

# To What Extent Have the Existing Land Tenure Systems Affected Urban Land Development?

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## **Abstract**

In Uganda, urban areas develop in pockets compared to other countries with a uniform land tenure system. This research sought to investigate the extent to which the existing tenure systems affect urban land development. In this research, different land tenure systems were identified in the urban areas, development patterns on different land tenure systems were described, constraints imposed by land tenure systems on development were examined and services together with the nature of housing on different land tenure systems were investigated. Observations were made in Mbarara and Arua Municipality on the nature of developments on registered land and non-registered land. In each municipality, some areas were observed to be more orderly and better spatially organized than others for example in Mbarara municipality, Kamukuzi area, which is a predominantly residential area under leasehold and freehold tenure, was found to be more spatially organized than Kisenyi, a residential area for the poor under customary tenure. Houses on untitled land were mainly one roomed houses, constructed from inferior materials such as mud/wattle and grass well as housing on titled land were one, two and three bedroom houses and constructed with expensive materials such as burnt bricks, iron sheets and tiles. Areas on untitled land had a limited access to piped water, electricity, roads, education facilities, drainage, garbage collection points, and toilets compared to titled land that had better services. Formalization – resurveying of land for documentation should be done in a participatory incremental manner so as to avoid possible resistance from the settlers. This would enable the planning of the areas the people live in.

**Key words:** Formalization, Land Tenure Systems, Urban land Development.

## **1.0 INTRODUCTION**

Land is an important factor of production. Land is used for construction of human shelter, agriculture and other economic activities (UN-habitat, 2008). Fast increase in population numbers in the urban places has increased the pressure on the limited land (Payne, 2007). The pressure is high in the urban areas compared to rural areas where the economic activities are low (Cohen, 2006). United Nations-World Urbanization Prospectus (2008) has projected that the population would have doubled by 2050. This population explosion will be due to the rapid expansion of the urban areas UN-Habitat (2008). UN-Habitat (2008) projected the built up areas of developing countries to expand from 200,000Sq Km to 600,000Sq Km by 2030. The growth of the urban cities of developing countries has exceeded capacities that planning for such cities has become difficult. Therefore these cities have developed tenure

insecurity, overcrowding, environmental health problems and limited access to good shelter (Cohen, 2006). Systems present in administering land rights in the urban centres are ineffective thus this has led to development of informal settlements (Sliuzas, 2004). Some of the causes of the informal settlements include; illegal tenure, not following subdivision rules when subdividing land and landowners not following building codes when constructing building (Farvacque and McAuslan 1992).

Land tenure system is the way people own land, occupy it, use it and dispose of it in the community (Payne, 2001). To ensure balanced and sustainable development, the land tenure system should be properly defined and managed (Postiou and Ioannidis, 2006). Before 1975, land in Uganda was under four tenure systems; freehold, mailo, customary and leasehold. After the land reform decree of 1975 land was given to the government, however people were allowed to settle anywhere they wanted provided they managed the land efficiently. Though in the 1995 constitution, the four tenure systems were restored (Bantungi and Rütther, 2008).

Uganda is mostly dominated by customary land tenure. Land under this tenure system is owned and disposed of according to the customary regulations of a particular community (Bantungi and Rütther, 2008). The rules governing the use and exchange of customary land vary among the ethnic groups and regions. One of the advantages of this tenure system is that people have lived with this system of land use and administration for a long time that they completely understand how it works. It has a problem that records are not kept making it difficult to resolve land disputes on this land (Bantungi and Rütther, 2008). There is little interest from the people on this tenure system to conserve the land resources hence there is a lot of mismanagement and degradation experienced. Mailo tenure system was introduced after the signing of the 1900 Buganda Agreement. Land was shared amongst the Kabaka of Buganda, other notables and the British protectorate. The basic unit of division was a square mile hence the name mailo. Originally mailo tenure was of two categories private and official mailo. The official mailo was transformed to public land later on. This tenure system is held for perpetuity and a certificate of title is issued (Okuku, 2006). The main advantage of this tenure system is that one has tenure security and so permanent investment can be made on such land. Regulatory agencies lack access to such land and hence cannot manage this land. This tenure also has a problem of squatters resulting from the absentee landlords. Land under the freehold tenure is also held in perpetuity and a certificate of title is issued. This tenure system was created to address the requirement of organizations like the religious and institutional organizations. It was also granted in other areas as a result of the Toro Agreement 1900, Ankole Agreement 1901 and Bunyoro Agreement of 1933. The British colonial authorities were given power to alienate land in freehold through the Crown Lands Ordinance (Okuku, 2006). This tenure system is mainly found in parts of eastern and western Uganda. Land parcels in this tenure system are small, though other features still remain the same as those of mailo making it experience the same environmental problems. Under the leasehold tenure system, land is held basing on the agreement made between the lessor and lessee. Leasehold tenure is divided into two types, private and official or statutory lease. Private lease is that given to individuals while official lease is that given to individuals or corporate groups under public Act terms (Okuku, 2006). The advantage of the leasehold system is that the lessor can attach conditions to the leases and has the right to revoke ownership in case of abuse. This tenure system is however very expensive and they have not addressed the environmental problems as they should (Bantungi and Rütther, 2008).

