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THE MAILO SYSTEM IN BUGANDA

by

H. W. WEST, M.A. (*Cantab*), F.R.I.C.S., F.R.G.S.
Assistant Commissioner, Lands and Surveys, Uganda

With a Foreword by the

COMMISSIONER OF LANDS AND SURVEYS, UGANDA

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A Preliminary Case Study in African Land Tenure

BY

H. W. WEST, M.A. (*Cantab.*), F.R.I.C.S., F.R.G.S.

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FOREWORD

THE MAILO SYSTEM of land tenure has always presented a challenge, a never-ending struggle to bring the register up to date. The challenge today lies not in the cadastral survey, for the technical requirement is slight, whilst the survey service now available to Mailo owners is more than adequate to meet the demand. But the administration of the system has become more and more difficult and involved with the passage of time, when the majority of estates are encumbered in one or more ways; with proprietors of unascertained portions; with Busuulu and Envujjo tenants; with heirs whose succession is unproven and unregistered; with unregistrable agreements.

Henry West joined the Department as a staff surveyor in 1951, and worked for a period in the field on Mailo surveys. He then opened the Mukono Mailo Office and through hard work and enthusiasm soon had it running efficiently. After service in other parts of the country, he became Assistant Commissioner in charge of the Mailo Division of the Department. When he said that he would like to record his experience in Mailo and make some recommendations for its future, before he left Uganda, I readily agreed. No one had had more all round experience of the system, no one had shown greater enthusiasm.

From his own experience of the system, diligent and careful research, and his leaning towards law has grown this most interesting and valuable book. To those engaged in the Mailo Division of the Department, much will be familiar, some will be refreshingly new. The book should be studied for a more complete understanding of the system.

But the value of this work I hope, will go far beyond the Department. In particular, I sincerely hope that officers of the Buganda Government responsible for land matters will study this book, and perhaps through it come to realize more fully the pressing need for very radical land reforms. The wealth and prosperity of Buganda springs from the land, and the Mailo system has become part of that heritage. If it is not to fall into decay, new and courageous legislation for reform must be introduced quickly. This book points the way.

BRUCE B. WHITTAKER,
Commissioner of Lands and Surveys.

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PREFACE

In his introduction to a paper by Lindsay[1], Sir Philip Mitchell, then Governor of Uganda, declared in 1937: "But we all assert on every possible opportunity that the life of the African must be built upon the land, that agriculture is the foundation of everything else, and if that is indeed the case, then it must also be admitted that land tenure—the holding and use of land—is the foundation of agriculture."

Similarly, Lord Hailey[2], in emphasizing that the land, and the interests of those who live on the land, must always be the first consideration in the government of African countries, concludes by quoting from the 1943 Report of the Anglo-American Caribbean Commission, to the effect that, "the productivity of the land and the social advancement of the people are dependent as much upon the evolution of sound systems of land tenure as upon the development of improved agricultural practice".

More recently, the Uganda Relationships Commission, 1961, has reiterated this view; and has, at the same time, added some pertinent remarks about the inherent difficulties. "Land tenure is a subject of great importance and complexity," observes the Commission, ". . . . There is little need to stress the general importance, in a country developing very rapidly, of equipping it with a system of land tenure capable of responding to its needs. In fact, however, customary land tenure, being deeply rooted in tribal habits, is one of the hardest subjects for reform, and it has a natural tendency to lag behind economic and political progress. This, of course, has pronounced social and economic effects, though often the traditional customs are taken so much for granted that their practical consequences are scarcely noticed".[3]

So there is, it would seem, no shortage of authoritative opinion upon the importance of the study of African land tenure. Many works have already been produced, in the form of both general comparative studies and more detailed, local analyses; but, nevertheless, it would appear from the volume of literature available, that, in any event so far as Uganda is concerned, land tenure is still a relatively neglected subject.

The system of tenure at present prevailing in Buganda has already received some attention; and well it might. From its unique history and pioneer nature, and from its present peculiarities and complexities, there arise many points deserving close study. Although most of the people of Buganda accept the conditions of tenure without comment, just as "part of their lives", surely it cannot

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[1]Lindsay, A. G., *Land Tenure in Native Areas*. Entebbe, 1937. (Restricted circulation).

[2]In his introduction to Meek, C. K., *Land Law and Custom in the Colonies*. London, 1946. p. xxvi.

[3]*Report of the Uganda Relationships Commission, 1961*, under the Chairmanship of the Rt. Hon. the Earl of Munster. Entebbe, 1961. p. 80.

be denied that these conditions are really of immense importance to them and to the future prosperity of their country.

Writing, in 1938, about the Buganda Mailo Settlement, Thomas and Spencer were in no doubt upon this point. "This survey represents a unique experiment in African native land settlement," they wrote, "and thus merits wider interest than the small extent of the territory immediately affected . . . might be expected to evoke. Moreover, within the Protectorate, the settlement constitutes what is perhaps the most far-reaching and the most inescapable single political fact, an understanding of the antecedents and development of which is essential to a proper appreciation of the administrative problems of Uganda".[1] About the same time, Lord Hailey expressed similar views when he wrote: "Within the area affected by the Buganda Agreement (*sic*), the survey of the mailo lands, the registration of the numerous transfers of title involved, the questions arising from the fragmentation and subdivision of holdings are the main land problems of today in Uganda. . . ."[2]

Since then, many of these problems have become greatly accentuated, and therein lies the justification for this work.

What is the Mailo System?

The system of land tenure found in Buganda is probably unique in East and Central Africa. It is certainly not a complex of communal rights, as yet found today in some other tribal areas; although a few ancient communal rights still survive. It is not even a system based upon clan rights, also fairly common elsewhere; as in Buganda these were, in the main, swept away more than sixty years ago. Nor, despite the recognition and full acceptance of individual title to land, is it a truly commercial tenure in which custom has yielded to contract as a basis for economic relations. Instead, it is somewhere in between. It is characterised mainly by the quasi-freehold titles introduced, almost revolutionarily after 1900; but it has also been deeply affected by a later partial reversion to tradition; a compromise with custom. It is the product of a well-meaning, but hasty, attempt to introduce modern European concepts of land-holding to a people amongst whom such ideas had not at that time developed spontaneously.

Its law is, in consequence, what Haydon[3] described in 1960 as, ". . . a conglomeration of native law, customary law, and Protectorate legislation. . . ."[4] The native law comprises the Buganda legislation, in which the rights and obligations of those holding Mailo[5] titles are defined; and also the later enactment which codified customary law, and superimposed, upon these proprietary rights, a system of statutory, inheritable tenancies. The customary law relates mostly to

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[1]Thomas, H. B., and Spencer, A. E., *A History of Uganda Land and Surveys and of the Uganda Land and Survey Department*. Entebbe, 1938. p. 61. Full acknowledgment is due here for the many quotations taken from this work.

[2]Lord Hailey, *An African Survey. A Study of Problems Arising in Africa South of the Sahara*. Royal Institute of International Affairs. Oxford, 1938. p. 763.

[3]Formerly Judicial Adviser, Buganda.

[4]Haydon, E. S., *Law and Justice in Buganda*. London, 1960. p. 169.

[5]Allocations of land to be held under this tenure were made in terms of square miles; and the word "Mailo" is merely a Ganda rendering of the English word "mile". The phrase "my mailo" is commonly used to describe land so held; and, by usage, is now applied to holding of any size.

inheritance; and the Protectorate legislation provides the law principally upon Land Registration.

The expression "mailo system" is here employed to cover all aspects of the tenure; all rights, not only of true mailo proprietorship, but also of tenancies. If the system has a reputation for complexity, this has been incurred only partially through the variety in the rights and interests involved. It is due more to unsuitable and inadequate legislation; and to the inability of the survey and the Register to keep pace with the definition and recording of these rights. These are defects which may be rectified.

The Mailo Titles Register, itself, has been a pioneer along the route that more modern systems of adjudication and registration of title must follow. Part of any value in this study must lie in pointing out some of the pitfalls; so that later arrivals may avoid them.

Purpose and Scope of this Work

There has never been any comprehensive programme of research into land tenure in Uganda, although land is the main source of wealth in this country. It is true that, shortly before World War II, the Provincial Commissioners, despairing of reaching any agreement over the draft Land Ordinance, upon which they had been engaged for a number of years, recommended the appointment of a specialist officer to study land tenure systems throughout the country. In consequence, the late C. M. A. Gayer, a former District Commissioner of Bugisu, was seconded from his administrative duties to enquire into the Bugisu land tenure system. His report[1] was submitted in 1944; but, unfortunately, for various reasons this programme was never resumed after the war. It was not until 1953 that there was any revival of official interest in land tenure in Uganda.

This led, as we shall see in Chapter III, to a second investigation into the system of cadastral survey and registration of title in Buganda; but we are still awaiting a full and authoritative examination of the whole system of mailo tenure.

This would undoubtedly be a most instructive study. Speaking of the mailo system, Meek has said: "Uganda provides one of the most interesting examples of the evolution of land tenure as the result of recent political and economic changes."[2] The problems of this system, with its merits and demerits, are the problems which are likely to be encountered, in the future, to an increasing extent in tropical Africa. They have not received a great deal of attention in the past; their importance is only now coming to be realized.

But sweeping constitutional changes have now occurred in Uganda; and many officers, having experience of the mailo system, have already left the country. It has, therefore, been felt advisable to record some of the knowledge and opinions of these officers, lest the value of their experience be largely lost.

For this reason the present work has been undertaken. It is not intended to be an exhaustive or definitive study. It has been written with a time limit in view,

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[1]Gayer, C. M. A., "Report on Land Tenure in Bugisu" in *Land Tenure in Uganda.* Entebbe, Government Printer, 1957. pp. 1–16.

[2]*Op. cit.* p. 131.

and it should be regarded as merely preliminary reflections upon a subject which merits both wider and closer attention. A number of suggestions and proposals have been put forward; yet these are hardly expected to provide the full answer to the problems encountered. If they stimulate thought and constructive discussion, then their purpose will have been fulfilled.

It has been written, primarily, for the information and guidance of those African officers of the Uganda Government who are now taking over responsibility for the survey and Titles Register. These officers should remember that survey and registration are but means to an end; that end being better land utilization and productivity. No amount of survey and registration will rectify, by itself, some of the weaknesses in this system of tenure. But the officers responsible for this service are daily in contact with the land and landowners; and so (aided by an efficient register of interests) they should be in a good position to observe both healthy and harmful trends, and so to advise the authorities upon any measures necessary. Amongst these officers, as wide an approach as possible to the whole subject of land tenure is therefore to be encouraged.

It is hoped that this work will also be of use to other officers of the Uganda Government, to future expatriate officers appointed on contract, to officers of H.H. the Kabaka's Government of Buganda, and to the newly-appointed Kingdom and District Land Boards. Although a certain knowledge of the background and language has throughout been assumed, it may, as a synopsis, prove to be of interest to those engaged upon a wider study of land tenure in Africa. Use of the more abstruse legal and technical terms has, as far as possible, been avoided, and an apology is offered here for various inconsistencies between the old and new forms of spelling, particularly of personal and place names.

In what follows it has sometimes been necessary to be critical; occasionally severely so. But the object in enumerating mistakes is not to apportion blame in a partisan spirit; but rather to ensure, in the light of hard experience, that the same mistakes are not repeated elsewhere. Moreover, each apparent case of neglect should be viewed in the light of circumstances obtaining at that time. What has been achieved has only been achieved by great effort; and there is no doubt that many of the defects were appreciated at an early stage, but the appropriate action was beyond the resources of those concerned.

