Law, District Land Boards were to include one member from the municipal councils, one from urban councils, one from each county in the district, and a chair. This board was responsible for holding and allocating land in a district that is not owned by individuals or any authority. The district administration paid this board and the board was beholden to parliament to define its operating rules. Land Committees assisted the district land board, were paid from the district administration fund, and were empowered to create rules to govern the actions of their members. Finally, the 1998 Land Law established district land tribunals to mediate local land disputes. This three person tribunal was appointed by the Judicial Service commission and paid out of the Consolidated Fund, a body under the control of parliament. What this change meant was that Museveni ensured support among rural farmers. Decentralizing land adjudication and administration was meant to appease Monarchists who wanted greater local control. However, this move also acknowledged the status quo: local adjudication and administrative bodies already existed, and the government was attempting to draw these institutions into the legal structure of government.

Again, the 1998 Land Law left both land title owners and landless farmers unhappy. At their annual expatriate convention, the Baganda diaspora vowed to “use every opportunity to lawfully reverse the land act which has be used to rob *ssabasajja kabaka* and Baganda of their land” and “demand the return of the remaining assets seized by the Government of Uganda” (Diaspora Statement August 29, 2000). Likewise, the Kampala City Council and the Buganda Land Board fought to control land allocation and adjudication within city limits. Buganda kingdom officials publically denounced the 1998 Land Law. One such official, Sewawa Serubiri

of the *Lukiiko*, claimed that the 1998 Land Act undermined the Buganda kingdom's historic rights and that all 9000 square miles from the Buganda Agreement rightfully belong under the kingdom's control (*Daily Monitor* 7/1/1998).

Opposition to the 1998 Land Law expressed their complaints in two studies, one sponsored by the Buganda kingdom, the Buganda Constitutional Review Commission of 2002 (BCRC), and another by the government, the 2003 Constitutional Review Committee (CRC). The BCRC supported the Buganda kingdom's claim to 9000 sq. miles and called for more autonomy in line with the Buganda kingdom's power under the British government.<sup>79</sup> The BCRC also found fault with the administrative power of the Kampala City Council over Buganda kingdom territory and the NRM government's failure to return control of the kingdom's 9000 sq. miles (2002, 41-46). The BCRC argued that the return of this land was legally similar to Museveni's repayment of the Asian community that Idi Amin had displaced. They argued that, "to omit the kingdom's most important and sacred traditional ancestral institutional sites is viewed by the Baganda as illogical, unfair, and an unnecessary humiliation, a mockery of their culture and disrespect of their cultural institutions. Some regard it as occupation" (BCRC 2002, 41). Likewise, the BCRC argued on the behalf of titled land owners:

the Land Act automatically creates tenancies, and takes away land owner's right to negotiate fair tenancy terms; when it restricts the land owner's right to use the land; when it restricts the rights of a title holder to transfer, pledge or mortgage land, it is taking away the essence of ownership, and that is interfering with the property rights of the land owners, which is unconstitutional (2002, 47).

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<sup>79</sup> Citing the Odoki Commission, the BCRC claimed that 65% of all Ugandans and 97% of people in Buganda wanted a federalist system (BCRC 2002, 19). The BCRC argued that federalism and devolved power were popular throughout the country.

The CRC in 2003 echoed many of these complaints and noted other land rights problems outside of Buganda. The CRC found that both the regions of northern Uganda and eastern Uganda favored customary land tenure and that the custom of the people generally regards land as belonging to the whole community. Further, the CRC's investigation into popular opinion of land tenure in the north is that the "individualization of land ownership is perceived as a means through which the powerful will grab large parcels of land to the detriment of the poor" (2003, 224). Again, *mailo* owners, almost exclusively from the Central Region, were also discontent with the 1998 Land Law. The CRC found that *mailo* owners were concerned 1) about the excessive rights given to lawful and bona fide occupants, 2) that the land rent was restricted to 1000 UGX / year without regard to the size of the land or activity on it, 3) that individuals living on the land for more than 12 years prior to 1995 are legal occupants of the land (CRC 2003, 224).

The CRC also found problems with land allocation, security of tenure, and adjudication of land disputes. Specifically, another ethnic group and kingdom in Uganda, the Basoga, were angry that land was given to investors without regard to local claims and that the Land Boards in general frequently dismiss the claims of occupants. Further, those finding fault with the existing structure of Land Boards tended to prefer traditional or clan structures, especially in the Buganda districts and eastern Busoga. Here, the CRC also found a "dominant sentiment about public land...that it should be handed over to the kingdom" (2003, 225). To address these problems, the CRC argued for greater social justice in land acquisition and security of tenure (2003, 226). The commission acknowledged Buganda land owners' complaint that the restriction of land rent to 1000 UGX was unfair.

Hansard debates also reflected these arguments between the Monarchists and the NRM regime. According to the sessional committee formed to investigate land tenure, the decentralized land administration had been dysfunctional since its creation. In the six years since their formation, no land tribunals had met (Hansard 2003, 4588). In place of effective land tribunals, land officers, local council members, Resident District Commissioners, and village elders had informally adjudicated land disputes. Magistrates had also heard land disputes, though illiterate and peasant farmers tended to seek local dispute resolution venues.

The BCRC, the CRC, and the sessional committee to review land tenure in Uganda all agreed that land law remained a contested issue among its major stakeholders. The land administration and adjudication bodies were underfunded and insufficient to meet the needs of Uganda's farmers. In short, the laws were inappropriate, insufficient, and implemented poorly. Since the laws did not apply, banditry and land grabbing persisted.

#### *The 2004 Land Law*

The 2004 Land Amendment Law undid two important provisions of the 1998 Land Law, essentially recognizing the fact that implementing the land law as it was written would be too costly and impractical. This new law split the preferences of the government and the Monarchists. Article 13 of the 2004 Amendment altered section 30 of the original 1998 Land Law and allowed for Land Tribunals to hear appeals from parties that declined the use of another moderator with reference to the legal occupation of the land. These Land Tribunals had the power to order the eviction of occupants, but they had to give the occupants one year to vacate the property. Land Tribunals have the power to dismiss occupants' claims, but still the occupants may remain on the land for a year. Meanwhile, Article 14 of the 2004 Land Amendment Law

gave power to the Land Board to determine annual nominal ground rent with the approval of the Minister, altering Article 31 of the original 1998 Land Law. Should the Minister fail to reply to the District Land Board's suggestion within 60 days, the rent value was to be considered valid.

Titled landholders were happy that the rent ceiling was no longer fixed at 1000 UGX, but it was still left to be determined by locally elected land officers. This new power to local land officers could mean anything: corrupt, populist, or fair pricing. Likewise, the Land Tribunals could order eviction, but this power still carried the caveat that evicted farmers had a year to vacate. Again, Monarchists and titled landholders were neglected in Uganda's land law.

#### *2010 Land Law: Outcome of 2007 – 2010 Negotiations*

However, the law still was not sufficient: the government failed to protect both the land owners and the landless farmers. Monarchist parliamentarians continued to argue on behalf of the Buganda kingdom and other traditional rulers. Divisions between Monarchists and the NRM government persisted, with the primary focus being tenants' rights against those of rights of land holders. In the 2010 Land Law, landless farmers gained rights over their assets and interests on the land, and there were no specific concessions to the Monarchists.

With reference to other bills before parliament, ministers cite the 1998 Land Law as a piece of legislation that they passed but that has led nowhere because the government is unwilling to fund it. In a session to address the government budget in 2009, the Minister Nabilah Sempala (Women Representative, Kampala) asked this very question:

Citizens have started killing each other over land, and land wrangles are escalating. On one hand, tenants are being evicted especially in Buganda or the Central Region; and on the other hand, landlords are being lynched. This trend is going to escalate further,

especially with the population explosion, and the appreciation of the scarce land in this country... Is it going to be in every village so that the land wrangles are done away with? Right now, security is for those who have the guns. If you have land and you have the guns, you can protect your land. But if you are a landlord and you do not have guns you risk being lynched. If you are a landlord or if you have bought land and you have guns you can evict. Either way, it is for those who have security and those who have the guns, to protect themselves. During evictions, they are there to stand by and watch the evictions, or if they are landlords or they have bought the land, they are able to protect themselves.

(Hansard August 19, 2009).

The Ugandan Parliament considered the land law incomplete and on February 12, 2010, enacted another amendment to the 1998 Law, the Land Amendment Act of 2010. This act's principle function was to better secure the tenure held by lawful and bona fide occupants of land. To do this, parliament amended the powers of the land board, the reasons that tenants may be evicted, how tenants are affected by title transfers between registered owners, and specified the penalties of illegal evictions by land lords.

Landholders and the Buganda kingdom were unhappy with the existing laws and argued that their interests were not represented in government. They continued to agitate against land laws, basing their arguments on ethnic, economic, and historic claims to property. They argued that they consistently lost control of their property, and that titles to property mean little in the current regime. This new act followed that trend. In the 1998 Land Law ground rent was set at 1000 UGX per holding, but this threshold was repealed in the 2004 Land Amendment. In 2004, land boards were empowered to define the nominal ground rent that the tenant must pay to the

land lord (Section 31 (d)). The amendment granted the central government the authority to define this payment if the land board has failed to set the ground rent within six months of the occupancy of the tenant. Further, this rent must be paid within a year from when the Minister of Lands defines the payment. The 2010 Land Amendment also narrowed the claims by which the tenant may be evicted. Lawful or bona fide occupants, under the new amendment, may only be evicted if they fail to pay the ground rent on their property. However, even if the tenant fails to pay ground rent, the registered land owner still needs to obtain an order by the court – either a magistrate or Chief Magistrate - and allow the tenant a further six months to vacate the property.

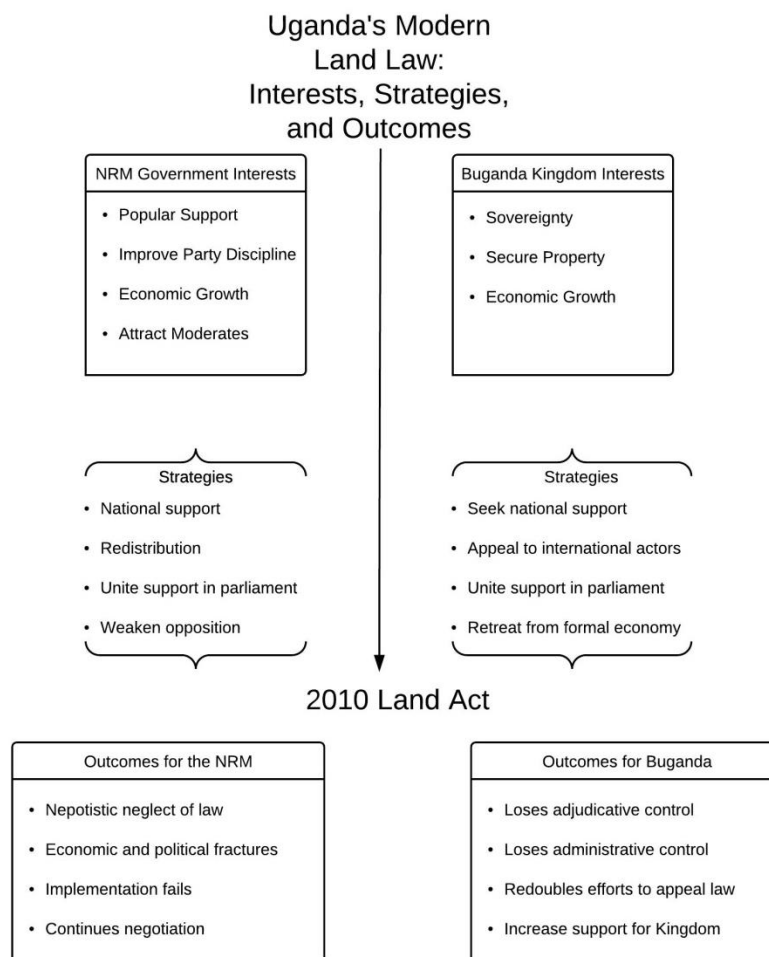
The tenant's interests on the land also gained greater protection in the 2010 Amendment. In Article 35 (8), the interests of the tenant are protected when the registered owner transfers the title of the property to a second party. One protection for the registered land owner in this amendment is a check on the ability for the lawful or bona fide tenant to transfer their interest to another party without the knowledge and assent of the registered owner. Article 35 (1a) stipulates that the tenant must give the registered owner the first option for tenancy of that property before he or she sells it to a third party. This change ensures that the owner has an opportunity to regain control over their land before a third party asserts a legal interest on the land. Landless farmers and tenants gained the rights that titled owners, arguably, should have over their property.

In sum, the 2010 Land Law buttressed the rights of bona fide and lawful tenants on a registered land owner's property. These changes enhanced the protection of what are typically small holders by protecting their interest on the land vis-à-vis the land lord and creating stricter penalties for people that violate the land law. Like the 1998 Land Law, its 2010 amendment favored the rights of the peasant farmers against the registered owner of the land. Similarly, the law addressed several problems rampant in the country. Before, if the occupants had been



evicted, they lost their interests. The occupants, too, had a history of selling their interest on the land without notifying the registered owner. Indirectly, this amendment required that the land lord and the tenant interact – by paying a ground rent and discussing land transfers. However, the law clearly built more protection for the lawful or *bona fide* tenants than the earlier act, at once illustrating problems with land tenure in Uganda and the popular sympathy of the legislative and executive branches of government.

**Figure 15 Negotiating Modern Land Law**



Both the Buganda kingdom and the NRM government have qualified success in Uganda's parliament, but land law quarrels continue: the Buganda kingdom maintains its claim

over its historic territory, land adjudicative and administrative bodies remain hindered by a lack of funding, and land owners remain legally disadvantaged against landless farmers on their property. Additionally, to the detriment of both the NRM government and the Buganda Kingdom, ethnic tension continues over land ownership, and both sides mobilize their supporters around ethnic claims. The NRM claims to be a national party, seeking peaceful nationalism over ethnic separatism. Outspoken Buganda kingdom officials argue that they are being targeted, and that the kingdom is being economically and politically weakened under the NRM regime.

#### **5.4 Analysis: Explaining Modern Land Law**

The years of contracting property rights in Uganda reveals that the process is far from complete: incomplete negotiations and altering the law gives evidence that neither party is satisfied with the outcome of the law. Both parties recognize that land law did not work and was a failing institution.

At first cut, the political negotiations between Monarchist parliamentarians and the NRM government would seem to reveal that the two bodies have reached political compromise through years of contracting property rights. For example, the Buganda kingdom did not tolerate the results of the 1998 Land Act that mandated a 1000 UGX rent for all farmers, regardless of size or activity on the land. This clause of the law was amended in 2004, even against the protest of the president. Additionally, administrative responsibility over the land was devolved to local units instead of being handled by a government ministry. District land offices are legally responsible for administering land titles, district land committees help decide land allocation and use, and (initially) local land tribunals were responsible for land adjudication. Decentralized authority has been against the demands put forward by many NRM members, but it is popular in local communities and among both parliamentarians and cultural political groups.

The evolution of land rights in Uganda has generally favored the preferences of NRM members of parliament with only a few exceptions, especially in contemporary legislation. The debates reveal that when the NRM-led parliament passes legislation including Monarchists' preferences, these articles are not implemented:

1. The district land boards are poorly funded, district land offices are frequently under staffed, and local tribunals have disappeared because of lack of funding.
2. The repeal of the 1000 shilling land rent has not resulted in a fundamental change in land rent appraisal. *Mailo* land continues to be used by the occupant with the registered land owner collecting rent sporadically if at all.
3. The Buganda kingdom does not have control over the 9000 square miles or much of the other cultural property that it identifies within its historical domain. Members speaking on behalf of the kingdom continue to advance this argument, with opposition party members promising to return the land after gaining office.

The NRM regime has made few concessions to the Monarchists advocating for more local land control and more rights for registered land owners. Additionally, the question is more complex than examining just the evolution of the law. Each of the decentralized bodies established in the different land laws are either dependent on Central government organs for funding and staffing or they are not functioning at all. The District Land Boards are, generally, not funded by the government and operate as a volunteer service. The District Land Offices are underfunded and thus understaffed, with a minority of the districts having a completely staffed office. In order to complete the titling process, the office relies on a single cadastral office in Entebbe for mapping and the land office in Kampala for approval. Finally, the District Land Tribunals never officially met, and land adjudication became the formal responsibility of the

magistrate's courts and the informal responsibility of the police, district land officers, local authority figures, and the Local Councils.

Though the law appears to appease some of the Monarchist demands – aside from specific land allocation and land rent reform – the aspects of the law that can be understood as a compromise frequently are not enforced. For this reason, the Buganda kingdom continues to argue, *inter alia*, against the 1000 UGX land rent: farmers still cite the law and land owners do not collect rent. Further, peasants' interests on land are protected against the registered land owner in law, but in practice the peasants must defend themselves against powerful land owners who physically remove them from the land with little or no compensation. The law does not provide for *pro bono* attorneys to assert the rights of poor and illiterate farmers, and the existing legal framework creates a series of authorities that hear land disputes.