## **2.0 METHODOLOGY**

The study was carried out in two municipalities; Arua and Mbarara municipality because of the evident development disparity and economic relevance of these municipalities in their respective regions (Northern and Western). Settlements were chosen purposively from each of these settlements for the study. The settlements were; Congo, Enyau and Nsambya - Arua and Kajogo, Kizungu and Kiyanza - Mbarara. Unprocessed Google earth satellite imagery taken on 18th February 2014 for Mbarara and Arua municipality was used. Document review was done to gain a profound understanding on land tenure systems, informal settlements and the urban development process. Photographs were taken to capture the types of buildings, and services on the different tenure systems. Key informant interviews with the municipality physical planners, Slum Dwellers Federations members, Deputy Clerks, Community District officers and the LC chairmen were conducted and questionnaires were administered to the local residents. To gain a deep insight into the issues affecting these people, focus group discussion were conducted with groups of females, landlords and tenants in these settlements.

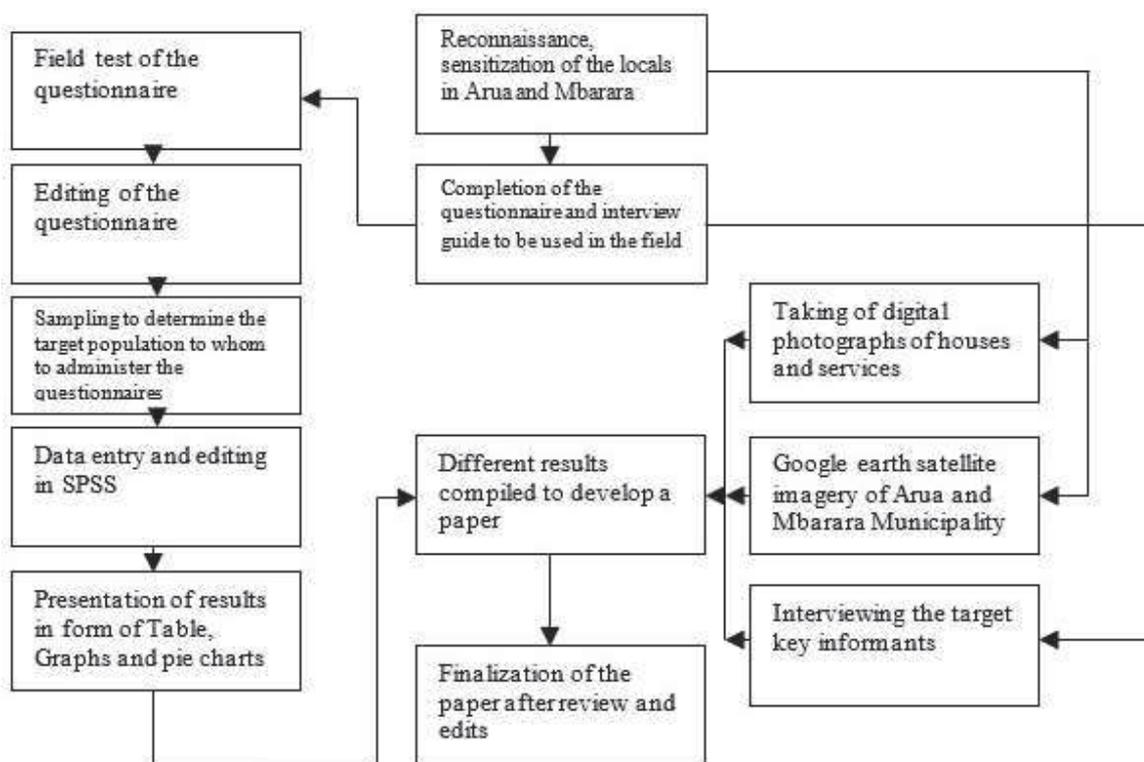


Figure 1: The flow of the Methodology used

### 3.0 RESULTS AND DISCUSSIONS

#### 3.1 Evidence of Better Spatial Ordering on Titled Land

In each municipality, some areas were observed to be more orderly and better spatially organized than others. For example in Mbarara Municipality, Kamukuzi area, which is a predominantly residential area under leasehold and freehold tenure was found to be more spatially organized than Kisenyi, a residential area for the poor under customary tenure Figure 2. Kamukuzi is located on a gentle hill while Kisenyi is located in a swampy valley within Mbarara Municipality. A further disparity was observed in plot sizes, which in the case of Kamukuzi were properly and neatly fenced off. The plots in Kamukuzi appeared larger in size; the observed houses were more beautiful, bigger with large and well maintained compounds. A second example where disparities

in developments is visible is Arua Municipality (Figure 3) in which Arua Hill, a predominantly leasehold residential area is visibly better spatially organized than River Oli, a settlement for the urban poor, where the land is predominantly held customarily.



**Figure 2: (left) Kamukuzi residential area (right) Kisenyi residential area in Mbarara**



**Figure 3: (Left) Arua Hill-titled (Right) River Oli – Customary**

### 3.2 Better Housing Units and Services on titled land

In the two municipalities, the study revealed distinct disparities between informal settlements and other better organized settlements based on the nature of housing structures and services. Houses in informal settlements