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**Land Policy and the Evolving Forms  
of Land Tenure in Masindi District, Uganda**

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## Land Policy and the Evolving Forms of Land Tenure in Masindi District, Uganda\*

### Introduction

This paper examines the evolution and the nature of the current forms of land tenure in Masindi District and the extent to which these forms impair or facilitate positive socio-economic changes. Such an examination is vital in light of the fact that there exists no convincing empirically grounded studies on the impact of the official land policies on the relationships between forms of land tenure, social structure and agricultural production. Of particular concern is the impact of the 1975 Land Reform Decree which is but the most radical and perhaps far reaching piece of legislation in Uganda's post-independence history. The 1955 East African Royal Commission Report recommended the individualization of tenure as the most ideal form of tenure for socio-economic development. The colonial government accepted the proposals and drew out a programme for land titling.<sup>1</sup> In many areas of Uganda these land tenure proposals were rejected; in Teso and Lango there were even riots.<sup>2</sup>

Since this was a time of African Nationalist Movement for independence, the colonial state became cautious about the programme of individualization of tenure. This fact is clearly reflected in the initial approach, of testing first the waters via pilot schemes of land registration in Kigezi, Ankole and Bugisu.<sup>3</sup> Even the World Bank that prepared a blueprint for Uganda's economic development was cautious: "in the short run, changes in the system of land tenures should be modest and largely based on modifying rather than altering the fundamental structure of the land system".<sup>4</sup> For this reason the power over land was left in the hands of the District/Kingdom land Boards by the 1962 Public Lands Act that converted crown land into Public land. The drawback of the 1962 Public Lands Act, however, was that it did not give

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<sup>1</sup> These proposals were contained in Land Tenure Proposals, Government Printer, Entebbe 1955.

<sup>2</sup> See Uganda Parliamentary Debates, Hansard Series, Volume 88 1968-1969, p.440; Abraham Kiapi, "Legal Obstacles to Rural Development in Colonial Uganda", Mawazo Vol. 4 No. 3, 1975, p.105; James Obol-Ochola, "Customary Land Law and Development of Uganda" University of Dar-es-Salaam, LL.M. Dissertation 1971, p.113.

<sup>3</sup> S.Okec, "Pilot Schemes for the Registration of Land Titles in Uganda" in James Obol-Ochola (ed.) Land Law Reform in East Africa, National Trust, 1970.

<sup>4</sup> Quoted in James Obol-Ochola, *ibid.* p.135.

\* The views expressed in this paper are those of the researcher

ceiling on the amount of land an individual could "individualize".<sup>5</sup> By 1968 it was sufficiently obvious that a process of grabbing and enclosing of land was gaining momentum.<sup>6</sup>

The 1969 Public Lands Act limited the amount of land that could be acquired by an individual to 500 acres, beyond which the consent of the Minister had to be sought.<sup>7</sup> In addition, the act provided that no one wishing to lease land containing "customary" tenure peasants could evict them before they consented and thereafter compensating them. The 1975 Land Reform Decree changed all this; it was primarily aimed at removing the last obstacles to "individualization" of tenure. The Decree in, other words, was aimed at uprooting once and for all the foundations of "customary" tenure:

The power of the customary tenants to stand in the way of development by refusing grants of lease to persons who are most able to develop the land, has been abolished. Where a particular piece of land must be developed in a particular way, the tenants occupying that land will be asked to move away to enable the planned development to take place.<sup>8</sup>

The principal argument of the paper is that the 1975 Land Reform Decree(LRD) rejuvenated the evolution of landlord tenure that the land laws of the 1920s and 1930s sought to prevent. Although on paper the motive was to create capitalist (individual) tenure in practice it led to landlordism. The very evolution process of this tenure reduced the land of the so-called "customary tenure" under which the majority of the producers operate. The conversion of

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<sup>5</sup> "The major weakness of that bill, however, was that it did not put any absolute limit on the amount of land that could be acquired in freehold". See Selwayn Douglas Ryan, "Uganda: A Balance sheet of the Revolution", *Mawazo*, Vol. 3 No. 1, June 1971.

<sup>6</sup> See the Uganda Parliamentary Debates, *Hansard Series*, Volume 88, 1968-1969. For example, in this debate there were accusations of some of the members of the bureaucracy of grabbing and enclosing land. Ojera speaking in Parliament said: "I will be speaking at later date, perhaps this evening and I will expose that there are land grabbers today in Uganda. We have already seen in some Districts where people have misused their powers given to them as Land Committees to grant land to individuals such as the one who is speaking now at the expense of the ordinary man who does not even know the value of land titles. We have seen people in some districts who have actually got as much as ten thousand acres of land. In some of these areas they have included other common men who are supposed to be squatters in their own land to be tenants, and certainly government will not allow this sort of thing to go on." That was on February 26, 1969.

<sup>7</sup> Although, the powerful ministers, civil servants, etc, could still end up with more than 500 acres by registering different tracts of land under the names of their spouses, brothers, relatives, etc.

<sup>8</sup> .File Lan 75, "The Land Reform Decree 1975", Hoima District.

land from "customary tenure" to landlordism was characterised by conflicts and multiplied insecurity of tenure among the majority of the producers who happen to survive on the basis of "customary" tenure. Through a twin process, that of direct conversion of land from customary tenure and population pressure partly arising from diminishing land resources for the majority of the rural dwellers, new social categories evolved with time, namely the landless (those who absolutely have no access to land), squatters and tenants. In other words there has been a process of land concentration among a few and the marginalisation and the rise in inequalities among the majority. At the same time, the expansion of landlordism has led to ecological resurgence as the unused lands of the landlords harbour wild game and tsetse flies which are hazardous to crops and health of the neighboring peasant producers. And it has also led to ecological destruction as those without adequate pieces of land and the landless cut trees indiscriminately for charcoal business. In terms of agricultural production these processes are partly responsible for the non-expansion/improvement of agricultural production.

We have organized this paper in five parts. Section one highlights the empirical and theoretical shortcomings in the manner in which the land question has been perceived and articulated in Uganda. Section two outlines the historical evolution of land tenure in Masindi district focusing particularly on the essential elements that inform our empirical findings in Kahara and Kitongozi villages. Section three demonstrates the forms of land tenure, the inequalities in rights to land within households and across social strata/classes, and how in turn this set-up leads to further land concentration and further impairs or facilitates agricultural transformation or stagnation. In section four, the forms of land conflict and the institutional framework for conflict resolution are discussed. In section five, we draw conclusions and make recommendations for a possible land reform.

The empirical data was collected during the fieldwork in Kitongozi village in Kiryandongo sub-county, Kibanda county in July 1991 and in Kahara village in Miirya sub-county, Buruli county in May 1991. This was supplemented by material from secondary sources in Masindi, Hoima and Entebbe archives as well as the various libraries in Kampala.

## **1. Empirical and Theoretical Issues in the Land Debates in Uganda**

The debate on land issues can, for simplicity, be categorized into two schools, the "individual" and the "customary". The former argues that lack of socio-economic transformation is due to the persistence of the so-called "customary" tenure, and the solution being "individual", sometimes equated to capitalist, tenure. All the post-World War Two land legislations were geared

towards individualization, though as explained earlier, "customary" tenure was tolerated for political expediency. Proponents of the "individual" school, therefore, welcomed the enacting of the 1975 Land Reform Decree. Khiddu Makubuya, for instance, went as far as saying that "opinion is practically unanimous that to date customary tenure has been one of the basic hindrance to socio-economic development of Uganda". He pointed out to policy makers that "the process of abolishing customary tenure that is initiated by the Land Reform Decree should be carried forward, completed and all loopholes still remaining be closed".<sup>9</sup> How does "customary" tenure hinder development?

The criticism against "customary" tenure was/is essentially the following: first, that there is insecurity of tenure because land is collectively owned and, therefore, it is impossible to acquire loans from the bank. Secondly, because land is collectively owned there is a tendency to misuse the land resources via irrational husbandry techniques such as shifting cultivation/grazing which are inefficient and uneconomic way of land use. Finally, the inheritance customs lead to fragmentation and, therefore, the rise of uneconomic pieces of land.<sup>10</sup>

On the other hand, "individual" tenure is strongly advocated for because it is believed that it offers security of tenure and, therefore, incentive to invest in better agricultural and husbandry techniques. Second, it allows mobility of land resources from the inefficient farmers to the efficient ones via a land market. Thirdly, it offers opportunity to the owner to acquire loans from banks as individualized land serves as a collateral security.<sup>11</sup>

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<sup>9</sup> Khiddu Makubuya, "Land Law reform and Rural Development in Uganda" in Apolo Nsibambi and James Katorobo (eds.) Rural Rehabilitation and Development, Proceedings of the Conference on Rural Rehabilitation and Development, September 14-18, 1981 p. 323.

<sup>10</sup> See Abraham Kiapi "Legal Obstacles to Rural Development in Colonial Uganda." *Mawazo* Vol. 4 No. 3 1975, p.104; Irving Gershenberg, "Customary Land Tenure as a constraint on Agricultural Development, A Re-Evaluation", *East African Journal of Rural Development*, Vol. 4 No. 1 1971; James Obol-Ochola, "Customary Land Law and Development of Uganda", University of Dar-es-Salaam, LL.M. Dissertation, 1971; James Obol-Ochola (ed.) *Land Law Reform in East Africa*, National Trust, 1970; Chango Machyo W'Obanda, "Communal Land Tenure and Rural Development" in Proceedings of *Mawazo* Workshop on the theme "The Agrarian Question in Developing Countries", February 10-12, 1984.

<sup>11</sup> "Individual tenure" school merely repeated the recommendations of the East African Royal Commission (1955) and the World Bank (1962). The World Bank mission argued that "the creation of the concept of private ownership of land in Buganda has aided that province in its development. Security of tenure has facilitated investment, particularly coffee, and the creation of a land market has discouraged the use of valuable land for subsistence purposes. In addition, the mission believes that the right to own land into negotiable asset has assisted in the emergence of groups of producers who are commercially oriented and are beginning to specialise in production for the market".

Counteracting the "individual tenure school", advocates for "customary tenure", argue that "individualization" was undemocratic and alien to the African traditions. Obol-Ochola was quite explicit that "customary" tenure was the "common man's system of land holding" and fitted with the doctrine of "Move to the left" which emphasized social and economic justice.<sup>12</sup>

Let us examine the merits of these arguments. To begin with, the concept "customary tenure" has been and continues to be used merely as an ideological concept by both schools. This is because both schools continue to view "customary tenure" in terms of what it is not and not what it is. In other words "customary tenure" is not the "individual tenure". There has been little attempt to explore the contents of customary tenure in terms of who controlled access to land, the rights of the producers, etc. The effect has been to paint a misleading picture that rights in land under "customary" tenure were uniform across societies in Africa. Yet, a careful reconstruction of the evolution of tenure in Uganda will reveal, for instance, that before colonialism land tenure in Buganda exhibited tendencies towards landlord tenure while in northern Uganda there existed communal, relatively egalitarian clan tenure. With the introduction of commodity production these "customary tenures" underwent a change and it is wrong to continue calling these tenures customary. What even makes the usage of the concept customary tenure more ideological is the failure to investigate the dynamism in "customary tenure", for instance, in the changing rights to land. If the rights of access to land under customary tenure are no longer applicable today there is no justification of continuing to call that tenure as "customary". For instance, we discovered in Kahara village that what these schools continue to call "customary" tenure is characterised by two types of tenure - the *Kibanja* tenure where by the rights of access are usufruct on state-owned land, and landlord tenure whereby state-owned land is controlled by landlords and access to it by the land hungry is conditional to their surrendering part of their resources (rents) to the landlord. While it is true, for example, that Obol-Ochola did note that "customary" tenure was undergoing transformation, his empirical investigations were only focused on the reform sector - the Kigezi Pilot scheme and the *Mailo* land. No attention was given to the dynamics in the non-reform sector (the "customary" tenure) nor was an effort made to understand the relationships between the reform sector and the

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<sup>12</sup> James Obol-Ochola (1971) "Customary Land Law and Development of Uganda", University of Dar es Salaam LL M. Dissertation, p.3 and p. 17; Chango Machyo W'Obanda, "Communal Land Tenure and Rural Development" in Proceedings of *Mawazo* Workshop on the theme "The Agrarian Question in Developing Countries", February 10-12, 1984.

non-reform sector and how, in turn, these changes affected security of tenure and production.<sup>13</sup>

Arguments by advocates of "customary tenure" were premised on the assumption that "equality and customary tenure" were synonymous. These advocates drew their inspiration from the "African socialist" school of thought that viewed social processes in Africa as being timeless. Thus Africa was egalitarian with no classes. Yet given the fact that various societies were at different levels of social development before colonialism, there existed also different structures of authority that controlled access to land and unequal rights to land. The development of capitalism under the aegis of the colonial state triggered off uneven development among regions and also had unequal impact on the "customary tenure". This means that the economic justice and the democracy bestowed on to the customary tenure is an ideology. Furthermore, there was little attempt to examine relationships internal to households. For instance, the democracy alluded to by the "customary tenure" school was indeed a democracy of the men and not the women or the youth.

Interestingly, the virtues of "individual tenure" have not been tested against empirical evidence. There, indeed, has been little investigation to test the alleged merits of individual tenure. Where it was done there have been methodological and theoretical problems. For instance, the attempt by Nsibambi to examine the relationships between the landlords and the tenants in Buganda after the 1975 Land Reform Decree was marred by methodological and theoretical failings. His respondents were only tenants and no landlords were interviewed. Tenants were asked questions such as whether their landlords were good to them or not. There were no questions that sought to investigate the material basis of social relations and the conditions that governed the tenants' continued access to land. In overall terms the conclusions were biased.<sup>14</sup>

The same can be said of the most recent study on land tenure undertaken by the MISR-Winsconsin team. The study had obvious shortcomings: the methodology was empiricist and the conclusions were not derived from the study.<sup>15</sup>

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<sup>13</sup> James Obol-Ochola, (1971) "Customary Land Law and Development of Uganda", University of Dar es Salaam LL.M. Dissertation.

<sup>14</sup> Apolo Nsibambi, "From symbiosis to Antagonism: The Case of the relationship between the Landlord and the Tenant in the Rural Development of Uganda" in A. Nsibambi and James Katorobo (eds.) Rural Rehabilitation and Development, Sept. 14-15, 1981, Vol. 1.

<sup>15</sup> "Land Tenure and Development in Uganda", MISR-Winsconsin, 1989. For a comprehensive critique of the methodology employed in the MISR-Winsconsin Study see Ddungu Expedit, "A Review of the MISR-Winsconsin Land Tenure Centre Study on Land Tenure and Agricultural Development in Uganda", CBR Working Paper No. 11.

Perhaps the absence of valid empirical investigation is due to an assumption about land issues in Uganda in particular and Africa in general. This is that land in Africa continues to be plentiful *vis avis* the population implying an absence of a land problem. This assumption lead to the failure to see a process of land inequalities spurred by factors other than population. In the 1980s Goran Hyden was to argue that land is plentiful in Africa and that this very fact precludes the "capture" of peasants by the state and to produce for the market.<sup>16</sup> Because land is not a commodity and it is abundant, there was no prospect for increasing production and innovation, and no social differentiation could take place. This "uncaptured peasants" theory was indeed a misreading of the state-peasant relationships. Whereas land may be plentiful *vis a vis* the population, Hyden ignored the possibility of the state enacting legislations that lead to the enclosure of fertile land into landlordism and, therefore, precluding any innovation and expanded production. Alternatively, there was no understanding that powerful social groups can disinherit peasant producers as happened in Kenya at the turn of this century. This is besides the fact that "customary" tenure like any other form of tenure is dynamic; through contradictions within, "customary" tenure can change giving rise to a market in land and inequalities in access to land.