The 1998 Land Law and the subsequent 2010 Land Amendment Act reflect institutional bargaining between a group of urban/industrialized Ugandans and an organized group of landed/historically powerful Ugandans.<sup>80</sup> The confusion from overlapping laws and adjudicative bodies, as convincingly argued by parliamentarians and explained in constitutional reports, benefits those individuals already powerful in the country. Laws do little to protect poor farmers, who as a group are being removed from valuable land. The land owners that inherited land in the central region have little incentive to keep this land if they do not have the money to develop it

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<sup>80</sup> This bargaining has also included intimidation outside of parliament. For example, On July 18, 2008 after a conference of Buganda Kingdom stakeholders, three prominent members, Medard Ssegona, Charles Peter Mayiga, and Betty Nambooze, were arrested by the NRM regime and detained for several days. According to Mayiga, Ssegona was arrested for his public reaction to President Museveni's statements about the *1998 Land Bill* (2009, 397). Mayiga and Nambooze, the Buganda kingdom's Minister of Information and a member of the Central Civic Education Committee respectively, were also arrested for speaking out in reference to the Kingdom's legal claim to land in Uganda. Ssegona and Nambooze would later run for political office, Ssegona as a parliamentarian in the 2011 elections and Nambooze, first as a member of parliament from Kayunga and then as the Democratic Party's presidential candidate in 2011.

and can sell it at a premium to wealthy groups from the city. Hence, the newly urban and newly wealthy can invest in registered land and remove untitled peasants.

Though the preferences of the most powerful group, the Buganda kingdom, have not been expressed in the new laws and even though the laws tend to protect the landless peasants, these laws are frequently not enforced. Further, the NRM is able to absorb the complaints by the members of parliament from the Buganda kingdom because it is able to coerce, compromise, and build coalitions with others in the territory of the historic Buganda kingdom, thus reducing the clear division between the cultural kingdom and the NRM regime. The government's failure in implementing the law, the Monarchists' constant pressure to alter property rights, and the government's legal and illegal response to the Monarchists suggest that land law in Uganda is not a functioning institution.

Hansard debates and position papers from the most important opposition members (the Monarchists), show that they were neither satisfied by the outcome of the land law nor were they sufficiently compensated after losing in each successive legal measure. The Buganda kingdom and the parliamentarians that promote the interests of traditional rulers lack enough political power to fundamentally alter the formal rules that govern land use and allocation in Uganda. As it stands, land law in Uganda favors those that benefit from the chaos in Uganda's dysfunctional land institution. Parliament passes legislation, but the legislation has little effect outside of parliament aside from creating new powerless and anemically-funded institutions. I develop this thesis more in Chapter Six and Chapter Seven.

Land law in Uganda provides an insight into a changing institution that reflects the interested political powers. Political opposition groups and cultural institutions interested in the land question are able to harness enough support to influence the substance and direction of

parliamentarian debates, but the outcomes of these debates (the laws) remain imbalanced; that is, the laws that govern the fundamentals of land ownership remain in flux. Even though the hegemonic party in government – the NRM – can unilaterally pass legislation, when mobilized interest groups press their claim for reform the government must be responsive to their demands. At first, property rights resembled populist concerns, aimed at returning land given to the Baganda kingdom under the colonial regime and reducing the rights of registered land owners. In time, this has changed to create more secure and tractable property rights, though these too continue to lack substantive implementation. The result is a combination of formal and informal policies and practices that continue to favor the regime and beg the resistance of the Buganda kingdom as well as other opposition members.

## CHAPTER SIX - IMPLEMENTING LAND LAW IN UGANDA: LEGAL SPACE FOR PREDATION

### 6. 1. Introduction

In the previous chapter, I examined the evolution of property rights in Uganda with the hypothesis that the preferences of the interested parties translate into law when the parties have sufficient political will to overturn laws that had created economic disadvantages for them. The end result of the negotiation between the NRM party and the Buganda kingdom, as well as other advocates for local control, was a series of laws that removed power from traditional land owners. At the highest level of government, parliament changed the existing dispute resolution mechanisms and the legal basis for owning property. Further, the new land laws provide a perverse set of incentives: the land laws, ostensibly written to create a market for modern farming techniques, in fact structure incentives for buyers to hold land without developing it with the plan to sell to developers in the future.

As we saw in the previous chapter, the Buganda kingdom won several concessions from the NRM government, but for the most part the government wrote the law according to its preferences. In 1993, the NRM government returned some of the Buganda kingdom's property, allowed the *kabaka* to reclaim his throne, and acknowledged the Buganda kingdom as a corporate entity before the law. In the 1998 Land Law, local authorities were endowed with the authority to hear and settle land disputes. The NRM government first set land rent at 1000 UGX per lot regardless of the size of the plot or how the owner was using it. In time, the Buganda kingdom and opposition MPs successfully fought to repeal that law. However, the Buganda kingdom and opposition members were not satisfied with these concessions and continued to

argue for more rights for traditional leaders. Most notably, traditional authorities sought the power to allocate land and determine rent on customary land.

To grasp Uganda's land law as a whole, it is also necessary to understand how it affects farmers that carry out land transactions and arbitration outside of the legal market. Informal, uncodified laws govern much of the country. It is important to ask how the law evolves to show the way that political actors negotiate laws within the constitution, in the legal environment that defines much of the day-to-day politics of the country. It is also important to understand the output of that negotiation in terms of how a law is implemented, especially concerning land law because it affects the whole country. Taking into account farmers' reaction to the law is vital because it reveals their interests, but also because it gives us insight into what behavior lawmakers can influence and try to influence.

In this chapter, I explore the capacity of the government to implement land law. Chapter Five discussed the debate in parliament in an effort to better understand what forces have shaped Uganda's modern land law and explain why land law is in its current form. This chapter is concerned with the next step: the real application of those laws in policy and practice. As Onoma (2010) and Green (2011) argue, creating and implementing new, dysfunctional institutions can be a political strategy to allocate wealth to supporters and weaken opposition. African governments adopt land laws to shape market conditions. However, the degree to which these laws actually shape the market is contingent on a government's will and capacity to implement that law. When these policies appear to directly oppose farmers' interests, a government's capacity to implement law is drastically reduced insofar as it can be difficult and costly to coerce rural citizens. In some cases, farmers' resistance against government policies can be a deliberate choice to be antagonistic (Scott 1985, Meagher 1990, and Bunker 1991), but more often farmers



neglect countries' laws and withdraw from the market because they are pursuing their best interests (Bates 1981, De Barros 1993, Nabuguzi 1993, Place and Migot-Adholla 1998).

Institutions and institutional change take legal shape in halls of parliament, but they are also shaped by daily use in particular environments (Knight 1992, Pierson 2000, Knight and Harrell 2003). The intersection and disconnect between written law, implemented law, and the behavior of those that the law is meant to affect is illustrative of the preferences of the legislators as well as citizens. Implementing a law can be as political as passing the legislation, and scholars have studied this behavior across the continent (Manji 2001, Joireman 2007, Onoma 2010). To examine the output of Uganda's evolving land law, I interviewed two sets of people that the land law directly affected: the government employees responsible for registering land titles in Uganda and Ugandan farmers from around the country.

I conducted 84 interviews with farmers in each of Uganda's historic geographic regions. I used purposeful, snowball sampling in order to meet farmers from each region and who could represent different points of view. My research assistant (a local community member) and I typically met farmers at their farms, and we conducted the semi-structured interviews in their local language. In each of the districts where I spoke with farmers, I also met with land officials (either the District Land Officer, the Register of Titles, or both). These interviews were in English, and were semi-structured. A detailed description of these interviews, a statistical summary of farmer demographics, and an overview of the geographic location of each interview is provided in the Appendix.

In order to examine the farmers' and land officials' responses, I use qualitative techniques developed by Fielding and Lee (1998) and Mayring (2000) to analyze themes from the interviews. From these interviews, several themes emerge that reveal the state of land law in

the countryside. Ever-changing land law has resulted in a complex brocade of authorities and laws that generally favor urban, wealthy elite at the expense of poor farmers, especially those that lack titles. Just as we saw in Chapter Three, these farmers do have methods to contest land owners who try to exploit them, but ultimately the law and informal laws/*de facto* power relations favor land owners against peasant farmers. In rural Uganda, there is a patchwork of legal and illegal, formal and informal processes for securing property rights, where both legal and extra-legal institutions are biased toward the urban and wealthy. Most land transactions and adjudication take place informally between community members. These community members use informal agreements because the institutions are recognized by other community members and reduce the costs involved in the transaction (i.e. information, enforcement, and bargaining costs). On the other hand, formal laws dramatically increase the transaction costs and exclude farmers from using the laws to protect their property. Whereas the written law stands to benefit property holders and peasants, the implemented law benefits just the wealthy.

Informal institutions do several important tasks. Informal institutions can reduce the costs of transactions because they provide valuable information, such as the range and costs of different options to all parties (Demsetz 1967, Gamm and Shepsle 1989, Calvert 1995). They reduce uncertainty of transactions, like land sales, because each party knows the rules involved in buying and selling land and the powers of adjudicating authorities. So, scholars researching land institutions take care to define what institutions are in place because they explain the environment of the transaction, and because they can point to important institutional inefficiencies or incompleteness (North 1990, Knight 1992, Pierson 2000, Eggertsson 2005, Ostrom and Nagenda 2007). They may be imperfect in terms of alleviating uncertainties by

empowering agents who want to change the institutions or be less suited to incorporate external pressures.

## **6.2 Evidence from the Field**

### **6.2.1 Regional Diversity and Bureaucratic Breakdown**

At first cut, land ownership relations appear different across Uganda. Land holding seems very different in each region in part because of the history of the region and in part because contemporary farming methods include communal pastoralism, culturally-defined farmer hierarchies, and individual land ownership in different areas of Uganda. For example, farming in the northeast typically revolves around cattle pastoralism. In the southwest, many farms are gazetted with barbed wire fences but can also include elaborate irrigation systems that allow for intense agricultural farming regardless of the season. The economic and political organization of these communities creates different forms of customary ownership.

However, during Museveni's regime (1986-Pres.) Ugandans have increasingly registered their land in the national registry. In 2005, Uganda's Ministry of Lands and Urban Development studied land registration trends, dividing the country into the historic 4 regions (North, Central, East, and West), then including Kampala as its own region. The study shows increased land registration throughout the country, with the most registration taking place in the Central Region and Kampala.

While Ugandans are registering their land more frequently, two other recent studies bring to light contemporary problems registering land, especially in recent war zones. Rugadya, Nsamba-Gayiiya, and Kamusiime (2008), in a project sponsored by the World Bank called Northern Uganda Peace, Recovery, and Development Plan (PRDP), take aim at the government of Uganda for failing to sufficiently address land claims of internally displaced persons. The war

in Northern Uganda lasted nearly two decades and has resulted in overlapping land claims by refugees in addition to generations of landless Ugandans leaving displacement camps.

Likewise, Huber (2010) studied six districts of northern Uganda, specifically in Lango and Acholi lands that have been devastated by war. Huber found that in Northern Uganda, formal and informal authorities compete between and among themselves and do not always recognize the authority of the other party. Further, Huber provides a series of case studies that show individuals who present competing claims to a parcel of land, each arguing that they are the rightful owner through inheritance or their status as tenants. Recent wars have complicated land formal registry in Uganda, and locals negotiate land law in the absence of state authority.

A third recent study, Batungi (2008), argues that land title information has been poorly kept and that it is impossible to analyze titles because so much information is either missing or “unusual” (2008, 96). Bagtuni also notes that the quick decline in land transfers is the result of a “long delay in implementing the new policy, after the change from the colonial policy” (2008, 106). Batungi's household survey reveals most Ugandans are not aware of the new land act and that farmers who sought dispute resolution would typically seek out local council members or clan leaders/elders to adjudicate their disputes (2008, 135).

Problems of land holding and transfer evident in each study concern title transfer in inheritance, transferring land between parties, and misunderstanding land boundaries. History of land title ownership in Uganda is also cluttered with confused ownership because of wars and migration, leading to misunderstandings between owners and peasants on the land. As the first two studies show, the war in the North has displaced farmers, and this lesson can be applied to farmers in the Central Region that were displaced during Museveni's revolt against Obote.

### *Access to Formal Land Registry*

At the time of my study, land offices throughout the country appeared very different. I visited 21 district offices and farmers in each district. In the land law, each office is to be staffed with a district surveyor, a physical planner, a land value assessment officer, a register of titles, and a district land officer to oversee the office. However, very few land offices actually have a full staff because they lack funding and are unable to attract qualified professionals. The district surveyor, physical planner, and the district land assessment officer (land value appraiser) have technical jobs in the office. The district land officer oversees these workers, but also gives technical assistance to the district land board. The register of titles registers the interests on the land, but the paperwork comes from Kampala. The interests are registered, along with caveats and other transactions.

The district surveyor files on behalf of the district, but the land is surveyed privately. Each titling farmer contracts with a survey firm to verify the boundaries before they register land. There are few of these private surveyors. In a report conducted by the International Finance Corporation and the World Bank, researchers estimate that the average cost of titling land in Uganda is 545,700 UGX to title the land (about \$235), and an additional 1% of the value of the land paid as a stamp duty to the government. The same report found that the average time necessary to register the land is between 43 and 51 working days (IFC 2011). The sum of half a million shillings and the time required (two to three months) create a considerable institutional hurdle for poor farmers that seek to register their land.

From an organizational perspective, the government's bureaucratic infrastructure fails to meet the demand of Uganda's farmers and excludes most of the farmers from participating in the formal land market. The above regional studies show that there is a general increase in land

registration, but they note significant problems of incomplete title records and the high price of registering land and surveying. In addition to the economic differences in different regions of Uganda, communities' experience with war has led Ugandans to rely on local political structures.

### **6.2.2 Informal Institutions as the Rule, Formal Mechanisms the Exception**

Legal institutional change in the Parliament may not affect farmers in distant districts or it may affect them in ways that Parliamentarians do not foresee. The farmers themselves respond in ways that the Parliamentarians passing the laws may not expect, increasing the price for formal transactions through informal, organized resistance to people that they consider outsiders. In general, redefining land tenure in Uganda also reshapes how farmers relate among themselves. In order to understand this “output” side of land tenure reform, it was important to interview farmers and understand their logic. Additionally, I conducted representative interviews with the staff and land officers in districts around Uganda because they are in a unique position to evaluate land reform – including relationships between the farmers and markets that develop as a result of land reform - in their geographic regions.

A series of themes emerged in response to the questions that I asked farmers and land officials about land ownership and dispute resolution. A typical response by farmers was that they sought local councilors to adjudicate land disputes, but they also sought clansmen and village elders. Likewise, farmers cited many different informal methods to administer the land among themselves apart from government policy and formal markets. Ugandan farmers think the central government should play a role, but also they generally want to handle their local issues by themselves and through local means. They worried about protecting their interests, especially when people that they regarded as outsiders bought land in their communities. Recurrent themes

emerged that show that Ugandan farmers generally trust their local governments and local land administrators, but that these same bodies are overruled by national concerns – namely wealthy, urban Ugandans with ties to the military and government. However, local, informal institutions define most of the transactions between the farmers that I interviewed and the farmers are generally happy with these institutions.

Local land institutions fail when formal institutions legally overrule the informal. In general, interviews with the farmers revealed that the government's effort to establish a modern, national land market has given a set of urban, wealthy Ugandans a tool to use to gain land in rural Uganda while at the same time excluding the majority of Ugandans from protecting their property. Uganda land law has in part redistributed land but has left a patchwork of overlapping formal and informal institutions that favor the politically powerful. While the Buganda kingdom and other authorities have sought to wrest political power from the central government, powerful national forces dramatically affect local land politics. Local level authorities that typically administer the land and adjudicate disputes informally lose when they contest national powers.

Land administration continues to be handled by most Ugandans at the local level and outside of government offices. The general framework for this land tenure system predates Uganda's 1995 Constitution and subsequent land laws as part of the economic organization of local communities. The theme of 'informal institutions as the rule' came about as a result of farmers' testimony about informal titling/boundaries/agreements, dispute adjudication, and ownership structures. By explaining the farmers' continued participation in the informal market, local dispute resolution mechanisms, and ownership structures we begin to understand how rural farmers are excluded from Uganda's modern land law and gain a better understanding about who benefits from the new legislation.

### *Informal Titling, Demarcating Boundaries, Agreements*

The process of gaining access to land requires local elders to witness the transfer from one owner to another. In the country, the people living on the land generally do not have any documents to describe the ownership or the transaction, but instead rely on witnesses to attest to the change of ownership. In this system, a group of elders and clansmen verify the exchange and mark the boundaries of the land transfer. Frequently, this involves the new owners and the old owners surveying the property with the witnesses. To mark these boundaries, farmers use physical features on the property – generally, they use either stones, trenches, or they plant a specific type of bush to mark the property. The elders and family members agree on the boundaries and the terms of the agreement. The farmers also frequently described land transfers as generally understood processes, wherein they did not need to survey or describe the property because all the locals knew the boundaries. When they bought, sold, inherited, or divided the land, they just invited the witnesses to observe the transaction and frequently they did not inspect the grounds.

When farmers complained about titling, they argued that the process of formally titling land with the government is too costly, too time consuming, and confusing. A typical response from farmers without formal land titles is that they are prevented from pursuing titles or completing the process because it is so expensive. For farmers upcountry or in distant districts, the cost and time required to travel to Kampala is prohibitive. It is similarly intimidating for peasant farmers unaccustomed to the city: Kampala, a city hovering between one and two million inhabitants, is daunting to many peasant farmers.