were very small (one roomed), constructed from inferior materials such as mud/wattle and grass (Figure 4), well as the housing structures in other settlements were larger (one, two or three bedrooms) and constructed with more expensive materials such as burnt bricks, iron sheets and tiles. Access roads in informal settlements were very narrow, dusty and did not serve all the houses. A number of houses did not have access roads reaching them and one would have to wind through footpath, house verandas in order to reach some of the housing units. Other basic infrastructure, such as water and sanitation, electricity and community facilities were found to be sorely deficient, if they existed at all (figure 6).



**Figure 4: Examples of housing structures in informal settlements**



**Figure 5: Examples of Houses in informal settlements**



**Figure 6: Poor Sanitation facilities in urban poor settlements**

### **3.3 RESULTS FROM THE SURVEY**

To assess the nature of houses in the urban poor settlements, respondents were asked to describe the kind of houses they were living in. The information was further verified through observation. The majority of the respondents (39%) possessed houses made of mud and wattle – thatched with iron sheets while others (15%) were living in houses built from unburnt bricks. Only 29% lived in permanent houses with burnt bricks and thatched with iron sheets. Only 29% lived in permanent houses with burnt bricks and thatched with iron sheets. Figure 4 shows examples of some of the houses observed in the settlements. Regarding services and facilities, respondents were requested to give their opinion on the adequacy of selected services provided in their settlements. The selected services included water, electricity, roads, education facilities, medical facilities, drainage, garbage collection points and toilets/pit latrines. The responses are summarized in Figure 7. From the results, garbage collection, drainage and electricity came out as the most outstanding problems for the urban poor settlements. These problems are largely associated with lack of planning. The poor state of these services is demonstrated in Figure 6.

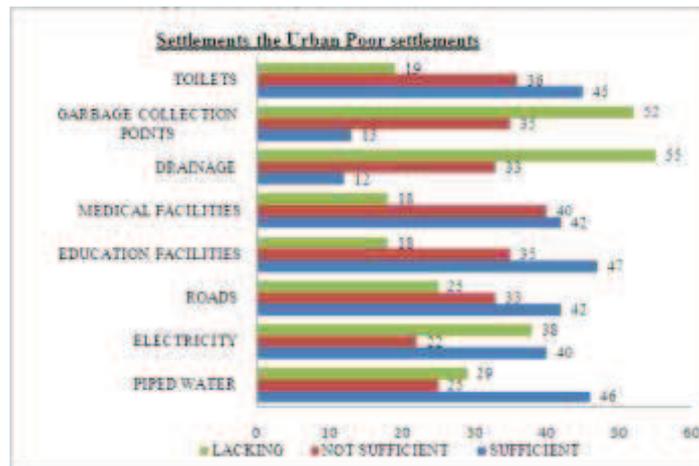


Figure 7: Satisfaction levels on the provision of services

### 3.4 DISCUSSION

In the two municipalities, it is clear that most of the better planned areas were located on titled land (leasehold and freehold) while most of the disorganized settlements were located on customary land Gidding (2009) , in the land market study for Kampala argues that failure by urban councils to enforce minimal planning standards has led to chaotic, unplanned land development, the inefficient use of ever-scarcer land, the occupation of environmentally fragile areas and the formation of large, poorly-serviced slum areas.