Besides, the acknowledgement that inheritance laws can lead to land fragmentation should sensitise us to the fact of inequalities since fragmentation goes with land concentration, increasing inequalities and a decline in the productivity of the economy.<sup>17</sup> As it will become obvious in this paper, there has been a process of distress land sales that feed into rural inequalities as well as an enclosure movement.

Since both the "customary" and "individual" schools could not visualize or correctly foresee social differentiation, they could not give attention to the implication of social differentiation on relationships within a household particularly the issue of women and youth's access to land. Particularly with the "individual" school, this shortcoming is reflected in its analysis that does not go beyond the legal forms. The question is, 'What is the essence behind the "individual" tenure?' Obol-Ochola defined individualization of tenure as being a process whereby "a person or a group of family being able to register or

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<sup>16</sup> Goran Hyden, *Beyond Ujamaa in Tanzania: Underdevelopment and the uncaptured peasantry*, London, Heinemann Education Books Ltd., 1980. For a critique see Nelson Kasfir, "Land and Peasants in Western Uganda: Bushenyi and Mbarara Districts" in Holger Bernt Hansen and Michael Twaddle, *Uganda Now: Between Decay and Development*, James Currey Ltd., 1988.

<sup>17</sup> While it is true that Obol-Ochola acknowledged the fact that "throughout Uganda there is a visible trend towards individual tenure" he at the same time contradicted himself by continuing to call that change as "traditional" or "customary".

record freehold title to the land held customarily by the person or the group".<sup>18</sup>The fact that a person or group of persons can hold land as "individual" tenure immediately sensitizes us to the need to go beyond the legal form and analyze the dynamics behind the "individual" tenure. For whether a particular land under "individual" tenure will be utilized well or not, or be used to acquire loans, is dependent on the nature of the politics or democracy in a given household or a group of households. For example, in Kenya there was demarcation and registration of group ranches among the Masaai.<sup>19</sup> Results show that not only have the leadership used the ranches for their private gain but also there is no significant march towards improved productivity of the range lands. Our main point here is that an analysis that does not go beyond the form fails to capture the vulnerable social groups in our society, namely the women and youth, and to realize that their marginalisation as key producers in agriculture has serious implications for agricultural development and industrialization.

Another serious weakness is reflected in the failure to analyze land tenure issues within the historical, socio-economic and political contexts as if land tenure is not a product of the historical processes or as if land tenure is the only factor that makes crops grow. At the extreme, discussions under this perspective are so simplistic and sometimes a reflection of groundless ideological postures.<sup>20</sup> The basic shortcoming of the "individual" school was that it could not see the life of "customary" tenure in relation to the development of "individual" tenure.<sup>21</sup>

The crisis of "customary" tenure was instead seen as resulting from irresponsible reproduction instincts of the producers and management of resources. The "reproduction" explanation was in the mainstream of the Malthus population explosion theory: unrestrained population expansion was soon to overtake the resources in the "customary" tenure and lead to environmental degradation (soil erosion, climatic change, etc.) and land

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<sup>18</sup> James Obol-Ochola, "Ownership of Land in African Customary Tenure" in James Obol-Ochola, *Land Law Reform in East Africa*, 1970, p. 36.

<sup>19</sup> Robert K. Davis, "Some Issues in the Evolution, Organisation and Operation of Group Ranches in Kenya", *East African Journal of Rural Development*, Vol. 4 No. 1 1971.

<sup>20</sup> See Apolo Nsibambi, "The land question and conflict" in Kumar Rupesinghe (ed.) *Conflict Resolution in Uganda*, International Peace Research Institute, Oslo, 1989. See also an evaluation of a seminar on Land Law Reform in East Africa sponsored by the Milton Obote Foundation, held at Makerere University College from June 10th to 19th 1968. Delegates came from Kenya, Tanzania and Uganda. See Beverly Brock, "Customary Land Tenure, "Individualisation" and Agricultural Development in Uganda", *East African Journal of Rural Development*, 1968 1 (1), p. 1.

<sup>21</sup> W. Daniel Bromley, "Property Relations and Economic Development: The Other Land Reform", *World Development*, Vol 17 No. 6, 1989.

fragmentation.<sup>22</sup> The "management" theory, the so-called the "tragedy of the commons" was based on the assumption that common property systems must always result into irresponsible use of land resources by the members.<sup>23</sup>

The evidence in this paper shows that population increase is a secondary factor in the crisis of the non-individual tenure. The primary factor is the evictions and crowding of many peasants into marginal lands or transforming them into squatters. This seems to be a nation-wide trend. Jarson Clay attributes the eviction of the Banyarwanda in the 1980s to a process whereby the Ankole-Masaka Ranching scheme ate up communal lands.<sup>24</sup> This was confirmed by the Mugerwa Commission which in its report noted that "government-sponsored ranching schemes occupy a large area of the savannah land. This leaves traditional cattle keepers with inadequate area available for their cattle which constitute the largest portion of the national herd...At the same time much of the remaining adjacent public land has been unsparingly, and in some cases irregularly, leased to individuals some of whom have made no effort to develop it".<sup>25</sup> The same story was recorded by Mahmood Mamdani with respect to Karamoja.<sup>26</sup>

In turn the reduction of land resources available to the so-called traditional cattle keepers led to overgrazing well publicized for Kyaka, Nakivale and Nyabushozi in Mbarara districts, Rakai District, Karamoja, etc. With the advent of the land reform decree this marginalisation is continuing to lead to conflicts that assume nationality (tribal) or racial face. The best example being the grabbing of land by party officials and bureaucrats under the cover of chasing away foreigners (the Banyarwanda).<sup>27</sup>

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<sup>22</sup> World Bank quoted in Gavin Williams, "Modernizing Malthus: The World Bank, Population control and the African Environment". Paper presented to the International Meeting on Population Movements, Food Crises and Community Responses, New Delhi, India, 11-13 January, 1992.

<sup>23</sup> See W. Daniel Bromley, "Property Relations and Economic Development: The Other Land Reform", *op. cit.*

<sup>24</sup> Jarson W. Clay, *The Eviction of the Banyarwanda: The story behind the refugee Crisis in South West Uganda*, Cambridge, Cultural Survival Inc., August 1984.

<sup>25</sup> Report to the Uganda Government, *The Commission of Inquiry into Government Ranching Schemes*, Government Printer, Entebbe, 1987.

<sup>26</sup> Mahmood Mamdani, "The Karamoja Famine" in Apolo Nsibambi and James Katorobo (eds.) *Rural Rehabilitation and Development, Proceedings of the Conference on Rural Rehabilitation and Development*, September 14-18, 1981.

<sup>27</sup> In a way this trend can be likened to the crisis of labour reserves/Bantustans in settler colonies whereby the bulk of land was given to European settlers and the majority of Africans were crowded into uneconomic labour reserves. As the population increased so did the labour reserves/Bantustans became less and less viable. Environmental degradation, productivity decline and starvation set in. The crisis of the reserves was not because of population explosion but that most of the land had been taken away, leaving very little marginal lands for African

Besides, abuse or misuse of land resources is not a curse confined to "customary" tenure. The so-called modernisation schemes that usually are conceived under "individual tenure" are well known for leading to environmental damage characterised by elements such as soil erosion, deforestation, etc. As we shall show later in Kahara, land owned by landlords is experiencing rapid deforestation because of allowing charcoal burning by individuals for a certain amount of rent. Since the individuals have no objective interest in the future tree needs they cut the trees indiscriminately. Neither is fragmentation an inherent problem of "customary tenure" or bedevilling customary tenure alone. Fragmentation occurs in "individual tenure" as well. If "mailoland" in Uganda was the epitome of "individual" tenure as the World Bank argued, A. B. Mukwaya had documented way back in the fifties the fragmentation of "*mailo* land" through inheritance and land sales.<sup>28</sup> In other words even with individualized tenure, fragmentation is always a potential possibility. Moreover, fragmentation is a product of the inheritance laws/customs or in some situations is consciously encouraged as a way of spreading risks of crop failure.

The "individual" tenure school further misunderstood "customary tenure" as being characterised by insecurity which in turn acted as a disincentive to production. It praised "individual" tenure as a conducive foundation for the development of a land market, security of tenure and improved agricultural and husbandry techniques. This premise has serious empirical and theoretical problems. First, our finding in the 1990s, particularly in Kahara village, contradict some of the arguments by the "individual" tenure school. A land market has developed, although transactions are usually disguised as sale of a banana plantation or cassava garden.

Second, security of tenure has always been a political question first. There is no tenure that is inherently characterised by insecurity. If "customary" tenure is characterised by insecurity it is fitting to find out how and by what forces was that insecurity caused. Let us take the example of the Butaka (clan) tenure in Buganda as perhaps an example of "customary" tenure. After the *Mailo* land awards, this clan tenure was threatened by the changes that came with colonialism. Much of their land was taken up into *mailo* land. The insecurity of the so-called customary tenure was created, it was not inherent. Besides the nature of insecurity varies across time and space. It is dependent on

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use. See H.W.O. Okoth-Ogendo, *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya*, ACTS Press, Nairobi, 1991; Tabitha Kanogo, *Squatters and the Roots of Mau Mau 1905-1963*, James Currey, London 1987.

<sup>28</sup> A.B. Mukwaya, *Land Tenure in Buganda*, Kampala, The Eagle Press, 1953.

the forces clashing at the time. It can only be captured through empirical research.

Third, and more important, "individual" tenure can exist in various pre-capitalist settings, for example the feudal system. But in a feudal setting it takes a long time characterized by class struggles before "individual" tenure can lead to incentives to produce for the market. In fact "individual" tenure under feudal social formations is an impediment to improvement and/or expansion of agriculture. This fact can be illustrated by drawing on the Ugandan experience. The abolition of the clan (*Bataka*) ownership of land by the Buganda Agreement of 1900 and the creation of private *mailo* land led to economic decline and political instability. Economically, *mailo* land led to the development of the landlord-tenant relations that were to become one of the principal factors behind the decline of cotton production in Buganda. Politically, *mailo* land led to a tenant movement (the *Bataka* Movement) agitating for a land reform in their favour. That historical experience is usually ignored by those advocating for "individual" tenure. Yet the lessons from that experience are becoming more and more relevant today as fertile lands are daily being enclosed by landlords.

"Individual" tenure was further deemed to be a sound basis for production for the market, innovation and acquisition of loans from banks. These assumptions are based on a misreading of the evolution of social and economic structures. First, the issue is not simply producing for the market but how much income the producer gets from selling his products. Second, not all individuals who sell or participate in the commodity markets do so because they have surplus. The poor usually sell because of social crises such as sickness - distress sales. Third, the social composition of the commodity markets and the extent of state intervention determines the amount of incomes producers get which in turn determines the possibilities and limits to innovation and expansion in agriculture. Besides production for the market is dependent on a host of other factors than land tenure; namely the availability of good feeder roads, adequate instruments of labour and marketing, the cost of transport, the level and forms of taxation (amount of cash, *'Bulungi Bwansi'*), etc. Both "individual" and the so-called "customary" tenure can produce for the market if the social, economic and political incentives exist.

Though proponents of "individual" tenure such as Khiddu Makubuya can argue that unanimous opinion exists that "individual" tenure is most preferred, they do not show empirically the extent to which individual tenure has contributed to development. To begin with, it is clear that most of the individuals who leased land were more of politicians than farmers. The Mugerwa Commission, for instance, leaves no doubt that the ranches were "allocated to anybody who was highly placed in government, relatives and friends although he would not have qualified for a ranch... Many allocates were

not genuine farmers" at best they were "telephone" ranchers. This fact is reflected in the cattle production figures. "Individual" lease tenure contributes a mere 5 per cent of the national cattle as opposed to "customary" tenure whose contribution is as high as 95 per cent.<sup>29</sup> Thus it is clear that beneficiaries of the "individualization" of land tenure were not the true productive, innovative capitalists but a social class that can rightly be termed as rentier class. It is rentier because it thrives on rents in the form of subsidised agricultural inputs, prison labour/cheap labour and free government vehicles. The limited production by those who owned land on the basis of "individual tenure" was grounded on rents extracted from the majority of the producers in the form of subsidized inputs and privileged access to marketing and transport. In no way can this group be classified as true capitalists. Our findings show that the official "individualization" policy led to landlordism and agricultural stagnation and not innovation and improved agricultural production.

Proceedings of the workshop on mechanization made a revealing observation that, for instance, "shifting cultivation" continued even with those farmers who had adopted the use of tractors and other modern agricultural technologies.<sup>30</sup>

At the same time our findings show that, after all, the non-reform sector, the so-called "customary tenure", has been the most dynamic form of tenure and that investment, innovation, etc, are possible as long as it is profitable to do so. The failure of the "customary" tenure to innovate or expand production is because of the continuous loss of resources: land and social surplus. There has been massive alienation of land and the evolution of a squatter population as happened in Kiryandongo with the creation of the "ranches". This has also led overcrowding in "customary" area as the population increased in the context of non-expanding or diminishing land resources. The social surplus has been captured at the level of the state to subsidise the "individual" tenure in terms of extension service, agricultural inputs, etc,.

The notion that "individual" tenure provides security of tenure to acquire loans from banks to improve productivity/production is contradicted by practical experience. Land titles (security) is not the paramount and single factor that influences banks' decisions to lend money. Usually it is forgotten that land must be in a strategic place where its value can attract buyers in case the borrower defaults. It is also never understood that the real situation in

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<sup>29</sup> Report to the Uganda Government, The Commission of Inquiry into Government Ranching Schemes, Government Printer, Entebbe, p.14 and p. 45.

<sup>30</sup> L. Joy, "Some Generalisations about Social and Economic Factors Affecting the Success of Farm Mechanization Applied to Uganda" in J.L. Joy (ed.) Symposium on Mechanical Cultivation in Uganda, Department of Agriculture, Uganda. 1960, p.145.

Uganda is such that loan procurement has mainly been based on the individual's political connection or willingness to surrender a big fraction of the loan to corrupt bankers who do not contribute to the re-payment. Furthermore, most of the borrowers find it exceedingly rational to invest borrowed money in trade or transport. An individual can acquire a loan on the pretext that he/she is going to invest it in agriculture. In practice the borrower knows that this would be suicidal as he would lose the money and become indebted to the bank and lose the very land he/she mortgaged. To be on a safe side the "agricultural" loan is invested in trade where the profits are higher and the turn over is faster. In 1966 43.5 per cent of loans went in commerce, 28 percent to import expansion industries and 8 per cent to agriculture, the marketing of agricultural products.<sup>31</sup> A 1985 report by the Agricultural Task Force on crop finance discovered that the total banks lending to the agricultural sector in the 1982-1983 season was 44 per cent of the total lending. Crop finance as a proportion of lending to agricultural sector averaged 87.6 per cent.<sup>32</sup>

In the 1960s the colonial agricultural officers criticising the 1955 East African Royal Commission recommendations on land tenure observed correctly that "more loans may be encouraged but sound investments will not necessarily result and little may be achieved for the development of agriculture or the individual borrowers. A large number of failures to repay commercial loans might lead to difficult political and economic problems. Efforts are certainly needed to increase the effective use of credit but the provision of security is only a small part of the answer in Uganda. For the most part, credit provision for mechanization will need to be non-commercial and in these circumstances the need for mortgageable security is not the paramount issue."<sup>33</sup>

In light of the foregoing let us summarise as follows: that a lot of discussion of land tenure issues in Uganda has been simplistic and quite often misleading. Most of the arguments have not been backed by empirical evidence and, therefore, the discussion has not improved on our understanding of land issues in Uganda. The land question has often been deemed as being "customary" tenure versus "individual" tenure when in reality it is landlord tenure versus capitalist tenure. This will become apparent later in the paper. For the moment we shall turn to the historical origins of the current forms of tenure since these very forms are products of history.