A More Constructive Approach Required

Our experience of the mailo system to date has taught us many lessons; but, of these, two stand out as being of greater importance than the others.

Firstly, the success of Registration of Title in Uganda, as elsewhere in East Africa, depends ultimately upon enclosure. Without rational enclosure, modern survey techniques based on photogrammetry, cannot be brought fully to bear upon the problem. Because of the magnitude of the task, ground methods are too slow; and, in view of relatively low land values, they are too expensive. If Government is prepared to legislate for compulsory hedging[1], then more

[1]The *luwaanyi* tree, *Dracoena fragrans*, is traditionally employed in Buganda to mark plot corners. Its more extensive use, in hedges, rather than as individual trees, could probably provide the "air-visible" boundaries essential for aerial survey methods.

satisfactory progress towards better land administration could be made. Otherwise, we must wait for the same situation to develop spontaneously, through pressure of population upon the land.

Secondly, no system of Land Registration, and, indeed, no form of land tenure, can be efficiently managed, and so operated to the public advantage, unless it has the full support and co-operation of the community. In Buganda there is, in general, no apathy over land rights; but there is ignorance of the law, and, above all, suspicion of Government motives. A plea must be entered here for a more constructive approach to the problems of land management in Buganda; and for a determined attempt to improve upon the present unsatisfactory legislation.

H. W. WEST.

KAMPALA,
24TH APRIL, 1964.

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H. W. W.

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CHAPTER I

CUSTOMARY TENURE PRIOR TO 1900

"IN BUGANDA, as far back as any tradition goes, the heads of kindred groups have existed as authorities over land side by side with chiefs who were appointed by the King and could be deposed or transferred by him at will." In this one sentence from L. P. Mair[1] is summed up what was perhaps the main feature of the situation prior to the introduction of the Mailo system.

Although there are conflicting views upon the origin of the people of Buganda, it seems likely that the country was settled at a very early date by people of the West African Negro type. With plenty of land to spare they tended to occupy the hill-tops and fertile slopes and in course of time a primitive society, based upon the clan, developed. Recognizing no higher authority outside the clan, they chose a leader, probably from amongst the direct descendants of the original settler in that locality. Him they called the *Mutaka*[2] or "landchief". He was, it would seem, more in the nature of a clan land custodian whose duty it was to allocate the usufruct and to adjudicate upon any disputes that might arise.

It would further appear that at a later date the country was invaded, according to Sir William Morris Carter[3], by Bahima and other peoples of Hamitic stock. Whereas, in other parts of Uganda, such as Ankole, Toro and Bunyoro, these Bahima have retained a more or less separate identity and continue to constitute the ruling class; in Buganda they have become more closely integrated with the earlier peoples; and, apart from a small number of Bahima herdsmen[4], they do not appear as a separate group. But it is probably true to say that the concept of kingship was introduced by the Bahima, and from them has sprung the present ruling dynasty.

One may conjecture that the early kings, or Bassekabaka, in establishing and exercising their sovereignty, came early into conflict with pre-existing clan rights. But over the succeeding centuries these customary rights of the clans, termed *Obutaka,* were preserved and extended; and the Bassekabaka contented themselves with acquiring the power of confirmation in appointment of the *bataka* and the title of *Ssaabataka* or "Head of all the Clans".

Simultaneously, as Buganda developed as a political unit, and the administration, with a hierarchy of chiefs, became more elaborate, succeeding Bassekabaka

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[1]Mair, L. P., "Baganda Land Tenure". *Africa.* Vol. VI. No. 2. April 1933. pp. 187–205.

[2]Except in quotations, the spelling of Ganda words here, in general, follows Mulira, E. M. K., and Ndawula, E. G. M., *A Luganda-English and English-Luganda Dictionary.* 1952. The plural of "mutaka" is "bataka".

[3]Carter, W. M., "The Clan System, Land Tenure and Succession among the Baganda". *Law Reports. Uganda Protectorate.* 1904–1910. Vol. I. p. 100.

[4]Most of whom are probably recent immigrants to Buganda.

exercised their prerogative by granting areas, of generally unoccupied land, to those chiefs as a reward for their services. So another system of landholding, known as *Obutongole,* developed side by side with the more ancient *Obutaka;* and the concept was eventually established that the ownership of all land was vested ultimately in the Kabaka.

It is now proposed to look briefly at these two systems, and also at a third system, of lesser importance, known as *Obwesengeze* that has been described by Mukwaya[1]. As these have already been described by the three authorities already mentioned, and by others, it is not intended to go into any great detail. But some knowledge of the older forms of tenure is essential for a fuller understanding of the present Mailo system, by which they have, in the main, been replaced. It should also be instructive to consider the extent to which certain aspects of *Obutaka* and *Obutongole* have found their way into the present form of tenure.

The Traditional Rights of Control Over Land

A. *The Clan Rights or "Obutaka"*

These were the rights exercised by each clan head and by the heads of sub-sections of each clan, all of whom were known as *bataka.* The land itself was termed *Butaka* land and Liversage[2] has shown that equivalent expressions exist in other East African languages, such as *Githaka* in Kikuyu, and *Kitsaka* in Nyika. But the Ganda *butaka* estates differed from the ancestral lands of kindred groups in other tribes in at least one important and interesting respect. To quote Mair[3], "to the Baganda the *butaka* are essentially the traditional homes of the kinship heads, in which any member of the group to which the area belongs may claim the right of burial; and, indeed, a considerable proportion of the area seems to have been taken up, not by cultivation, but by graves. . . . But any discussion of land tenure is always based on the underlying assumption that the majority of persons would not settle on the *butaka* of their clan. . . ." Or, as Mukwaya[4] states, "the hills and villages which are the clan lands are dotted all over the country with the greatest concentrations near the past residences of the kings. Only in a few such villages were the clansmen in the majority." As we shall see in Chapter V, this scattering of the members of a clan has greatly complicated the procedure for inheritance of property.

Not a great deal is known about the number of the *bataka,* or of their lands. Roscoe[5] listed 522 such estates in 1911 and an analysis of his lists gives us some interesting information. As is to be expected, most of the *butaka* estates, being of ancient origin, are located in what might be termed the "home counties" of Buganda and not in those counties added towards the close of the 19th century. Thus Busiro has 113 of them, Kyaggwe 98, Mawokota 72, whilst Buwekula

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[1]Mukwaya, A. B., *Land Tenure in Buganda: Present-day Tendencies.* East African Studies No. 1. Kampala, 1953. p. 12.

[2]Liversage, V., *Land Tenure in the Colonies.* Cambridge, 1945. pp. 3, 4.

[3]*Op. cit.* p. 189.

[4]*Op. cit.* pp. 8, 9.

[5]Roscoe, J., *The Baganda.* London, 1911. p. 133.

has only two, Bugerere one, and Buruli, Bugangazzi, Buyaga, Kabula, Koki, Mawogola and Buvuma none at all. Nsimbi[1] agrees in the main with this distribution, but ascribes one to Koki and two to Buvuma. Roscoe lists only 44 in Kyaddondo, but this relatively small total must be due mainly to the smaller size of the county and partially to the probable existence of many *butongole* estates there. It is perhaps surprising to find that there were as many as 17 *butaka* holdings in the Ssese Islands.

These *butaka* estates were held by individuals and not collectively.[2] *Obutaka* was not in any sense a communal form of tenure; but neither was it the fullest private ownership. The *bataka* held what might be likened to an entailed estate[3] in the land. They could merely allocate the usufruct and receive the profits. Without the consent of the clan they could not give it away and the concept of sale was at that time unknown. Upon the death of a *mutaka* his *butaka* land passed, *without subdivision,* to his successor. This successor was chosen by the clan elders who would normally be prepared to confirm a nomination made previously by the deceased. Only male members of the deceased's *siga* or sub-clan were eligible; and Kabaka Mutesa I[4] decreed that a son, if there was one, must be elected unless he was notoriously unfit for the position.[5]

The appointment of each new *mutaka* had to be confirmed by personal presentation to the Kabaka; a practice which still continues today in respect of successors to mailo land. In his capacity as *Ssabataka* the Kabaka therefore exercised general control; he would judge any clan dispute brought before him, and he could evict any *mutaka* for neglect or abuse of his responsibilities. But, in this event, a replacement was not nominated by the Kabaka but was elected from the same clan and *siga.* If he so wished, the Kabaka could take away part of a *butaka* holding for the creation of new *butaka* or new *butongole* estates. But it was very rare for a *mutaka* to be deprived of the actual burial ground of his ancestors.

B. *The Rights of the Kabaka and Chiefs or "Obutongole"*

In the exercise of his prerogative power the Kabaka granted land to the great chiefs, or *bakungu,* to whom the administration of sections of the country was entrusted; also to the more numerous, lesser, chiefs or *batongole;* for services rendered or for reasons of favouritism. Mair tends to differentiate between *bakungu* and *batongole* in the tenure of their land; but, as the incidents of tenure were essentially the same, it is proposed here to follow Carter's lead and to group their rights together as *Obutongole.*

The *batongole,* therefore, held rights of usufruct over estates attached, for the most part, to particular offices. Whilst in possession they enjoyed rights similar to those of the *bataka;* but the rights of *Obutongole* ceased upon the death of the office holder or upon his removal from office, for whatever reason.

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[1]Nsimbi, M. B., *The Buganda Clans.* Address to Uganda Society, August 1963. Unpublished.

[2]Carter, *op. cit.* p. 116.

[3]*i.e.* their interest could pass only to a certain, specified, class of successor.

[4]Reigned 1857–1884.

[5]Carter, *ibid* p. 112.

The *batongole* held their land at the Kabaka's pleasure; at the most they had a life interest. Upon the death of a *mutongole,* or upon his promotion or demotion, the Kabaka could appoint whomsoever he chose to fill the vacancy. He was not limited in any way to a choice from the sub-clan of the former *mutongole,* as was the case in the appointment of a new *mutaka.* It was, in fact, unusual for a son to be appointed to his father's office and emoluments; but, very frequently, he would, in due course, be awarded another chieftainship and so receive *butongole* land in his own right.

Obviously, the system of *Obutongole* was the forerunner of the official Mailo estates granted to the Kabaka, to certain members of his family, and to the regents and county chiefs under the Uganda Agreement, 1900. From very early times, therefore, in Buganda there was a close association between political power and the exercise of controlling rights over land.

One other point of interest should be mentioned. The systems of *Obutaka* and *Obutongole* were, on the whole, mutually exclusive[1]. If, for example, an individual, having previously succeeded to a hereditary *butaka* holding, was later offered an appointment as *mutongole,* he was required to choose which of the rights he would retain and which he would surrender. In such circumstances, Carter maintains, the individual usually chose to accept the office of *mutongole* and the *butaka* land passed to one of his relatives.

C. *Certain Individual Hereditary Rights or "Obwesengeze"*

There existed, in addition, a third but far less important class of rights over land, known as *Obwesengeze;* for a description of which we are indebted to Mukwaya[2]. According to him, "these claims were based either on long occupation of one particular holding confirmed by the King, or to (*sic*) an original grant of one holding or one small estate to an individual chief or peasant by the King himself. . . . Both chiefs and peasants who had some access to the King availed themselves of the same opportunity to have a permanent claim to one particular piece of land recognized. It was common for a chief early in his career to choose one holding for his personal use as distinct from the holding for his official use." These *ebibanja eby'obwesengeze* were generally small; but were regarded as very valuable as they were inheritable and carried with them no political duties.