The interviews with the farmers illustrate the different inhibiting costs – both time and money – and demonstrate why they prefer the informal and reasonably secure methods of land



transfer to the formal and expensive methods. For instance, a farmer in Rakai stated, “Now I am about to launch this program about getting my land surveyed and I would be given a title. It costs bit of money – about 200 000 to get a land title. You have to hire some people to come, then you have to bribe here and there. You cannot do anything without bribing. If you don't bribe you don't get anything” (Rakai Farmer C). This sentiment was echoed by a farmer in Mpigi, who complained, “You pay the land lord, the surveyors – then you go to the land office. You pay taxes there. You find problems – more expenses. For me, it has been up to a million [UGX] to process the land title” (Mpigi Farmer C). About two thirds of the farmers that I spoke with were content with their status as titled or customary owner or were secure but sought a land title as a way to access bank loans. About a third of the respondents were either frustrated and stopped the process or felt insecure about their informal ownership and did not seek a title.

The farmers that responded most strongly that they felt secure on their land gave one of three reasons. First, farmers from the Central Region explained that the nominal rent that they pay (*busuulu*) keeps the land lord from evicting them. Secondly, secure farmers said that either they had formal titles or claimed that their neighbors knew their property – so generally, they believed that they had formal or informal support to their land claim. A third group of farmers that felt secure argued that people know each other and that “outsiders” do not move in to their communities. This concept of community membership reoccurred in interviews with both the government bureaucrats and the farmers that I interviewed.

“Outsiders” influencing normal land relations came in a couple of varieties. In recent war zones, “outsiders” were often displaced people who either sought new land to settle or were trying to reclaim land that had been settled after they had fled from violence. Farmers found different ways to explain the land confusion that resulted from conflicts in their communities.

For example, one administrative officer in Gulu explained that, “After the war, they were told to go back to their respective places. That is where the wrangle is – the area that was made for resettlement. The owners say, 'eh this is my land. You resettled the people here and no compensation.' (Gulu Land Officer). In neighboring Apac district, a land administrative officer told a similar story, explaining that, “...these people had it where they came, before. They must have come from somewhere. Whether you are born in the camp, but your parents or grandparents came from...So that is what they are referring too. You must go back to where your parents came from” (Apac Land Officer). Local leaders try to verify the claims, but these disputes persist especially in northern Uganda where civil war has displaced millions of people.

The second type of 'outsider' that disrupts politics is wealthy, urban Ugandans who buy titled land but then remove the farmers already on the property. Both land officials and farmers attest to the influence of 'outsiders' with land titles within formerly stable communities:

The land lord sells this land to a rich person but there are squatters, without knowing the tenant...they find one day, a rich man has a meeting and he says he wants to use [the land] for development and wants to make a farm here and so you should look for where to go.

(Luwero Farmer C)

...it is that new buyer that comes far, tries to establish where that land is located. The old people in the area will tell you that, 'Look here, we've never seen them demarcate this land. How can you say that it is titled?' Yet here we see that the title has gone through the due processes. (Kiboga Land Officer)

The typology below simplifies this concept of “insider” and “outsider” that both the land officers and particular farmers identified:

**Table 4 Typology of Land Buyers**

	Economic Status: Poor	Economic Status: Wealthy
Location: Foreign	Foreign, Poor (outsiders)	Foreign, Wealthy (outsiders)
Location: Local	Local, Poor (insiders)	Local, Wealthy (insiders)

When farmers do not own the land that they occupy, they frequently come to terms with the titled land owner, a person who is relatively wealthy but still part of their community. This relationship sometimes entails rent, but sometimes the land is granted to the farmers to use without payment. Legally, it is at least as important for the farmer to come to terms with the titled land owner as it is for the titled land owner to collect rent. While the land owner does not seek to gain much money from ground rent, the farmers must pay a nominal ground rent to legally remain on the property. Additionally, from several farmers that I spoke with, the ground rent is sometimes higher than the government mandates because they want to keep a good relationship with the land owner. Farmers recognize that although they may be protected before the law, the land owner may still exert authority over them against the law. In this instance, farmers recognize the shortcomings of the law and augment them:

The government said to pay 1000 UGX and the land owner said that he can't take that, so we were paying 10 000 every year. (Mubende Farmer D)

It was very little money and our land lord said I cannot take the money. So now, these people started feeling insecure because there was no more commitment. They heard that other land lords around had negotiated with residents. The other LC (Local Councilor), the other village pays about 5000 a year. When the residents from our village here heard about it, they organized and said that it is right and applied for the same.

(Masaka Farmer A)

For us within the area – we love our king. Instead of 1000, we should give something reasonable so he can manage his places, so he doesn't lose interest in us as tenants. So, we decided to give 5000 each year. Most of the people in the area do that.

(Luwero Farmer A)

In sum, land titling and surveying is still defined to most Ugandans through local mechanisms and outside of formal institutions. Farmers use culturally recognized bodies to administer land. Sometimes this work is documented, but much of the time it relies on knowledge and trust of community members. These institutions have the same benefits as the formal ones defined by the government to reduce transaction costs. Further, farmers feel that their holding is secure unless it is challenged by a Ugandan that is not from their community and does not abide by the rules of that community.

### *Local Dispute Resolution and Adjudication*

Ugandan farmers have a good idea about how they would resolve their land disputes, even though they have not had land disputes in the past. In their disputes and the disputes that their neighbors had, farmers sought the advice and authority of local councilors and clan elders. The Local Council Chairmanship (LC) is an elected government position. However, it is underfunded and the elections themselves remain unfunded by the central government. The LC position, generally, is a government name for an institution that already existed in most Ugandan communities – that of a village elder. The government's funding does not determine whether or not this position exists because it existed before the government established the title and compensation. Though it has been unfunded, farmers continue to use the LC to resolve land disputes. Almost without exception, every farmer at one point mentioned that they would resolve a land dispute with the LC. A typical response, echoed in almost every interview, outlined the process, “the first thing is to go to the community leader, basically the clan leader. If they fail then go to the LC and, if they fail, then go to the magistrate” (Apac Farmer D). In another interview, a Local Chairman reiterated the reason why farmers seek local adjudication:

You know that people like friendship, and so the grandfather invited his friends to come, and he has come and stayed for more than 60 years. It is not possible to chase that person away. You cannot send him away from there. The LC is to bring the two people into understanding... You can see many at the sub county court but most of them are not solved, very few are solved. Even if they are solved, people go back without feeling that there was no justice, and you find them going back again, beginning to conflict again over the land. There are many unsolved issues concerning land. (Gulu Farmer C)

The means to adjudicate disputes is clear among farmers in a community. They seek the authority of members of the community that they respect and that they know will treat them fairly. The only distrust that farmers found in the Local Council System or individual Local Councilors was a worry that they might be coerced or bribed by wealthy Ugandans from another community.

### *Informal Land Exchanges and Ownership Structures*

When farmers bought and sold their land, they did not involve the land office. Instead, they settled the arrangement among themselves. Government officers, taxes on the land transfer, and changes on the land title itself took no part in the exchange. However, this informal market exists and underscores the importance of conducting interviews: formal titling involving a surveyor and land office infrequently occurred, yet the farmers would regard the land titled if they settled the issue among themselves. In legal terms, the farmers were buying and selling user rights, while the physical ownership of the land remained with the titled land owner. User rights transferred between parties and the value of the asset included many of the same properties as it would in the formal market: proximity to tarmac road, water availability, and whether the property was electrified. However, in the community, the agreement between willing farmers was almost all that mattered for the transaction. According to one Apac farmer, “The people and government need to leave the land the way it is. Once the traditional tree is planted, it is more or less the same land that is registered.” In the Central Region, too, farmers exchange ownership rights freely without involving the government bodies responsible for regulating the market:

So, there is an advantage about paying the *busuulu*. It means that you have receipts and people know you have some ownership on the *kibanja*. For example, if there is a road to be put through part of your land, there is compensation because you have proof that you have some kind of ownership. (Mukono Farmer D)

The institutions developed in Kampala have not spread through much of the rest of the country – farmers and local council members continue to rely on informal relationships for land administration even though the government has adopted new laws and developed new policies. While these laws and policies exist on paper, most Ugandans remain untouched by them.

Informal agreements dominate transactions between parties in rural areas or when the parties have a pre-existing relationship. Small farmers may be squatting on the land that they farm, but they negotiate the terms of their tenancy with other farmers that have claims to the land. As the Mukono farmer above stated, farmers demand receipts for their rent payments because it gives evidence that they have some claim to the interests on that land. In Uganda's land law, this relationship – that of renter and owner – is important to evince for two reasons. First, the renter cannot be evicted if they pay rent. The law states that the only cause for eviction is failure to pay rent. Secondly, the squatter loses claim to ownership of that property when they pay rent. The receipt for land rent shows that the squatter is in fact not the owner. In Uganda land law, if a squatter had lived on a parcel of land for 12 years after 1986, then they had a legal claim to the territory that they occupied. This claim is not valid if the land is contested during those twelve years. However, none of the farmers that I spoke with made this connection between their claim and the land law.

### **6.3 The Ugly Side of Institutional Change: Rules for Predation**

Urban and wealthy citizens may unify to enshrine their common preferences into law (Bates 1981, Firmin-Sellers 1995, Onoma 2010). Coalitions of powerful actors are able to insulate the source of their power through laws and government organizations because they are able to effectively control those institutions and ward off endogenous political change. Uganda's land law ostensibly protects the small farmers through different provisions: laws against eviction, defining legal tenancy of squatters, and low rent ceilings. However, the peasants are unable to access the land laws that protect their interests. The immense cost and onerous process of registering land in Uganda prohibits most of its farmers from securing legal titles. The formal institutions fail the farmers that the law supposedly protects, and creates legal space for predatory behavior by wealthy and politically-connected urban Ugandans. One farmer explained:

The problems are coming from above, the government officials. When land gained a lot of value they want to buy a lot of land. They have pushed that down and people down [referring to farmers] are also wanting to buy land. They try even the dirty game of trying to acquire land from different people. (Kiboga Farmer A)

My interviews with Ugandan farmers and land officials reflect these findings and illustrate how a government safe from rural political pressure can ignore the preferences of the majority of its citizens. Lacking mobilization on the margins of Uganda's economy, rural peasants seldom influence government politics, though politicians invoke their name and preferences when they pass legislation. In Chapter Five, we saw how the central government secured political power from regional authorities by failing to fund land tribunals and centralizing land administration.



Likewise, the government has failed to sufficiently fund land offices and land boards (Rugadya 2003, Mwenda 2007). Central government neglect, abstruse land law, and unwieldy formal institutions may matter little to Uganda's peasant farmers as long as they did not interact with economically and politically powerful forces from Uganda's capital. Instead, laws and informal institutions allow for the politically powerful to gain assets in Uganda's countryside.

Some farmers that I spoke with frequently referred to the plight of a people that they described as “ignorant” and “illiterate” farmers. These “ignorant” and “illiterate” farmers are the poorest farmers in Uganda: farmers without education and without the means to send their children to the free public schools, because they cannot afford school supplies and uniforms. One farmer lamented this practice of abuse by Ugandans using the legal system and those outside of the system, arguing that, “They come and fence the land when they have the titles and do not talk with the tenants...[the tenants] cannot plead for themselves, they do not afford a lawyer. The thing is becoming complicated. Those with money can do anything (Sembabule Farmer B). When I spoke to these farmers, they expressed insecurity about their tenancy and were the most reluctant to speak to me. These farmers are officially landless and generally only have a tenuous claim to the land that they farm.

However, even these landless farmers have some formal and informal mechanisms to protect their claims and interest. These informal institutions were recognized across the country, and the cost of violating them generally resulted in either protracted disputes or violence. Farmers seldom sought the advice of attorneys, because like formal titles, they were too costly. Similarly, farmers and land officials reported that cases would be tied up for years in court. A coherent theme emerged from farmers' interviews that described a market of laws and relationships that existed outside of those established by Uganda's government.

### *Insecurity in Land Tenure – Uncertainty and Power*

Interviews with farmers indicate that the state of land law in Uganda favors the powerful urban elite, in law and in practice. In addition to a titling system that is costly and time consuming, negotiation within the legal system favors the people who can afford attorneys. There are few *pro bono* organizations to represent the claims of peasant farmers, and most peasants cannot afford attorneys even if the legal system could accommodate the increased case load. In Chapter Five, parliamentarians and interest groups referenced the plight of these farmers, and my interviews with the farmers illustrated similar stories:

It is easy to evict people like that who are ignorant and poor. The people who live in these parts have had a reasonable amount of education – some are highly educated. They know their rights. They can talk to lawyers and write to newspapers, cause you trouble if you evict them. But areas in the village, you can do anything. (Rakai Farmer C)

You know here in Uganda, someone with enough money - a peasant cannot win. Those are such problems. There is some kind of corruption. You find someone coming with five soldiers from outside. Even the local leaders fear. Someone grabbing the land without giving these people time to express themselves. (Kiboga Farmer B)

The question of poverty is a factor in this – someone is very poor, and a big man comes, he says he wants the land and says he is offering this amount of money, and you don't have any option. He hasn't used any force, but circumstances have caused you to accept to leave because of too much pressure from the rich guy. (Mpigi Farmer A)

According to the farmers that I interviewed, poor farmers seldom seek recourse in court to defend their interests and claim to land under the constitution and the 1998 Land Act. Instead, farmers said that they either negotiate the situation themselves – sometimes with the aid of other local farmers, or they seek adjudication from the Local Councils.

### *Locals Fighting the Central Government*

Another key finding of my interviews and fieldwork was the impotence of the local government against powerful outside forces. While local farmers sought adjudication and claim legitimacy from LC's and local elders, they worried that these institutions were powerless when members from the central government or the military were interested in the land market.

Generally, the farmers recognized that the politically and economically powerful had claim to the land: they owned the title and had likely bought it from some land owner in Kampala. Though the farmers understood that their hold on the land might be tenuous, they also understood that when farmers moved they should be compensated for their right to use the land and also compensated for any interest that they have on the land. The farmers also suggested that the government's laws were the result of corruption and bribery:

The local government has tried, but it is not easy. There is corruption in the land office. It is the local government that tries to protect these people, but it cannot work against those with the documents. The incumbent chairman – his opponents came because the incumbent prevented a rich man from evicting people, so now it is tough. (Nakasongola Farmer B)

The central government has come in to deal with land issues and seems to look different than how the Buganda government operates and has been operating. They are all scared that the government is grabbing land – just taking peoples land. A long time ago, even if you bought the land, you couldn't just make them vacate. The process was clear – compensating people – so you don't just grab. Now, people with money just take it.

(Kayunga Farmer A)

Local understanding of land ownership accommodates the politically and economically powerful removing peasants and squatters from land. Farmers understand that people who do not own the formal title to the land they farm may lose it. However, they expect some compensation for the farmers that are being displaced. Specifically, they expect the powerful and wealthy to respect farmers' claims. As evidenced above, farmers are outraged when outsiders buy land and fail to compensate their neighbors who had to move. At times, these poor farmers mobilize against people that they perceive to be outsiders:

...someone was trying to take over a neighbor – so we had to come in and solve this problem. If the other is going away, he had to get them to compensate him. Otherwise they would divide and rule...the powers of the LC1, when they went to report it the LC said, 'no you know what to do.' They had insisted to use force, and they fought and brought out their anger. The LC 1 pushed the issue to the RDC (Resident District Commissioner). The money was paid in the RDC office....we came out with our pangas (machetes). (Jinja Farmers B)

In the last statement, this farmer and his neighbors were outraged to the point that they physically disputed the land lord. These Jinja farmers gathered with their machetes and argued with the armed guards, who were working on behalf of the new land lord, for a relocation fee. The farmer acknowledged that they did not have ownership rights to the land, but they demanded some compensation for the owner to use the land anyway. In his words, if they did not demand this as a community, the wealthy could buy land from under them, and everyone would lose.

#### **6.4 Predatory Actors in a Permissive System: Social Control in Land Law**

Instead of bringing security, land tenure reform has disrupted the existing institutions that created a stable system of property rights and replaced it with one that excludes the farmers who are in physical possession of the land. Local institutions for titling and adjudication are ignored and local farmers have become the prey of outside economic and political actors who take advantage of a set of formal and informal laws that protect predatory land acquisition. This finding was supported extensively in the interviews that I conducted with Uganda's farmers:

So, as an example – there is some big land occupied by an Indian, but in the process he sent off the people. There was chaos, some were killed some people were given some little money. But there is no clear process of compensation in such cases. So in the neighborhood – someone came from the president's office, bought that land, sent off the people, brought cows that encroached on people's crops and the same man brought a gun for security, intimidating these people. (Mubende Farmer A)

Those people get soldiers to evict people. Just throw their things or when they come, they make a fence around with barbed wires. They say, 'if you don't go out, they bring in cows and eat everything.' Whatever you have. You will be forced to move. (Luwero Farmer C)

Farmers acknowledge that LC's are powerless before 'big men' from Kampala or other urban centers, and that other local institutions are slighted when national institutions are prominent. Hence, wealthy Ugandans may find legal reasons for evicting the farmers settling on their land, but they also have the power to pursue illegal means against poor farmers because the poor farmers cannot access legal recourse (because of the expense) or informal dispute resolution mechanisms (local authorities). As one farmer in Gulu explained:

It depends on the nature of the conflict and the people involved. Some people may be above the LC and the LC may shy away from talking to them – but if it is within the local community and the local people, the LC serves very well. When it involves the top people in the district, it becomes hard and goes before the court. (Gulu Farmer D)

In short, the corruption prevalent in the central government creates a safe environment for wealthy interests to prey on Uganda's peasant farmers. The laws passed in Parliament have helped to ensure that predation continues both legally and illegally.