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<sup>31</sup> Mahmood Mamdani, *Imperialism and Fascism in Uganda*, Nairobi, Heinemann Education Books, 1983, p. 24.

<sup>32</sup> Bank of Uganda, *Report of the Task Force on Crop Finance*, July 1985.

<sup>33</sup> .L. Joy, "Some Generalisations about Social and Economic Factors Affecting the Success of Farm Mechanization Applied to Uganda" in J.L. Joy (ed.) *Symposium on Mechanical Cultivation in Uganda*, *ibid*, p.145.

## 2. The Historical Evolution of Land Tenure in Masindi District

Masindi District is a political administrative unit located in the western part of Uganda and was formerly part of Bunyoro district. Amin's regime split Bunyoro District into two, giving rise to North (Masindi) and South (Hoima) Bunyoro. After the 1978/9 liberation war, the two districts were re-named Masindi and Hoima.

Culturally, Masindi and Hoima districts are inhabited by the Banyoro who had significantly advanced technologically and socially before the advent of colonialism.<sup>34</sup> A state was in existence deriving resources for its reproduction from extracting rent (tribute) from the population. The tribute was in the form of agricultural produce, artisanal products, and labour for the construction of palaces and for military purposes.<sup>35</sup> At the top was the king (Omukama) and below him was hierarchy of chiefs through whom the authority of the king flowed. But given the undeveloped administrative, physical and monetary infrastructure, state control was seriously circumscribed. Chiefs maintained substantial autonomy and could rebel without any reprisals from the centre. In this situation neither could the state directly control the allocation and actual use of the land nor could private interests develop in land. Although in theory the King was the owner of the land in Bunyoro-Kitara Kingdom, the allocation and use was vested in clans. Before the colonial "wars of pacification" there existed many clans, each living on a ridge. Land on a particular ridge belonged to a particular clan defined as a group of people who believed that they descended from one ancestor. Allocation of land was a responsibility of the clan leader who assumed this role not because he was elected but because of his age.<sup>36</sup>

There were two forms of usufruct rights to land owned by a clan: "individual" and "common" rights. Individual usufruct rights were exercised by an individual household. As long as a given household continued utilising the land, the clan leader had no authority to interfere in the production plans of that household. Individual rights were terminated only and only if the household ceased to cultivate the land or if the members of that household

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<sup>34</sup> See Nyangabyaki Bazaara, "The Food Question in Colonial Bunyoro-Kitara: Capital Penetration and Peasant Response", M.A. Thesis, Makerere University, 1988.

<sup>35</sup> See Nyangabyaki Bazaara, "The Food Question in Colonial Bunyoro-Kitara: Capital Penetration and Peasant Response", *ibid.*; and Nyangabyaki Bazaara, "The State and Social Differentiation in Kakindo Village, Masindi District, Uganda", CBR Working Paper No.8".

<sup>36</sup> See Kosia Kahubire Labwoni, "The Land of Bunyoro" in Land Tenure in Uganda. Government Printer, Entebbe, 1957.

became social outcasts.<sup>37</sup> Only under these circumstances were individual rights to clan lands terminated and the land reverted to the clan for re-allocation. It should be noted at this stage, that women also had usufructory rights within the clan. A woman with a failed marriage could return to the clansmen and be given a piece of land for cultivation. She would have control over the products of her sweat in contrast to women who entered the clan as wives. Although wives could cultivate individual plots, they had no control over the products of their sweat because husbands exercised tremendous powers over products of the wives.

Individual usufruct rights were passed on to the young through inheritance. Bunyoro being a patrilineal society inheritance was through males, most often the eldest son. Women too retained the right to use the land of their dead parents.

The second type of rights to clan land were common usufructory rights. These were rights enjoyed by all clan members for a particular "commons" land. Clan "commons" in a sense that this was the land where any clan member household was free to graze, collect firewood, honey, etc. It should also be noted that the concept "common" here does not mean that "commons" were free access lands. The "commons" were common only to the clan members and not outsiders. Outsiders could only gain access to this land after the express consent of the clan. This point should serve as a reminder to those who argue that land in Africa was and continue to be "free open access". The concept "commons" made sense only within the limits of clan authority and in a situation where the state was in embryonic stages of development or non-existent. For the rise of social differentiation undermines the authority of the clan and strengthens the central authority of the state.

Colonialism set into motion a process that led to the evolution of new types of tenure. Most significant the ownership of land and control over its use changed from the clan heads to the colonial state. In theory, the colonial government could decide any time to switch the ownership and use of a particular piece of land although the evolution of land tenure in Bunyoro was determined by the practical contradictions and resistances to colonialism. On the basis of these contradictions and the solutions that were effected at each successive stage we can categorise the evolution of forms of land tenure into three periods, each period defined by the dominant form of land tenure. 1900-1933, *Obwesengeze* and Bibanja landlord tenure; 1933-1975, *Kibanja* tenure

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<sup>37</sup> John Beattie, *Bunyoro: An African Kingdom*, Holt, Rinerhart and Winston, Inc., 1960; Marvin L. Perlman, "The Traditional System of Stratification Among the Ganda and the Nyoro of Uganda" in Arthur Ruden and Leonard Plotnicou (eds.) *Social Stratification in Africa*, The Free Press, New York Collier-MacMillan Ltd., London, 1970.

alongside growing state and individual lease tenures; and 1975-1991, *Kibanja* tenure and landlord tenures of the lease and non-lease types.

### **2.1 *Obwesengeze and Bibanja* Landlord Tenure, 1900-1933**

When Uganda was colonised at the beginning of this century, it was not clear to the colonisers, which was the most appropriate land tenure for achieving the goals of export raw material production. But at that early date there was a strong feeling that production in Uganda would be based on quasi-capitalist plantation agriculture. In 1911, the colonial state instituted the Sir Morris Carter Commission to consider the appropriate land policy in Ankole, Bunyoro, Busoga and Toro. In between 1911 and 1921, it produced four reports calling for plantation agriculture. But this idea was never fully embraced and was later to be dropped entirely for a number of reasons.

First, the cotton manufacturers thought that raw materials produced on the basis of plantations were expensive and unreliable. The Director of Agriculture who was later accused of being anti-planters noted in 1916 that, "their (planters) presence is helping considerably in developing the country, but the best and safest method of extension is for natives to be encouraged to grow the crops and the Europeans to buy and export them. Natives own the land and can produce the crops at one tenth the cost of one European."<sup>38</sup>

Peasant agriculture was efficient and cheap, "not so much in the technical sense (its methods were inevitably inferior to that of planters) but in relation to costs."<sup>39</sup> It was reliable because in the context of unstable world market prices, peasants were likely to continue production where the planters would not, particularly during price slumps. The economic depression of the 1920s and the lessons from settler colonies proved this reasoning correct.<sup>40</sup>

Second, the expansion of plantation agriculture was bound to lead to massive land alienation and an army of landless who, without an alternative source of livelihood, would become a destabilising factor to colonial rule and could only be controlled at astronomical costs. Already the colonial state had faced the anti-colonial war waged by Kabalega and shortly after in 1905-07, there was the Kanyangire Baganda uprising. Land alienation could feed into the anti-colonial struggles and at a time when the colonisers needed peace to consolidate their hold on Uganda. In addition, the colonial state was conscious

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<sup>38</sup> Director of Agriculture to Chief Secretary, February 10, 1916. File 4624: Agricultural Coffee and Cocoa Estate Registration of National Archives, Entebbe.

<sup>39</sup> E.A.Brett, *Colonialism and Underdevelopment in East Africa: The Politics of Economic Change*, London, Heinemann Educational Books, 1978. p. 48.

<sup>40</sup> See Mahmood Mamdani, (1976) *Politics and Class Formation in Uganda*, New York, Monthly Review Press, Chapter 2.

that planters would be competitors for the labour supply it also needed for constructing infrastructure necessary for exporting raw materials. For the above reasons the chapter was closed in favour of peasant forms of production based on "customary" tenure adapted to the needs of export crop production.

While the planters were busy pressurizing the colonial state for favourable policies, the collaborating Banyoro chiefs were also demanding awards of *mailo* land similar to those given to their counterparts in Buganda. Buganda chiefs were awarded square miles (*mailo* land) for their assistance in the conquering of other areas of Uganda and for their expected future roles: maintenance of law and order. However, the colonial state was reluctant to award similar land grants outside Buganda. The problem was that *mailo* land tenure led to the evolution of landlord-tenant relationships, which undermined the production of cotton production in Buganda. As the tenants increased production, so did the landlords increase extraction of rent in the forms of "*busulu*" (ground rent) and "*envujjo*" (commodity rent). In this situation the tenants cut back production and were discouraged from innovation. At the same time the losers to the *mailo* land reform, the *Bataka* (clan leaders), took advantage of the tenants grievances and organised the *Bataka* movement beginning with the 1920s.<sup>41</sup> These developments provided lessons to the colonial state that *mailo* land tenure in Buganda was a mistake that must never be repeated else where in Uganda.<sup>42</sup>

Yet the colonial state was in real financial difficulty in the early years of its existence in Uganda. The colonial office had made it categorically clear that the Uganda Protectorate had to be financially self-supporting. According to the Thomas and Rubie Commission Report, "the resources of the Government, were at this time most limited, and neither an adequate European staff to gain personal touch with the people, nor funds for the proper remuneration of a service of native chiefs were for some time available".<sup>43</sup> In this situation chiefs were given official land holdings (*obwesengeze*) from which they could derive a kind of remuneration. The remuneration was a commission that a chief retained on the tax collections from all the inhabitants on his *obwesengeze*. With time the *obwesengeze* were being transformed into private (*bibanja*) estates. This is because *obwesengeze* only provided for active service and not retirement and therefore, on retiring chiefs curved out for themselves private holdings

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<sup>41</sup> See Nyangabyaki Bazaara, "The Food Question in colonial Bunyoro-Kitara: Capital Penetration and Peasant response", M.A. Thesis, Makerere University, 1988, Chapter 4.

<sup>42</sup> For a reader interested in similar type of chiefly politics in Busoga, see D.J. Bakibinga, "The Land Tenure issue in Busoga: A Historical Debate", Makerere Law Journal, Vol. 2 No..2, November 1974.

<sup>43</sup> Enquiry into Land Tenure and the *Kibanja* System in Bunyoro, 1931, Government Printer, Entebbe, 1932, p.9.

(*bibanja*). Secondly, *bibanja* had become very lucrative as those who held them used them as a basis of accumulating wealth through rents. The Thomas and Rubie Commission appointed to investigate into land issues in Bunyoro discovered in 1931 that the best lands in Bunyoro were taken up in *obwesengeze* and *kibanja* estates. 18,000 out of 22,000 tax payers were paying *obusuru* (rent) to estate owners. On official estates there were 12,000 tenants and on private estates there were 6,000 tenants. Tenants on these estates constituted 84 per cent of the population in Bunyoro.<sup>44</sup>

These developments changed the land tenure considerably and had negative consequences for production. The control over land shifted from clans to chiefs. The role formerly played by clan leaders that of admission or exclusion passed on to chiefs, a feature that has been predominant ever since.

In turn, this changed the rights of access to land. Free peasants became tenants whose access to land was conditional to payment of rent to the *kibanja* or *obwesengeze* owner. The rent was in the form of cash payments, labour services, beer, agricultural produce, etc. This rent exaction was an additional burden to the producer besides the various state demands such as taxes, forced labour, etc. The landlord-tenant relation structures made it difficult for the producer to innovate and expand on his/her production. For instance, the landlord-tenant relations were a factor behind the non-adoption of perennial crops in Bunyoro since the tenants could never be allowed to grow them. The principal export crops became the annual crops of tobacco and cotton and not coffee although the climatic conditions and soils are favourable for the growth of this crop.

By the 1930s, the landlord-tenant relations were fairly developed. It was obvious that a politically powerful landlord/chiefs class was emerging on the basis of this tenure and that this was not in the best interests of production. The Thomas and Rubie Commission, echoing the argument of Secretary of Colonies made in 1916,<sup>45</sup> recommended that the landlord-tenant relations be abolished and the security of the tenants restored.

## **2.2 *Kibanja* Tenure, 1933-1975**

Following the submission of the report by the Thomas and Rubie Commission, the colonial state re-asserted the security of the actual cultivators

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<sup>44</sup> <\$F*ibid.*>

<sup>45</sup> When the Secretary for Colonies was contacted on the issue of *Mailo* land in Bunyoro he expressed dissatisfaction as to whether the arrangement being contemplated was in the best interests of the protectorate. He argued, instead, in favour of a system where land would be held in tenancy from the Crown, *ibid*>

from any form of rent exactions or eviction. Chiefs who were deriving their remuneration by virtue of the *Obwesengeze* and *Kibanja* estates were put on salaries and pensions. The Commission further recommended that certificates of occupancy be issued to actual cultivators for "undisturbed occupancy" with a right to dispose of the products to the heir or by sale to another "native" but not foreigners. In a way this development acted to increase production in Bunyoro. For instance in 1927, total estimated acreage of all crops produced by peasants was deemed to be 56,543. Ten years later, it had risen to 150,689 acres.<sup>46</sup> However, the reform had some defects. It succeeded in abolishing official estates (*obwesengeze*) but not private estates (*bibanja*). All that happened is that chiefs took up what was formerly official estates as their private estates and for which they acquired "certificates of occupancy". And much more important, some of these *bibanja* for which "certificates of occupancy" were taken out, contained tenants as before. Of the 5037 certificates issued between 1933 and 1949, 156 certificates were held by 78 people and 8 certificates were held by 2 people.<sup>47</sup>

A survey carried out in 1954 revealed that more than 1500 certificates were for tenanted estates.<sup>48</sup> In a way, landlord-tenant relationships and disguised rent in the form of produce, domestic animals or labour services continued. Those who controlled the land had absolute power over the productive resources on the land like anthills, grass, clay, sand, etc. The owner could expel the tenants from his *Kibanja*. Beattie discovered in 1954 that "signs are now beginning to appear that an attempt by a tenant to develop his holding on modern lines by planting permanent crops, etc, is coming to be regarded as a ground for eviction."<sup>49</sup> But a tenant threatened with eviction could successfully block the eviction in court, if he/she wished. Up to the mid-1970s, there were many tenants living on the "certificate of occupancy" *bibanja*. From 1967, however, conflicts began between the *bibanja* owners and the tenants as the owners attempted to fence, evict tenants and lease the land. On the other hand, those who acquired a lot of land under the "certificates of occupancy" became landlords as population increased and as the village commons diminished. This transformation bred tenure that we have called landlord tenure of the non-lease

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<sup>46</sup> A.R. Dunbar, *A History of Bunyoro-Kitara*, London, Oxford University Press, 1965, p. 140 and p. 157.

<sup>47</sup> See Nyangabyaki Bazaara, (1988) "The Food Question in Colonial Bunyoro-Kitara: Capital Penetration and Peasant Response", Thesis submitted for the fulfillment of the requirements for the award of the Degree of Master of Arts, Makerere University, p.120.

<sup>48</sup> J.H.M. Beattie, "The *Kibanja* System of Land Tenure in Bunyoro, Uganda", *Journal of African Administration*, Vol. 6 Nos. 1-4, 1954, p. 24.

<sup>49</sup> *ibid.*

type. We shall have an occasion to look at the rights to land under this tenure later in the paper.