It was for the confirmation of these personal claims, that the Kabaka would send a special messenger to plant a bark-cloth tree upon the land granted. This was an open and public act, and is of interest as being the equivalent of the old English feudal practice of *feoffment with livery of seisin.*[3]

The Meaning of these Traditional Rights

An individual, exercising any of these rights of control over land, was termed a chief; and his position can best be described in the words of the old Ganda proverb, *"tafuga ttaka afuga bantu"*—"he does not rule land, he rules people".

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[1]Here, however, the views of Mukwaya differ from those of Carter and Mair.

[2]*Op. cit.* pp. 12, 13.

[3]By which a twig, or clod of earth, was, in the presence of witnesses, handed to the grantee. *See* Megarry, R. E., and Wade, H. W. R., *The Law of Real Property,* London. 1957. p. 46.

The land itself had no intrinsic value. The idea of him disposing of his land for profit would, no doubt, have appeared absurd. Only indirectly was the land the source of the power and wealth of a great chief. He measured this, instead, in terms of the number and services of the peasants he could induce to settle upon his land. Over these peasants he had indeed, the power of life and death, but, as they were free to desert an unjust chief, these powers had to be exercised with care. However, for good reason, he could evict a peasant from his holding and accept another in his place.

He was entrusted with the administration of justice in his area; and with the collection of taxation, of which he usually had the right to retain a certain percentage for himself. He had a traditional right to expect a tribute of beer and food from his peasants, and to call upon them to work for him upon the construction and maintenance of roads, for example, or upon the building of a new palace for the Kabaka or a new house for himself.

Ultimately, his power depended upon his right to call upon the peasants to fight for him in time of war or of civil disorder. Exceptionally, he had the power to appoint lesser chiefs upon his estates; but, more generally, all chiefs, both great and small, held their office and land directly from the Kabaka.

The Peasants' Right of Occupation

We come now to a consideration of the rights and obligations of the peasants or *bakopi*. If less time is spent upon a study of these rights, it is only because they were more general and are more easily described. But the *bakopi* were very much more numerous than the various types of interest-holder described above. Their rights have always been of immense importance, and even more so today, after the stabilisation and protection of these rights by legislation.

Traditionally, the most important of their rights was that mentioned above; namely, their freedom of choice of the chief whom they wished to serve. It is in this fundamental respect that any analogy with the English feudal system must break down. The *bakopi* were not serfs, bound to the soil, as were the *villeins* under the medieval manorial system. In Buganda, the structure of society was not based so rigidly upon the tenure of land. The relation between the *bakopi* and their chiefs was more of a political and social nature. The services and tribute due from the *bakopi* were part of a series of mutual obligations between a chief and his people; to which the right of undisturbed use of a parcel of land was merely incidental.

Provided he fulfilled his obligations, and paid due respect to his chief, a *mukopi* could expect to be left undisturbed in the possession of his *kibanja*[1]. In general, he had a right to the use of any land which he himself had cleared; and he also shared in certain common rights of grazing, and the collection of water, wild fruits, building poles and fire-wood. Furthermore, it was established that, upon the death of a *mukopi*, his successor had the right to remain in occupation, if he so wished.

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[1]Traditionally a parcel of land upon which a *mukopi* might live and cultivate his food crops.

Effects of the Introduction of the Mailo System

Anticipating the contents of the next chapter a little, let us now look briefly at the effects wrought upon these ancient rights, by the land settlement of 1900 and subsequent policies. Haydon[1] has suggested that it was as though the rights of *Obutaka* and *Obutongole* were, in some respects, fused together, and then converted into something approaching *Obwesengeze*.

In the rapid introduction of the alien concept of "freehold" these previous systems of tenure were rudely handled. As it was the *bakungu* who negotiated the settlement, it is not surprising that the rights of *Obutongole* and *Obwesengeze* were more nearly preserved, although in a very altered form.

The *bataka* took little part in the negotiations; with the result that their rights were almost entirely obliterated at law. Only a relatively few *bataka* received grants under the Mailo Settlement, although a larger number were later able to retrieve their *butaka* lands by purchase. Later, attempts were made to preserve the inalienability of *butaka* land outside the clan. In a well-known case, of 1922[2], it was held that where land, previously subject to *butaka* rights, had been allotted under the 1900 Agreement to a member of the clan, that land was to be regarded as still subject to customary law and could be sold, therefore, only to a fellow clansman. The same argument was followed in the Kabaka's *Succession Order, 1926,* in which s. 12 (*a*) reads, ". . . if, however, the deceased person had a *butaka* land such land will be entailed and on no account shall any portion of it be sold." But the 1922 decision was unsound at law and was later reversed. In a judgment delivered in 1933[3], Mr. Justice (now Sir John) Gray gave it as his opinion that "examination of the land legislation passed by the Native Government of Buganda for the Baganda of Buganda clearly shows to my mind that customary *butaka* tenure no longer exists. . . . It is perfectly clear from the Land Law of 1908 that, subject to certain restrictions imposed upon alienation to non-natives and to religious and other societies, a Muganda landlord has been granted the unrestricted right to alienate his land—no matter of what customary tenure it might formerly have been held—to any person he chooses. . . ."

But, no matter how the law may change, ancient traditions die but slowly in the minds of people. Even today many Baganda landlords, being possessed of mailo estates known formerly to have been *butaka* land, despite their legal rights, still regard themselves as bound by the customary law and refuse to dispose of that land outside the clan. Also litigants will still try to establish a prior claim by asserting that disputed land is theirs by *butaka* right.

Concerning the peasants' rights of occupancy, we shall see that these were entirely ignored in the 1900 Agreement; with the result that later, following discontent and civil unrest, they had to be codified and specifically protected by legislation.

Today, the position of the peasants is more favourable than it was prior to 1900. But this will be discussed more fully in a later chapter.

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[1] *Op. cit.* p. 136.

[2] H.C.C.C. 79 of 1922. Fazaldin Miranbux *v.* Simoni Lule, 3 U.L.R. 101.

[3] H.C. Misc. C. 19 of 1933. Timoni Mwenge *v.* Serwano Migade, 5 U.L.R. 97.

In Retrospect

Looking back over an interval of more than sixty years, it is now evident that, at the time of the land settlement of 1900, the status of the traditional "landowners" was misunderstood.

But it also seems unlikely that these old, customary, systems could have later adapted themselves spontaneously to rapidly changing economic conditions.

As a result of the changes, about to be described in the next chapter, we have in Buganda, according to Kirwan[1], "the relics of an ancient system parallel to but concealed beneath a system of modern growth."

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[1]Kirwan, J. D., formerly Judicial Adviser, Buganda. "Customary Land Tenure and the Legal System in Buganda". *Digest of African Local Administration*. No. 4. p. 20. Colonial Office, 1948.

CHAPTER II

MAILO TENURE: THE FORMATIVE YEARS 1900–1927

THE UGANDA AGREEMENT, 1900

During the early years of the Uganda Protectorate several attempts at a land settlement had been made, principally by Commissioners Berkeley and Ternan. But vacillating Government policy was to become partially stabilised through the ruling made in 1899 by the Law Officers of the Crown to the effect that "where Her Majesty exercises rights of Protectorate under Treaties which do not specifically grant to Her Majesty the right to deal with waste or unoccupied land, such right accrues to Her Majesty by virtue of her right to the Protectorate."[1]

When Sir Harry Johnston[2] was appointed Special Commissioner with effect from the 1st July, 1899, with instructions to restore ordered civil administration and to make the Protectorate more nearly self-supporting, he was determined that there should be a land settlement as early as possible in the history of British rule in Uganda.

But there seems little doubt that he arrived in Uganda with several preconceived ideas and in a "sublimely confident mood".[3] Upon reaching Kampala he straightaway opened negotiations with the Regents and principal chiefs of Buganda. It is not necessary to give here a detailed account of these negotiations[4] but it is apparent that they were for the most part conducted through F. J. Jackson[5] as an intermediary and this led to several misunderstandings which might have been avoided. Johnston originally had in mind a tripartite division of land with the granting of freehold estates to the Kabaka, Regents and others; with the confirmation of the Crown's rights over waste and uncultivated land; and with a board of trustees to be set up to administer and protect the peasants in rent-free rights to the land they occupied. But as the negotiations proceeded Johnston's standpoint departed further and further from this original idea.

At no time during these negotiations does any consideration seem to have been given to the customary forms of land tenure then prevailing in Buganda.[6] There was no prior study nor was advice sought from experts such as Wilson,

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[1]Thomas and Spencer, *op. cit.* p. 48.

[2]1858–1927. Formerly British Vice-Consul in the Cameroons and the Niger Delta and Consul-General, British Central Africa.

[3]Low, D. A., and Pratt, C. R., *Buganda and British Overrule*. Oxford, 1960. p. 27.

[4]For interesting details, *see* Low and Pratt, *op. cit.* Chapters 1–4.

[5]At that time Acting Sub-Commissioner, Buganda. Later Governor of Uganda, 1911–1917.

[6]Except in so far as the concept of "Official Estates" was retained.

the Assistant Commissioner for Buganda, who might otherwise have been able to contribute from his knowledge of the customs and traditions of the people. He was absent on leave at this time. Basic misconceptions were not cleared up because their very existence was not recognised. Kirwan explains that the concept of rights in an individual over a given piece of land which the term "ownership" creates in the European mind, did not find a place in the thoughts of the Buganda Regents and chiefs. In its stead was an entirely different concept, that of rights over persons residing in a given area. "The parties to the discussion" he says, "never realised until years later their conceptions of land ownership were completely different, and Sir Apolo Kaggwa[1] was horrified when he discovered years afterwards, that, according to our (*i.e.* European)[2] ideas, 'ownership' of land did not entitle the 'owner' to exercise all authority over those living on his land."[3]

At first the Regents were very apprehensive for they feared that Johnston intended to abolish the whole traditional system of government in Buganda. But eventually this misunderstanding was cleared up and so it came about that on the 10th March, 1900, after less than three months' residence in Buganda and without any further consultation with the Foreign Office, Sir Harry Johnston signed the Uganda Agreement.

Notwithstanding the haste in which the prior negotiations had been conducted, or the lack of research into the problems covered by its terms; and, further, in spite of the rather amateurish manner in which it was drafted, this Agreement was to become the basis of relations between the British and Buganda Governments for more than fifty years. It is now normally accepted as marking the birth of modern Buganda. By the terms of this Agreement the British Administration acquired the right to levy taxes and the legislative, judicial and administrative functions of the Kabaka and the *Lukiiko*[4] were defined. Article 15 provided for a general land settlement, the like of which had never before been seen in East Africa.

It is with this land settlement that we are here primarily concerned. (Further details of it will be found in Appendices A and B.) Fundamental though it undoubtedly was, and although Article 15 has been very far-reaching in its effects, nevertheless the land settlement should be viewed only as an integral part of the whole Agreement. If regarded as a separate entity certain features of it will appear to border on the preposterous. But, seen in the context of the whole Agreement, it will be recognised as one of the main instruments whereby Johnston hoped to make Government financially more nearly self-sufficient and to strengthen the hand of the ruling oligarchy; so bringing stability to the Protectorate.