## 6.5 Analysis

### *Formal and Informal Institutions*

The laws that satisfy all of the parties involved tend to bridge institutions that exist at the local level with the laws passed by Parliament. For example, the Local Councils adjudicate land laws at the local level, and they have the legal backing of Parliament to do this since the land tribunals have failed. Other community leaders, such as members of the land offices and village elders, do not have the legal authority to adjudicate disputes but are sometimes consulted because they represent the government and respected elders. Though they are not the authorized legal authorities, if both parties agree to allow these community members to adjudicate the dispute, then their ruling has traction.

Another attribute of these institutions is that they receive little funding from the central government. Land officers work hard to register the titles that come through their offices, but they are underfunded and understaffed. To gain security of their tenure, farmers use local institutions: local methods of agreement, local surveying methods, and local adjudicating bodies. These arrangements are secure between farmers in the community and satisfy the defining features of an institution.

The 1995 Constitution, the 1998 Land Law, and subsequent Land Amendments passed by Parliament lack the defining features of successful institutions such as the informal institutions that exist in rural Uganda that have evolved since the 1900 Uganda Agreement. These laws do not increase the security of tenure; they fail to reduce uncertainty in transactions, and transaction costs – i.e., the costs of gaining the title – are prohibitive to farmers that seek secure property rights. While many land officers and farmers argue that the government needs to increase

sensitization for farmers of government programs, farmers themselves will not seek information if it is costly or use the formal titling and adjudication mechanisms when they are too expensive.

Discussions with farmers and land officers lend evidence to suggest that the costs of titling and going to court deter farmers from using these mechanisms even when they know the process because of the costs involved. In addition to knowing the time and expenses necessary to process their claims, farmers know that informal relationships in bribes and intimidation trump the system of law. In the end, the overlapping formal and informal land laws that exist in Uganda create a perverse set of incentives for farmers: there are loans for farmers that title the land and some additional security of land tenure, but only when their interest is not the target of more powerful political actors.

When their claim is already locally recognized, the additional expense of formal titling generally does not provide a sufficient amount of increased security or a high enough return on investment to create an incentive for farmers to title their land. Some farmers would like to title their land because they know it gives them access to credit in banks and adds some security, but there are financial obstacles that inhibit their success. Other farmers do title their land, but they may have otherwise been safe from predation because they have the requisite education and money to hire an attorney if their property was threatened.

In practice, most land law in Uganda continues to follow informal patterns of authority and ownership. The 1995 Constitution, the 1998 Land Law, and the subsequent amendments to the 1998 Land Law remotely apply to most land sales and land dispute adjudication because the government has failed to sufficiently fund the offices and staff necessary to implement the laws and because the laws themselves do not directly reflect the norms of each community. This



disconnect is natural since the land law attempts to create a unified land market throughout a country where the existing community norms inhibit a national market.

Following the theoretical basis of the argument, it is necessary to ask who is benefiting from these land laws. From the above interviews, locals tend to respect and are content with their community land sales and adjudication mechanisms *until* that system is disrupted by wealthy “outsiders.” To them, the system is not any better because it opens land sales to Ugandans who use the government to access community land and take advantage of the rural poor. The argument for titling is that it protects rural farmers' interest on the land against aggressive outsiders, when in fact the existing land laws facilitate the ability for outsiders to use the legal system to buy claims and evict farmers.

The unified land market, then, seems to be benefiting these wealthy outsiders at the expense of poorer, local farmers. This is evidenced in both the discontent of community members toward the abuse that they receive when farmers are removed from their farms without compensation and also the means by which they are removed from their property. The farmers expressed outrage at the physical harm to their neighbors, but also at the disrespect that the ‘outsiders’ – both private citizens and government officials – have towards the existing informal mechanisms for land sales and adjudication.

A second theoretical implication from farmers' interviews is that in land administration, the institutions that reflect informal patterns of behavior are far more successful. The administrative bodies that receive no funding from the central government – informal dispute resolution bodies as well as titling procedures – take root at the local level. When the government passes laws that closely resemble these institutions, for instance empowering local councilors who already work without pay, the institutions persist within the law. These

institutions, now formalized, burden the government and the farmers with little costs. However, the current institutions established by the government for land administration are expensive to both the government and the farmers. Government institutions make space for bribery, are much less efficient, and are more expensive than informal mechanisms that serve similar market needs.

### *Informal Organizations to Respond to Formal Laws and Predation*

The mismatch of formal and informal laws has led Ugandans to protect themselves from laws passed in Parliament. To protect their interest in land, farmers unify among themselves to raise the cost of “outsiders” abusing their holdings. This is evident when the community organizes to demand money from these outsiders, be they wealthy urban Ugandans or Indians, in compensation for farmer relocation. Further, communities continue to use local means to demarcate land and establish secure ownership, a behavior that shows that the institutions created in Kampala are both foreign and expensive. The farmers describe some desire to attain formal ownership from offices in Kampala and Entebbe, but they also explain that the cost of gaining that ownership generally exceeds the benefit. In sum, farmers put a premium on secure land tenure at a low cost, and they believe that they can generally attain this through local mechanisms.

## **6.6 Conclusion**

The laws passed in parliament reflect the political objective to create a unified land market, to help build a national identity, a simplified system of ownership and sales, and ultimately improve the agricultural output of the country. However, the laws also continue to benefit a class of modern urban Ugandans that have access to bank loans, attorneys, and armed

security. Peasant farmers recognize this power disparity and sometimes organize to offset their collective weakness against outside actors.

In relation to my central argument, it is clear from the interviews with farmers that the government has failed to create formal institutions that are capable of satisfying farmers' demand for land tenure security. For most farmers, secure tenure exists in enclave communities and most Ugandans do not have access to the national land market. Ugandans using the formal systems - i.e. formal titling offices - gain access to state resources and banking opportunities, but there is a massive economic gap between Ugandans that can afford to legally protect their land and those that cannot. The costs involved in the legal process inhibit the majority of Ugandan farmers from titling their land, while the population defining the legal process is the one benefiting from it. This situation propagates land insecurity in rural Uganda that allows predatory behavior from the urban, powerful, wealthy Ugandans. These same actors have the means to defend their acquisitions legally, but they can also defend their acquisitions illegally as evinced by farmers' statements.

The laws have tended to favor the national government against the position of decentralized power. The rulings of national government officials have won out against those of local government officials, even where the structure of legal system gives authority to the local actors. Likewise, laws that ostensibly create open land markets in fact benefit those same political and economic actors. In essence, land law reform in Uganda is similar to other market-based reforms in Africa such as privatizing national firms: well-connected and powerful Africans decide what is privatized and who owns it (James *et al* 2005, Mwenda 2007, Bush 2007, Kibble 2007, Onoma 2010).

In law and in practice, the central government has maintained an environment wherein powerful political actors are able to gain more and more control over property. The NRM's ability to selectively implement laws has allowed it to circumvent the concessions that it made in Parliament. Instead of allocating land to the politically powerful, the government deliberately weakens the institutions and laws that would restrain them. Just as the British did in 1900, the NRM government uses land as a political resource and has defined land tenure in such a way that powerful political actors access that resource with its help or acquiescence.

## **CHAPTER SEVEN - CONFLICT AND INTERESTS IN THE BUGANDA KINGDOM**

### **7.1 Introduction**

This chapter explores land policy and implementation comparing administrative regions in Uganda in order to explain successes and failures in modern land law. The Central Region can be considered a microcosm of land politics for the whole country, exemplifying the relationship between individuals, traditional institutions, and the NRM government in land law. The Central Region encompasses the historic territory of the Buganda kingdom, and how the government develops and implements law here has important implications for how it approaches land law in every other district. As explained in the previous chapter, while the Buganda kingdom defended and won important concessions in land law (local land adjudication, elimination of a cap on land rents), these concessions were neglected or abandoned when it came time to implement the law.

This chapter answers the question, “when do land laws work” by comparing the Central Region with the rest of the country. There are three principle findings. First, while the land bureaucracy is more comprehensive and price of land is higher in the Central Region, the government fails to implement land policy and enforce land laws. Land fraud, evictions, and predation are rampant. Secondly, comparing the Central Region to the rest of the country, land institutions and the definition of property rights remain politically contested. Land tenure and ownership debates aggravate the tense relations between the NRM and the Buganda kingdom. Finally, insecure property rights and increasing land value in the Central Region induce individuals to use traditional mechanisms in order to secure their property. The NRM government has failed to create working land institutions, and individuals continue to use to informal institutions as an alternative to government institutions. The Buganda kingdom’s

cultural and administrative land institutions operate where state institutions are inaccessible by citizens who want to protect their property.

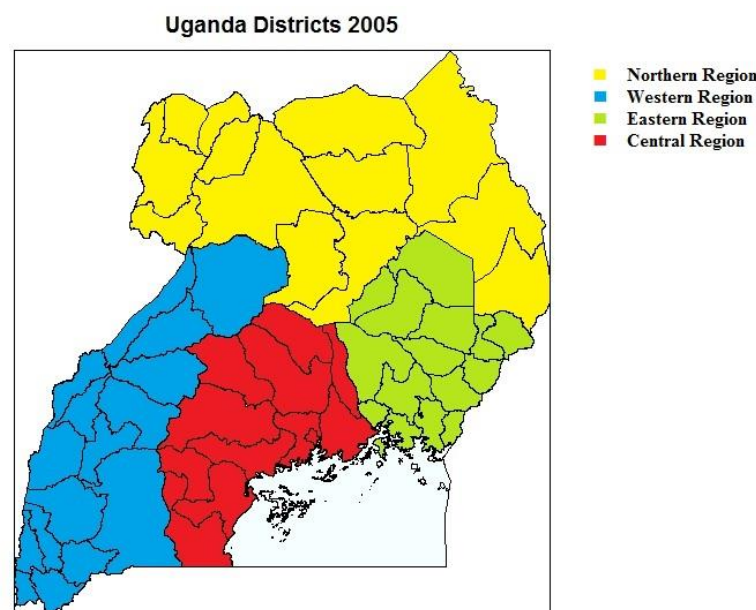
As I argued in Chapter Six, the degree to which laws shape the land market is contingent on the government's will and capacity to implement that law. This chapter argues that while the government should be able to implement land law most effectively in the Central Region, it remains a place where illegal evictions and land predation are rampant. Because this land is more valuable (as evinced by my own survey), we should expect Ugandans to demand more secure property rights from their government. While every farmer would prefer secure land rights, as in the other regions, land laws fail because accessing the formal land institutions is too costly. Like other regions, informal institutions exist in the Central Region – here in the form of the Buganda kingdom. Again, like the rest of Uganda, these institutions are not strong enough to govern powerful economic and political elite.

### **7.1.1 Case within a Case Study**

The most vitriolic land rights contests in Uganda are found in the region where the property rights' literature expects them: in the Central Region, which is the historic territory of the Buganda kingdom. The Buganda kingdom remains the most mobilized ethnic group in Uganda, with a parliament that regularly meets as well as ethnic media outlets (Luganda-language newspapers and radio stations). A politically mobilized ethnic group like the Baganda, with clear goals and access to the government, should be able to influence government laws. Likewise, intuition suggests that where there are greater rewards from investing and developing land, we should expect to see the government conduct more planning, protect individual rights, and implement land policy. However, even in the Central Region, politics subverts property rights, and a hybrid system of informal and formal land institutions results.

Comparing the Central Region to Uganda's Northern, Eastern, and Western regions, I expected to find more secure property rights for two reasons. First, government offices are more consistently fully-staffed and supporting institutions – law enforcement and judicial bodies – are more concentrated. The government has the opportunity to implement laws where its implementation organs are stronger.

**Figure 16 Four Historic Regions of Uganda, 5 Districts**



Secondly, in areas with fertile land, with access to paved roads, and in close proximity to urban centers, individuals have more incentive to secure their property because the land has consistently gained value. Landed interests in the Central Region should title their land, seek formal adjudication bodies in the case of disputes, and prosecute legal offenses. Though cost of using formal mechanisms inhibits landed interests in other regions, as argued in Chapter Six, individuals are more likely to use formal institutions in the Central Region because they have more to lose and because they have better access to these formal institutions.

## **7.2 Uganda's Land Infrastructure at a Glance: Urban Laws, Rural Reality**

Uganda continues to experience neglect in terms of implementing land reform, and different parts of the country present different challenges for a single national land law and policy. Customary ownership, outlined in the 1995 Constitution, the 1998 Land Law, and the 2004 Land Amendment Act, continues to define most of the land in Uganda. However, internal and external circumstances (discussed in Chapter Four) forced migration and contributed to conflicting claims of customary ownership all over the country. The Ugandan government is constrained by its capacity to implement land law, even if there was a concerted effort to guarantee land rights to farmers and land owners.

Customary/informal land ownership is not without its problems. For example, customary land owners must face is when wars and cross-border migration have displaced farmers who become internally displaced persons (IDP). Orphans born in IDP camps, women whose husbands died in the war, and displaced people are all but left out of customary laws. According to the World Food Program, approximately 1.5 million people (as many people as who were living in Kampala) were living in IDP camps in 2006, as the war with the Lord's Resistance Army was coming to an end (WFP 2007). While most people associate IDPs and refugees with the northern part of the country, many IDP camps are in Uganda's south east region and house Rwandan genocide refugees. Camps are not meant to be permanent, but they have more services close by than the distant villages, so that even given these poor conditions people want to stay in the camps. IDP camps and forced migrants also disrupt existing community land administration/adjudication relationships and bring their leaders with them into new communities.



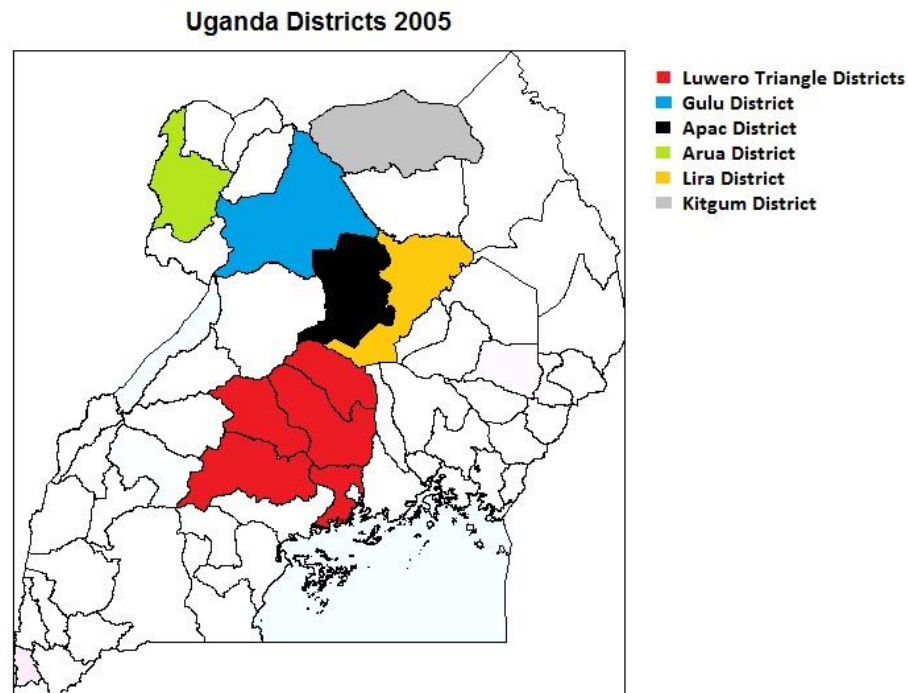
Where the state fails, village elders assume roles as adjudicating and administrative authorities, as well as farming extension officers. Where the state does not have legitimacy or capability, elected and cultural leaders help to determine land law. As one land officer in Gulu explained to me: “Local leaders interpret for the villages – land managers in Gulu on the radio, but individually talking to village leaders who settle disputes” (Gulu ROT). In the same district, another land official explains, “There are no certificates. The customary land is not registered. You look at our history, almost 90 percent of the land in Acholi land is customarily owned. So we refer them to the local leaders, the traditional leaders, and the clan leaders because these are the people on the ground, so and so was here and, if this is the son of so and so that qualifies them.” Without state finances, education, or mandate, adjudicating and administrative bodies emerge from a common need in post-war communities.<sup>81</sup>

Gulu, Arua, Apac, Kitgum, and Lira are some of the regions most affected by the war against the Lord's Resistance Army, but there was a similar experience for farmers and internally displaced people after Museveni's war against former President Milton Obote that ended in 1985 (Figure 17). Farmers in what became known as the Luwero triangle, essentially the Luwero district and its surrounding area, were displaced because of the war between Museveni's National Resistance Army and Milton Obote's Ugandan National Liberation Army. Estimates of deaths in this liberation war reach as high as 200,000 people with as many as 500,000 displaced in the Luwero Triangle (Kasozi *et al* 1994, 4).

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<sup>81</sup> Creating social order in the wake of war and state collapse are common in Ugandan communities, for examples see Mutibwa (1992), Latigo (2008), and Huber (2010).

**Figure 17 Districts Affected by Civil War, 1985-2005**



In Gulu, the land office has had relative success managing claims from the most recent war, but secondary research into Northern (Rugadya *et al* 2008, CSOPSU 2004), Eastern (Goldman and Heldenbrand 2002), Western (PSIA 2007) and Central Region districts (PSIA 2007) all expose a lack of planning and local capacity by the state officials in each region. Reports call for more government funding and organization at every level – local, district, and national – of land administration. While early writers lauded this devolution of administrative power (Tidemand 1994, ODI 2000, Cotula *et al* 2004), it became clear that this reorganization equated to an unfunded mandate from the central government (Mwebaza and Sebina-Ziwa 2005), in effect creating an environment of predation by politically-connected economic elites. The Luwero Triangle, heart of both the Buganda Kingdom and epicenter of the 1986 civil war, has faced the same problems as Gulu faces today in Northern Uganda. Farmers in the Luwero

triangle complained that the 1986 war forced them from their homes. Further, when the farmers returned, they found new settlers in their place.