### **2.3 State Lease Tenure, *Kibanja* Tenure and Landlord Tenures**

The policy of certificates of occupancy was short-lived. Although the commitment for the security of the producers by the state remained, the issuance of certificates of occupancy was discontinued in the 1950s partly because the system was abused and partly because new ideas of social change had come in the aftermath of the Second World War. First, there was the problem of an escalating nationalist movement whose containment required changes in the economy. At the agricultural level this meant the creation of a social group that would have an objective interest in moderate as opposed to radical politics. At the same time, the creation of such social group would go side by side with rapid agricultural change and expansion of the market for imported agricultural technologies. These changes required some modification of the land tenure and, therefore, formed the background to the recommendations of the East African Royal Commission of 1955 - individualisation of tenure. Since the nationalist movement was so strong, the colonial state exercised caution and at the end of the day opted for two approaches for the time being. In the language of the time these routes would be the transformation approach based on "individual" tenure and "improvement" approach based on "customary" (read *Kibanja*) tenure.

The transformation approach led to the evolution of new types of tenure in Bunyoro namely "state lease" tenure and "individual lease" tenure. State lease tenure was for ventures between the state and foreign capital. In Masindi district examples of state-sponsored schemes include Kiryana (38,560 ha., 1956) and Kyempisi (7460 ha., 1968) Ranching Schemes, Bunyoro Growers Cooperative Union Ranches of Nyakyana (15,992 ha., 1966), Kinyara Sugar Works (15,424 ha., 1971).<sup>50</sup>

The individual lease tenure was for the new social group in agriculture who were hailed as "progressive farmers/ranchers". They became "progressive" not because of their savings but from resources supplied by the state or international capital. In this sense we can rightly say that the policy of progressive farmers/ranchers was artificial social engineering. "Progressive farmers/ranchers" schemes were used by the regimes in power to reward political supporters, just like in a feudal social formation. The most dramatic example of this type of schemes is the Bunyoro Ranching Scheme subdivided

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<sup>50</sup> Curled from the Register of Surveyed Land, Uganda Land Commission Minute File, Masindi Lands and Surveys Office.

into 37 ranches of the average size of ranging between 950 and 1800 hectares in Kibanda sub-county. From the evidence we came across many of these ranches have changed hands. First allocation was during the Amin regime. During Obote two they were again re-allocated. We shall have occasion to revisit this scheme for, Kitongozi, our sample village, is located in the "ranches". Suffice it to note that the development of state and lease tenures simultaneously meant a reduction on the land bank under the *kibanja* tenure. It involved the displacement of peasants and could only be promoted at less political costs in situations where there was land where the peasants could re-settle.

It should be acknowledged that in the 1960s there was relatively plentiful land in Masindi District. This situation of course, is a result of historical circumstances often ignored in official circles. In the first three decades of colonial rule, the population of Bunyoro as a whole was decimated by colonial wars of subjugation, epidemics (sleeping sickness, Spanish influenza, syphilis, etc.) and famines.<sup>51</sup> These developments led to ecological resurgence (marked by the tsetse fly carrier of sleeping sickness). Most of the population crowded along roads and near the towns. After the Second World War a programme of reclaiming the land by eradicating the tsetse flies was begun. Large scale schemes (state lease tenure) were established in areas that had been abandoned to tsetse fly and, therefore, displacements of peasants were minimal. Those who were evicted could find alternative areas of resettlement. For example, the establishment of Masindi Sisal Estate (10,000 acres) in 1950 displaced 14 households, Murchison Falls National park (1952) over 5000 people, Kiryana Ranch (1956) 273 households, Bunyoro Growers Cooperative Union (1965) 46 households.<sup>52</sup> All these were able to re-settle. In Kahara village we found some households that were displaced by the Kinyara Sugar Works scheme in 1969-1971 period. They came to Kahara and settled.

By the end of the 1960s, however, land became more and more scarce as more and more land was transformed from *Kibanja* tenure to state and individual lease tenure and as the population increased. The foundation for the enclosure movement that led to serious land conflicts after the enacting of the 1975 Land Reform Decree was laid by the institutional changes in the

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<sup>51</sup> <\$FI have dealt with these developments elsewhere. For a reader interested see Nyangabyaki Bazaara,"The Food Question In Colonial Bunyoro-Kitara: Capital Penetration and Peasant Response", op. cit.>

<sup>52</sup> <\$FCurled from District Commissioner to Provincial Commissioner, Western Province, 1952. File Game 3 Game Ordinance, District Archives, Hoima; Sabairu, Kibangya Buruli to Saza chief, Buruli, November 16, 1955; Assistant District Commissioner, Masindi to District Commissioner, 1956; and Sabairu, Kibangya to A.D.C., Masindi, February 17, 1956. All these letters are in File No. Lan 9/3. District Archives, Masindi. County Chief Buruli to A.D.C., Masindi, May 23, 1969, File No. SCW 3, District Archives, Masindi. >

administration of land after 1967. Before then, the power over land matters was vested in the Bunyoro Kingdom Land Board which certainly barred those from other ethnic groups from taking huge chunks of land in Bunyoro. The kingdom land board tolerated migrant labourers from West Nile in as far as they provided cheap labour and beefed up the kingdom treasury through taxes. The attitude of the Bunyoro Kingdom Land Board was always a source of tension between the Central Government and Bunyoro Kingdom. It is probable that one of the reasons why the kingdoms were abolished was their control over land, a point that was echoed by the World Bank in its 1962 report. After the abolition of kingdoms, the power over land matters was centralised in the Uganda Land Commission thereby reducing District Land Boards to mere agents of the Uganda Land Commission. This change meant that bureaucrats nation-wide could carve out land for themselves in Masindi District. This was a watershed, which led to serious absentee landlordism since its abolition in 1933.

The second factor that laid the basis for the enclosure movement had to do with the diminishing state subsidies. In as far as state modernisation schemes were aimed at rewarding political supporters; these schemes became mere "spheres of influence" rather than spheres of production. The little production was dependent on the continued flow of subsidies from the state or international capital as well as the prices in the world market. By mid the 1970s production in state sponsored schemes had to decline as the state run into a fiscal and legitimacy crisis. Naturally, the beneficiaries of these schemes attempted to look for a more lucrative and easier activities through which they could accumulate. The most profitable was trade. But big time trade requires substantial capital. This capital can only be found in banks, which banks require collateral security of leased land. The need for leased land to gain access to merchant capital could have been one of the underlying forces behind the enacting of the 1975 Land Reform Decree (LRD). The LRD removed legal obstacles to those who wanted to lease land carved from the *kibanja* tenure.

## **2.4 The Impact of 1975 LRD: From *Kibanja* to Landlord Tenures**

As early as 1972, a parish chief wrote to the sub-county chief complaining that a certain individual was attempting to evict 6 households living on the basis of *kibanja* tenure. He expressed what was later to be the dominant trend in land matters in Masindi district: "where do you think such poor, ill-treated and oppressed will find a good site for settlement, as the rich, wealthy and prosperous dominate and occupy all the land of others".<sup>53</sup>The

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<sup>53</sup> Kezekiah Dura, Parish Chief, Nyantonzi, Budongo to Isyabi Micheal, Gombolola Budongo. July 16,72, Mw 19, Masindi Lands Office.

processes of land grabbing was uneven and of varying intensities that we cannot accurately capture them here. But on the basis of the cases that we discovered in the Lands Office, we can demonstrate that the policy of individualisation reduced on the *kibanja* tenure but mostly the common lands aspect of *kibanja* tenure. The question at this stage is what were the forces involved and what methods did these forces employ to get the land.

### **i) Legal Force**

The state as we have seen was involved in the establishment of the so-called modernisation schemes. In 1973 the state initiated the Bunyoro Ranching Schemes covering 43,218 hectares or approximately 186 square miles. We could not establish the number of peasants who were evicted. But it is important to note that from the little evidence available, some of the peasants were compensated while others were not. We can, therefore, conclude that the state grabbed the land under legal disguise.

### **ii) Kinship Ideology**

Then there were individuals based in the civil service (bureaucracy) the army and up-coming petty bourgeoisie in the cooperative societies who also enclosed land. The methods of enclosing the land varied. The first method was the use of kinship ideology. A particular individual would go to the village where he/she was born and claim land for himself. Usually such claims would be preceded by "gifts" (clothes, drink, etc.). The target for this tactic was usually the commons land.<sup>54</sup>

### **iii) Corruption**

In some other cases the kinship mask would not work and the individual would resort to bribing the surveyors. By 1974 this corruption was sufficiently developed to warrant the attention of the Commissioner of Lands and Surveys who wrote a circular entitled "Unnecessary Land Disputes" to all branch officers expressing concern about certain surveyors who "have been carrying out title surveys for individuals that belong to customary tenants". He further noted that in some cases the tenants were not compensated resulting into disputes. He was "doubtful as to whether a surveyor can undertake such a

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<sup>54</sup> Interview with a Land Officer.

survey without any pecuniary interest".<sup>55</sup> Despite this warning, the bribing of surveyors remained a feature of the enclosure movement. In 1978, in Kimengo sub-county, Buruli county, individuals allocated land were reported to have grabbed out for themselves, most likely in collusion with the surveyors, more land than they had officially been allocated. In a dispatch to the District Commissioner, the Gombolola Chief wrote:

I regret to inform you that the two people who were allocated land in my Gombolola are not cooperating with neighbours. Dr. ...has fenced forty people in his fence more than the five square miles he was given...He has gone as far as the main road Kampala-Gulu road and is chasing away people from the land...Mr....has also fenced as far as the road more than he was given. Please may you stop these people from going too far and finishing the whole of Kimengo. My people are now fenced in and no where to migrate...<sup>56</sup>

As recent as 1984, the Minister of Lands noted the following:

When the public lands Act 1969 was enacted an important regulation regarding government policy on land was non leasing of land then known as communal grazing areas as well as swamps. However, during the military administration of the 70s although this policy was not officially reversed, implementors of the land policy did not bother about it. In fact it was literally ignored as the pressure on land increased.<sup>57</sup>

The same minister attempted to put a stop to the enclosure of commons. He directed that "no district land committee should entertain application for land by private individuals of areas known and earmarked as communal grazing areas. These should remain intact and be used by members of the community as a whole". He further directed that "swampy areas should not be leased out to private persons. These are a source of water for all and must as far as possible remain in their natural state". But this intervention came after big chunks of land had already been enclosed. In addition, the minister did not have the necessary machinery to effect his directive. The Lands and Surveys Department was riddled with corruption and low pay, which never came on time. In effect the enclosure of commons continued in some places. For instance, in 1989 the following petition was sent to the Lands Office:

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<sup>55</sup> P. Bakashabaruhanga, Ag. Commissioner of Lands and Surveys, to The Assistant Commissioner (S and M), The Ass. Commissioner (C) and all branch Offices, August 2, 1974. File MW 19, Masindi Lands and Surveys Office.

<sup>56</sup> Aristide Jukacha, Ag. Gombolola Chief Kimengo to DC North Bunyoro District, June 7, 1978. FILE LAN 8/ptII: Land Disputes, District Archives, Masindi.

<sup>57</sup> Commissioner of Lands and Surveys to all District Commissioners, April 18, 1984. File: MW. 19, District Archives, Masindi.

We have learnt with dismay that people calling themselves Balyegomba would like to lease the above public area without the consent of the villagers who use that clay for their pots and brick making. That land belongs to the village according to cell division and therefore Isagara council has refused the leasing of that land since it has been serving us publicly for quite a long time together with the neighbouring villages namely: Bikonzi, Ikoba, Kisonga, Kityedo, Isagara, Kiryanjojo, to mention but a few. We are not refusing anybody from using the clay or making bricks but it should be used publicly as it has been.<sup>58</sup>

#### **iv) Grabbing**

Before the NRM came to power the army men used naked force to enclose land settled by peasants or the commons. This use of force was particularly marked during the Amin regime. Examples of forced evictions were found in the disputes file. In 1978, sixteen peasants signed a petition to the District Commissioner, North Bunyoro, complaining that "we people of Titi hereby present our problems to you concerning land disputes. We are 23 men with families and a man called Abdalla has fenced us with barbed wires. Our major fear is that where shall we go. We have been in this area since 1965".<sup>59</sup>

In an earlier dispute one individual informed the Land Commission that, "I was one of the sad victims of the former Second Commanding Officer in Masindi Artillery Regiment by the name Major... In 1975, Major.... was on rampage chasing land occupants in Kigumba area. My workman by name Tankuzi was evicted ...in my absence at gunpoint."<sup>60</sup>

In Bujenje County in 1975 a certain Lt. Colonel also evicted peasants. The *Saza* chief writing to the District Commissioner observed that "the people are grumbling that they are not happy with Lt Col... because of occupying their parts again. (Lt. Colonel)... had confiscated their grazing area and they were badly squeezed".<sup>61</sup>

The enclosure movement has been marked by land conflicts, bitter quarrels, evictions and sometimes death. It is very difficult to re-construct the fate of the evicted. But from the available evidence it is clear that those who

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<sup>58</sup> Lawrence Kyamanywa, Chairman RCI, Isagara, Kiryasajo to D.A. Masindi District. April 10, 1989. File MW 31 (A) Application Forms for Rural lands, Masindi District Lands Office.

<sup>59</sup> Njoroge Mungai, Onen Abdilai, Kwamba Gaitroi, Peter Munywa, Jerome Onjiojo, Shitabangi Sternly, Yakobo Andaliri, Watata Francis, Moses Gaitari, Joseph Gutubia, Yohana Otoo, Gwera Majara, James Maiteki, Katamazire, Paulo Nungango to District Commissioner North Bunyoro, Masindi, February 8, 1978. FILE LAN 8 /pt V Land Disputes.

<sup>60</sup> Henry Karuhize, Kigumba to the Chairman, Land Commission Kampala, December 1, 1979. File: LAN 8/VIII Land Disputes, Masindi District Archives.

<sup>61</sup> *Saza* Chief, Bujenje to District Commissioner, North Bunyoro 10th Oct, 1975. File: LAN 8/VIII Land Disputes, Masindi District Archives.

survived in the evictions resettled. In dispatch to the Chairman, District Land Committee the *Gombolola* Chief of Kiryandongo noted that:

the remaining land in Masindi is already inhabited by those who were evicted from Panyadoli Ranch (sic Bunyoro Ranching Scheme) and also from the Palestinian farm of Kirooko and Kitaleba. Furthermore, this claimed land is already known to you for it is the very piece to which General..... wanted but it failed as it had more people.<sup>62</sup>

Others went to Lira and Apac districts. In 1979, after the fall of Amin some of the Langi in Apac and Lira Districts waged a war against all non-Langi. The feeling was that all non-langi had conspired with the Amin regime to annihilate the Langi. Some of the Langi seized the chance to chase away the non-langi nationalities in what was described as the "Dok Turwu" (go back to your native land) war.<sup>63</sup> Again these peasants came back to Kiryandongo as fugitives, having lost some of their property and relatives. These internal refugees were channelled to the abandoned Palestine Farm and the "ranches". In the "ranches" the refugees settled as squatters in villages of Nabikoni (602 people), Kihembera (169 people), Kikungulu (160 people), Kabonyi (116 people), Kankoba (269 people), Kyansanyi (175 people), Kiryampungura (284 people), Kyamakubagi (209 people) and Koki (106 people). The total squatter population within the "ranches" was at the time of research deemed to be as high as 2504 people, according to the RC3 population figures. This process created the Landlord tenure of the lease type.