Let us turn then to the land settlement set out in Article 15. Briefly, the total area of land in Buganda was assumed to be 19,600 square miles and this was to be divided between the Kabaka and other notables on the one hand and the

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[1]*Katikkiro* (Prime Minister) of Buganda and Regent.

[2]Author's insertion.

[3]*Op. cit.* p. 18.

[4]Great Council of the Baganda. The term was also used in a wider sense to embrace not only the legislature but also the executive Government of Buganda.

Protectorate Government on the other. Thus the Kabaka, members of the royal family, the Regents, County Chiefs, and certain other leaders were to receive either private or official estates totalling 958 square miles and "1,000 chiefs and private landowners" were to receive the estates of which they were already in possession. These were computed at an average of eight square miles for each individual, making a total of 8,000[1] square miles. A total of 92[2] square miles was to be granted to the three Missionary Societies, 50 square miles were set aside for existing Government stations and 1,500 square miles for forest reserves. The remaining area, amounting to an estimated 9,000[3] square miles of waste and uncultivated land, was to be vested in Her Majesty's Government.

Not until after the Agreement had been signed were its terms communicated to the Foreign Office where it was received unenthusiastically, largely because of the nature of Johnston's land settlement. A Foreign Office Committee studied the Agreement on the 6th June, 1900, and commented in a despatch dated 15th June, 1900, that the "introduction of the law of England in regard to land, which appears from the wording of the Agreement to be the intention of its framers, may create a very complicated system."[4] It was realised in Whitehall that this parcellation of the land of Buganda would inevitably necessitate an elaborate settlement survey for which the facilities did not at that time exist. Nevertheless, little could be done as the Agreement was already a *fait accompli.* The Foreign Office accordingly acquiesced, thereby irrevocably committing Buganda to a cadastral survey without parallel in African dependencies at that time. This, Buganda did not really need and certainly could not afford.

Part of Article 15 reads; ". . . as regards the allotment of 8,000 square miles among the 1,000 private landowners, this will be a matter to be left to the decision of the Lukiko with an appeal to the Kabaka. The Lukiko will be empowered to decide as to the validity of claims, the number of claimants and the extent of land granted. . . ." The responsibility for the initial allocation of the mailo estates therefore fell upon the *Lukiiko.* The wisdom of this has been questioned many times subsequently as the *Lukiiko* was an administratively undeveloped body at that time and was composed of those people whose interests were primarily involved. Necessarily, the procedure was by paper allocation of areas and an allotment was made to each of the twenty counties of Buganda. Each chief was then required to produce detailed allotment lists for allocation within his *Ssaza*[5].

Difficulties immediately arose, particularly over the application of the two subsidiary memoranda dated 13th February and 13th October, 1900[6]. Regarding

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[1]To these figures of 958 sq. miles and 8,000 sq. miles is to be added 45 sq. miles as a result of the Memorandum dated 13th February, 1900; bringing the total sum of mailo land to 9,003 sq. miles. Of this area 573 square miles are Official Mailo.

[2]Distributed as follows:— C.M.S. (Native Anglican Church) 40 sq. miles, White Fathers' Mission 35 sq. miles, Mill Hill Fathers' Mission 17 sq. miles. In order to balance the inequality of the Protestant and Roman Catholic distribution the N.A.C. was, in 1901, permitted to purchase a further 12 sq. miles at a nominal price. *See* Thomas and Spencer, *op. cit* p. 52.

[3]But this area has to be reduced by the 45 sq. miles granted by the Memorandum of 13th February, 1900.

[4]Thomas and Spencer, *op. cit.* p. 52.

[5]Administrative County.

[6]Laws of Uganda, 1951, Vol. VI, pp. 26–28.

the latter, on completion of the first Allotment List and satisfaction of all claims, it was found that 1,200 square miles remained unallocated. The *Lukiiko* therefore drew up a list dated 25th July, 1900, for the reallocation of 1,000 square miles, which had the effect of adding 387 square miles to the allocation of the principal chiefs and of decreasing the area allowed to the sub-chiefs by the same amount[1]. This led to delays and further negotiations as the Commissioner, who by then was Colonel Hayes Sadler, found difficulty in accepting this obvious variation of the terms of the original Agreement.

Further difficulties arose from the interpretation placed by the *Lukiiko* upon the words "1,000 chiefs and private landowners". This was held to mean "1,000 chiefs and others"; or, 1,000 *bakungu* and "others", the "others" being *batongole* or minor chiefs. It would appear that Johnston had contemplated dealing with something like 1,000 to 1,030 proprietors[2]; but in the event, the first Allotment List alone included 3,650 names. This was followed by two other Allotment Lists and subsequent further grants bringing the total number of original allottees eventually to 4,138[3]. The compilation of the original Allotment Lists proved to be a complicated task and even after the direct personal efforts of Sir Apolo Kaggwa they were not authoritatively available until 1905. In the cases of a large number of these allottees there was little or nothing to justify their claims[4].

In the meantime most of the fortunate allottees were not slow in making their claims and implementing the new order of things. Little notice was taken of old rights of occupancy and the claims of the old *bataka* were repeatedly brushed aside. No one considered the position of the *bakopi* and their customary and hereditary rights of occupation were degraded to tenancies at will upon privately owned land. The order of dignity was followed, the greater chiefs first satisfying their claims and then the lesser chiefs choosing their estates from what was left. The former occupants were ordered to leave their land for the followers of the incoming chiefs and the result was that the roads were encumbered with peasant families being forced to migrate from one county to another, often with considerable hardship. So, in the words of Bishop Tucker, "the game was played until everyone was sorted out and settled down in his own place."[5] In this way, many of the old *butaka* estates came into the possession of claimants belonging to other clans and the old system of landholding by the clan received a blow from which it was never to recover.

The Start of the Settlement Survey

Shortly after the signing of the 1900 Agreement, the first steps were taken towards the establishment of a Land and Survey Department and R. C. Allen, having been appointed Chief Surveyor[6], landed at Mombasa on the 5th February, 1901. About this time, Wilson estimated that the proposed settlement survey in

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[1]*See* Appendix B for explanation. The list, dated 25th July, 1900, was later the subject of the Memorandum dated 13th October, 1900.

[2]Wilson to Sadler. December 18, 1902.

[3]Report of the Land and Survey Department for the twelve months ended 31st December, 1921. p. 12.

[4]For particulars of devices used by some claimants, *see* Thomas and Spencer, *op. cit.* p. 66.

[5]Tucker, A. R., *Eighteen Years in Uganda and East Africa.* London, 1911. p. 287.

[6]The title was changed to Director of Surveys in 1909.

Buganda would take ten years to complete; and in 1902, Allen, initially occupied with the establishment of a topographical survey, gave his estimate as fourteen years at a cost of £76,000. It was with these estimates in mind that work was eventually started upon what came to be called the "Mailo Survey of Buganda" in July 1904. Although, by this time, the original thousand allottees had been virtually quadrupled, neither Allen nor Wilson could possibly have imagined the proliferation of claims and the complexity of land dealings which were to develop. Nor could they have anticipated the delays that would be caused by the First World War. It is interesting to speculate upon what their reaction would have been then had they known that the task before them would occupy the major part of the departmental effort for nearly 32 years at a total estimated cost of some £200,000[1], and would lead to the recognition and survey of no fewer than 15,398[2] claims by Africans in Buganda.

For interesting details of the many problems encountered and overcome, and for particulars of the survey techniques developed and employed, one cannot do better than consult "Uganda Land and Surveys" by Thomas and Spencer. It would be difficult to over-emphasize the magnitude of the task undertaken in the settlement survey of Buganda from its inception in Ssingo County in 1904 until its eventual conclusion in the Buvuma Islands in May 1936. No criticism of policy or tenure should be allowed to detract from the achievement of the many officers, both European and African, who were engaged in this survey. The methods employed were critically reviewed, firstly, in 1907, by Major (later Brigadier) E. H. Hills, R.E., of the Topographical Section of the War Office, and also, in 1929, by Brigadier H. St. J. L. Winterbotham, Chief of the Geographical Section of the General Staff. They both reached the same conclusion; that these methods of survey provided, in the circumstances, the most satisfactory solution to the problem involved. More recently, with the development of photogrammetrical mapping processes based on aerial photography, experiments have been conducted with a view to modernising the survey approach. But, although photogrammetrical methods have been successfully employed for cadastral survey in other countries where other conditions obtain, it has not yet been found possible to employ such methods under the circumstances prevailing in Buganda[3]. The survey techniques remain therefore essentially the same.

The Buganda Land Law and the Land Titles Ordinance, 1908.

Returning once more to the Uganda Agreement, 1900, we must consider what form of land ownership Johnston had in mind in granting rights to individual Africans. Article 15 did not indicate the manner in which these private or official estates were to be held, but the Certificates of Claim, issued to the first allottees in Buganda, certified that the claimants had obtained an estate in Fee

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[1]Thomas and Spencer, *op. cit.* p. 83. Fees due to Government for this work were to amount to some £58,000. It is ironical that Johnston should have initiated such a task as part of his objective of making the administration of the Protectorate self-supporting.

[2]The figure quoted is that for the total number of Final Certificates issued up to 31st December, 1943. 6,000 to 7,000 of these were original claims (many claimants obtained their land in several separate parcels) and this figure was more than doubled by sales and successions during the period of survey.

[3]The question of survey method is discussed more fully in Chapter III.

Simple. This is a term in English Real Property Law specifying a definite form of tenure. But in 1902 Judge Ennis advised the withdrawal of this form of certificate so far as African claims in Buganda were concerned. He substituted a form of Provisional Certificate for mailo land which avoided all terms of English law and confined the recognition of ownership to such tenure, whatever it might be, under which the land was to be held. Evidently, at this time, official opinion was not in favour of introducing a new, European, concept of land ownership, and the intention was to preserve Ganda customary tenure as far as possible[1].

In September 1904 the Registration of Documents Ordinance came into force; and Allen, in addition to his duties as Chief Surveyor, was also appointed Principal Registrar of Documents with effect from 1st April, 1905[2]. Section 4 of this Ordinance provided for the compulsory registration of all documents conferring right, title or interest in immovable property, except those of a testamentary nature[3]. Section 11 required that every document presented for registration under section 4 should be registered at the registry of the district in which the property affected was situated. This, the first legislative attempt in Uganda to provide for the maintenance of adequate land records, was destined to be superseded, before it came into effective operation, by a system of Registration of Title. But subsequent events have indicated that perhaps this supersession was premature and too hastily carried out and that perhaps this Registration of Documents Ordinance, with modifications, could have continued to fulfil a useful function in certain parts of Buganda. This idea will be expanded in Chapter III.

During this time the allotment lists were being prepared and finalised, and the claimants were marking out their claims and submitting written memoranda to the *Lukiiko* for confirmation. Once confirmed, each claim was then further evidenced by the issue of a Provisional Certificate pending formal demarcation and survey.

In 1906, Judge Carter[4] carried out an investigation into the facts of land tenure in Buganda. His report furnished, in the words of Thomas and Spencer[5], "the background for the deliberations of a Committee upon the Protectorate's outstanding land problems, having as members the two Protectorate Judges, Ennis and Carter, the Crown Advocate, W. A. (later Sir Alison) Russell, and the Land Officer[6], R. C. Allen. The Committee's report dated 13th March, 1907[7], is an exceptionally comprehensive document and contains a number of important recommendations which did much to mould the future of land administration in Uganda. As regards Buganda, the Committee was satisfied that the natives regarded the 1900 Agreement as having introduced a new order of things in

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[1]Thomas and Spencer, *op. cit.* p. 52.