So even where the government may want to implement land law, it is faced with considerable obstacles in different parts of the country. In Gulu and Luwero, IDPs compete with local farmers for legitimate claims to the land. In Kibale the government has begun a program to buy land from Baganda land owners, but reselling this land to title-less Banyoro has been slow and uneven. In areas of the country historically defined by migratory people even before the war, especially in the North, few individuals stayed on one piece of land for very long. This lifestyle has led migratory people to make competing legitimate claims to the same land. Where the government is unwilling or unable to create secure property rights, individuals create institutions to protect their interests.

### **7.3 Central Districts' Land Value**

Uganda's increasing land value creates an incentive for individuals to demand better and more secure property rights from their government, but it also creates an incentive for more fraudulent land sales as well as more land grabbing. Uganda's population is also becoming more urban and peri-urban: people are attracted to Kampala by better living conditions, education, and job prospects. Since Kampala is in the Central Region, comparing the land sales here with the rest of the country is useful to illustrate how increased land value can either amplify existing tenure insecurity or lead to more secure property rights. While anecdotal evidence suggested that land value was increasing, I needed to understand this trend in a more systematic way in order to better understand Uganda's land economy. My interviews and secondary research confirms that the price of land in Kampala has increased considerably in the last ten years. Kampala property is the most expensive in the country.

Interviews with farmers and land officers in districts on Uganda's borders have led me to conclude that land value appreciation is a national trend, directly affected by land use and location. The road network dramatically affects the value of land domestically (a map of the network created by Pozzi, Robinson, and Nelson (2010) is in Appendix E). District officials and farmers that I interviewed, especially at the border districts, explained that land value is increasing as trade increases with to Sudan, the Democratic Republic of the Congo, Rwanda, Kenya, and Tanzania. Regional integration in COMESA has helped to contribute to increasing export of traditional exports (tea, cotton, coffee, tobacco) as well as non-traditional exports (other agricultural and consumer goods) to surrounding communities (UEPB 2009, UEPB 2008). In sum, one source of land value appreciation is farmers' ability to make it productive.

A second source of land appreciation comes from domestic population pressure. Since 1980, the population has grown from approximately 12.6 million citizens to 31.3 million in 2010. This increase has resulted in a growing Kampala (from about 500,000 in 1980 to a population of about 2.5 million in 2010), where the city accounts for about 45% of all of Uganda's urban citizens (KCC 2002). The country's population pressure is felt in every district, and it is changing the way that farmers view their land and their relationships with other farmers. One farmer lamented the changing economic and social relationships, noting that it is "only of recent that challenges are coming up that people are wanting to take each other's land because of the increase of population. In the old days, it was normal – they could even give you land to settle on. Just because of relationships, they can give you land and settle" (Arua Farmer A). A similar relationship has historically defined land holding in Uganda's Central Region. Studies attribute this increase to the growth of Kampala and Uganda's import and export industry (Giddings 2008). From the interviews, farmers agree that land prices inhibit many farmers from buying

land and have become an investment opportunity. Real estate speculators take advantage of Uganda's laws that grant the owner control over the asset in perpetuity, and in most cases the land is not taxed. There is no income tax or idle land tax, and, since land increases in value, it remains a stable investment.

Since land increases in value and is not taxed, it provides a perfect asset for speculators. Again, the government provides a perverse set of incentives in land law: the land laws, ostensibly written to create a market for modern farming techniques, actually creates incentives for buyers to hold land as investments. Wealth taxes and property taxes do not apply to farmland, and a tax on 'idle land' is politically infeasible. In terms of assets, speculators have a good reason to believe that holding land will yield a significant rate of return. According to one farmer, "land here is very marketable, very expensive. The competition for it is very high. It's because those that came to buy. The VP [vice president] has a hotel. There is another that has a better hotel. There are flowers - it is very, very expensive" (Wakiso Farmer B). In order to hold these assets, though, the speculator needs secure land rights. Where these rights are insecure by design, speculators rely on government law enforcement, which may or may not be corrupt.

The majority of Ugandans are farmers, and the majority of Uganda is farm land. None of the farmers that I interviewed intend to sell their land in the future or expect their children to sell it after they die. For the Baganda, land is important because it ties them to their cultural institution: each clan has a historic homeland in the Central Region, and the territory contains the birthplaces and palaces of former *kabaka*. However, in every region farmers are concerned about attaining or keeping land, whether for cultural reasons or because they understand that land is gaining value and want to retain the asset. In order to understand trends in Uganda's land value, I surveyed farmers in each of my selected districts. I summarize these results in Table 5.

**Table 5. Price Quotes for Land, 2011**

<b>District</b>	<b>Size of Land</b>	<b>Price UGX</b>
Wakiso B.....Entebbe rd.	Plot, 50x100	3.4 M
.....Mityana rd.	Plot, 50x100	6 M
Nakasongola	Plot, 50x100	400 000
Rakai	Plot, 50x100	1 M
Sembabule	1 Acre, rural	1 M
Mubende	1 Acre, rural	3 M
Masaka	Plot, 50 x 100	1.5 M
Mukono	Plot, 50 x 100	6 M
Arua	1 Acre, rural	500 000
Kamuli	1 Acre, rural	500 000
Mbale.....rural	1 Acre, rural	500 000
.....on tarmac	1 Acre, rural	2 M
Kibale	1 Acre, rural	500 000
Kasese	1 Acre, irrigated	2 M

*Estimates made by farmers concerning land in their districts*

Each of the districts above has urban centers, and land value with access to these urban centers typically claims a higher price than land that is far from tarmac roads. The price of land in Wakiso and Kayunga districts is fueled by their proximity to the capital city, Kampala.

According to farmers and the district officials, farms that have access to water and electricity are generally worth more. Land that has been cleared of brush, drained of marsh, and has proven fertile also claims a better price.

The price of land in Kampala, the economic center of the country, drives land values in surrounding districts. In Kampala and its surrounding Central Region districts, public land is almost completely developed and, according to Giddings (2008), “much of the *mailo* land is occupied by tenants, either bona fide or illegal, whose occupancy is protected by law and must be compensated upon sale by the *mailo* owner; other freehold owners, like religious and educational institutions, are reluctant to part with their land” (Giddings 2008, 21). This analysis accords with the assessment by the Kampala city government. According to Kampala's District State of Environment Report (NEMA 1997), landholding in Kampala is divided between *mailo* (49%), statutory leases held by KCC (30%), land under direct control of Uganda Land Commission (ULC) for government development projects (10%), freehold (7%), and leases held by institutions (4%). The relative distribution of the various tenure systems in the five Divisions, more than 90% of the landholdings in Kawempe, Rubaga and Makindye Divisions is *mailo* land. In the Nakawa and other Central Region districts, the predominant tenure system (80%) is leasehold from the KCC and ULC authorities (KDR 2000).

**Table 6. Kampala Land Value Change, ¼ Ace**

<b>Neighborhood</b>	<b>2002 UGX</b>	<b>2008 UGX</b>
Ntinda	30 000	120 000
Nsambya	15000	60 000
Kisenyi	10 000	20 000
Bwaise	10 000	20 000
Muyega	30 000	60 000
Jinja Rd. East	NA	10 000

*Source: Giddings 2008*

Giddings (2008) reports that the price of land in Kampala has increased so much that standard plots of land have largely shrunk from 1/4 to 1/8 of an acre. In Table 6, prices for buying land double and quadruple in different neighborhoods of Kampala over the course of six years. These prices affect the wealthy who build homes, but it also creates greater pressure for the slum dwellers that work in adjacent communities. Land in the Central Region is gaining value for the same basic reasons: an improving economy and a growing population are leading to more development projects. Population pressure on the capital city is the result of a local economy that is growing faster than the rest of the country (Odiki *et al* 2004).

However, with the land appreciation comes incentives to grab that land. Developers seek land with more value, and fraudsters are attracted to opportunities to exploit land tenure/sale ambiguity. According to one Register of Titles in a district close to Kampala:

What happens now is that people come and steal this property. They find a person dead, and a vast amount of land is undeveloped. The people go and get letters from the



administration and take over the estate, and yet they are not the rightful owners. We also have most of these estates sitting there unsurveyed and underutilized. They cannot function in the land market....we have problems. We have fraud, the fraudsters...fraud comes with urbanization. (Mukono ROT)

The fraudsters in Mukono, as in other districts, attempt to gain titles over land that does not belong to them, sell other people's land to buyers who are unfamiliar with the owners, overvalue the land that they are selling, or attempt to evict informal farmers to develop land where the fraudsters have no legal claim. Sometimes these fraudsters are government officials themselves, such as Jinja RDC Livingston Katenda-Luutu, who tried to evict a tenant under the guise of an order from the president (*Daily Monitor* 6/15/2011). Other Jinja officials were found guilty of land speculation, allocating themselves property on land that the central government was planning to buy soon in order to build a bridge over the Nile River (*Daily Monitor* 4/26/2011). Interviews with Buganda officials pointed to the same behavior occurring within the city:

However, because they wanted to resettle the BLB was working on resettling; people were living in slum areas. The *Kabaka* wanted to give better land, a better organized community, better housing facilities with power and everything. People raised a lot of noise. A politician will come in – when it comes to controversy, the *Kabaka* will say ‘we’ll leave it.’ (Official D)

Opposition to land development frequently occupies the front pages of the country's major newspapers, whether it concerns inner-city redevelopment of informal markets, removing colonial-era living quarters in older parts of the city, or disputes over marshland that industries try to drain. Every Ugandan wants the country to develop, but many also sympathize with people displaced by development and want to protect the country's cultural land and forests.

Appreciating land value gives individuals more reason to secure their property through formal or informal means (Deiniger 2008, Ahene 2009). They have an asset that people value more and that they could sell for a greater price. Likewise, appreciating land value gives individuals a greater incentive to lay claim to property legally or illegally (Binswanger and Rosenzweig 1986, Jacoby 2005). This process has led to more precisely defined land law in formal titles and administration, but also it has led to the creation of informal institutions like the Buganda kingdom. However, land fraud and predation remain in Central Uganda.

#### **7.4 Messy Institutions and Contemporary Land Politics**

Land tenure was the issue that traditionally separated the Buganda kingdom from Uganda's governments (as discussed in Chapters Three and Four), and it continues to do so today. Kingdom elites, struggling for the kingdom's land rights, elicit popular support from different factions of the Buganda kingdom. The government fights back by creating legislation to restrict Buganda kingdom authorities and circumvent elected offices with appointed positions. The kingdom does not break the law, but it is also inhibited from pursuing its interests within the law.

Like all other traditional bodies and kingdoms in Uganda, the Buganda kingdom is constitutionally prohibited from taking a political stance, but its members are guaranteed political and cultural rights as individuals (Uganda Constitution art 21; Art. 27, Sec. 37). The *kabaka* is the leader of a cultural group, and, while he may be able to speak as an individual, he is prohibited from mobilizing politically on behalf of the kingdom. According to the constitution, cultural and traditional leaders cannot take part in politics. The *kabaka* generally takes apolitical stances, but, since the constitution also ensures individual expression (Art 29, Sect 1), his personal opinion is legally protected. Chapter 16 of Uganda's constitution protects the office of

traditional leaders (Art. 246-1) and states that the institution can hold property as a corporate sole (Art. 246-3). Leaders, broadly defined, are excluded from making political statements on behalf of the institution, and cultural leaders are not allowed to hold government positions. The Buganda kingdom enjoys the formal status as a cultural institution with all the rights and privileges that the constitution guarantees. However, traditional institutions occupy a gray space where they are empowered extra-legally by citizens in some regards (land administration and allocation), while formally empowered by the constitution in terms of local adjudication.

A piece of legislation passed by the Ugandan Parliament and signed by President Museveni, the Traditional and Cultural Leaders Act (2010), enacted the provisions of the constitution outlining the powers of cultural leaders. It also prohibited actions by cultural leaders. The law was unpopular among the cultural and religious leaders because it essentially reiterated the restraints on traditional leaders outlined in the constitution. The 2010 act more or less empowered the government to restrain traditional leaders at a time when the traditional leaders were under threat by the government. Many observers complained that the bill was directed at the Buganda kingdom, specifically before the 2011 election. Kattikiro Walusimbi is quoted asking why the Baganda people are labeled as rebellious and partisan (*New Vision* 3/7/2011), and Central Region members of parliament boycotted the vote. The law seemed to target cultural authorities, and both the cultural authorities and Baganda people associate this persecution with the land issue.

Two Buganda kingdom officials made this point explicit in my interviews. According to one Buganda kingdom official, the land laws in Uganda continued to favor an elite class of NRM political allies even if it appeared to protect farmers:

It was in a political sense that the president made his calculation – and I think rightly – that how many people have land titles and how many don't? Those without were more – 'if I appease them.' It was more or less an appeasement policy. So he grabbed land from the land owners and gave it to the *bibanja* owners and the squatters. It was a cosmetic move. First, he was saying that he wanted to cure the cancer of evicting others, and who was evicting? Those that were close to him, his relatives or his henchmen in the government. Those that were using government plans, the soldiers. And if not a soldier, then you have to be close to a soldier to evict someone. So, it was a cosmetic move by the government. (Buganda Kingdom Official)

While not all Baganda agree that the NRM government legislates land law to create opportunities for predation, some members of the Buganda kingdom do, and they have been vocal about their opinion. These individuals speak on behalf of the Buganda kingdom's rights and are legally allowed to do this because they are not the *kabaka* or other cultural leader. However, monarchists who oppose NRM land reform are threatened and arrested. With reference to the arrests<sup>82</sup> surrounding the land debate in 2009, one official noted that:

I am just a small mortal. I can die today or tomorrow. The spirit for which I speak can never die. His [Museveni's] predecessors have tried in the past – Obote tried, Amin and everything. They robbed and raped this country. The spirit has continued. They were trying to tell the population – look, we can deal with people who speak against us. The second message was to the king – look, we are in charge of the affairs of the state. We can afford to be cruel. We can work outside the law. That was the message. The message

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82 The interviewee assured me that the Mengo activists arrested in 2009, Betty Namboozee, Medard Ssegona, and Erias Lukwago were abducted, not arrested.

was received but with contempt. We cannot sacrifice our country and principle because we fear for our lives. You die either way.

The perspective of this official, though extreme, is far from unique, and similar attitudes drive many Baganda to speak out politically and seek government positions.

Former Buganda kingdom officials seek and win government positions, despite the rivalry between the NRM government and the Buganda kingdom. Supporters of Buganda kingdom rights are a minority in parliament and coalesce support with parliamentarians that also support other traditional institutions, as evidenced in Chapter Five. Recently, Erias Lukwago, Betty Namboozee, and Medard Ssegona, the three officials abducted and imprisoned in 2009 for speaking out against the government's land program, have enjoyed or currently enjoy positions as Kampala's mayor or members of parliament. Likewise, former Katikirro Dan Muliika and Joseph Mulwanyamuli Ssemwogerere belong to political parties that oppose the NRM regime. These examples show us that despite government harassment, Baganda with Monarchist platforms achieve political positions because they represent popular beliefs.

The Buganda kingdom has made its preferences clear. As explained in Chapter Five, the Buganda kingdom wants the restoration of its property in the form of local adjudicative and administrative powers. The Buganda kingdom prefers secure property rights that exist outside of the guarantees of a particular government – property rights that the state can guarantee. The kingdom wants to control the property that the NRM government promised it in the 1993 Restoration of Traditional Leaders Act, and it would prefer for the system of *mailo* land tenure to continue (BCRC 2002, 41). Some officials in the kingdom are not optimistic about the future of land tenure security right now. As one official explained:

There is a populist streak in government right now. You're a researcher, you can see one of our biggest problems right now is land – everyone needs land – but you can't determine issues relating to property on a popular vote. Everyone would want your coat. If you would put it to a vote, you would lose it.

President Museveni has been able to respond to this populist streak by advocating for liberal land markets, claiming that the new laws help to protect small farmers and allow successful farmers to flourish. The Buganda kingdom officials above call attention to a behavior that was evident in Chapter Six: that the land law provides opportunities for land predation by Ugandans that are politically connected to the NRM regime. Buganda kingdom officials argue on behalf of their interests and the interests of other land owners who hold property titles but are not necessarily politically allied with the government.

There are Baganda that favor the changes that the NRM government has made in modern land laws. Some former Buganda Kingdom ministers belong to the NRM. Robert Ssebunya, a former Ugandan Minister for Buganda Affairs, and former Prime Minister and Minister of Lands, Apolo Nsibambi, belong to the NRM government and have spoken on behalf of government land legislation. With respect to the positions that Baganda NRM elite take, Englebert (2002) notes that the NRM regime has been adept at recruiting support. Englebert surveys an extensive list of Baganda elite and Buganda kingdom officials in earlier NRM governments and notes, “instead of interacting with Buganda elites as colleagues in government, the NRM has treated the kingdom with a mixture of co-option and intimidation, the usual tools with which African regimes deal with competing loci of power” (2002, 362). Buganda kingdom members that take NRM positions against the interests of the Buganda kingdom may have been co-opted by the regime or may be acting as statesmen and in the national interest. While the

kingdom asserts its opinion on land matters and individual Baganda speak on its behalf, it is also important to understand that there is some division within the Buganda kingdom.