As the process of land enclosure unfolded, there was also a corresponding rise in population. Together with political displacements, population rise increased pressure on the little commons land remaining. Inevitably some of those without land encroached on the forest and game reserves such as Karuma and Pakanyi and Lake Albert Range game reserves.<sup>64</sup>

At the time of research the encroachers had been evicted from the game reserve.<sup>65</sup> The evicted were at the time of research trying to pressurise the authorities to extend the boundary of the game reserve:

they are still asking the government to make a new boundary of game reserve to have more land for digging as well as double production for those who were

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<sup>62</sup> George K. Gahwera, Sub-county Chief, Kiryandongo, to the Chairman, Land Committee, Masindi, 8th June 1978.

<sup>63</sup> Jarson W. Clay, *The Eviction of the Banyarwanda: The story behind the refugee Crisis in South West Uganda*, Cambridge, Cultural Survival Inc., August 1984, p.27.

<sup>64</sup> Interview with the County Chief, Kiryandongo, July 1991.

<sup>65</sup> See Memorandum to the Hon. NRC Member, Kibanda, visiting on March 5, 1990. File ADM. 2 County Team, Kiryandongo Saza Headquarters.

sent away from Panyadoli (and Palestine Farm) to show them the real boundary of that game reserve.<sup>66</sup>

Within the "customary" tenure, population increase has obviously redistributed land through inheritance. Land became more and more fragmented. At certain point when the land pieces could not be sub-divided further land (the developments) were sold at distress prices. In some places shifting cultivation and/or fallowing became untenable as the population increased. These processes fed into inequalities, conflicts over access to land and changed the basis of agricultural production. In addition, the crisis in *Kibanja* tenure fed into the expansion of landlord tenures of the lease and no-lease types. Rent relations became a predominant feature from the mid-1970s. Yet the enclosed land was never put to use and further became a menace to production. For example, in 1990, an RC chairman complained to the higher authorities that:

Following complaints by residents from various areas in Kimengo sub-county concerning the destruction of both their food and cash crops by vermin, the RCII council has identified among others, the following major sources of the above...Almost all persons who acquire leased land in the sub-county enclosed big areas of public land which they were not "offered" and in some cases they went ahead and inserted false "milestones" --illegally...As a result all such areas are being occupied by all sorts of wild animals including vermin which have caused untold suffering to the local population.(emphasis added).<sup>67</sup>

Let us look closely at this process and how it affects production by examining empirical data from two villages.

### **3. Forms of Land Tenure and Inequalities: Case Studies**

Two villages were selected for comprehensive investigation. The villages include Kitongozi in Kitwara parish, Kiryandongo sub-county, Kibanda county. This village is populated by squatters. The second sample village was Kahara, in Bigando parish, Mirya sub-county, Buruli county.

The choice of the villages was arrived through multi-stage sampling technique. Stage one was at the level of the district where two counties of Buruli and Kibanda were randomly selected. Stage two involved random sampling of the sub-counties and we came up with Kiryandongo and Mirya sub-counties. At this level the selection of sample villages in the two counties was arrived at

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<sup>66</sup> Sub-county Chief Kiryandongo to *Saza* Chief, Kibanda 18 May, 1976. File No MIS 12/ ptI.

<sup>67</sup> The Chairman RC II, Kimengo Sub-county to all Kimengo landlords, March 19,1990. File MW 19.

through different routes. In Buruli county, the choice of the parish was by random sampling but the village was purposively sampled. Kahara village is strategically located 10 miles from Masindi town and the demand for land was high. In Kibanda County, the choice of the village was influenced by a reconnaissance visit to Kiryandongo RC3 where the author learnt of a grave squatter problem in the "ranches". The author immediately decided to random sample from the squatter villages of Kikungulu, Kiryampungula, Kooki, Nabikoni, Kihembera, Kitongozi and Kyamakubagi. The choice was Kitongozi. The author departed from the systematic stratified sampling methodology stipulated in the proposal and opted for comprehensive house to house interviews. Systematic stratified technique, rigorously scientific as it may be, has the potentials of leaving out vital qualitative information, especially the relationships that govern access to land.

### **3.1 Forms of Tenure, Inequalities and Agricultural Change**

In the two villages of Kahara and Kitongozi we discovered forms of tenure we have categorised as follows: *Kibanja* Tenure (336 acres), Landlord non-lease Tenure (660 acres) and Landlord Lease Tenure (3257.5 acres).

Before we look at the contents in each of the above forms of tenure it is important to make the following observations. That the *kibanja* tenures are what in legal and political circles, are still erroneously being termed as "customary" tenure. We have discarded the concept "customary" tenure as inappropriate for the tenure discovered in the two villages. Though some elements of the old clan type of tenure exists, that tenure, for practical purposes, is no longer in existence! Clans no longer have land and the household heads are free to sell the land (or rather the developments on the land). Another indicator is the ownership of "commons". In the past commons were owned by the clan with each clan member having use rights. Clan commons are no more. Whatever commons may exist belong to the state.

It should be noted also that our main interest in examining these tenures is the levels of inequalities, the changing modes of access and rights land, security of tenure and how these retard or facilitate agricultural production.

#### **3.1.1 Kibanja Tenure**

**Table 1**  
**Inequalities in Access to Land under *Kibanja* Tenure in  
Kahara Village, May 1991**

Class /strata	H	Land C/trol	Av. Land total H	% of
Capitalist	2 (2.8 %)	25	12.5	7.4 %
Rich Peasants	11 (15.5 %)	84	7.6	24.9 %
Middle Peasants	34 (47.9 %)	172	5.1	51.1 %
Poor Peasants	16 (22.5 %)	51	3.2	15.1 %
Wage Labourers	8 (11.3 %)	5	0.6	1.5 %
<b>Total</b>	<b>71 (100)</b>	<b>337</b>		<b>100 %</b>

Key: H- Household.

It is clear that inhabitants of Kahara village under the individual *kibanja* tenure are differentiated. One of the factors behind this differentiation is the inequality in access to land. Eleven per cent of the households under *kibanja* tenure are virtually landless. Most of the land in Kahara is controlled under the landlord tenure of the non-lease type. Inequalities under *kibanja* tenure are reproduced through inheritance and distress sales/speculative buying. The process of inheritance and distress sales not only leads to expansion of landlord forms of tenure and a reduction of land under *kibanja* tenure but also changes the rights to land within households.

### **Inheritance**

Through inheritance the land is sub-divided as the youth become of age and get married. Inheritance, however, has different implications in each household depending on the class or stratum. The youth amongst the wage labourers and the poor peasants have practically no land to inherit. For example, one youth in a poor peasant household bought land from his parents. The implication of this trend is the fact that the practice of passing on land to the young is watered down amongst those with little pieces of land. The effect of this has been that the youths among the middle and poor peasantry become wage labourers or end up in charcoal burning based on trees in the landlord *kibanja* tenure and for which they pay a certain amount of rent. Part of the explanation for the

agricultural stagnation in Kahara is the fact that the youth who are energetic have no land to cultivate and their participation in charcoal burning destroys the environment. At the same time by going out to the forests (Nyakyanika, Pabidi, Biiso) west of Masindi town they are not available to grow anything.

**Table 2**

**Average Inheritable Land by Youths under the  
*Kibanja* Tenure in Kahara**

<b>Class/ Strata</b>	<b>Total land (acres)</b>	<b>Total No. of Children</b>	<b>Males</b>	<b>Females</b>	<b>Av. per child</b>
Capitalist	25 acres	17	5	12	1.5
Rich peasant	84 acres	49	28	21	1.7
Middle peasant	172 acres	119	49	70	1.4
Poor peasant	51 acres	65	24	41	0.8
Wage labourers	5 acres	19	9	10	0.3
<b>Total</b>	<b>337 acres</b>	<b>269</b>	<b>115</b>	<b>154</b>	

It is clear that the use rights of the youth under the *kibanja* tenure in Kahara are in jeopardy. 31.22 per cent of the children have no land to inherit at all. The rest have less than two acres to inherit. Of course, we have frozen a dynamic situation here. Some youths work hard, accumulate money and buy land and add to the little they have. We have already mentioned a youth who even bought land from his parents. Females usually leave their parents for marriage or as we discovered are in Kampala working as house girls. Some of the children go out for wage labour in Masindi town, in forest lumbering, etc. We should add that there is a possibility of the rich peasantry and capitalist

purchasing land from the poor who sell because of social crises. The position of the youth in these social groups cannot be equated to those among the wage labourers or poor and middle peasantry. For the fact is the youth among the rich peasantry and capitalist have better prospects of acquiring education and once they enter the bureaucracy they accumulate money and can buy their own land. In general terms, however, we can say that the second generation of youths will have no land to inherit, particularly amongst the middle peasants and the poor peasants, unless the industrial sector develops fast enough to absorb some of them or land is redistributed.

The inequalities in access to land have also differing consequences among the women. We saw that access to land under the old customary practices was that the youth, regardless of sex had use rights at the parents' home. Once they came of age they automatically enjoyed use rights on the parents' land although they could not dispose of the land through sale. The moment a girl got married into another clan, the use rights she enjoyed on the parents' land became dysfunctional in the sense that she was not physically present to enjoy them. But she was free, if she wished to occasionally cultivate the land. At the husband's home a woman's rights to land were circumscribed. She was free to cultivate the land but the husband controlled the products of her sweat particularly with export crops. Though she contributed to the cultivation of cash crops, a woman had no right over the sale of the produce and the decisions on how the funds should be spent.

The social differentiation within the kibanja tenure implies that the position of women among the marginal social strata is becoming precarious. Table 3 shows the number of women-headed households and the modes through which they gained access to land.

**Table 3**

**Mechanisms of Women Heads' Access to Land in Kahara**

<b>Class/ Strata</b>	<b>No. of H</b>	<b>Amount</b>	<b>Donation from clan relative</b>
	MP (Divorced)	1 H	0.75 acres
	MP (Divorced)	1 H	2.0 acres
Borrowing from church	MP (Divorced)	1 H	0.25 acres
Use Rights	MP (Divorced)	1 H	2.5 acres
Use rights + Purchase	MP (Divorced)	1 H	0.25+2.0 acres
	MP (Divorced)	1 H	0.25+ 0.25 acres
Purchase	RP (Divorced)	1 H	4.0 acres
	MP (Divorced)	1 H	4.0 acres
Allocation by Chief	MP (Widow)	1 H	5.0 acres
Custodian	MP (Widow)	1 H	5.0 acres
<b>Total</b>		<b>10 H</b>	<b>26.25 acres</b>

Key: MP- Middle Peasant; RP- Rich Peasant; H- Household.

It can be seen that access to land via usufructory rights (3 households) is overshadowed by other modes (donation, borrowing and purchase). Most of these, as can be seen, are divorcees. This means that for the majority of women divorcees the rights they are supposed to enjoy at their parents' are narrowing. With time the only option that will be available to them is purchase. Yet for the majority of the women the prospects of raising money to buy land are exceedingly limited. Simultaneously, we see that women's position in access to land is unequal. It is dependent on the stratum or class of a particular woman. A small group of women can purchase land on their own but the majority have no capacity to do so.

**Distress Sales and Speculation in Land**

The existence of purchase of land under *kibanja* tenure is indicative that land changes hands on the basis of money. Sale and purchase of land not only concentrates land among a few but also feeds into the landlord tenure of the non-lease type. This process has its origin in the economic crisis that swept Uganda for more than 2 decades characterized as it were by a run-down social service system. In the 1960s, education, medical treatment and agricultural inputs were subsidised. Since the 1970s, however, these subsidies dwindled as the state run into a fiscal and legitimacy crisis. In the 1980s, IMF/World Bank imposed on Uganda structural adjustment conditionalities that emphasize the removal of subsidies from social services such as education, health or even agricultural inputs. Producers found it difficult to cope with their education, health, etc, expenses. An operational treatment for say intestinal obstruction in a government hospital is conditional to the patient paying two goats. In such a situation a peasant without alternatives sells off a piece of land. This is what we term distress sale. A dramatic example took place during the research. An individual working as a chief diverted the tax collection. When pressed to refund or face imprisonment he sold off his entire six acres of land thereby becoming landless!

**Table 4**

**Land Purchases in Kahara**

<b>Class/ Strata</b>	<b>Buyer</b>	<b>Seller</b>	<b>Acreage</b>	<b>Amount</b>	<b>Year</b>
	PP	MP	1	4,000.00	1990
	MP	?	1	5,000.00	1985
	MP	?	2	500.00	1980
	MP	MP	4	30,000.00	1986
	MP	PP	5	50,000.00	1985
	RP	RP	4	75,000.00	1981
	RP	MP	10	30,000.00	1985
	RP	PP	5	21,000.00	1981
	CP	MP	11	100,000.00	1989
		RP	6	150,000.00	1991

Key: PP- Poor Peasant; MP- Middle Peasant; RP- Rich Peasant, CP- Capitalist

What should be noted about this scenario is the fact that those with inadequate land attempt to increase on the land they can utilise. When an opportunity for distress sales arises they buy using their hard earned savings. The other side to land purchases is of individuals who sell to raise capital in the hope that if they join trading activities they can accumulate profits. At least one rich peasant reflected in the table above sold land to raise capital for trading purposes. On the other hand the buyers also include speculators. The capitalist depicted in the table has for sometime been involved in speculative buying and selling of land. The inflation that swept Uganda for more than two decades led to a process whereby people keep their savings in real assets, the best being land. In theory the speculator buys developments on the land (*kibanja*) but in practice he buys the land itself. Sometimes the transactions in land do not involve land with crops but mere bush. The point, however, is that the buying of land from producers by speculators not only concentrates land amongst a few but also alters the social structure of the village, the relationship within the households and insulates land from production thereby transforming *kibanja* tenure into landlord tenure of the non-lease type.

It should be noted that *kibanja* tenure belongs to the state, as was the case during the colonial era. However, during the colonial era some measure of protection of the peasant producers had been put in place by the 1933 land reform. Thus an individual had security of tenure on the land owned by the Crown. The 1975 Land Reform Decree removed the security of producers to enjoy the rights to use land that is owned by the state. The majority of the population in Kahara lives on the basis of this tenure. The implication of the 1975 land Reform Decree is that all these people have no security of tenure of undisturbed use of the land. The diminishing of the *kibanja* commons meant that population increased side by side with land fragmentation, and distress land sales which in turn fueled inequalities in access to land. It is the security of tenure of people who thrive under this form of tenure, which is at stake; and it is under this tenure where one finds the problem of landlessness.

### ***Kibanja* Tenure, Inequalities and Agricultural production**

Inequalities in access to land contribute to the levels of production depending on the class/strata and, through the process of borrowing, further entrench the movement from *kibanja* to landlord forms of tenure. Those with pieces of land that cannot support the production needs of the household are exposed to exploitation via wage labour and rent relations. There are two types of social categories exposed to these relations: wage labourers and poor peasants. For different reasons we have capitalists who rent land from the middle peasantry or the church. Although the reason for "borrowing" is the

inadequacy of land, capitalists who borrow have other ways of defraying the rent costs and indeed are able to accumulate.

Wage labourers are a social category that derives most of its income from the sale of their labour power. There were 8 households in Kahara, each household controlling 0.9 acres of land. Certainly 0.9 acres is too small for even a modest harvest. As discovered in Kahara, some of the wage labourers resorted to "borrowing" land from middle peasants (3 households), poor peasants (1 household). In total the 4 wage labourer households borrowed 1.85 acres for food production. So in addition to exploitation via wage labour they were also exposed to various forms of disguised rents. Usually this takes the form of labour rent, as we shall describe more comprehensively shortly.