[2]These duties were transferred to the Crown Advocate on 1st July, 1906. Prior to 1904 there had been a few registrations of land titles under the Land Regulations, 1897.

[3]But non-registration did not render a document invalid. It could still be admitted in evidence.

[4]Later Sir William Morris Carter, see above.

[5]*Op. cit.* p. 53.

[6]Duties of Land Officer were also added on 1st April, 1905.

[7]See *Further Correpsondence relating to Concessions in Uganda, the East African Protectorate and Somaliland.* African No. 869. Colonial Office, London, 1907. pp. 304–314.

which were merged any differences between *butaka* and *butongole* holdings. It saw no good purpose in attempting to check this new conception of a single allodial ownership[1]; and it suggested that the conditions of this new form of ownership, for which the name 'mailo' tenure was proposed, should be defined in a Buganda native law, thus showing an appreciation of the fact that mailo land had never been vested in the Crown. The Committee was swayed in this recommendation by the consideration that a *butaka* tenure postulated the creation or confirmation of a class of hereditable but inalienable property, whereas the whole course of legislation in England had been to free the land from restrictions on alienation".

From these recommendations there stemmed the basic law governing the tenure of mailo land. This was the Buganda Land Law, 1908, which now appears in Buganda legislation virtually unchanged under the title "Possession of Land Law 1908". This law, which defines and sets out the incidents of mailo tenure, deserves close attention as it was probably the earliest attempt in East Africa to reduce to statutory form a system of tenure evolving in response to political and economic changes. It provided that mailo land should be freely transferable and disposable by will or customary succession to Africans of Uganda, but, except with official consent, should not be transferable either in perpetuity or by lease (other than certain annual tenancies) to non-Africans. The total area which might be held by any one individual was limited, in general, to thirty square miles. The Protectorate or English law of Easements was made applicable to mailo lands and provision was made for the resumption of land for public purposes. Any mailo land which was the subject of escheat[2] was to be dealt with by the Governor (now the President) and the *Lukiiko* as trustees for the people of Buganda. Among other provisions it was enacted that an owner of mailo land would not be compelled to give to a chief any portion of the produce of his land, either in kind or in cash; and all transactions concerning mailo land were to be recorded in duplicate, one copy being stored by the Government and the other held by the owner of the land[3]. The full text of this Law, fundamental to the mailo system in Buganda, appears in Appendix A.

The 1907 Committee also recommended that the current system of registration of documents should be replaced by a system of registration of title with a guarantee of indefeasibility on the lines of the Torrens System[4]. Accordingly, a short Ordinance, the Registration of Land Titles Ordinance, 1908, was enacted in time to embrace the registration of the first Mailo Final Certificates issued in 1909. This Ordinance, "though only a provisional measure under which the registration of new titles alone was compulsory, established the important principle that all land, upon registration, must be identifiable by a satisfactory plan"[5]. In the light of subsequent events it is interesting to note that the Legal Draughtsman at the time thought it advisable to include, in Section 11, provision

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[1]*i.e.* ownership without acknowledgment to a superior.

[2]*i.e.* lapsing of property upon death of owner intestate without heirs.

[3]Based upon Meek, *op. cit.* pp. 133, 134.

[4]Sir Robert Torrens (1814–1884) was Collector of Customs in South Australia; and, later, Treasurer and Registrar General. In 1857 he introduced his Real Property Act, the principle of which consisted of conveyancing by registration rather than by deeds. See, *inter alia,* Hogg, J. E. *The Australian Torrens System*, London, 1905.

[5]Thomas and Spencer, *op. cit.* p. 54.

for possible future district registries and for the devolution of the duties of the Registrar of Titles. Had the fullest use been made of this clause, the history of registration of title in Buganda might well have been very different.

The Settlement encounters difficulties

The work of the Mailo Settlement Survey steadily proceeded. The general policy was to deal first with those claims lying in the fertile and densely settled counties in the vicinity of Kampala; and thence, working outwards in radial fashion, to survey the relatively fewer claims in the outlying areas. At first a scale of four inches to the mile was employed, but in October 1905, after the completion of some 235 square miles, a scale of 1/10,000 was substituted. This was retained (except for the *Kibuga*[1]) for the whole of the remaining settlement work. In brief, the procedure was for a claimant, whose claim had been established by the issue of a Provisional Certificate, to point out his boundaries to the survey party. After survey and the production of plans, his ownership of the mailo interest would be recognized by the issue of a Final Certificate supported by a dimensioned plan. This would in turn lead to the issue to the mailo-owner of a Certificate of Title upon its registration under the Ordinance of 1908. The first issue of such certificates was made the occasion for a public distribution by Sir Hesketh Bell, the Governor of Uganda, on 2nd January, 1909[2].

But in practice the procedure was seldom so straightforward. Very soon the difficulties, perhaps anticipated in the Foreign Office in 1900, began to multiply; and, by 1911, there were already ominous signs of the complexities that were to bedevil the mailo settlement for many years to come. Some of the allottees claimed their land, not as one distinct parcel, but as perhaps ten different estates in almost as many different counties. A few allottees failed through apathy to convert their paper allotments into claims for actual land; and these lapsed allotments had to be redistributed[3]. Furthermore, as the settlement survey slowly proceeded, many of these original allottees died whilst awaiting demarcation of their estates, and the practice soon arose (and was confirmed and to some extent regulated by the Buganda Land Succession Law, 1912) of subdividing on paper, amongst the heirs, the unsurveyed holding of a deceased claimant. Again, it did not take long for the leading Ganda families to appreciate that land now had a commercial value, and transactions *inter vivos*, a mere trickle in its first beginnings, was soon to become an ever-widening flood. Neither life, nor indeed death, could await the tardy arrival of the surveyor, and so there inevitably developed in Buganda the practice of dealing by the acre in unascertained parcels of land. In an attempt to regulate these dealings in "paper acres", as they have since come to be called, the Buganda Government enacted Land Laws in 1909 and 1912, requiring that all such transactions should be

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[1]The term *Kibuga* means 'town' or 'capital'. It was (and still commonly is) applied to the densely settled area around the Kabaka's palace at Mmengo. The area is now administered by the Mmengo Municipal Council. Because of many claims and higher land values it was originally surveyed on a scale of 1/2,500.

[2]Thomas and Spencer, *op. cit.* p. 68.

[3]To achieve some finality, all claims of original allottees submitted after 31st December, 1909, were barred. The *Lukiiko* was permitted, under certain conditions, to make reallotments. *See* Buganda Land (Survey) Law, 1909, and Thomas and Spencer, *op. cit.* p. 67.

verified by the *Lukiiko*. But even this measure[1] had several unforeseen and undesirable results in that it led to confusion in the minds of mailo-owners over what was required and implied in registration of title. Taken all in all, these dealings in "paper acres" were a practice for which Buganda came to earn an unenviable reputation. But the trouble lay, not in the minds of mailo-owners for inventing such an unsatisfactory procedure, but in the failure of Government to provide survey facilities adequate for the task.

Living in a country where there is no tradition of hedging or fencing, landowners found themselves obliged to wait perhaps thirty years for a surveyor to come to demarcate a plot they wished to sell. Faced with this prospect, and with no lawyers to help them, it is not surprising that they resorted to other methods; for to have held up all land transactions indefinitely would have been unthinkable as it would have retarded economic development. Dealings in "paper acres" may, therefore, be regarded, under the cricumstances then obtaining, as an unfortunate necessity. The buying and selling of abstract acres rather than of physically defined portions of land is likely to continue until general enclosure has taken place; or until the cadastral survey (and thus the Titles Register) is regularly maintained up to date and the people more fully aware of its value.

So by 1912, perplexing difficulties were already developing in the Mailo Settlement Survey; and, to quote Thomas and Spencer again, the situation "became vastly more complicated as a result of a supplementary agreement made in 1913"[2].

They continue; "the position had arisen in certain cases that a chief assuming that his principal family estate covered two square miles, had obtained a Provisional Certificate of Claim for that area. Upon survey this holding might be found to cover three square miles, and he was then called on to cut off the extra square mile, which would revert to the British Government[3]. The chiefs asked that they might be permitted to surrender equivalent areas from other of their less desirable claims and thus to retain the ascertained excess. This seemed not unreasonable, but the draughtsmen of the Buganda Agreement (Allotment and Survey), 1913, in their endeavour to meet all the implications arising from the original proposition, can hardly have foreseen the abuses which were legalised when the Lukiko in addition to the rights which had been sought over ascertained excesses or 'surplus estates', was given very wide powers in regard to the redistribution of unsurveyed land, not only in satisfaction of any deficiency ascertained upon survey to exist in respect of the area shown in a provisional claim, but in exchange for the other unsurveyed claims. Thus a Provisional Certificate of Claim which originally purported to recognise a chief as entitled to a certain piece of land 'by occupation and cultivation' became to a large extent a letter of credit for land negotiable where and when desired"[4]. Article 9 of this Agreement evidently gave official blessing to the practice of

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[1] *i.e.* the introduction of the *Lukiiko Endagaano,* a printed form of agreement, requiring the countersignature of the *Lukiiko* Ministers. This was recognised by the Buganda Courts but not by the Registration of Titles Ordinance.

[2] *Op. cit.* p. 67.

[3] and might possibly be sold to a non-African.

[4] Thomas and Spencer, *op. cit.* pp. 67, 68.

dealing in "paper acres" and, looking back, one feels obliged to commend the efforts of the officers whose duty it was to keep a record of this intricate trafficking in unsurveyed land so that reliable information on claims could be supplied to the surveyors operating in the field[1].

Clearly the Mailo Settlement Survey, at this time, was like a rolling snowball which increases in size as it proceeds. That the magnitude of the task had been grossly underestimated in Uganda is beyond dispute. It was policy at the time to devote all the resources of the Department to the Settlement Survey; so that, as this receded further and further from Kampala, no staff was available to attend to the mutations[2] occurring upon the estates already demarcated. At this juncture World War I intervened, virtually putting a stop to the survey work; but not, of course, to transactions between the landowners[3]. Apart from authorising the work of a totally inadequate number of private surveyors, it was not until years later that Government began to formulate any real policy as to how these mutations were to be surveyed[4]. It was this failure of Government to provide the necessary survey facilities (aggravated by the adoption of a Titles Ordinance right out of its context) that has been the primary cause of unregistered dealings amongst landowners ignorant of the law and procedure.

In the early years it was policy within the Protectorate to encourage the transfer of mailo land by Africans to non-Africans on the grounds that, through selling part of his mailo land, a mailo-owner could raise the capital necessary to clear and develop the remainder of his land. Furthermore, it was hoped that the development of a few former mailo estates by incoming Europeans or Asians would help to inculcate fresh ideas and farming techniques amongst the neighbouring African landowners. Such sales to non-Africans were carefully controlled by the Land Transfer Ordinance of 1906[5] and also by Regulations published in 1912[6]. But these outright sales were not popular amongst the Baganda who feared a repetition of events they could see happening in what is now the Highlands of Kenya and, in consequence, they were prohibited by order of the Secretary of State in 1916[7]. By this time, in all about 118 square miles of land in Buganda had passed in freehold out of African hands[8]; but a large proportion of this has since been reacquired by Baganda. Since 1916 non-Africans have, therefore, been able to acquire only leasehold interests in mailo land, because the official consents, as required by the Buganda Possession

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[1]"Deficient Estate" was freely transferable in the same way as actual (unregistered) land, on the authority of a Certificate of Ownership issued by the *Lukiiko*. It is not necessary here to describe the complexities and machinery of these dealings, which were, in any event, closed down on 31st July, 1937.