Tension over land issues in Uganda divides the government and the Buganda kingdom. Members of the Buganda kingdom attempt to influence land policy and the law. The NRM government responds by incarcerating advocates and reducing their influence in government. Baganda also disagree about the role of the kingdom within the state, and the government rewards Baganda who support the NRM's position. The kingdom and individual Baganda want secure property rights and pursue their preference using legal means, but the government consistently obstructs them in legislation. It alienates many opposition members and the interests that they represent.

### **7.5 Buganda's Political Kingdom in Daily Land Law**

In Chapter Six, informal institutions were the rule and formal mechanisms to govern land adjudication and administration were rare. Evidence in this chapter shows that people who represent Buganda kingdom, specifically cultural and administrative authorities, complete the same tasks that village elders and local authorities complete in the other districts. The Central Region differs from other regions because the Buganda kingdom can argue that its members use an existing system of cultural land institutions that it dictates. The Buganda kingdom's organization gives it a legitimacy and capacity parallel to the state. It responds to a popular demand for secure property rights.

The presence of the Buganda kingdom as institution still defines land matters for most people who live there. As the dominant cultural institution and the only institution to have a tenure system explicitly outlined in the 1900 Buganda Agreement and the 1995 Uganda Constitution, the Buganda kingdom's *mailo* tenure system formally connects the domestic,

cultural land tenure with a national tenure system. It is the only cultural system that is named and recognized locally and nationally, and the supporting institutions also remain. Farmers in the Buganda kingdom recognize the institutions and seek them out, as explained by one Mukono Farmer, “In some situations, people have gone up to magistrates but the issue is – still that higher level cannot sort out problems here until they come out to meet the *bataka* and LC's and those who know the truth. So the other can decide but having been informed by those below who stay here” (Mukono Farmer B). While land registration and adjudication takes place within the legal framework, local and extralegal authorities remain responsible for implementing and interpreting land law.

Traditional land institutions and cultural relationships remain important in the Buganda kingdom and throughout the Central Region. Farmers from the Buganda kingdom and other regions note that many cultural institutions exist in the lives of Ugandans, but the Buganda kingdom has remained the most organized, active, and unified (Porter 2001, Nkonya *et al* 2005). In the Buganda kingdom, farmers continue to refer to the ground rent as the *busuulu*, the payment that they gave to the *mutongole* to pay the *kabaka*. Likewise, in some places the *mutongole* still exist, and they initiate fund drives to send money from their communities to the *kabaka*. The rationale for this is that the people in the Buganda kingdom show respect for their king. It is clear from how the farmers discuss these drives that they gain a sense of belonging. In fact, the kingdom offers certificates to individuals and institutions that donate. The individuals and institutions proudly display these certificates as evidence that they support the king and the Buganda kingdom.

The Buganda kingdom adeptly makes use of the selective benefits of group membership and draws support for its operating budget from the sale of Kingdom Certificates. Businesses and



individuals proudly display the certificates. However, anyone can buy a certificate from the kingdom, while actually being Baganda is determined by being born into an ethnic group. The Buganda kingdom has historically been inclusive, though this inclusivity has different dimensions in policy and local acceptance – while anyone may live in the kingdom, individuals are prejudice against outsiders (Low and Pratt 1960, Mamdani 1976, Buchanan 1978, Reid 2002, Buganda Kingdom 2008). The kingdom also builds an identity of inclusion by appointing members of different religions and ethnic groups to the King's Cabinet.

In addition to these political and economic ties, the Buganda kingdom remains active in the lives of Buganda inhabitants through clan structures. Every Muganda has a clan identity and this identity is part of a hierarchical social structure linking them to people in other clans, clan elders, and ultimately the *kabaka*. The clan hierarchy is important to many Baganda for social occasions like weddings and housewarmings, but it is also an apolitical social connection between Baganda as a group. These political, economic, and social ties remain strong between many Baganda, especially those in rural areas and semi-urban communities (van Acker 2000, Englehart 2002, Forrest 2004).

The Buganda kingdom maintains cultural and administrative authority over its historic property, and local people recognize its legitimacy. Individuals who participate in cultural activities already acknowledge the authority built in to its hierarchy, and they consult hierarchy members to secure their land rights. Baganda leaders witness land transactions, adjudicate land disputes, and otherwise fill the role of government in local community land law.

### **7.5.1 Informal Institutions: Active and Not Always Welcome**

While informal institutions remain important, they are also the object of criticism and are the subject of local opposition. Not all of the farmers within the Central Region are ethnic

Baganda and approve of the kingdom's effort to reclaim administration over its historic territory. According to some farmers in the Central Region, land problems stem from the way that modern Baganda handle landholdings that they have inherited from their ancestors. In several accounts, these ancestors gained access to large tracks of land through collaboration with the British colonial administrators, with little regard to the people farming the land. The present day owners, descendants of the collaborators, now sell the land that they inherited and sometimes sell it without regard for the farmers on the land. One critic of the Buganda kingdom argued:

There are some Baganda who sell the land, and they give out the titles, not informing the tenants that they have sold. The tenants are left in suspense. This person that has bought comes and chases them away. They have not told the tenants. They are not paid. I blame the Baganda because they're the ones that gave the titles. If you are to sell, first take care of the tenants who have been there for a long time. (Wakiso Farmer C)

This complaint accords with other arguments that portray the Baganda land owners as a class of irresponsible land owners who continue to benefit from their historic relationship with the British. Another farmer in the Nakasongola district made a similar claim, arguing that the Baganda colonized the rest of the country with the British government's aid and that this results in modern land conflict. According to this farmer:

The indigenous people are complaining about being here without land, about being squatters – that is the main dispute. They are uncomfortable because the land lords with land here are not born here. The land lords are from that side of the country, but owned land here during the colonial times. They are mainly from the Central. (Nakasongola Farmer A)

In these excerpts, farmers express some contempt for the Buganda kingdom's institutions. Farmers share these sentiments in the peripheral districts of the kingdom but also among non-Baganda in the most central area of the Buganda kingdom.<sup>83</sup> In essence, they argue that the land tenure that the kingdom defends is to blame for land grabbing. They argue that rich Baganda continue to benefit from historical privileges and illegitimately remove landless farmers. The claim against these Baganda farmers has roots in colonial land distribution – a policy that ended before the British quit Uganda in 1962. The interviews reveal a sense of injustice among these farmers – again, that their informal institutions are not respected because national institutions (modern land markets) disrupt how they function.

The Central Region is in some respects different from the other regions of Uganda because the *mailo* land tenure system has allowed land holders, benefiting from their relationship to the British in the colonial era, to retain control of their assets with some minor caveats. *Mailo* owners still must respect the laws protecting small farmers, as outlined in Chapter Five. However, like land owners with other types of tenure, *mailo* owners flaunt the law by evicting tenants without due relocation fees, disregarding tenants' claim over their interests, and removing the farmers on short-notice. There is little recourse except through local organizations and by appeal to traditional/cultural leaders, two groups also influenced by land owners.

Where the Buganda kingdom institutions are influential, small farmers may seek compensation and adjudication. However, none of the interviews with farmers showed evidence that the Buganda kingdom bodies were any more or less successful than other local-level institutions in promoting the rights of small farmers. Likewise, it is difficult to ascertain whether the Buganda kingdom is more or less representative, democratic, or resistant to bribery than the

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<sup>83</sup> I focus here on the ethnic ownership debate, but a second facet of within the literature on the politics of land rights involves gender discrimination in customary land laws. In Uganda, this analysis is championed by Khadiagala (2001), Goetz (2002), Tripp (2004), Rugadya *et al* (2007).

government institutions. However, the traditional kingdoms do rely on the support of their communities in order to exist. They do not have the coercive authority of the state nor are they constitutionally allowed to petition the government. They function as cultural organizations, but as these interviews reveal, they also fulfill functions of Uganda's insufficient land administration.

## **7.6 Analysis**

When do land laws work? Comparing the Central Region in Uganda to other regions, we learn that land laws are not in the interest of the law's major stakeholders. Across Uganda, land is becoming more valuable, with the land in the Central Region being the most valuable. In spite of this, the majority of Uganda's farmers and customary landholders refuse to formally title their property. While they did express interest in gaining a title from the government, they said that they were obstructed by the costs and the burdensome process. Even in the Central Region, where the government has the most experience titling land and the most staff to accommodate title requests and land litigation, informal institutions still define most people's experience with property rights.

The largest single group of stakeholders in land policy, the Buganda kingdom, has little interest in aiding a government that fails to acknowledge its claim over property in Kampala and the Central Region. Indeed, the government sanctions and silences Baganda elite who publically challenge the government. The government legally obstructs ethnic claims to land rights, but it also quells dissent illegally by threatening individuals and ethnic organizations. The "convenient chaos" that accompanies the NRM/Buganda kingdom conflict fosters conditions where the government has the ability to allocate land to political allies and ignore predation by NRM supporters.

Land institutions succeed when people have an incentive to use those institutions to protect their property, and in the Central Region land is more valuable, giving landholders more incentive to formalize their land tenure. As in Chapter Six, the explanation for this pattern remains the same as it does for the rest of the country: high administrative costs, low state capacity, and a preference for local/ethnic organizations persist. Local and traditional institutions take the place of national land institutions because people want secure property rights. The bureaucracy for land adjudication and administration in the Central Region is incomplete; individuals do not trust the bureaucracy or the state. Other institutions have more legitimacy and protect individuals' interests.

## **7.7 Conclusion**

As my research finds, land value is increasing in the Central Region, and price of urban property has more than doubled in the last ten years. At the same time, national land authorities continue to struggle for funding to title land and adjudicate disputes, leaving landed interests in the Central Region and the rest of the country to rely on informal institutions in the form of the Buganda kingdom or other local authorities.

The value of land in Kampala and its immediate vicinity makes the Central Region different than other property in Uganda. The presence of the Buganda kingdom also distinguishes Kampala from other regions. However these two distinctions reflect three important characteristics of land markets throughout Uganda: rising land values, failed formal institutions, and a patchwork of culturally-defined informal institutions. The Central Region of Uganda is different in ways that portend the future of land markets across Uganda, and the way that the government negotiates with the Buganda kingdom may foreshadow evolving conflicts over property rights in other regions.

The answer to the question “when do land institutions work” remains the same in the Central Region as it does throughout Uganda. Land laws work in Uganda when it is in the interest of the law’s stakeholders. The government can more efficiently implement the laws when individuals understand that it is in their interest to comply with the law and when the law resembles existing informal relationships. In the Central Region, the principle stakeholders are the Buganda kingdom, individual *mailo* landholders, and untitled farmers. Individuals want secure property rights within the law, but the land bureaucracy and political opportunists hinder formalization of land rights. Instead, the Buganda kingdom continues to provide informal property rights in local communities.

In this chapter, it is clear that land law is not in the interest of its stakeholders. The Buganda kingdom is ambivalent about the law. Informally, the institution remains important in the lives of *mailo* land owners and landless peasants. *Mailo* land owners and landless peasants use the Buganda kingdom’s local authorities to adjudicate land disputes and acknowledge property transfers. Land law remains a political tug-of-war between the NRM government and the Buganda kingdom.

Instead of creating secure property rights, land law in Central Uganda creates opportunities for predation because the government insufficiently implements the law and then does not create incentives for individuals to comply with the law. Governments are able to create successful land policy when that policy corresponds with the interests of its targeted population or the government is willing to spend a sufficient amount of money to compensate losers in that policy. Uganda’s government has failed on both counts.

## **CHAPTER EIGHT – LAND AND POWER IN THE PEARL OF AFRICA**

### **8.1 Introduction**

The administration in Entebbe was flustered. Reports from field offices streamed in, describing methods by which farmers were avoiding the national policy. To avoid taxes, Ugandans would band together and claim to be part of the same family and work the same land. Local officials also twisted the laws to their own advantage, even though they acted as the only link between the national government and the local people. Smuggling persisted; most market activity occurred in informal markets while wealth and records of assets were concentrated in the capital. In short, the state had little capacity to regulate its economy, but economic transactions continued to occur nonetheless. Policy formation took place in the capital, but daily politics in local communities revolved around traditional authorities who took matters into their own hands. Community members sought out these local authorities to resolve problems because they had nearby offices, were relatively inexpensive, were considered unbiased.

This narrative illustrates a recurrent pattern in Uganda's land politics. Farmers in pre-colonial, colonial, and modern Uganda have all found some way to react and respond to land law, at times being constrained into the law's prescribed behavior and at other times circumventing the law to pursue their own interests. State governments have been responsive to this behavior; to reduce costs and increase efficiency, governments like the Buganda kingdom and the British colonial administration relied on local officials and chiefs to implement policy and collect taxes. They built on the authority of local leaders and established land management institutions. Museveni's regime has sought to do this, too, through local councils and land administrators that hail from the regions in which they work.

However, the same problems of capacity and national mistrust that occurred under colonial regimes are being repeated in Museveni's regime. For the colonial government, choosing the Buganda kingdom chiefs to administer non-Buganda regions resulted in popular protest. The locals scorned the Buganda for being British compradors and opportunistically undermining the other kingdoms. Likewise, tenant farmers revolted against landowners in the 1920s, complaining that they were not fairly compensated for their labor. In both instances, the British changed the relationship between the administration and the locals, devolving power to lower level authorities and rewarding more rights to cultural institutions in an effort to improve the relationship between the citizens and the government. In a similar way, the Museveni regime has been accosted by locals who argue that the national government rewards its supporters with expropriated land and lets its highest officials evict local land owners, overstepping the national laws and local agreements. In response, the national government has at times devolved power to local authorities, though Ugandans recognize this as superficial and find the authorities difficult to access.

This dissertation analyzes property rights as an institution from 1900-2011. I pay special attention to political and economic events surrounding the 1900 Buganda Agreement and the 1995/1998 Land Law in order to compare these specific institutions across time and context. I compare the 1900 Buganda Agreement with the 1998 Land Law, as well as how the recent law relates to political/economic organization in different parts of the country, in order to better understand the relationship between salient political actors, their preferences, and political outcomes. While grounded in the case of Uganda, where we can ask how successive administrations have written land law in a similar environment and with similar interest, strategies, and outcomes, we can draw generalizable lessons for land reform, politics in



developing countries, and the empirical application of a rational choice approach to property rights reform.

As discussed in the next section, my evidence suggests that economic reasons serve to explain when land laws have traction: people abide by land laws, and more broadly property rights, when they have more incentive to comply than to break these laws. Well written laws that assimilate the preferences of a targeted group and that align their interests will give people an incentive to follow the law. The government needs to make it costly to disobey the law, through fines or other punishment, in order to increase the cost of breaking the law. However, punishment does not guarantee a functional institution.

In the final section, I extrapolate lessons drawn from the Ugandan case and apply them to broader questions on land rights, property rights, and institutional development and change. At both the national level and the local level, incomplete institutional contracting leaves room for negotiation between political actors. Economic and political power disparities between actors at the two levels explain the outcome between these actors, and the property rights environment creates a condition for predation by national actors.

## **8.2 Summary of Evidence and Arguments**

The political and economic environment of Uganda in 1900 and 1995 presented comparable tasks for both the British colonial government and Museveni's new National Resistance Movement's regime. Both sought to control a country enmeshed in civil war and torn between competing political elite. Existing farmer/land owner relations defined market relationships and empowered a select group of actors, but they were also open to change in the environment of shifting political and economic alliances. Hence, the British and the Museveni regimes in both instances bought the political support of the Buganda elite by rewarding its

members with land and promises of secure property. In time, both the British and the Museveni regime had to renegotiate the terms of land tenure security. The British first delegated authority to Buganda chiefs, but eventually decentralized power to other kingdoms and improved the property rights there.

### *Evolution of Property Rights in Uganda*

This study examines a history and process of institutional change, but emphasizes two points in time: the 1900 Buganda Agreement and modern land law. Land laws changed significantly at both points in time, and both points are instructional for understanding institutional change and durability. At first, the 1900 Buganda Agreement and the two contemporary laws (the 1995 Constitution and the 1998 Land Act) appear to create fundamental changes in property rights relations. The 1900 law created formal relationships between the British and the Buganda kingdom, began the process of formal ownership in the form of titles and deeds, and began to allocate land to individuals and institutions. Likewise, the 1995 Constitution and the 1998 Land Act challenged existing behavior in Uganda: these documents establish a legal basis for land dispute adjudication, demarcation, and administration within the jurisdiction of the state. These documents attempt to move the locus of authority away from cultural and community members and empower the state. These documents are the result of contracting between interested parties over a scarce resource. However, they are just documents; the actions of political elite to define the laws, and the subsequent actions of the government to enforce or neglect these laws, are descriptive of both the new and existing institution of property rights in Uganda. The political elite should not argue about a law that does not matter, and a constrained government only enforces a law that it needs to support.

In Chapter Three and Chapter Five, I analyze the politics of the 1900 Buganda Agreement and the 1998 Land Act. These moments in Ugandan political history exemplify bargaining between a government and the Buganda kingdom and defined land law within each regime. Moreover, these two laws reflect the political status quo in the country and the interests of those political actors. In 1900, Baganda elites began to buy land in the new land system when the previous system of property rights had entrusted the whole Buganda kingdom to the discretion of the *kabaka*. The *kabaka* no longer distributed land to office holders on the basis of merit and building political alliances. Instead, three oligarchs were temporarily empowered with titling land under the authority of the Buganda kingdom and the British Foreign Office. The new land system gave individuals property rights. Likewise, the 1995 Constitution and the 1998 Land Law enumerated the power of the state to adjudicate and title land in Uganda. The Buganda kingdom relented to the authority of the Museveni government.