The poor peasants derive most of their income partly from producing on the basis of family labour and partly selling labour power for a wage. Within this social stratum households have unequal pieces of land. Some have bigger pieces of land while others do not have economic pieces of land. Those with relatively economic pieces of land are forced to "borrow". We discovered that poor peasants with less than an acre were 2 households; between one and two acres, 5 households; 2 acres but less than 3 acres 5 households; three acres but less than four acres none; 4 acres but less than 5 acres, 1 household; and more than 5 acres, 3 households. In this scenario 13 households do not have enough land. Less than 3 acres are simply not adequate for annual production and to cater for fallowing and production of perennial crops such as coffee and bananas.

Middle peasant households under this category have relatively bigger pieces of land, averaging 5 acres. Most of the "lending" of land in Kahara under the *kibanja* tenure is by this social strata. In aggregate, 17.75 acres of land are lent to various classes/strata like (as we discovered) capitalists, fellow middle peasants, poor peasants and wage labourers. Middle peasants derive most of their income on the basis of family labour. But they also try to undertake small scale trading and disguised surplus extraction by lending some of the land they control. The motive of lending to the land hungry, however, varies from one particular case to another. It may be that the "landowner" wants cheap labour for keeping wild game from his/her crops or is avoiding the cost of clearing a piece of land. In our investigations we discovered there were some individuals who had lent land for purposes of keeping vermin at bay. The borrower's crops were a sort of buffer for the "lenders" crops. Before eating the "lender's" crops vermin destroy the borrower's crops. Obviously the borrower does not want to see products of his/her sweat going to waste. He/she will definitely keep vigil.

But indirectly the borrower will have paid disguised labour rent.<sup>68</sup> It should be noted that the borrower is obligated to "assist" the "lender" whenever the owner calls upon him/her to do so. This may be "assistance" in sowing, weeding, or harvesting. Thus to the "watchman" rent is added other disguised rents in the forms of sowing, weeding harvesting, etc.,.

The other motive may be an attempt to reduce on the clearing costs. The "landowner" lends a piece of land for one season after which the land reverts to him. The clearing costs are transferred to the borrower. The borrower pays a hidden "clearing rent".

Both situations, that involving a "watchman" rent and that of "clearing" rent, arise because some people do not have enough land and they are forced into "borrowing" from those who have more than they need. In both situations they cannot expand production nor innovate since their security of tenure is not guaranteed. In "clearing" rent situations the period is too short for the borrower to undertake long-term investments. In "watchman" situations the borrower never knows when his tenure can be ended. Sometimes, after the owner dies and the land is inherited by the sons, the original arrangement may be reversed by the inheritors. The borrower in this case cannot expand his cultivation beyond the piece of land lent him. Secondly, he/she cannot undertake permanent improvements or innovations. Among the land poor the crops grown are mainly annual crops because of being land poor or being involved in "borrowing" practices. They cannot grow coffee or bananas which keeps the land occupied perennially.

The rise of "borrowing" relations is indicative of another fact that commons have been reduced. Commons land in Kahara includes swamps, water/wells and foot paths accessible to all the inhabitants of Kahara and even the neighbouring villages. Villagers are free to collect water, clay, sand, firewood, etc. However, villagers in Kahara own use rather than ownership rights. According to the 1975 Land Reform Decree all the land in Uganda belongs to the state. The state has the liberty to take over the commons for its own use or to lease it to individuals. Although in Kahara there has been no serious enclosure of village commons in the recent past, in other areas of the district this tenure has been the most vulnerable to the provisions of the 1975 Land Reform Decree, which give leeway to individuals wishing to enclose them in the name of development. Village commons in Kahara cover extremely limited amounts of land. These have been reduced through a protracted process of population increase and enclosure movement. A reduction in the amount of

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<sup>68</sup> .<\$FI have already demonstrated the phenomenon of disguised rent in my paper "The State and Social Differentiation in Kakindo Village, Masindi District, Uganda", CBR Working Paper No. 8, April 1991.>

land under this tenure affects the production/productivity of the peasants under *kibanja* tenure. The rearing of domestic animals such as goats, pigs and cattle is circumscribed by the inadequate commons land. There are two capitalists involved in cattle rearing. These have problems of grazing land. Their cattle depends on neighbours' unused land and/or gardens after harvest and usually the owners find themselves in endless litigation over the issue of cattle damaging crops of neighbours. These capitalists cannot expand their herd without entering into rent relationships or endless conflict with the villagers over the problem of cattle destroying crops. This poses one of the biggest problems for agrarian capitalists as accumulation in agriculture is usually channelled to cattle rearing or trade.

The peasants usually keep small livestock, goats, pigs and chicken as a kind of insurance against sickness, school fees problem or against inflation. With little commons the peasants with inadequate land find it difficult to rear them. Those with small pieces of land are forced to graze pigs or goats tied to ropes so that they do not destroy neighbours' crops. There is certainly a limit to which one can expand the numbers of small animals based on rope grazing. Free grazing would require permanent labour to ensure that goats or pigs do not go astray and eat up neighbour's crops. Most peasant homes need all the labour they have for agricultural tasks and can least afford to deploy one of the members of the household to only this task.

It should be noted that relations that govern access to land contribute significantly to the low production levels and the failure to innovate although there are other factors that act in concert with problems of land tenure to undermine production.

### **3.1.1 Landlord Tenure of the Non-lease type**

In Kahara we discovered 2 forms of tenure namely the *kibanja* tenure discussed above and the landlord tenure of the non-lease type. The current form, that of landlord tenure, was originally the category of *kibanja* tenure. Over years the *kibanja* tenure was transformed into landlord tenure. The land was originally allocated under the "certificates of occupancy" introduced in 1933. As highlighted earlier, under this arrangement some individuals acquired more land than they could till. And this was possible then because most of the area in Masindi District was sparsely inhabited as the population had previously been reduced by wars, epidemics and famine. In Kahara, the land under this landlord *kibanja* tenure was controlled by an individual who inherited it from the father who acquired it through the "certificate of occupancy" described earlier in the paper. Landlord tenure of the non-lease type differs from the *kibanja* tenure described above in that the relations that govern access to the use

of land are landlord-tenant relations. Otherwise in terms of ownership the land under this tenure is also property of the state just like in the *kibanja* tenure.

It is significant to note that the size of land under the landlord *kibanja* tenure almost doubles that under *kibanja* tenure further reinforcing our argument that the effect of the individualisation policies pursued by the state has bred landlordism and concentration of land under a few. Land under *kibanja* tenure is equivalent to 336 acres upon which the livelihood of 405 people is based. Contrast this with the 660 acres of land under landlord tenure of the non-lease type supporting a population of 37 people. However, the 660 acres (66.3 per cent of the entire land in Kahara village) are controlled by one household, the landlord, resident in the village. This landlord derives most of his income from rent collections although he undertakes some cultivation of crops. The rent is exacted from those tenants who graze their cattle on land and those (including the landless) who undertake charcoal burning for sale.

Tenants are different from squatters in a sense that the former enter a contract, usually verbal, with the landlord, In Kahara the tenants were cattle keepers. Originally they were displaced from their so-called "customary" grazing lands by the Ankole-Masaka Ranching scheme. Since that time they have been wandering around the country even up to Teso in search of pasture for grazing. There were 3 tenants on the landlord's land. These occupied different social positions as tenants. They were differentiated. One was a poor pastoralist (the equivalent of a poor peasant) and two middle pastoralists (the equivalent of a middle peasant). The landlord used 5 acres for growing crops mainly for the family needs and the remaining acres (655) were accessible to the pastoralists for grazing. The condition for the use of the land for grazing purposes was the payment of rent in the form of cattle, two per year.

Extraction of rent cripples the pastoralists and deepens the inequalities among them. In addition the security of the pastoralist producers is not guaranteed. The tenancy contracts are never in a written form. The agreement is verbal because the 1975 Land Reform Decree is supposed to have abolished the payment of rent. A tenant with a written agreement can sue the landlord for exacting rent. For this reason the landlord and the tenants co-exist on the basis of a verbal agreement. It is important to note that this particular landlord preferred tenants who are not indigenous to the area and only those tenants who utilise land for grazing purposes. This is because if the tenant proves difficult or defaults on payment it is easy to evict him/her, as tenants would have no extensive evidence of having developed the land beyond the dwellings. The landlord cannot lend land to the indigenous people because he knows that over time they will cultivate crops, which have to be compensated in case he evicts them. Indigenous people are difficult to evict. Non-indigenous tenants are simple: the landlord simply whips ethnicity sentiments of foreigners

wanting to grab the land and the entire village will side with him. Or the landlord will simply accuse the tenant of some crime such as witchcraft. The village will gang up and the tenant is evicted. Again here we see the simple fact that although the 1975 Land Reform Decree provides that a tenant cannot be evicted without compensation, the landlords have managed to go around this provision and tenants can be evicted without compensation. Since there is usually no written agreement, the arrangements have been cancelled at any time and without prior notice. The pastoralists are never secure about their tenure in the landlord's land. An expansion in the herd can mean the landlord asking for a bigger rent or in case of disagreement, eviction. The future of these pastoralists is not certain. Since the landlord is worried about the land being taken away for lack of development, the likely consequences are that the landlord is going to sell the land and the buyers may decide to evict the pastoralists. The pastoralists could have innovated, improved the herds, introduced fencing; but they are not secure that they will retain access to the land for long. Obviously under this tenure, we can see disparities as far as the future prospects of the youth and women gaining access to land is concerned. It is obvious that, as things stood at the time of research, only the youths in the landlord's household are secure in terms of land. Each child is assured of 100 acres to inherit. In contrast, the future of the tenants' children is bleak. There is no guarantee that the children will inherit the tenant rights of their parents. Since the main source of livelihood for these tenants is cattle, the death of cattle due to epidemics such as rinderpest would mean that the wives and children of the tenants would be reduced to wage labourers.

The landlord also extracts rent from individuals who cut trees on the land for charcoal. Usually the rent is charged per *tanuru* (a heap); an average one contains 40 bags of charcoal. Every 40 bags the landlord exacts rent equivalent to 2 bags or expressed in money terms, which at the prevailing prices was equivalent to 2400 shillings. We were unable to establish the number of *Tanurus* produced every month. But the rate of production is certainly high posing a serious danger to the environment - soil erosion and rainfall unreliability as the vegetation canopies are removed.

### **3.1.3 Landlord Tenure of the Lease type**

This tenure is directly a result of the official effort to individualise interests in land. The initial and continued access to land under this tenure is conditional to one's continued holding of a powerful political/bureaucratic/army position or connections to the crucial areas of the state machinery. Again this tenure was created at the expense of the "*kibanja* tenure". Interestingly, under this tenure the owners of the lease rights are

absentee landlords. They do not reside on the land and we found no productive activity on the land. The land was either under bush or was occupied by squatters. The majority of the "ranches" in Kiryandongo (see map) fall under this kind of tenure. Kitongozi village is within a "ranch" owned by an absentee landlord and like other villages within the "ranches", it is inhabited by squatters. Squatters are a category of people who settle and use land without any contract, verbal or otherwise with the leaseholder. According to our investigation squatters in Kitongozi constitute 84 households with each having access to varied amount of land. The squatter population is differentiated.

The inequalities in access to land amongst the squatters is due to a combination of factors. The first has to do with "first comers versus the late comers". Most of the squatters are internal refugees, fugitives from Apac and Lira Districts. After the fall of the Amin's regime some of the Langi petty bourgeoisie waged a *dok turwu* (return to your native land) war against all non indigenous people. Among the victims were those Banyoro who had settled in areas like Ijuje. These were channelled into the ranches, sometimes without knowing that the land they were occupying belonged to some absentee landowners. Those who settled Kitongozi in the early 1980s managed to acquire as much land as possible. However, at the time of research, there was another wave of settlers evicted from the Palestine-cum-NRA farm and the game reserve. The newcomers got smaller and smaller pieces of land than the pioneer settlers.

The other factor had to do with the power of allocation. Before the establishment of RCs, chiefs wielded a lot of power over allocations of land in the "ranches". Many of the squatters had to bribe their way to Kitongozi. Most likely the amount of bribe determined the place of settlement and the amount of land that squatters could get.

Furthermore the local politics within the squatters, which assume an ethnic face, affected the amount of land the settlers could get. The Baruli, the dominant group in Kitongozi think that "ranch" land used to belong to their ancestors who were evicted to give way to "ranching". They argued that they should have a say in the way it is parceled. They tried as much as possible to ensure that those from other groups got less land than themselves and at the parameter of the settlement. As they said, let them ("foreigners") be *'olwigi lwa isye'*, meaning that foreigners should be the doors that stop wild animals/vermins from entering the Baruli's gardens. Because of problems of water and roads some ranches are not inhabited at all. These became sanctuaries for wild game and tsetse fly multiplication. Late arrivals are faced with a situation of settling further inland and to face wild game and tsetse flies. But, rather than settle at the edges those with some money buy already

developed areas from those with urgent problems like sickness. The one selling of course reduces the amount of land at his/her disposal.

On the other hand the amount of land acquired depended on the resources and people a particular household had. There are some capitalists who came with cows and big families. These naturally helped themselves to bigger chunks of land. Finally, as the children come of age they are apportioned land, a kind of sub-division. As soon as they marry, they become a household separate from the parents. This reduces on the land the parents originally acquired. It is through this complex process that the squatter population have unequal access to land as can be seen from Table 5.

**Table 5**  
**Access to Land by Squatters in Kitongozi Village**

<b>Class/ Strata</b>	<b>H</b>	<b>Amount of Land Controlled</b>	<b>Average</b>
Capitalists	2	680 acres	340
Rich Peasants	10	239 acres	23.9
Middle Peasants	48	527 acres	10.97
Poor Peasants	20	250 acres	12.50
Wage Labourers	4	3 acres	0.75
<b>Total</b>	<b>84</b>	<b>1699 acres</b>	

Key: H- Household.

In Kitongozi, entrance into the village was not circumscribed by sex considerations. Every woman who so wished was free to acquire her own land in Kitongozi. All the women-headed households who came with the exodus from Apac and Lira or having lost their husbands through war, natural death or divorce were given land provided they paid a demarcation fee (*obusamba irungu*) averaging shs.1300 in the 1986-1991 period. But the patriarchal ideology, deeply ingrained in the consciousness of the peasant women, shifts land control to the sons and not daughters when the woman dies. After death, the inheritance of the land is not through the female as would be expected but through the sons who, however, have got to recognise the use rights of the daughters, at least in theory.

**Table 6****Mechanisms of Women-Headed Access to land Among the Squatters  
under the Landlord Tenure in Kitongozi**

<b>Class</b>	<b>Amount</b>		
Use Rights	1 H	MP (Divorced)	5 acres
	1 H	MP (Widow)	3 acres
Purchase	1 H	MP (Divorced)	12 acres
Resistance			
Council/Chief	5 H	MP (Divorced)	49 acres
	1 H	MP (Widow)	5 acres
	1 H	PP (Widow)	50 acres
<b>Total</b>	<b>10 H</b>		<b>124 acres</b>

Key: MP- Middle Peasant; PP- Poor Peasant; H- Household.

The youths in Kitongozi are much better off than the youth in Kahara. In terms of inheritance each child is assured of 12.8 acres amongst the capitalists, 3.6 acres among the rich peasants, 3 acres amongst the middle peasants, 4.8 acres among the poor peasants. The wage labourers children do not have enough but could settle at the boundary of the village where there is still plenty of unused land. All this is being said on the assumption that the absentee landlord does not succeed in evicting them. If the squatters are actually evicted a total population of 524 people of youths and adults will have nowhere to settle.