In this study, we concur that the disorganisation and chaos observed in the urban settlements for the poor is essentially as a result of lack of planning or lack of enforcement of plans by the urban authorities. This may not be directly related to land tenure types as there is always a requirement for government to approve any development or building plans before implementation, and this should not depend on land tenure. However, in Uganda, there is a requirement to provide proof of land ownership before building plans can be approved by the urban authority and this is where issues of land tenure come into play. Land owners on customary land where the ownership is not properly documented may not easily acquire planning permissions and hence end up acting in the informal sector (Nkurunziza, 2008). Furthermore, some land tenure systems such as mailo and customary are not perfectly individualised since they hold overlapping multiple interests. Security of tenure may lead to fear of eviction which will in turn lead to investments of a short term or temporary nature. Respondents complained of high standards for the requirements to have building plans approved. Many of the requirements were considered to be time consuming, unclear, prohibitive and extremely expensive to the urban poor. With meagre financial resources, but in need of basic housing, the remaining logical alternative for the urban poor is to take a risk of constructing a low cost housing unit without following the formal procedure. The biggest risk as perceived by the urban poor was demolition of their houses during or after construction and prosecution in courts of law (Kombe and Kreibich, 2000). However, because of corruption and weak enforcement mechanisms, the urban dwellers would find ways of minimising the risks. On the other hand, it was established through informant interviews that the middle class were not more likely to take a risk of development without legal land ownership documents and approved plans because the size of investments was in most cases relatively large. In case the funds for housing construction were to be borrowed from financial institutions, a formal procedure was mandatory, as a precondition for financing (Olima and Obala, 1998). As a result of the constraints explained above, the nature of developments on

customary land included mainly semi-permanent and temporary structures used for residential purposes.

Commercial premises on customary land included small scale businesses such as stalls and make-shift village markets. On the contrary, freehold and leasehold land was mainly occupied by high value permanent buildings for residential purposes and multi-storeyed buildings for commercial purposes. In the order of ranking, the most developed and planned land tenure was leasehold followed by freehold and customary. The explanation for this trend is probably because leasehold tenure sets conditions which, if not adhered to may lead to loss of the lease offer and associated land rights. Therefore leasehold tenants ensure that all processes and planning standards are complied with so as to avoid the heavy penalties associated with noncompliance. Freehold tenure on the other hand gives the owner a sense of perpetual ownership which may sometimes become a dis-incentive to planning compliance (Schwartz, 2008). Since the urban council does not own the land, the level of control on use may not be as good as in the case of leasehold where the urban council owns the land. Planning for common facilities such as garbage collection areas, drainage, access roads, becomes complicated when land does not belong to urban council (Nsiah-Gyabaah, 2005). Finally, customary tenure limits development because the land is not documented and hence not available for planning. More so, some customs such as those prohibiting sale of land outside the clan do not promote maximum utility of land.

#### **4.0 CONCLUSIONS**

Settlements for the urban poor in Uganda are predominantly under the customary land tenure system. Areas outside the informal settlements have land on leasehold, freehold and Mailo, most of the land holding businesses is on leasehold, religious and educational institutions on freehold. Titled land under both the leasehold and freehold tenure has developments that are more orderly and spatially organised compared to the untitled land under customary land. Buildings on titled land are large and made of quality materials compared to the small (one roomed) sized buildings on untitled land that are made of inferior building materials. Customary tenure does not encourage record keeping except for some areas where certificates of customary occupancy have been issued which makes the resolution of disputes and the approval of building plans difficult. In freehold, land is held in perpetuity and a title is issued thus resolution of disputes and the approval of building plans is easier. On leasehold land the lessor attaches conditions to the leases and the lease can be revoked in case of abuse hence orderly developments are most on such land. These tenures are however very expensive to get and the slum dwellers cannot afford land in this tenure. Land under customary ownership has semi-permanent buildings because of the tenure insecurity on such land as the owners have no proper documentation to show ownership. Buildings on leasehold and freehold are permanent and large sized made from standard material due to the tenure security on such land as the owners have titles over the land.

#### **5.0 RECOMMENDATIONS**

An inventory should be carried out on customary land to assert the landlords in the settlements so that this could be used as evidence enough to grant such owners building permission. Over a long term these should be encouraged to formalize their land converting it to either leasehold or freehold. Community planning should be encouraged so that the people can voluntarily avail land for the provision of the services compared to the forceful evictions with little compensation given

to the people affected. The most outstandingly lacked services are the garbage collection points and the drainage facilities which could be handled first due to limited finances that are available.

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