[2]*i.e.* changes in ownership necessitating survey and alteration of the Titles Register.

[3]Land and Survey Department Annual Reports for the period 1914–1919 comment upon increased dealings in mailo land.

[4]*See* Brushfield, T. N. N., and Relton, A. J., "Land Registration in Buganda". *Empire Survey Review*, Vol. 13, pp. 194–202, 243–252.

[5]*See* Appendix A.

[6]Land and Survey Departmental Annual Report, 1913, Appendix C.

[7]See Notice 458 dated 11th December, 1916, Official Gazette, 1916, p. 598. This decision was also influenced by the fact that, with the expansion in the growth of cotton, economic development was increasingly based upon African peasant agriculture. *See* Hailey, *op. cit.* p. 761.

[8]Thomas, H. B., and Scott, R., *Uganda*. London, 1935, p. 104.

of Land Law, 1908, the Native Official Estates Ordinance, 1919, and the Land Transfer Ordinances, 1906 and 1944, were, as a result of this (administrative rather than legal) prohibition, given only to leases and not to sales[1].

The Registration of Titles Ordinance, 1922

As indicated above, the Registration of Land Titles Ordinance, 1908, was regarded as a provisional measure; and, by 1914, the draft of a new Ordinance based on that of South Australia, was already under consideration by the Land Office Conveyancer. But this law was considered to be too elaborate and not sufficiently adapted to the law and practice of the Protectorate. On the appointment, however, of a new Conveyancer, opinion swung, in 1916, in favour of an Ordinance based upon the new Transfer of Land Acts, 1915 and 1916, of the State of Victoria, Australia. The draft of a comprehensive new Ordinance was prepared which, it was considered, "should, if sympathetically administered, result in at least the beginnings of a satisfactory and easily worked Land Titles Registry"[2]. But it was not proposed to bring the Ordinance into force until the end of the war. In fact, the resultant Registration of Titles Ordinance was not enacted until 1922 and did not come into force until 1st May, 1924.

During the period 1914 to 1924 there were five different officers responsible for conveyancing and registration of title; and, during the same period, a number of other officers carried out these duties in an acting capacity at one time or another[3]. During this critical formative period, therefore, there was an unfortunate lack of continuity in thought and experience, the effects of which are still detectable.

Uganda was pioneering in the application of Land Registration under conditions never before experienced. The 1908 Ordinance was, no doubt, inadequate in itself, but it did have the merit of simplicity; and, at least in so far as mailo land is concerned, it could have provided the basis for a sufficient system evolving and adapting itself in response to changing conditions in Buganda.

Instead, another course of action was adopted by the application, to Uganda, of a highly sophisticated and complex Ordinance designed for use under conditions very different from those obtaining there. What is more, it was many years before this Ordinance was translated into Luganda and so made more readily available for the Ganda Courts and the mailo landowners themselves. An explanatory pamphlet[4] was, indeed, produced in simple English, with a view according to its preface, to it being translated into Luganda; but the Luganda version never saw the light of day. One may, perhaps, understand the hesitation of any would-be translator of the Ordinance when confronted with such phrases

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[1]For further particulars of the need for consents, see *The Transfer and Exchange of Land in Uganda.* Department of Lands and Surveys, 1956.

[2]Land and Survey Annual Report, 1916, p. 16.

[3]The Land Officer carried out the duties of Registrar of Titles until 1st January, 1921, when the Conveyancer became also Registrar of Titles.

[4]*The Torrens System of Registration of Title as applied to the Uganda Protectorate,* by Godfrey Place, District Magistrate, Entebbe, and Acting Conveyancer and Registrar of Titles. Entebbe, 1923.

as "messuages, tenements and hereditaments, corporeal or incorporeal. . . ."[1]. Not until 1954 was the Transfer Form prescribed by the Ordinance translated into Luganda and not until 1959 was a translation of the whole Ordinance undertaken[2].

The Bataka Movement

But during this same time other developments were taking place. It has been noted above that, at the time of the early implementation of the 1900 Agreement, little or no notice was taken of old rights of occupation and the rights of the old *bataka* were repeatedly ignored. In the words of Mr. Justice Guthrie Smith[3], "The Uganda Agreement, 1900, is silent as to *butaka*".[4]

No attempt had been made to safeguard the customary rights of the *bataka* (thought now to have numbered some 2,000 individuals) in the drafting of the 1900 Agreement, which was to pave the way for the supersession, to a large extent, of custom by law. It is true that a few of the *bataka* had themselves been allotted land under the mailo settlement, and others were soon to retrieve their customary holdings by purchase from the original allottees. Under the conditions prevailing in Buganda at that time, however, it took years for the realization to develop that the old system of land tenure had been fundamentally and permanently altered. Likewise, it took a long time for the Protectorate Government to realise the extent of the injustice perpetrated upon these *bataka*. According to Thomas and Spencer, "one of the first signs of appreciation of the place occupied by *butaka* tenure in the social life of the nation is to be found in the first draft of the native Land Law, 1908, in which it was proposed that certain small areas occupied by the ancestral graves of a clan should be excluded from the surrounding estates and handed over to the trusteeship of the Native Council; but at the request of the Council which had already begun to display oligarchical tendencies, this provision was at the last moment omitted".[5] A further attempt to rectify the situation, and so to preserve the ancient *butaka* estates intact, was made when a suggestion was put to the *Lukiiko*, in 1918, that *butaka* estates should be vested in Land Trustees. Any mailo owners being dispossessed thereby would be compensated by grants of other land; Crown Land[6] being made available for this purpose. But this proposal met a similar fate; the *Lukiiko* being dominated by the very mailo-owners who were likely to be disturbed.

Dissatisfaction with the results of the mailo settlement was also concurrently developing from a separate but related source. In 1900 the land had had no intrinsic value. It was not the economic potential of the land itself, but rather the power derived from political control over the occupants of the land, that had been in the minds of Kaggwa and his colleagues. Many of the original

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[1]Registration of Titles Ordinance, 1922, s. 2.

[2]*Translations into Luganda of certain Protectorate Legislation*. Vol. II, pp. 65–302.

[3]It is interesting to note that it was Guthrie Smith who, as Conveyancer in 1914, rejected the use of the South Australian Ordinance on the grounds that it was too elaborate and not sufficiently adapted to the law and practice in Uganda.

[4]H.C.C.C. 79 of 1922. Fazaldin Miranbux *v.* Simoni Lule. 3 U.L.R. 101.

[5]*Op. cit.* p. 69.

[6]*i.e.* the land vested in the Protectorate Government under s. 15 of the Uganda Agreement, 1900.

mailo allottees, being assured of tribute[1], in labour and kind, behaved in the traditional manner towards their tenants and the change from the old order of things was at first hardly discernible. But, with the passage of time, these benevolent landowners, who had never really understood the implications of their proprietary rights in the land, died, and were replaced by their sons.

Simultaneously, the introduction of cotton, as a cash crop, caused these successors to adopt a somewhat different attitude towards their land and the peasant farmers upon it. A more commercial trend was developing in the relationship between landlord and tenant.

"The imposition of a rent on cultivators," say Thomas and Spencer, "was a simple evolution arising from the commutation into money of the services traditionally due by a peasant to his overlord. By 1918 this rent had been generally fixed at ten shillings a year for each peasant's garden, occupying usually one or two acres, but signs were not wanting in succeeding years of a desire on the part of certain landowners to increase this figure. A few thousand fortunate landowners were entitled to the rents of several hundred thousand tenants; but there was no security of tenure nor formal recognition of tenant rights."[2]

Since earliest times a *mutaka* had been also entitled to a tithe upon the produce of peasants' land under his control. By tradition, such tribute, usually in the form of bananas, beer or goats, was intended for the sustenance, only, of the *mutaka* and not for his profit in any commercial sense. But a radical change in the concept of this *envujjo*[3] occurred when, with the spread of cotton cultivation, the landlords extended it to include a proportion of the peasants' cotton crop. It is said that, in some localities, mailo-owners demanded as much as one bag out of every three from the produce of the peasants' cotton plots. That such an imposition should bear heavily upon the peasantry is not surprising, in view of the fact that each peasant was also called upon to pay Poll Tax[4], and was also liable to render one month's customary labour or *luwalo* to the Buganda Government; and, until 1921, a further two months' labour, *kasanvu*, to the Protectorate Government.

So it transpired that the discontent of the *bataka* and of the peasantry, caused them to join forces in pressing for a return to the old customary forms of tenure. This dissatisfaction found expression in the establishment, in 1921, of an association usually referred to as the "Federation of Bataka". In the words of Thomas and Spencer[5], "The articulate elements of this group were young educated but landless Baganda; but behind them was a strong body of older peasant opinion which compared the exactions of its present landlords with the

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[1]This tribute was now due to the landowners and was therefore no longer available to assist towards the administration of the Native Government of Buganda. Formerly land had been of political value; now its value was economic.

[2]*Op. cit.* p. 69.

[3]From *okuvujja*, to make a present of beer to a chief, to pay tribute.

[4]Under the Uganda Agreement, 1900, Article 12 (*a*), a Hut Tax of Shs. 4 *per annum* was imposed. For this there was later substituted a Poll Tax of Shs. 10 *per annum* (Agreement of 5th June, 1909) and this was increased to Shs. 15 *per annum* by the Uganda Agreement (Poll Tax), 1920.

[5]*Op. cit.* p. 70.

benevolent despotism of the chiefs of earlier days. Certain landowners, acting from various motives, and a number of minor chiefs allied themselves with the movement, which was, however, essentially the party of the 'have nots' banded against the 'haves' ".

Petitions and counter-petitions were submitted to the *Lukiiko* but eventually the Federation addressed itself to the British Government. This led, in 1924, to the appointment of a Commission to inquire into the distribution of land under the 1900 Agreement[1]. This Commission severely criticised Johnston's land settlement, and also the original decision to allow the *Lukiiko* control over the land allotment; and proceeded to recommend the establishment of an Arbitration Court with powers to restore the *butaka* lands to their former owners. Had this proposal been implemented it might have led to a most undesirable inquisition into the title of every registered proprietor of mailo land in Buganda. But the recommendation was, in fact, impracticable, as the Commissioners had not taken into account the extent to which the former *butaka* lands had already passed from the original allottees to *bona fide* purchasers for value, both African and non-African; or had become encumbered with valuable leasehold interests.

"Confiscation being ruled out, no practicable plan for financing the enormous cost of expropriation and compensation presented itself. Attempts to define the incidents of the tenure upon which these *butaka* estates should in future be held made it evident that modern conceptions of individual tenure had become ineradicably implanted in the minds even of the *butaka* claimants, and that the result of the inevitable confusion of the reintroduction of *butaka* tenure might be nothing more than the substitution of one group of landowners by another. The fact is that Buganda had, in less than a quarter of a century, progressed so far along the road towards European conceptions of individual ownership of land that its social organisation could no longer adapt itself to a system of clan tenure[2]."