Table 7

**Inheritable Land Among Youth Squatters under Landlord  
Tenure in Kitongozi**

<b>Class/ strata</b>	<b>Total land</b>	<b>Total Number of Children</b>	<b>Males</b>	<b>Females</b>	<b>Av. per child (acres)</b>
Capitalist Rich	680 acres	53	25	28	12.8
Peasant Middle	239 acres	66	37	29	3.6
Peasant Poor	527 acres	184	95	89	2.86
Peasant Wage Labourers	250 acres	52	33	19	4.8
	3 acres	6	3	3	0.5
<b>Total</b>	<b>1699 acres</b>	<b>361</b>	<b>192</b>	<b>169</b>	

The leasing of land was one of the key features of the 1975 Land Reform Decree and indeed the 1969 Public Lands Act. We do not need to repeat the arguments of this official position. Save to show that the effect was the opposite of what was anticipated - namely more production, innovation in technologies and techniques. Far from becoming an impetus for agrarian transformation and expansion, the leasing of tenure became not capitalist lease tenure but landlord tenure of the lease type. The lessees of land under this form of tenure acquired the land because of their structural position within the state or good connections to key areas of the state. These are the individuals who had no assets or capital, they had no experience in organising production. As the Mugerwa Commission noted, the allocation of "ranches" was done by Presidents, Ministers, etc. "Consequently many allocatees were not genuine farmers".<sup>69</sup> In the majority of cases they were "telephone" or "absentee" ranchers to use a popular expression. Even for genuine farmers (if there was any), frequent changes in regimes posed insecurity for production. The ranches were, and continue to be, objects with which to reward political supporters. For

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<sup>69</sup> Uganda Government, Report of the Commission of Inquiry into Government Ranching Schemes, December 1988, Government Printer, Entebbe, p. 25.

instance, some of the "ranches" where Kitongozi is located, changed hands during the Obote regime. Our investigation revealed that at least five ranches changed hands during Obote II.<sup>70</sup> This politicization of the so-called individual tenure bred insecurity for the allocatees. No sensible man or woman could invest heavily in a property he/she would lose sooner or later. For every change of regime a substantial number of them go into exile.

Further on the question of insecurity of tenure, we should add that the beneficiaries of these land leases were faced by another force of the landless/squatters who were displaced to give way to the "ranches". In a situation where the landless had no alternative sources of income they looked on the empty stretches of land with a determination to occupy it. This as we saw was what was happening in Kitongozi. Definitely, as the situation stood at the time of research, no lessee could begin production or rear cattle without his/her crops being destroyed or the cows speared to death by the squatters. In many areas of Masindi District much of the village commons were enclosed and this created antagonism between the lessees and the village inhabitants who can struggle in various ways to ensure that land is not put to effective use.

Moreover, it is difficult to create a viable commercial business in agriculture. It is even more difficult in the Ugandan situation where most of the proceeds of agricultural produce are captured in the sphere of exchange. Thus the "ranches" were political rewards rather than an attempt to create genuine agrarian capitalist class contrary to the usual conventional wisdom. It is clear if one acknowledges the fact that state subsidies and assistance (agricultural extension services, subsidised agricultural inputs, etc.) were given to individuals under this tenure. That is why the approach was subsidizing agriculture from the production side and depressing the marketing of the produce. In order to discriminate against political enemies, regimes provided inputs for agricultural production (supply) than freeing (demand) the market of agricultural produce. The Mugerwa Commission records that "in Bunyoro, 8 ranches received all the facilities including boreholes depending on the individual ranchers, backed by their status and position in government". The subsidy to these facilities amounted to 50 per cent.<sup>71</sup> Because of these subsidies some of the "ranchers" were able to begin production. But as soon as the state could no longer provide these subsidies, the little production disappeared all

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<sup>70</sup> Evidence was analysed from LWFP files for individual ranches. The files are in Lands Office, Masindi. Also the Mugerwa Commission records an instance: "Late Okware's ranch in Bunyoro Ranching scheme was taken over by the Minister of Animal Industry and fisheries, Mr. E. Nkwasiabwe. The matter was, however settled out of court." See Uganda Government, Report of the Commission of Inquiry into Government Ranching Schemes, op. cit, p. 21.

<sup>71</sup> Uganda Government, Report of the Commission of Inquiry into Government Ranching Schemes, op. cit, p 31.

together. The Mugerwa Commission could not hide the truth that some of the "ranches" had never been developed and was not hesitant to recommend that it was politically imperative that 20 out of the 37 ranches be repossessed by government. In other words the achievement of the process of individualisation, backed by the powerful Land Reform Decree resulted into landlordism rather than agrarian capitalism.

The 1975 land reform provides that continued possession of land is dependent on developing the land. This, however, would be difficult because to develop a ranch of 5 square miles without prior experience and capital is difficult. According to conventional economics the lessees could use the leases as collateral security for loans from banks. This, however, is not easy unless, once again, the landowner is well connected to the state. But most important, any sensible man or woman knows that to borrow a loan from a bank for agricultural purposes is risky. There is a danger of failing to pay. Since agriculture is rain-fed a poor harvest is enough to spin the borrower into a cycle of debt. Since 1981, when the government adopted the IMF-sponsored structural adjustment programmes whose conditionality, among other things, emphasize high interest rates, very few individuals have borrowed for agricultural purposes. In addition, whereas in the formal applications the borrowers may indicate that the loan is for agricultural purposes, in practice the money is diverted into trading in produce or import export trade. Leased lands are used to acquire loans for other activities other than agriculture. For example, a certain ranch in the Bunyoro Ranching Scheme was re-allocated to another politician in 1983. The new beneficiary has never touched anything on the ranch. He may even not know the exact place where the ranch is. But he was able to get a loan on the basis of the lease. He wrote to the Minister of Lands and Surveys in March 1988:

The above was leased in my name as a result of Ranch No... of Bunyoro Ranching scheme being allocated to me in 1983. Due to the problems we had in that area it was impossible to develop. The same property has been mortgaged to Uganda Development Bank as a result of a loan I procured from them (in 1984).<sup>72</sup>

This individual is just one of the many who get loans but find it irrational to sink money in agriculture where the returns are depressed. In this situation the much preached about miracles, efficiency, technological transformation cannot take place. Under the existing political, and socio-

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<sup>72</sup> Absentee "Rancher" to Hon. Ben Okello Luwum, Minister of Lands and Surveys, March 1988. File LWFP/5466, Kiryandongo Ranch No..., Bunyoro Ranching scheme, Lands Office, Masindi.

economic circumstances, individualisation of tenure leads to absentee landlordism, agricultural stagnation, starvation and famine.

### **Landlord lease Tenure and Productivity of the Squatters**

Since the process of enclosure, spurred by the 1975 Land Reform Decree, continue to displace many peasants, the absentee landlords found over time uninvited guests in their leased land such as in Kitongozi. How is the production of squatters affected by the Landlord Lease Tenure? The squatters are faced with a potential eviction. That is enough to worry a producer and discourage him or her from innovation and expansion. However, the response to this insecurity has varied depending on a household's class or stratum and the ethnic background. The peasantry is differentiated into poor, middle and rich peasants. Then there are capitalists and wage labourers. The rich peasants and capitalists have responded to this insecurity by trying to produce more. According to them the 1975 Land Reform Decree (LRD) provided that leasehold must show signs of development before the term of the lease can be extended to 45 years or 99 years. The absentee landowners have nothing to show by way of development and therefore they have no legal right to displace people who have been developing the land. The LRD further provides that no one can evict another without providing adequate compensation. Therefore, according to rich peasants and capitalists, expanded production was a much better response to insecurity than constricting their production. Of course they could argue like that because the landlord exist as a potential threat. If he was exacting a periodical rent, they would also cut back on production. We should note that this explains why rich peasant and capitalist squatters are able to plant perennial crops such as coffee, bananas and even to build semi, permanent houses of *mabaati* (corrugated iron sheets).

On the other hand the poor and middle peasants are scared stiff of eviction. Some have been evicted more than two times. They felt that another round of evictions was in the offing. These peasants minimise their production.

The squatters from other ethnic groups (non-Banyoro) face additional insecurity. The source of this insecurity is the local Banyoro middle class. Squatters of Bugisu, Lango and West Nile origin in Uganda and those from Kenya, Zaire, Rwanda and Sudan face constant harassment. They are accused by the Banyoro middle class of being foreigners with no rights to land and some are reported to have demanded a periodical "gift" (rent) from pastoralists for allowing them to graze in the "ancestral" land that was grabbed by the state to create the "ranches". Whenever contradictions sharpen among the squatters the organisational lines are drawn along the ethnicity lines. Thus as the land crisis sharpens we are bound to see a reverberation of "tribal" ideology. The

point, however, is that the contradictions among squatters expressed through "tribal" solidarity threatens the production plans of the numerically small and less organised ethnic groups.

There is another problem related to the evolution of landlord lease tenure namely, the multiplication of wild game and tsetse flies that further impair the productivity of the squatters. Animals like baboons, monkeys, wild pigs, etc, have reproduced so much in the land tied in landlordism that they constantly destroy crops of the squatters. This multiplication has re-introduced the tsetse fly that had more or less been eradicated in the 1960s. Tsetse flies are vectors of trypanomiasis that cause nagana (Rwakiumpuru) in cattle and sleeping sickness in humans. This is an addition to the squatters' problems as it increases expenditures on drugs and impairs production by physical destruction.

The other source of insecurity to "individual tenure" is the state itself, which in the demarcation of ranches had an uncoordinated policy. Before the "ranches" were demarcated there were already two gazetted forest reserves of Nyamakere and Kibeka. The "ranch" land was superimposed over the forest reserves. Contradictions existed between the forest and the veterinary departments, both constantly harassing the squatters to vacate the area in the interest of specific functions that go with their departments. To this we add the chiefs who aided the settlement of the ranches purely for personal gains. Unconfirmed reports have it that they extracted money from the desperate refugees-cum-squatters. In the particular case of wandering pastoralists, some chiefs are said to have demanded a periodic "gift" for having aided them to acquire land. This kind of confusion is an obstacle to any production and uncoordinated state policy is the cause of insecurity for any type of tenure.

In general terms we have shown that state policy has led, and continues to lead, to concentration of land among a few (non-productive) and marginalisation of the majority (productive). In addition the resulting forms of tenure, are landlord tenure where the rights to land is conditional to payment of rent. These landlord/tenant relations together with insecurity of tenure have affected negatively the productivity of agriculture. This is not the place for us to examine other factors that are pre-requisites for successful agrarian transformation such as a democratic market, adequate and appropriate agricultural technological inputs, peace and security, the levels and forms of taxation, etc. Suffice it to mention that land relations as they exist now are one of the impediments to agrarian change.

#### 4. Land Conflict and Institutions for Conflict Resolution

The land relations described above for each form of tenure and the changing modes of access have potential for conflict. Such conflict paralyses production and has the tendency of feeding into particular political alliances, which in the final analysis entrenches landlord tenure. In this section we examine the types of conflict that we discovered in the two villages.

##### 4.1 Landlord-Tenant Conflict

This conflict existed between one pastoral tenant and the landlord who wanted to increase the rent (an additional bull) but the tenant refused. So the landlord demanded that the tenants leave the land and the pastoralist migrated away. This conflict almost assumed a nationality ("tribal") face, an increasing phenomenon countrywide. For example, consider a documented case in Kiryandongo between a Kikuyu of Kenyan origin and an indigenous person. The indigenous person lent land to the Kenyan for a certain amount of rent. When the Kenyan refused the indigenous person attempted to evict him from the land. He justified the move by arguing "according to the current "double food production campaign" it pains me more to see my humble plans of fulfilling the government policy being ruined by a foreigner..." The foreigner complained to the district commissioner: "I wish to know whether it is bad for someone who develops about 25 acres of crops than the one who wants to keep the bush because he is TRIBE MAN. Please Sir, I beg you to stop your chief for interrupting my plans just because I am a Kenyan."<sup>73</sup>

But the most important point to note is that the 1975 Land Reform Decree abolished the payment of rent. Despite this legal provision, rent relations still exist in the countryside and cause conflict.

In Kitongozi, a village submerged under the landlord lease tenure, the conflict involved many forces. First the squatters were locked in conflict with absentee landlords. Simultaneously there was conflict between the Veterinary Department and the Forest Department. Before the "ranches" were established, two forests, Kibeka and Nyamakere had already been gazetted as reserves. For unknown reasons those who demarcated the "ranches" assumed that there were no forest reserves. The veterinary department was urging the forest department to abandon the forests to ranches. On its part the forest department was

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<sup>73</sup> William T. Kiryaisoke, Kiryandongo trading centre to the DC, North Bunyoro, Msd. April 1, 1979; Elijah Wanyoli, Kiryandongo to DC, North Bunyoro, April 20, 1978; William F. Kiryaisoke, Kinyomizi, Kiryandongo to Sub-county Chief May 3, 1978. All in File: Lan 8 Pt. V Land Disputes, Kiryandongo Saza Headquarters.

insisting that the forest reserves should remain. The veterinary department had better leverage. It had forged an alliance with the absentee owners. The stalemate had not yet been resolved but both departments in turn were harassing the squatters to vacate the contested areas. In a County Development Committee meeting, the forest officer had before our research reported that the squatters "who have been settling there are now leaving".<sup>74</sup> The author, however, could not establish the authenticity of that information.

During the research, there was an influx of people looking for land to settle in Kitongozi. These were people evicted from the NRA farm which previously was demarcated by the Amin government and allocated to the Palestine Liberation Organisation (PLO). Its creation in 1973 led to the eviction of peasants who were not compensated. After the fall of Amin the farm remained vacant. Population pressure together with "Dok Turwu" refugees led to the encroachment into the farm. When the NRM/NRA took over power the land was taken over by the NRA production Unit. At the time of research the squatters were being evicted. Giant earth moving equipment was uprooting banana plantations and huts, particularly in Kirooko 1 and Kirooko 2 villages. Again the squatters crowded in the remaining areas of Kiryandongo, others went to Pakanyi in Buruli, the "ranch" land, and into the Karuma Game Reserve. No sooner had those who went to the game reserve settled than the Game Department began its own eviction from the game reserve. Those evicted claimed that the Karuma Game Reserve boundary was an illegal creation. It was a product of the game warden who in the attempt to punish a rival over a woman created a new boundary so that the rival would leave the area. In the process, innocent peasants were also displaced. This line was drawn in 1964.

## **4.2 Conflict Resolution**

Boundary conflicts in the seventies were handled by the chiefs. In some cases chiefs did not arbitrate fairly especially when one of the parties involved was in position to bribe them. When the NRM came to power in 1986, a new institution of Resistance Councils (RCs) was introduced. The RC system is structured as follows. Level one all the inhabitants of a village form the Village Resistance Council (RC1). The RC1 Council elects a 9-person executive committee. All the executive committees of RC1 in a parish form the RC2 Council. The RC2 Council elects a nine-person executive committee. The entire executive Committee of RC2 forms RC3 Council. The RC3 Council elects a nine-person executive committee. All the RC3 executive committees form the RC4

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<sup>74</sup> Minutes of the County Development Committee meeting held on Thursday, April 18, 1991 in the County Hall, Kibanda. File ADM.2 County Team, Kibanda Saza Headquarters.

Council. The RC4 Council elects a nine-person committee. All the executive committees of RC4 form the RC5 Council (the District Resistance Council). The RC5 Council elects a 9-person Executive Committee, the RC5 executive Committee or the District Resistance Executive Committee.

The RC system is a much better system of handling conflicts in the village compared to a chief; in the sense that these are people's committees while the chief is the local expression of the state. In the past the chiefs were powerful and could take bribes to suppress one party. While it is true that RCs are not immune to bribes or corruption, they nonetheless present a better advance in disputes over land. Any body wishing to lease land must get the endorsement of the RCs. Compared to the past it is not easily possible for an army man or a bureaucrat to bulldoze through the enclosure of land.