These two documents explicitly detail the powers of the government concerning land sale and ownership. They also serve to illustrate what political powers were important in crafting legislation in pre-colonial and contemporary Uganda. Just like after the 1900 Buganda Agreement, following the 1998 Land Law elites at the center of power wrestled for control over property rights. The law that followed political negotiation empowered some and excluded others, and the parties in the negotiation knew that it would. The land law defined people's access to land; it established the rules for access over a scarce resource. Hansard documents from contemporary parliaments and personal communication among colonial administrative authorities serve as evidence to show both the broad class of winners/and losers from land law change and also how individuals benefited from these reforms.

Chapters Three, Six, and Seven illustrate how laws have been unevenly implemented through the country and how locally-developed institutions evolve to meet political and economic demands. In the 1900 Buganda Agreement, the three Buganda regents were empowered with titling and distributing land within the Buganda kingdom. The agreement itself allocated land that Buganda kingdom officials already controlled, thereby formalizing the kingdom's paramount *status quo ante* among the interlacustrine kingdoms. The 1995 Land Law also did this to some extent, allowing for four types of tenure (communal, *mailo*, freehold, and leasehold) to exist throughout the country. In both cases, governments met with political opportunists and ethnic claimants. The British colonial government and the Museveni regime took similar tacks: both befriended local elites that agree to cooperate with the central government and both replace opposition leaders who obstruct government policies. The contemporary government in Uganda has also neglected to implement land law in different regions of the country, and rural Ugandans have taken note of this. Weak land laws and impotent local authorities empower Ugandans with personal connections to security forces: failed institutions empower Ugandans with political ties to the government outside of formal elected or appointed offices.

Chapters Three, Six, and Seven also illustrate how individuals and organizations respond to national law. In each chapter, the wealthy and the well-connected (chiefs in Chapter Three, urban elites in Chapters Six and Seven) take advantage of permissive institutions to gain greater control over land. In 1900, the Buganda regents were able to use their powers of land adjudication and administration to empower and enrich their political allies. The British did this too – by allying with the Buganda kingdom and empowering them with administrative positions as well as giving them the lead in military conquests (that essentially became excuses to loot).

Themes that emerged from interviews that I conducted told a similar story in contemporary Uganda: people allied with the national authorities were free to dismiss local land claims and community authorities because the legal system permitted a behavior of ‘might-makes-right.’ This environment of disorder creates opportunities for the most powerful actors to ignore common conceptions of property rights and instead abide by the more durable institution of patronage politics.

None of this analysis ignores the role of international actors in this comparative study. The British government was instrumental in writing the 1900 Buganda Agreement, and attorneys from the United Kingdom, among them economists Patrick MacAuslan and Klaus Deiniger from the World Bank, significantly contributed to modern land law in Uganda (Manji 2002, 229). The 1900 Buganda Agreement reflected the evolving British policy of indirect rule and the status of land law in Western states: titled land for willing-buyer/willing-seller arrangements. Likewise, the 1995 Constitution and the 1998 Land Act reflect the cultural and gender-sensitivity commonplace in contemporary development policy and programs. Land laws and constitutional amendments now account for the representation and the rights of minorities, disabled, and women. In accordance with these standards, the 1995 Constitution and the 1998 Land Act make provisions for equal opportunity in property ownership.

In addition to willing-buyer / willing-seller arrangements, common property and property for cultural institutions is protected in the 1900 Buganda Agreement and the 1995 Constitution. At both of these junctures, liberal and neo-liberal market concepts defined political and economic relations between Ugandans and between Ugandans and foreigners. Colonial and British Commonwealth definitions of property rights and free market rationale were built into

both documents, fundamentally altering who owns land in Uganda and legal means for land transfer.

### **8.3 Property Rights Lessons from Ugandan Land Law**

In answering the question, “what explains the property rights creation and implementation in post-colonial states,” my research finds that emerging property rights are the result of demand to protect resources, but they are also the work of the political elite to claim access to resources in the present and the future. Land is a scarce resource and has cultural value, so it is no wonder that pre-colonial kingdoms, British Colonial governments, and the Museveni regime have used land to attract and retain political support. Patronage, as an unwritten 'rules of the game', exists in land law reform and in land law neglect. Economists predict that once a resource gains a sufficient amount of value, efficiency will force governments and property holders to create institutions to protect that asset. However, governments may impede this efficient behavior, because governments are beholden to clients whose support they buy with land transfers. The basis of their ownership is then contingent on the government's political support, and so it undermines citizens' incentive to organize for secure property rights *vis-a-vis* the state.

The second research question that drives my study asks, “When governments establish property rights in economies that already have local mechanisms to protect rights, how does the government engage cultural/informal institutions and what does it look like?” African polities have experienced locally-defined property rights, colonial property rights, and property rights as defined by different post-colonial governments. What explains local adoption of new property rights and local resistance? Where do these rights restrict actors and where are they circumvented? Findings from my interviews illustrate that informal institutions perform the

functions of land offices. However, these institutions do not restrain national-level actors and neither do the land laws established by the government. Land offices established by the government are cumbersome, sluggish, and fraught with corruption. Locally-recognized mechanisms may be imperfect, but they are also more responsive and inexpensive. Further, neither local land authorities nor nationally-recognized authorities may sufficiently curb exploitation. This uncertainty reduces small farmer economic potential but also precludes the expressed function of the land law, i.e. to establish a national land market.

Finally, this dissertation closely inspects one country across time in an effort to draw larger conclusions. Uganda's experience developing land law provides some insight for property rights in developing and developed countries. First, while there may be economic motivations to protect property, I find that political considerations, actors, and institutions better explain when specific property rights and laws have traction. In Uganda at the turn of the 20<sup>th</sup> century, the most important actors were British colonial officials, the Buganda monarchy, and Buganda chiefs. The British were an exogenous force that stabilized an embattled monarchy in the 1900 Buganda Agreement. The British chose Katikioro Apolo Kagwa, Stanislaus Mugwanya, and Zakariya Kisingiri as suitable allies who had consolidated their support within the kingdom. These three regents were willing to work with the British and ostracized chiefs who opposed them. Likewise, the 1900 Buganda Agreement empowered the Buganda regents to build an alliance of chiefs, to bring together the rest of the country, and to stabilize the Buganda economy (Fallers 1959, Roberts 1962, Reid 1998).

In the absence of government enforcement, local communities are largely responsible for administering, adjudicating, and allocating land in Uganda's countryside. The property rights literature would suggest that since the resource is relatively plentiful and cheap there should be

little government intervention. There is little incentive for the government to intervene in transactions where there is no community outcry and where it does not stand to lose tax revenue. Further, Ugandans opt out of government institutions because they are costly and corrupt. This strategy serves most rural farmers well, unless national actors are interested in their property. In this case, neither legal land rights nor their local political organizations can protect their land. The property falls prey to more powerful, politically-connected Ugandans.

Property rights function as institutions when they reduce the uncertainty actors have about the behavior of others. Land laws fail this criterion when individuals can seize land, bribe value estimators, bypass land offices, alter and forge titles, intimidate local authorities, and payoff judges. Instead of acting within the land law, individuals create informal laws. The informal institutions reflect other political and economic actors who have a greater reason to work in informal networks than within the government-created institutions. These individuals are dissuaded from working within formal markets because they can circumvent cumbersome and expensive government bureaucracy and reduce the cost of their transaction; both landless farmers and wealthy land developers recognize this strategy. They succeed as institutions when they align the interests of the contracting parties; the 1900 Buganda Agreement was successful, in part, because the British and the Buganda kingdom agreed on how to distribute Uganda's resources. Their interests were aligned and neither had an incentive to deviate from their agreement.

When individuals are working with relative equals, whether in local communities or on a national-level, they can both afford to use formal and informal networks. Locally, individuals tend to use the same authority: community members. When national-level actors are active in rural communities, they can afford the legal mechanisms of the state as well as extra-legal



mechanisms (bribery, intimidation) to exert their influence and pursue their preferences. They have a choice. In this way, rural farmers are isolated from modern land law. The law serves only the national-level actors because they are the ones who can afford to access the state via land offices and patronage. These conclusions affirm Onoma's finding that "it is the political leaders that have or can create enough impunity to get away with some of the more fraudulent and violent ways of exploiting land...with little consequence" (2010, 58). Rural farmers are only able to afford and influence the authorities within their neighborhood. The laws do not sufficiently constrain the behavior of others on the market, and the institution of patronage persists.

Uganda's land law also provides two broader lessons about institutions and institutional change. First, property rights were not invented by the British, nor did Museveni's regime create individual property rights from scratch: salient political actors from colonial and modern Uganda understood private property to be a valuable resource. Uganda's evolving land law also illustrates when institutions will function and how a government may pursue policy to increase formal market activity. To bring more farmers into the formal land market, property rights must give individuals sufficient incentive and low enough cost to pursue formal titles.

### **8.3.1 Land Rights**

The legacy of existing land rights in Uganda from the British and the kingdoms created a situation where neither the British colonial authority nor Museveni government could invent completely new rights for two reasons. First, in both cases personal property already existed in practice. In the pre-colonial Buganda kingdom as well as in Uganda prior to the 1995 Constitution, individuals held private property. In pre-colonial Buganda, the *kabaka* awarded private property to individual subjects at times. Likewise, British and other international merchants and missionaries had negotiated for private property within the Buganda kingdom.

Private property existed in the kingdom and was attractive as a resource for wealth and status. Likewise, private property existed prior to the 1995 Constitution, though Idi Amin had vested all land to the state in 1975. Obote and Museveni negated Amin's edict and both recognized the necessity of formally returning private property. In both the contemporary and colonial regimes, the central political power recognized and expanded private property rights.

Additionally, in both cases, the relatively poor central government did not have the capacity to mandate and execute policy across the country at one time. In colonial Uganda, the 1900 Buganda Agreement and subsequent, similar agreements with other polities took years to negotiate and implement. Many of the local offices are virtually vacant, if not because of ghost workers then because the offices are understaffed. In part, this is because few people will work in the periphery of the country when they have an education that allows them to work in the city. In short, the government is constrained by its capacity to implement law and by existing land laws.

Uganda's land law includes elements of ethnic land tenure in the national policy, but the law privileges the policies developed and implemented by state institutions rather than ethnic claims when the two conflict. This conclusion is evident in policy implementation and Uganda's 1995 Constitution. Local political actors are empowered by the national government with the coercive authority of the state, and, in much of rural land politics, Uganda's laws have traction. However, informal laws that exist outside of the national framework continue to regulate behavior – land adjudication, administration, and markets – in most of rural Uganda. Indeed, my interviews show that informal institutions are the norm throughout much of the country. These land institutions have developed as the result of local demand and preferences, through the daily behavior of individuals working within the institutions. Though perhaps unplanned at the

national-level, local institutions are also more cost-efficient to local farmers and the farmers trust local officials.

Comparing Uganda at the turn of the 20<sup>th</sup> century to modern Uganda illustrates similar pressures from external and internal sources. In both cases, domestic chiefs and land lords pressed for greater ownership over their scarce and appreciating resources, while international pressure demanded peace between the government and its citizens. In colonial and modern Uganda, the weak condition of the state to implement policy meant that it could do so best by building coalitions with existing authorities, but the British and the Museveni governments had different preferences and have had different levels of success in this regard.

### **8.3.2 Politics of Disorder and the Institution of Patronage**

Finally, the incomplete contracting of property rights in Uganda allows for an environment of patron/client exchanges that circumvents existing land law. Patronage in Uganda, both in formal institutions (Green 2006, Green 2011) and through informal networks (Tangiri and Mwenda 2003, Clark 2004, Mwenda and Tangiri 2005, Mwenda 2007, Stearns 2011), is well documented. Locally-devised responses to political and economic demands reflect the interests of local community members, albeit imperfectly. National-level responses to political demands reflect a national-level imperative for the ruling party to stay in government. Other examples of this in Uganda include parallel organizations of the Local Council/Resident District Commissioner, the proliferation of districts, and security forces with overlapping jurisdiction. This overdeveloped state inhibits local economic and political development (Sandbrook 1985, van de Walle 2001).

Patronage politics is an institution that creates inherently unstable relationships and has its own institutionalized uncertainty: the assets exchanged in patronage are only as safe as the

relationship between the patron and client, and empowered clients will seek more security. This relationship and the instability with the institution are evident in Uganda's politics. In each government of Uganda – pre-colonial, colonial, and modern – administrations have sought to retain support by distributing land. In the pre-colonial Buganda kingdom, the *kabaka* awarded land to office holders, and they controlled the production on those parcels. So long as they met minimum quotas of production, road maintenance, and military service, they retained their land. After their death or dismissal, the *kabaka* could redistribute that parcel. Likewise, early British administrations in Uganda distributed land to loyal chiefs with the aim that they could improve production and help colonial subjects comply with policy. For the British, Nigeria and Uganda were testing grounds for their new policy of indirect rule.

In both places, the support of ruling elite was essential. In the Buganda kingdom and throughout the territory of Uganda, the privileged position of Buganda kingdom chiefs helped them use the coercive force of the British colonial authority to seize territory. Shortly after the British colonial government exited Uganda, the Buganda Monarchy was dismantled and a power vacuum engulfed the country for twenty years. If the system of patronage politics persists in the Museveni regime, a similar power vacuum could reemerge when the current president is no longer in office.

Land institutions fail when they fail to provide incentives for stakeholders to comply. The successes and failures in Ugandan land law give lessons for future laws in that country: farmers will use formal mechanisms when it is in their interests and the costs of those institutions are not prohibitive. Farmers – both landless farmers and farmers with titles – want secure property. In Uganda, the government is able to offer this security, but fails because it would have to

discipline powerful political forces within the country. Uganda's government would also have to reduce the cost of titling the land.

These lessons are also generalizable in developing states with few resources, legal colonial legacies, and ethnic claims to land. Domestic and international pressure for land, especially fertile land with access to water and land with oil/mineral deposits, contributes to conflict within developing countries and escalates ethnic tension. Secure and formal tenure can reduce this tension and improve agricultural economies. In order to realize these potential benefits though, the laws must be attractive to stakeholders and be implemented impartially.

## **Methodological Appendix**

### **Analyzing Qualitative Data**

#### **Theoretical Basis for Archival and Interviews in Comparative Politics**

Analysis of both archival data and interviews included coding and classifying complex statements into simplified data that are analyzable and generalizable. Dey (1993), Huberman and Miles (1994), and Coffey and Atkinson (1996) argue that the process of codification and examining patterns in qualitative data serves several important purposes: it distills complex narratives into useable concepts/themes, it can open that data to different modes of analysis, and it can reveal distinct themes otherwise buried in complexity. Step-by-step qualitative analysis of primary source data, focusing on the methods described by Maryring (2000) and Fielding and Lee (1998) disciplined this study and ensure its replicability and validity. By inspecting the historical documents themselves and not only the secondary sources, I avoided some of the potential pitfalls in comparative historical research outlined in King, Keohane and Verba (1994), Lustick (1996), Gerring (2001), Mahoney and Rueschmeyer (2003), and Marshall and Rossman (2006): most notably selection biases among variables and historiographical prejudice. In the same way, codifying and analyzing interviews through methods outlined in Kvale (1996) and Aberbach and Rockman (2002) helped me to draw out themes and patterns from semi-structured interviews with Buganda kingdom officials, farmers, and land administration officials.

In addition, interviews revealed processes and transactions hidden from archival data and also evaluated the strength of the quantitative research (Mason 1994). Tracing legislation construction and implementation requires data that reveals the preferences of both legislators and the people whose behavior that the law is meant to influence (the stakeholders). Archival records

and interviews helped to shed light on both, especially where economic data are unable to survey market activity, prices, and political behavior. Where there was no record of legislative votes, Hansard documents provided evidence of parliamentary preferences. In colonial records, personal communication between administration officials and the biographies of colonial officials revealed the motives and strategies of British representatives and Buganda kingdom officials. This primary and secondary research yielded insight into the preferences, choices, and payoffs to the different political actors and helped establish characteristics in institutions that Thelen (1999, 387) argues are important: functionality, power relationships, and legitimacy. I used the same logic and concepts to guide my interview coding, classifying and extracting meaningful concepts from colonial records, biographies, and missives. Likewise, I selected the records and biographies based on their logical connection to my query: records and biographies that were available from colonial administrators in Uganda, military officials deployed in colonial/pre-colonial Uganda, and ethnic elites who wrote to the administration and whose opinions are published in English during that period.

## **Interviews Methods and Procedure for Archival Research**

### **Interview Process and Analysis**

I selected 21 of Uganda's 56 districts (using the 2005 district map) on the basis of their location and population density. Since land-value data was scarce, I used population density and urbanization as a proxy for land value and gathered data/conducted interviews from the four historic regions of the country: the Northern, Eastern, Western, and Central Regions. From these regions, I then selected one district with a dense population and one that was sparsely populated. Finally, from each region I selected one other historically important district, for a total of 3

districts per region. I conducted interviews with farmers in 12 of the 13 Central Region districts, excluding the district of Kampala because this district is entirely urban.

In each district, I conducted interviews with four farmers, individually, at their farms. My selection method was a purposeful snowball sample and was directed at trying to speak with farmers who work different sizes of farms and different distances from administrative centers. Where it was possible, I collected interviews from farmers in each region based on the size of the farm and the willingness of farmers to be interviewed. Below is a table of the farmers represented in my interviews.