The Busuulu and Envujjo Law, 1927

The British Government was, therefore, faced with a choice between two possible courses of action. It must either order a reversion to the traditional system, still understood in Buganda, but ill-adapted to the requirements of a rapidly developing economy; or, alternatively, it must accept the new order, for good or evil, by refusing to interfere with the spreading individualisation of rights in land.

Inevitably, the latter course was chosen and this decision was publicly announced on 7th October, and published in the *Uganda Herald* on 15th October, 1926. At the same time, the British Government, mindful of the powerful support rendered to the few *bataka* by the many *bakopi*, or cultivating tenants, "declared its intention of insisting upon the passage of legislation to ensure security of tenure to native occupiers and for the limitation and regulation of rents and tribute in kind[3]."

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[1]The Commission consisted of the Chief Justice (Sir Charles Griffin) and the Provincial Commissioner, Buganda (J. C. R. Sturrock).

[2]Thomas and Spencer, *op. cit.* p. 71.

[3]*Ibid* p. 72.

So, there was enacted the Buganda *Busuulu and Envujjo Law,* which came into effect on 1st January, 1928. This law, the full text of which appears in Appendix A, has been described as "perhaps the first legislative enactment in Africa dealing with native rental conditions"[1]; and has profoundly influenced the utilization of mailo land. Statutory limitations were set upon the dues payable to the mailo-owners by the tenant-occupiers. Thus *busuulu,* the former, semi-feudal, labour obligation which had already been commuted into a cash payment variable at will by the landlord, was fixed by law at Shs. 10 *per annum,* and has since come to be regarded as an annual rental. *Envujjo,* formerly the feudal obligation for the rendering of tribute in kind, became, for the most part, a cash levy or *modus* upon the growing of certain commercial crops; principally cotton and coffee[2]. In return, the tenant receives, for himself and his successors, statutory protection of his right of occupancy in his holding; this right being revocable only for good and sufficient reasons (which are duly prescribed in the law) and, then, only upon an eviction order being granted by the court. There were furthermore, other provisions designed to safeguard the peasant cultivator. In particular, his ownership of his own improvements was recognised[3].

It may be said that with the enactment of the *Busuulu and Envujjo Law*[4], the initial, formative, period in mailo tenure came to an end. Article 15 of the Uganda Agreement had introduced to Buganda an entirely new concept of the relationship between man and the land. The conditions of a quasi-freehold system of individual title to land had been defined, for Buganda, by the Land Law, 1908. But, later, with the reaction which found expression in the Bataka Movement, on to this modernised system permitting the free negotiability of land, there was superimposed a pattern of hereditable tenancies. These were protected by a statute, which perpetuated and extended certain aspects of the former customary systems of land occupancy.

It must be left to Chapter IV to attempt an evaluation of this peculiar mixture of old and new.

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[1]Hailey, *op. cit.* p. 763.

[2]Concerning *Envujjo* there is a distinction in Ganda thought between traditional *envujjo* (beer, barkcloth trees, etc.) and *envujjo* upon these commercial crops. *See* ss. 4 and 5, respectively, of the *Busuulu and Envujjo Law.* It will be noticed that the offence of non-payment of *envujjo* (s. 18A (*a*)) applies only to the former.

[3]except when he should abandon his holding; *see* s. 12.

[4]as now clarified and amplified by case law.

CHAPTER III

LAND REGISTRATION: THE SUBSEQUENT RECORD

The Survey Policy

Meanwhile the settlement survey had continued, absorbing the not inconsiderable effort which the Department of Land and Survey, under varying conditions, was able to devote to it. By the end of 1923 it had been estimated that the survey had covered half the area of the Kingdom of Buganda; but, as the completed portion was the more densely populated part, it was reasonable to assume that more than half of the mailo estates had been surveyed. By this date, (bearing in mind that the issue of Final Certificates necessarily lagged behind the settlement survey) the total number of certificates issued was 6,700. This represented an area of some 4,640 square miles or 51 per cent of the total area which was guaranteed to individuals under the 1900 Agreement[1]. The following year it was reported that, with the insignificant exception of Bunjako Island, being part of Mawokota County and joined to the mainland by papyrus swamps, the cadastral survey of the whole of the Lake Victoria shoreline of the mainland counties of Buganda was completed. It was added that the ownership of every portion of the mainland, within a minimum radius of about 60 miles from Entebbe, was by then determined[2]. The "home counties" of Buganda; namely, Kyaggwe, Kyaddondo, Busiro, Mawokota, Butambala, Busujju, Gomba and the more densely settled parts of Buddu, were now completed; and the survey had already been extended into more outlying areas in Bugerere, Bulemezi, Ssingo, Buwekula and Buyaga[3].

The policy had been to continue to press on, as rapidly as possible, with the initial settlement survey; although there had been, since 1915, ominous signs of difficulties developing owing to unsurveyed dealings upon those estates already demarcated. It is always easier to be wise after the event, but there do seem to be grounds now for questioning the correctness of this policy. It was, no doubt, felt at the time, that it was essential to pursue the settlement survey to its final conclusion; in order to demonstrate the Protectorate Government's determination to stand by the 1900 Agreement in implementing Article 15 to the letter. Further it may be argued that, until this settlement survey was finalised, those lands which

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[1] *Annual Report of the Land and Survey Department* for the year ending 31st December, 1923. p. 11.

[2] *Annual Report of the Land and Survey Department* for the year ending 31st December, 1924. p. 7.

[3] Please *see* Map 1.

would pass to the Crown, and which Johnston had seen as a potential source of revenue, would never be ascertained[1].

But, generally speaking, the survey carried out, after 1924, led merely to the extension of Registration of Title into areas where the low land values and sparsity of population did not warrant it. Crown lands in these outlying counties were, indeed, identified, but this has since proved to be a rather pointless exercise; as they were of relatively low value and little revenue from them ever accrued to the Protectorate Government[2]. Apart from bringing the satisfaction of a job well done, the completion of the mailo settlement survey in these remote areas created more problems than it solved. In fact, even after the effort of a further twelve years, it was, in the event, found impossible fully to implement Article 15. When the land settlement in the Uganda Agreement, 1900, as supplemented or superseded by later agreements, finally ceased to have any effect on the 9th October, 1962, about 130 "Shortage Certificates"[3] remained unsatisfied due to the failure of the claimants to come forward; and an additional area of some 154 square miles was still awaiting allocation by the *Lukiiko*[4].

It would, therefore, have been better to have called a halt to the settlement survey on completion of the more heavily populated counties, where a *prima facie* case for Registration of Title could be said to have existed; except, perhaps, for a number of isolated pockets of more valuable land, such as that in central Ssingo, where larger numbers of claimants were known to be concentrated. This would have left those claiming estates in outlying areas in occupation of their claims by virtue of the issue to them of Provisional Certificates. They would not have received a registered title, but they would have avoided the obligation to pay fees for substantiating their claims to land which did not warrant such expenditure. Most probably, the Crown would have been the loser, as these claimants would have been left in quiet possession, for the most part, of areas larger than their entitlement. But this would have been of little consequence in view of the low value of both mailo estates and Crown lands in those areas. Greater use might, perhaps, have been made of the Registration of Documents Ordinance, 1904, to maintain some record of interests in these undemarcated mailo estates. In this way, if, at a later date, a formal request for survey were received from a mailo-owner, or survey was required for a proposed lease out of Crown land, information of value in the establishment of ownership in any given locality would have been forthcoming. Mailo estates in counties such as Buruli, Mawogola, Kabula, Koki, Ssese and Buvuma, and in large parts of Bulemezi, Ssingo, Bugangazzi, Buyaga and Buwekula, would not, therefore, have

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[1]It should be pointed out that, in making his land settlement, probably Johnston's main interest was in gaining control over this unoccupied land, which he hoped could be used to support the Protectorate Government financially. This being his primary concern, he did not worry himself unduly over the problems of the *occupied* land; so long as he obtained the chiefs' agreement.

[2]Or, latterly, to the Buganda Government, under Article 9 of the Buganda Agreement, 1955.

[3]Upon survey it was frequently discovered that the area marked out on the ground did not agree with the area stated in the Provisional Certificate. If an estate was under area, the claimant could claim the deficiency elsewhere; this being acknowledged by the issue of a "Shortage Certificate".

[4]It was computed that, on 31st December, 1940, the balance still to be allotted was 154 square miles and 161·65 acres. See *Annual Report of the Land and Survey Department*, 1940, p. 14. Subsequent to this date the figure was reduced only slightly, *e.g.* by the issue of Final Certificates in Ex-Soldiers' Settlement Schemes.

been demarcated as part of the general programme[1]. An untidy solution, perhaps, but one more in keeping with the objects and requirements of Registration of Title. Furthermore, this being the major point in the argument, it would have permitted the employment of a large number of the available survey staff in those counties where many dealings and higher values showed that cadastral survey and Registration of Title were a real necessity.

The Inadequacy of Survey Facilities

However, in the event, the settlement survey was pursued in the outlying counties whilst the Register in the "home counties" became more and more out of date. The Mailo Register owes much of its reputation for complexity and inadequacy to this period. With the trend towards a cash economy, the spread of cotton cultivation, a fuller realisation of the negotiability of mailo land, and with the general change from the old order to the new, transactions in mailo land, both surveyed and unsurveyed, increased year by year. As survey proceeded, transactions in surveyed land became relatively more, and those in unsurveyed land relatively less. Paradoxically, however, there is evidence to suggest that the transactions in unsurveyed land were better regulated, by the issue and recording of Certificates of Right[2] or of Ownership[3] or of Succession[4], than were those in surveyed land brought under the Registration of Titles Ordinance. In the latter case, the failure to translate the prescribed form of transfer, and to make it available to landowners, contributed greatly to the extension of the pernicious system of sales of "paper acres" by unregistrable manuscript agreement or *endagaano*.

By 1920, the situation had been such that two European private individuals applied for authority to carry out subdivisional surveys upon mailo land. These were followed the next year by a third. Two of these original three were, for many years, to make their living partly in this way; but, although similar authority was granted to a fourth in 1932, it is evident that their combined efforts could make little impression upon this enormous task.

Digressing, for a moment, on the subject of non-official surveyors, it should be recorded that Government policy, at that time, was opposed to the establishment of a licensed profession; and, in consequence, no statutory provision for the licensing of surveyors existed. Conditional and limited permission to practise was, however accorded to these four, largely on the grounds that they all had experience of the special conditions obtaining in Buganda[5]. Their activities were controlled merely by Departmental Regulations; and, not until the 1955

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[1]For further information see *Atlas of Uganda*. Department of Lands and Surveys, 1962, in particular those sheets on Population Density, Cultivated Land and Cotton Cultivation. *See* also Appendix B to this work; Population Density and Price of Mailo Land.

[2]A "Certificate of Right" was issued in respect of Deficient Estate (*i.e.* part of a claim as yet unsatisfied by survey) when it was convenient to close a Provisional Certificate as "completely satisfied".

[3]Dealings in unsurveyed mailo land were generally confirmed by a *Lukiiko Endagaano* after which the *Lukiiko* issued a "Certificate of Ownership" which was a translation of the *Endagaano*. Particulars of this were then endorsed by the Land Officer upon the Provisional Certificate.

[4]As prescribed by the Buganda Land Succession Law, 1912.

[5]As they had all previously served as Surveyors in Government.

amendments to the Survey Ordinance, was provision made for the licensing of Land Surveyors and their activities placed upon a statutory basis.