The drawback of the RC system is that it is a forum of all social classes, potential grabbers and victims. Given the fact that the general population has been terrorised by state organs there is a likelihood of the potential grabbers hiding within the RC system and using it to their advantage in land matters. Potential grabbers as discovered in my earlier research in Kakindo village will sidestep the RC system and opt for court arbitration. Courts are treacherous arena for contesting decisions about land. The one who is more enlightened about land laws and also with a lot of money to bribe his way can unjustifiably take someone else's land. As discovered in Kitongozi, the squatters are organised into RCs. They successfully blocked some of the "absentee owners" of the ranch who wanted to evict them. The RC system, however, cannot resolve the problem of land enclosed in the past. Lower RCs are not allowed to make byelaws. Land laws can only be enacted at the level of the National Resistance Council. However, the composition of the NRC is mainly absentee landlords, who have an objective interest in maintaining the status quo. Therefore, RCs have so far failed to resolve the absentee landlord-squatter problem in Kitongozi. In fact RCs are powerless as regards land that was enclosed in the past and leased either through state sponsorship or by individuals well connected to the state. Since there is no local organ that can solve the problem the squatters have always been resorting to violence.

Fortunately, before the squatters in Kitongozi could resort to *pangas*, a squatter crisis in the Ankole-Masaka ranching schemes erupted. This crisis sensitised the government to a grave squatter problem. The government was forced to set up a Ranch Restructuring Board (RRB). At the time of writing this report, the results of the RRB are yet to be made public.<sup>75</sup> But it is important to underline the politics of the absentee owners. In 1987 the government set up the

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<sup>75</sup> See General Notice No. 182 of 1990, The establishment of the Ranches Restructuring Board Notice, 1990, The Uganda Gazette, Vol. LXXXIII, October 12, 1990.

Mugerwa Commission to investigate the Government-sponsored ranches, which included the Bunyoro Ranching Schemes. It is interesting to note that in its report there was no mention of squatters living in the ranches. It looks like the Commission did not contact the RC system, which existed by then, or there was a deliberate silence over the existence of squatters. It is possible, for a commission that produced an otherwise more objective report of the kind, was misled by the absentee landlords that there never existed a squatter population in the "ranches".<sup>76</sup> Some of the members of the RRB that the author had discussions with admitted that the absentee landlords were exerting tremendous pressure on the RRB to evict the tenants and leave them with the ranches. The landlords argued that they could not develop the ranches because of insecurity. Some argued that they had acquired loans on the basis of the "ranches" and that re-dividing or restructuring the "ranches" was going to jeopardize that security to loans. At the time of writing, the results of the Board were not yet known but a potential clash existed. 'The New Vision' dated February 18, 1992 quoted Hon. David Pulkol the Chairman of the RRB as having said that the Board had finalised processing of the data collected and that the following month the re-demarcation of the "ranches" would begin.<sup>77</sup>

The squatters are, however, not organised and therefore their power to lobby is very limited. Their approach to the problem of being squatters was mainly petitions to chiefs, the District Executive Officers/District Administrator, the District Resistance Council and the Member of the NRC for Kibanda County. In 1988, for instance, one Council member from the area proposed to the Masindi District RC5 Council that a commission of inquiry be instituted to look into the "ranches" question:

A member informed the council that in Kiryandongo sub-county there was land that was grabbed and suggested that a committee of inquiry be appointed to look into the matter. The land in question was in the following locations: Kiryampungula, Kitongozi, Kyamakubagi, Kikungulu, Nabikoni, Ndeija, and Kooki in Ranch No 30, 31 32 and 33.<sup>78</sup>

In most cases the initiative to write petitions or appeal verbally has often come from the local politicians with their own private agenda. There is no formal organisation of squatters to defend their interests. The first attempt to do so was when Major Sonko of the Ranch Restructuring Board advised the

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<sup>76</sup> Uganda Government, Report of the Commission of Inquiry into Government Ranching Schemes, December 1988, Government Printer, Entebbe. p. 108.

<sup>77</sup> "Nomadism will be outlawed-Museveni", *The New Vision*, Tuesday, February 1992.

<sup>78</sup> "Minutes of Masindi District Resistance Council meeting held on 7th April, 1988 at 11 a.m. in the Council Chambers". FILE No MDC/ ADM/ 2: Minutes, Masindi.

squatters to form an organisation that can articulate their problems to government. However, the entire exercise was hijacked by the Banyoro local politicians who also have an interest in acquiring "ranches" for themselves. The local politicians whipped up ethnic sentiments, arguing that 'foreigners' grabbed all the land and marginalised the indigenous people who became squatters or landless. While the issue of marginalisation and transformation of many into squatters is true the real motive of the middle class Banyoro is not to assist the squatters but to use the squatter grievances to be allocated ranches too. They argued that of the 37 ranches only two Banyoro got ranches. The rest were taken by people from other ethnic groups. Yet some of them claim that in certain parts of the "ranches" lived their ancestors and that the land should be re-allocated to the grandsons.

The hidden motives of the middle class Banyoro was best revealed by one of them. Overzealous to have his share of the "ranches", he began parcelling out a piece of land in the "ranches" only to run into squatters. The squatters drew their *pangas* and chased him away. Yet some of the local petty bourgeoisie are reported to have been extracting rent in the form of cattle from pastoralists in areas bordering the Nile. Those who refused to give "rent" were branded "bandits" and chased away or died. In a 1983 incident in which the then nascent National Resistance Army attacked Kiryandongo Police Post the local politicians are reported to have attempted to take advantage of the incident to extract rent from pastoralists who were living along the Nile. Those who refused were branded bandits, the army was deployed and about 17 people are said to have died in Kapundo.

Thus it is these middle class local politicians who set about creating an organisation to defend the interests of squatters when Major Sonko suggested that squatters form such an organisation. The local politicians appointed themselves as representatives of squatters. But somehow the District Executive Officer in charge of Kibanda had understood the hidden agenda. She refused one of such self-appointed representative because he was well known for whipping ethnic sentiments and harbouring an agenda that of grabbing for himself a chunk of land from the "ranch" land. The individual went back and concocted a letter supposedly signed by 11 squatters:

We wish to inform you that we have elected another representative of squatters in this sub-county as per your demand. Madaam, we would also like you to let us know from your Office as to why you rejected our first representative whom we (sic) elected democratically....We are very surprised and shocked as to why this happened.<sup>79</sup>

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<sup>79</sup> <\$F Petition signed by 11 squatters, Kiryampungula Village, Kitwara Parish to the Assistant D.A. i/c of Kibanda County. November 25, 1990. File 3:Circulars. RC3 Kiryandongo.>

When the squatters were interviewed about representation and the structure of the squatter organisation, they had no idea. Neither did they know about a petition that was purportedly signed by eleven squatters. Besides the squatter population as we saw is much bigger than the eleven signatures. Furthermore, the local politicians had requested government representatives that the squatters be allocated 12 ranches. When interviewed, the squatters denied having ever agreed to 12 ranches. Some squatters expressed fears that this was a ploy to marginalise them by those who did not like squatters not indigenous to the area. They pointed out that the Baruli local politicians arrogantly referred to the rest as "*abaizire izo mbe*" meaning "those who came recently, how can they have a say or have big pieces of land?" The squatters argued that in light of the fact that one of the Baruli claiming ancestry to the land even tried to grab part of the land settled by squatters, the idea of the twelve ranches was indeed an agenda to take over their developments and resettling them at the margin so that they act as "*olwigi lwa isye*", the gate that keep vermin from the Baruli gardens. According to squatters a boundary line one mile away from the settlements was a simple and easier solution. It remains to be seen as to how the RRB will handle the squatter problem.

## 5. Conclusions

"As we are all Ugandans, there is no reason why we should not have a fair sharing".<sup>80</sup>

FILE MW 19, District Archives, Masindi.

"We want land and Peace".<sup>81</sup>

We have endeavoured to show that the impact of the policy of individualisation in Uganda, whose high point was the 1975 Land Reform Decree, led to the evolution of landlord forms of tenure. In both case studies, landlordism covers the biggest chunk of land - in Kitongozi 100 per cent and in Kahara 66.3 per cent of the total land. The other form of tenure, the *kibanja* tenure, which was discovered only in Kahara covers 33.7 per cent of the total land in Kahara. And yet it is under the *kibanja* tenure where the majority of the population live. How did these forms of tenure arise? We have shown that the early years of colonialism led to the development of landlordism. In the late 1920s and early 1930s, the colonial state halted the development of this tenure by guaranteeing the security of the cultivators under *kibanja* tenure. This security of tenure was, however, removed by the 1975 Land Reform decree. The

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<sup>80</sup> George Balijuka of Hoima to DC, Hoima, 20th Sept, 1973.

<sup>81</sup> RC3 Defence Secretary, Kiryandongo. July 29, 1991.

state and individuals grabbed and converted *kibanja* tenure into landlord tenure of the lease and non-lease types. The very process of converting *kibanja* tenure into landlord tenure was marked by violence and sometimes death. The milder face of this conversion was the politics of "tribalism" (the indigenous versus the foreigners). At the same time with population increase and subdivision of the land led to inequalities in access to land under the *kibanja* or, to use the familiar terminology, "customary" tenure.

At the same time the impoverished sections of the peasantry were engaged in distress sales of their land to speculators further feeding into the stream of landlord tenure. The process of land grabbing and speculation continues to deliver more and more land from *kibanja* tenure into landlordism of the lease or non-lease types. This process by itself contributed to the evolution of squatters, tenants and those who do not have access to land at all - the "landless". In essence the 1975 Land Reform Decree contributed to emergence of tenants/squatters and those who do not have access to land at all (the landless). The decree failed to, abolish the landlord tenant relations it had purported to abolish in the first place. Furthermore, the process of social differentiation adversely affected women and youths, particularly those found among the poor strata in *kibanja* tenure.

Although the philosophy behind "individualisation" of tenure is that this tenure would lead to security of tenure, our findings show that such security is dependent on the political and socio-economic structures. Certainly the security of tenure of those who "individualised" land was always at the mercy of the regimes in power and the level of militancy of the landless/tenants/squatters. The 1975 Land Reform Decree has often been applied to favour the powerful social classes within and outside the state. Any powerful personality could/can enclose the land. But this has not been easy. The confrontation between the lease owners and the squatters/landless have created paralysis in the countryside with none of the parties secure to invest or expand production. In real terms individualisation and the facilitation that came with the 1975 Land Reform Decree have not led to anticipated agrarian transformation. Much more damaging is the fact that the result has been landlordism, that has been accompanied by environmental degradation through indiscriminate cutting of trees as in Kahara and other environmental problems as in Kitongozi.

On the basis of the findings we can make the following recommendations:

1. Land that is not being utilised should be re-distributed to all those who do not have land. For example, the squatter issue in Kiryandongo should be resolved by re-possessing all the ranches that are not developed and resettling them with the squatters. For the fact is that

small-scale production has been the most dynamic sector of production. A foundation for a better agriculture has to be built on these small producers who in the process of social differentiation will result into wage labourers and capitalists or productive cooperatives. Let me underline one fact that the land question in Uganda is not capitalism versus socialism as ideologues of landlordism have tried to mislead the public. The land question in Uganda is capitalism versus landlordism. I hope the evidence in the paper leaves no doubt that the enemy to agricultural progress is landlordism. A redistribution of land will abolish disguised or open landlord-tenant relations, improve on the peace in the countryside and set the springboard for innovation and expansion in agriculture.

2. A redistribution of land should be accompanied by guaranteeing security of tenure to all those who till the land. The security of tenure should take into account the women and youths. Quite often these categories are ignored in land reforms.
3. Since it is obvious that there is no such thing as "customary" tenure the land reform should aim at a form of tenure that takes cognizant of variations in ecology, availability of water, clays, water bodies, etc. It would be disastrous, for instance, to privatise islands on Lake Victoria or turning Lakes Albert or Kyoga into individual private arenas. Certainly land tenure should take cognizance of the varied natural endowments and the needs of the community. In this respect some land should be left as a common pool where people can collect clay, firewood, etc. In the ranches in Kiryandongo, there is no reason why some of the land cannot be left as commons managed by all the users. But producers should be allowed to own land and not simply enjoying usufructory rights of land owned by the state.
4. Power over land matters should be decentralised to the lowest possible levels. Institution for the control over land should be established. These should be constituted by all social groups with interests in land. The Resistance Council institutions should play a watchdog role.
5. Land tenure reform is not sufficient condition for production to take place. It means that the land reform should be undertaken with other reforms in the wider political economy.

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## Appendices

### Appendix 1

#### Population Distribution

	<b>Kahara</b>	<b>Kitongozi</b>
No. of Households	79	84
Married Women	52	79

In Masindi District functioning ranches based on individual tenure covered 20,872 hectares (80.27 square miles) with 6,983 cattle which constitute a mere 14.25 per cent of the total herd in Masindi. The total cattle population at the time of research was deemed to be 49,000. The rest, 85.75 per cent, were found in the non-lease tenures. Quite interestingly, the non-lease tenure cattle keepers have adopted modern methods of disease control such as using acaricides and anti-biotic drugs wherever it is profitable to do so.

(File No. 2/38, Dairy Corporation, Masindi District Veterinary Department, and File 2/14, Ranches, Masindi Veterinary Office).

**Appendix 2**

**Leased Land in Masindi**

<b>County</b>	<b>No. Individual leases</b>	<b>Hectares leased</b>	<b>Hectares leased by ULC</b>	<b>Total</b>
Buruli	334	77025.38	1300.6	78325.98
Kibanda	123	23256.28	5256.31	28512.59
Bujenje	166	28210.02	4094.2	32304.22
<b>Total</b>	<b>623</b>	<b>128491.68</b>	<b>10651.11</b>	<b>139142.79</b>

Computed from Uganda Land Commission Minute File, Masindi District Lands Offices, Masindi Town.

**Appendix 3**

**Forest Reserves in Masindi District**

Kibeka Forest Reserve	9570 hectares
Kireba Forest Reserve	49 hectares
Kitonya Forest Reserve	293 hectares
Kyahaiguru Forest Reserve	422 hectares
Nsekuro Forest Reserve	132 hectares
Nyakunyu Forest Reserve	466 hectares
Nyamakere Forest Reserve	3898 hectares
Siri Siri Forest Reserve	452 hectares
Budongo Forest	81,893 hectares
Nyabyeya Forest Reserve	342 hectares
Kaduku Forest Reserve	583 hectares
Kasongoire Forest Reserve	3069 hectares
Masindi Plantation	39 hectares
Masindi Port Plantation	18 hectares
Musoma Forest Reserve	278 hectares
Masege Forest Reserve	957 hectares
Kwenirama Forest Reserve	127 hectares
Kigulya Forest Reserve	391 hectares
<b>Total</b>	<b>102,979 hectares</b>

*Source:* File No. 1/2 Degazetting and Gazetting. Masindi District Forestry Department, Masindi Town Headquarters.

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Dr. Nyangabyaki Bazaara (RIP) was born in a small village in the Masindi District in Uganda. He pursued his studies in his home country through graduate school, receiving his Masters degree in Political Science from Makerere University, Kampala. In 1997 Dr. Bazaara completed his Ph.D. in political studies at Queen's University in Ontario, Canada. He has written and published numerous articles on land policy, food security, and the role of civil society in Uganda. In July 1999, Dr. Bazaara was appointed the first full-time Executive Director of Center for Basic Research, a non-government and non-profit research institution in Uganda, of which he was a founding member in 1987.