**Table 7. Interview Geography**

Size of Farm x Distance to Administrative Center			
Size, Distance	Close	Intermediate	Far
Small Holding	Small, Close	Small, Intermediate	Small, Far
Intermediate Holding	Intermediate, Close	Intermediate, Intermediate	Intermediate, Far
Large Holding	Large, Close	Large, Intermediate	Large, Far

For each interview, I solicited the support of an individual from the area as well as a local interpreter to act as a research assistant. Then individuals from the area helped to introduce me to a farmer and helped me begin the snowball sampling process. I benefited from his or her credibility with local farmers. The interpreter translated my questionnaire and consent forms. To ensure a quality translation, the interpreter translated the documents from English to the local language (Luganda, Nyankole, Lango, Lusoga, and Anchoi), and I asked the person from the



local community who was introducing me to read to me in English my sample questions/consent form from the translated questionnaire (back translation). I also carried copies of the questions and the consent form in English and KiSwahili. I translated the KiSwahili questions/consent form, and I vetted this copy with a native speaker and KiSwahili instructor at the University of Kansas, Muhajir Makame.

While I had these documents with me at each interview, we did not always present them to the interviewee. Rural illiteracy in Uganda is high in English and the local language, and even though I enjoyed a certain level of trust having been introduced by a community member, farmers were wary of formal documents. For this reason, my research assistant, local community member, and I conducted interviews in farmers' homes and gained consent orally, in accordance with my IRB-approved procedures for oral consent. I recorded each interview with a digital recording device and later transcribed the interviews. In all, I recorded 84 interviews with farmers in 21 districts.

I also conducted interviews with local land officials and with Buganda kingdom officials. These interviews were in English, and I gained oral consent using a standard consent form. I met the local land officials at their offices, either at their district offices or in Kampala. I also met the Buganda officials at their work offices or at their offices at the Buganda Parliament Building, the Bulange. I selected the two land officials from local offices who would be the most directly influenced by land policy: the Register of Titles and the District Land Officer. However, very few districts had a complete complement of land officials and I was unable – either because they did not exist or because they were unreachable – to contact the specified land officials in each district. Therefore, I solicited interviews from District Land Officers and Registers of Title where possible, and I conducted interviews with individuals who were responsible for working in the

Land Office in the capacity of Land Officer/Register of Title but who did not formally occupy that position. In all, I conducted 15 interviews from 21 districts. Some of these land officials were responsible for multiple districts in the same region and spoke to land issues in the different areas in their domain.

I selected Buganda kingdom officials who work with land matters and who have advocated for land rights on behalf of the Buganda kingdom: Prince Daudi Wassajja, Medard Lubega Ssegona, David Ntege, David Mpanga, and Charles Peter Mayiga. The land officials and the Buganda kingdom officials were aware that they would be cited in their statements and consented to the interviews. Sample questions from each of these interviews are listed below, and transcripts are available upon request.

### **Archival Research**

To better specify both of these questions and to understand the context of institutional decision-making in colonial, post-colonial, and contemporary Uganda, it was necessary to investigate primary source material in the form of archival data. I conducted archival research primarily at Uganda's National Archives in Entebbe and three libraries in Kampala: the Makerere Institute for Political and Social Research (MISR), Uganda's National Bureau of Statistics (UBOS), and the library at Uganda's Parliament building. Documents from each of these institutions helped answer my research question “when do land institutions work?”

The National Archives houses records dating from the colonial administration to the current regime. These records include colonial era letters to administration officials from field offices, military personnel, concerned citizens, foreign governments, and kingdom officials. I surveyed these documents, using the methods described above and taking note of 1) political activity that included ethnic officials (chiefs and dignitaries from the Buganda kingdom and

other ethnic groups), 2) economic reports, and 3) national surveys. At the National Archives, I analyzed each document from 1890-1908 among the colonial letters and surveys in order to better understand the relationships, choices, and preferences of colonial officials and the Buganda kingdom. This analysis, in addition to historic biographies/autobiographies from these same officials, is the empirical basis for Chapters Three and Four.

Chapter Five relies on a similar methodology, though here I study contemporary parliamentary discourse and the influence of cultural/political elite. UBOS houses regional economic records as well as demographic and social records. In recent years, these records have been kept for district-level data, but for most of Uganda's history this data has been conducted at the national level. Additionally, continued sub-division of districts and immigration has made regional and district-level analysis difficult. For interest group and political analysis, I inspected Hansard documents from Uganda's Parliamentary Library, available constitutional reports and position papers by interest groups, and public statements. Hansard documents at Uganda's Parliamentary library are not available electronically, and they are important to understanding political coalitions and interest groups. In these documents, I was able to understand the political coalitions in Parliament, deduce the influence of constituents on the floor (most notably, the influence of regional constituents and interest groups), and note when the NRM party was able to dismiss/assimilate/accommodate the objections and perspectives of the political opposition.

I selected Hansard Documents from the first sessions where parliamentarians discussed each successive land law (the 1995 Constitution, the 1998 Land Law, the 2004 Amendment and the 2010 Amendment) on the floor of parliament and referenced the same documents that they referenced in their propositions: committee meeting archives, interest group/ethnic group policy statements, and legal precedence. This approach allowed me to trace the process of legislation

formation in Uganda's parliament without the benefit of examining how each parliamentarian voted: parliamentarian votes are counted and not recorded. Instead, Ugandan political scientists are beginning to identify political patterns by analyzing Hansard documents and rating each parliamentarian by the content of their statements made on the floor of parliament. These studies have only been applied to the last two years of Hansard Documents, and so the only way to understand political coalitions and bargaining is by reading the Hansard documents that report parliamentary conversations. By analyzing these documents, committee/interest group reports, and the outcome of these debates in the form of new land law, I am able to deduce what political interests successfully contributed to the new land law and what interests were ignored, even though parliamentarians voiced their concerns on the floor.

## Sample Interview Questions

A sample of the questions that I used to generate a discussion with farmers, land officials, and Buganda kingdom officials.

### *Farmers*

1. What do you grow? Where do you sell what you grow? How much land do you farm?
2. How did you obtain your land? What process of gaining land is common here?
3. Is your land registered? Is there much unregistered land in the area and is it secure?
4. Have you had any disputes on the land? What was the nature of the dispute?
5. How did you resolve the land dispute? Who adjudicated the dispute and was the process fair?
6. What are your plans for your land? Do you have plans for the land after you die?
7. Is there land for sale in the area? How would I go about buying land around here?

### *Questions for Land Administrators*

1. What are the problems concerning land tenure in your district?
2. What are the successes of the land tenure system?
3. What tenure is the most common in your district? What challenges
4. How do farmers adjudicate disputes? What kind of disputes are there?
5. Is there fraud or land grabbing in the district?
6. Can you speak to trends in land valuing and titling in the district?
7. What are the steps to titling land – is it easy and how would you improve it?

### *Questions for Kingdom Officials*

1. How has the land act affected land transactions?
2. What complaints do you hear about concerning land tenure?
3. What are the issues that divide the government and the kingdom?
4. What is the responsibility of the Buganda kingdom to its people? To the rest of Uganda?
5. What is the source of the kingdom's legitimacy?
6. Does the NRM government officials take political cues from the *kabaka* or officials in the kingdom?
7. Do Buganda officials seek government office in parliament or local offices?

## **Descriptive Statistics – Farmers, Land Officials**

Farmers: 84 total  
Mean Age: 52  
Mean Interview Time: 18 minutes  
Sex, Men / Women: (59/ 25)  
Mean Land Holding: 7.75 acres

### *Central Region Farmers:*

Mean Age: 54  
Mean Interview Time: 18 minutes  
Sex, Men / Women: (31/17)  
Mean Land Holding: 4.4 acres

### *Northern Farmers:*

Mean Age: 42  
Mean Interview Time: 21 minutes  
Sex - Men / Women: (9/3)  
Mean Land Holding: 23.7 acres

### *Eastern Farmers:*

Mean Age: 48  
Mean Interview Time: 19 minutes  
Sex - Men / Women: (8/4)  
Mean Land Holding: 4 acres

### *Western Farmers:*

Mean Age: 53  
Mean Interview Time: 15 minutes  
Sex - Men / Women: (11/1)  
Mean Land Holding: 13.125 acres

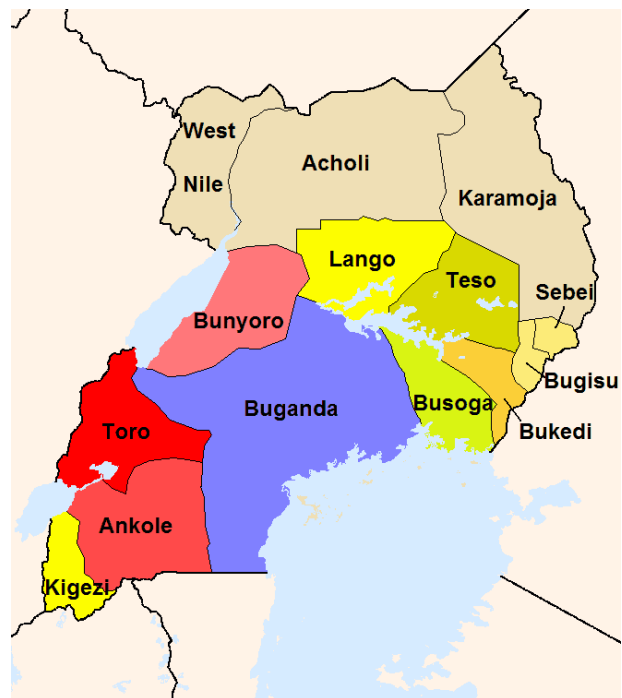
### *Land Officers*

The land office at Bukalasa (Luwero), Jinja, Gulu, and Masaka are responsible for housing land administers for the surrounding districts.

The Mukono Land office offers administrative services for both Mukono and Kayunga districts. Gulu was completing construction on a new land office with a fire-safe vault and electronic records and services several surrounding districts.

I also interviewed with Carlo Kharbugo (44:38), the Register of Titles, for Bundibugyo District in Western Uganda in order to gain more information from the region. However, Bundibugyo District is outside of my study since it does not meet the criteria for my sample.

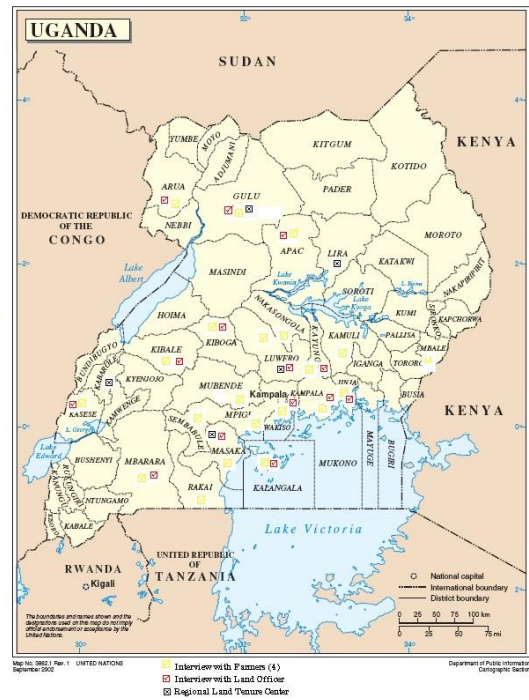
### Figure 18 Ethnic Map of Uganda



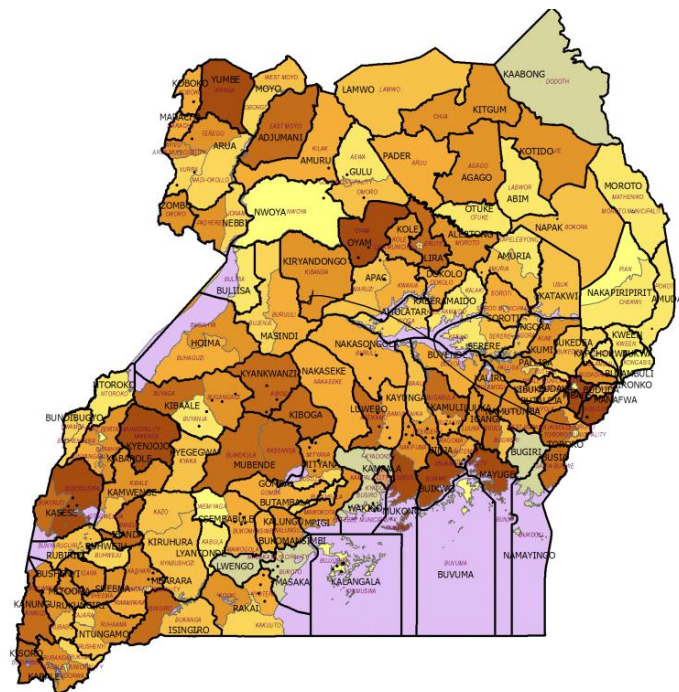
### Figure 19 Map of 56 Districts – Farm Locations



### Figure 20 Farms, Land Centers, and Land Offices



### Figure 21 Map of 112 Districts – Farm Locations





**Table 8. Selected District Demographics**

District	Population			Pop. Density	Urbanization	Growth Rate
	1991	2002	2010	2002 Census	2002 Census	2002 Census
Kalangala	16,371	34,766	58,000	74.3	8.5	6.5
Kampala	774,241	1,189,142	1,597,900	7258.6	100	3.7
Kayungo	236,177	294,613	344,600	211.2	6.7	1.9
Kiboga	141,607	229,472	319,600	58.8	5.2	4.1
Luwero	225,390	341,317	418,000	87.9	12.3	2.5
Masaka	694,697	770,662	833,500	244.8	10.6	0.9
Mpigi	350,980	407,790	454,900	138.8	2.5	1.3
Mubende	277,449	423,422	566,600	117.4	7.3	3.6
Mukono	588,427	795,393	981,600	255.8	17.2	2.6
Nakasongola	100,497	127,964	150,000	40.9	5.1	2
Rakai	330,401	404,326	466,900	119.8	4.5	1.7
Sembabule	144,039	180,045	210,900	78.9	2.2	1.9
Wakiso	562,887	907,988	1,260,900	545.3	7.7	4.1
Jinja	289,476	387,573	475,700	586.5	22.1	2.5
Kamuli	380,092	552,665	716,700	217.3	1.6	3.2
Gulu	211,788	298,527	374,700	41.2	25.1	2.9
Apac	277,451	415,378	543,200	116.4	1.5	3.5
Kasese	343,601	523,033	695,600	179.7	11.4	3.6
Kibale	220,261	405,882	613,300	98	1.2	5.2
Mbarara	267,457	361,477	427,200	191.8	3.5	2.6
Arua	268,839	402,671	526,400	155.9	8.8	3.5
Mbale	240,929	332,571	416,600	533.8	9.9	3.1
2002 Uganda Census						
2010 Uganda Statistical Abstract						

*Source: Uganda Bureau of Statistics, 2002*

## **Buganda Kingdom Parliament**



## **Seats in Parliament**



## **Kabaka Anjagala Road – “The Kabaka Loves Me” Road, from the Bulange**



## **Demarcating Property: Three Traditional Methods**

### **The “stone” method of demarcation**



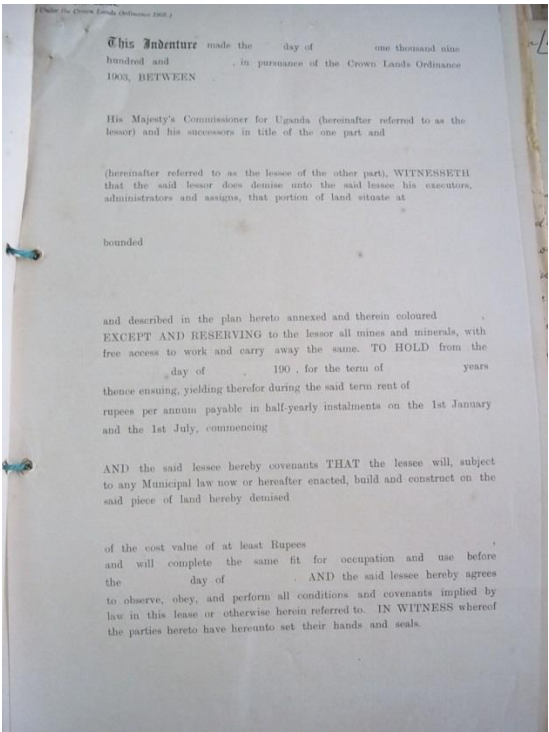
### **Trenches demarcate property**



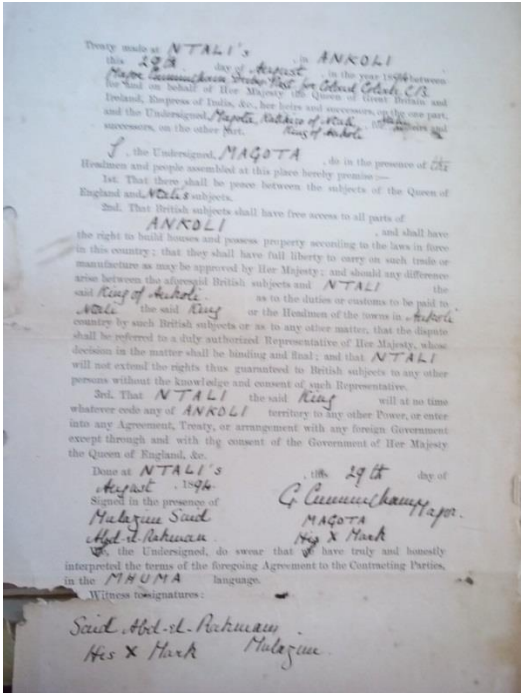
### **A specific type of indigenous, drought-resistant hedge demarcates property**



Historic land lease, blank form:



Treaty between the Bankoli and British: a typical form-letter treaty



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