In particular, the early private surveyors were not obliged to refer to the Titles Register before carrying out a survey; with the result that, accepting the instructions of, possibly, a claimant from an unregistered successor, they carried out many surveys which could not lead directly to the issue of a title. Furthermore, difficulties over the collection of fees caused these private surveyors to delay in submitting their plans to the Department; with the result that the situation on the ground, as indicated by the boundary beacons emplaced, came to vary more and more widely from the legal position as shown on the Titles Register. The operations of these surveyors also led to many misunderstandings in the minds of African landowners, many of whom thought that the mere emplacement of beacons, by a European surveyor, was all that was necessary to "register" his land. Also, the practice adopted by the Titles Office, at that time, of passing new Certificates of Title to private surveyors for onward transmission to their clients, only served to deepen these misapprehensions. Although many successors or purchasers did acquire title following survey by one or other of these private surveyors; nevertheless, due largely to lack of co-ordination with the Titles Registry, their efforts sometimes inadvertently worsened the situation. The result was that they were severely criticised during the enquiries of 1938 and 1953.

The training of African Planetablers to assist in this mailo work had been first mooted shortly after World War I; and, in 1924, the first class of three pupils completed their initial instruction at Makerere College and were drafted to the field. These were followed, later, by others up to a total, prior to World War II, of sixteen. But these officers were, until 1933, employed, for the most part, upon the settlement survey to which they added a valuable contribution. Certainly, until that date, their services were not available in those counties around Kampala where land dealings were taking place most rapidly.

So that, during these years which witnessed a multiplication of proprietary rights in mailo land as tenants sought to escape the exactions of their landlords, there was, regrettably, virtually no survey policy for dealing with the subdivisions. Government acclaimed this trend as a step in the building up of a landed peasantry; but did little or nothing to regulate it[1].

Harmful Effects upon the Register

Whilst the few surveyors available pressed on with the mailo settlement survey in more and more remote areas[2], the situation behind them grew steadily worse. The landowners, and, even more so, those intent upon acquiring this

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[1]During this period many thousands of mutations must have occurred in the titles to mailo land already registered, yet the number of transactions in mailo land registered is recorded in the Lands and Survey Department Annual Report, 1926, p. 16, as follows:—

1921 ...	41	1924 ...	61
1922 ...	45	1925 ...	85
1923 ...	67	1926 ...	279

[2]For an informative account of this work and of the life of the Field Surveyor, *see* Strickland, J. G., "The Uganda Mailo System", *Empire Survey Review*, Vol. III. 1936, pp. 422–27 and 460–69.

status, many of them illiterate and all of them unfamiliar with the difficulties inherent in land dealings, needed guidance. But there were very few lawyers in the country at this time and the Titles Office was situated in Entebbe, perhaps a hundred miles away from their homes over bad roads. Dealings in "paper acres", evidenced by manuscript and unregistrable agreements, became the normal procedure; and this in a country where Registration of Title had existed, at law, since 1908. The issue, by the *Lukiiko* Land Office, of the so-called *Lukiiko Endagaano,* itself a well-intentioned attempt to regulate these land dealings, frequently served merely to lull the landowners into a feeling of false security, as it had no validity under the Registration of Titles Ordinance. This competition between the legislative and administrative efforts of the Protectorate and Buganda Governments is one of the most unfortunate aspects of this period. Many a landowner, being unaware of his obligations, adopted a cavalier attitude towards his land and towards persons wishing to buy land from him. He would sign an *endagaano*[1] against his mailo estate, in much the same way as one would sign a cheque against a bank account; and, for similar reasons, the "account" was sometimes "overdrawn". Frequently, little or no attempt was made to identify the parcel of land on the ground; and, having once received his money, the absentee landlord regarded the matter as no longer of any concern to him. Customary law, as it evolved, made such dealings too easy for the landowner and did not hold him to his responsibilities.

Almost inevitably, the arrival of a surveyor, perhaps years later, would lead to a dispute between claimants who had acquired land in this way. Some sharp practices developed, though many of the oversales, which came to light, years later as the Registry staff struggled to bring order out of chaos, were probably due more to confusion of thought over redeemable sales or incomplete purchases by instalments, than to any deliberate attempt to defraud. Nevertheless, it would be difficult to over-emphasize the mischievous effects of the various malpractices which developed at this time; or of the harmful misconceptions, some of which prevail to this day.

As time went on, an increasing number of claimants began to send their manuscript agreements to the Titles Office, and, as these were not immediately registrable, they were advised to lodge caveats[2] to protect their claims until they obtained transfers in the prescribed form. The object and function of the caveat was misunderstood by many landowners, who assumed that the entry of such a caveat was tantamount to registration of their title, so that they took no further action to substantiate their claim and it remained on the Register for years. The following table gives the number of caveats entered and withdrawn during the period 1932–1937; though it must be pointed out that an additional but not large, number of caveats, was also automatically removed by the Registry staff during the same period, upon registration of titles in the names of former caveators.

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[1]This was the private *endagaano* in respect of a sale usually already completed. It was in manuscript Luganda, usually in duplicate and gave the names of the parties, the area (though typically not the whereabouts) of the land transferred, the purchase price and the date. It also contained the Land Registry reference to the land concerned, though this was frequently incomplete or incorrect.

[2]Under the Torrens system a caveat is, in effect, a statutory injunction against registration, designed to keep the property *in statu quo* until the rights of the caveator are determined (if necessary) by the court. (Kerr).

TABLE 1.

MAILO REGISTER: ENTRY AND WITHDRAWAL OF CAVEATS, 1932–1937

YEAR	CAVEATS ENTERED (*By Africans alone*)	CAVEATS WITHDRAWN (*By all races*)
1932 ..	581	24
1933 ..	489	49
1934 ..	477	21
1935 ..	593	14
1936 ..	757	10
1937 ..	910	9

Source: Land and Survey Departmental Annual Reports.

This misuse led to an alarming proliferation of caveats upon the Titles Register. Indeed, it was fast becoming a register, not of titles, but of caveats.

AN INQUIRY IS INITIATED

Though preoccupied with other matters[1], the Department of Land and Survey was not unaware of this huge problem that was developing. By 1934, in anticipation of the completion of the settlement survey, arrangements were being made for an assault on the problem, as soon as field staff was available. Government approved, in principle, that the demarcation of subdivisions should be carried out by Government planetablers in addition to the private surveyors already practising. Compulsory survey was to be conducted systematically, rather than sporadically, and a proposal was made for a combined survey and registration fee. Legislation, under consideration at that time, included an amendment to the Registration of Titles Ordinance to enable District Courts to grant Vesting Orders, rules for the better control of survey operations; a Buganda law to regulate the sale and purchase of mailo land; and a further Buganda law to simplify and accelerate the succession procedure. But, by 1936, when the enormous task of the initial mailo settlement survey was eventually completed, after the demarcation and survey of 15,379 individual African holdings[2], it was felt that the problem had attained such proportions that it would be advisable to seek outside, expert, advice, upon the best way to tackle it.

Accordingly, V. L. O. Sheppard, who, as Surveyor General of Egypt, had had many years' experience of the problems relating to Land Registration; and who, in collaboration with Sir Ernest Dowson, was later to produce an authoritative work on this subject[3], was invited to investigate the mailo survey and titles situation in Buganda. His terms of reference were as follows:—

"To ascertain and report in what, if any, ways the associated operations of land registration and cadastral survey in Buganda might be modified so as—

(i) to conform more exactly, more conveniently and more economically to the practical needs of the country, and of the people, and

[1]*i.e.* topographical, township and boundary surveys, *etc.*

[2]Land and Survey Departmental Annual Report, 1936, p. 15.

[3]Dowson, E., and Sheppard, V. L. O., *Land Registration*. H.M.S.O., London, 1952. Second Edition 1956.

(ii) to enable the conduct of these operations to be progressively entrusted in increasing measure to the Native Government."

Sheppard visited the Protectorate for some six months and drew up a comprehensive report, addressed to Sir Philip Mitchell, Governor of Uganda, and dated 12th August, 1938.

Before considering his report in outline, it would be as well to point out that Sheppard, by his terms of reference, had been invited to study only Land Registration (including cadastral survey), a field in which he was an acknowledged expert. He was not called upon to assess the value to Buganda of the mailo system of tenure as a whole. In consequence, some aspects of this tenure, for example, the landlord and tenant relationship, were not treated at all; whilst others, such as the question of the inheritance of land in Buganda, were touched upon only incidentally, in so far as they affected the maintenance of the Titles Register.

The Sheppard Report, 1938[1]

It is perhaps not surprising that Sheppard was very quick to recognise the main faults in the system he found in operation. He listed the more serious defects as follows:—

(i) *The unsuitable nature of the existing law.* Concerning the Registration of Titles Ordinance, 1922, he observed that the Victoria Act (upon which the Uganda Ordinance is closely based), "is the most abstruse in legal phraseology and the most complicated in the machinery of record to be found in Australia; it is therefore particularly unfortunate that the legislator selected this Act as the model for Uganda. Entire chapters of the Victoria Transfer of Land Act, 1918 (this Act has since been repealed by the Transfer of Land Act, 1928[2]) were copied into the Uganda Registration of Title Act, 1923 (*sic*). If a different law was necessary for each of the Australian States, it follows that no particular Australian Act could be expected to suit another country, far less a primitive African country such as Uganda".[3] He went on to comment that "there is nothing in common between the two countries in area, population, cultivation, education, average size of holdings, local laws and customs, or financial welfare of the landowners".[4]

His conclusion was, therefore, that Uganda should have a simple Ordinance, based as far as possible on local custom, adapted to conditions of life in Uganda, and readily understandable by the African landowners.

It is interesting to note that the adoption of the Victoria Act (which adoption had several distinguished sponsors at the time), was later partially explained and defended on the grounds that it was not intended to apply to mailo titles. But this argument seems hardly tenable when one recalls that, by 1924, mailo titles comprised by far the greatest proportion of those being

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[1]Sheppard, V. L. O., *Report on the Cadastral Survey and Registration of Title to land in Buganda*, 1938, pp. 48. (cyclostyled, unpublished).

[2]Which has now, in turn, been repealed by further legislation including the Victoria Transfer of Land Act, 1954.

[3]Sheppard Report, Part II, p. 6.

[4]*Ibid.* p. 7.

issued[1]. Furthermore, the preface to the explanatory booklet, by Place[2], shows the clear intention that it was to be translated into Luganda.

(ii) *The Register Book was itself obsolete and fast becoming merely a record of caveats.* More will be said, later, concerning the actual physical form of the Register prescribed by the 1922 Ordinance; for this was not designed in any way upon a territorial basis (surely, a *sine qua non* of any form of land record); and, after the closest scrutiny by officers experienced in the use of this system, opinion is unanimous that it had nothing to recommend it. It was Sheppard's view that "the system embraces all the disadvantages of the bound volume and the loose-leaf register, and the advantages of neither. It would be exceedingly difficult to operate should registration become general and subdivisions increase, as they certainly will."[3]

(iii) *There were several other unsatisfactory features in the operation of the existing Ordinance.* These, for the sake of convenience and brevity, will here be considered together. As the only Registry Office was situated at Entebbe, it was virtually inaccessible to the large majority of landowners; and this remoteness naturally deterred them from making use of the facilities offered. Also, Sheppard found that the scale of fees charged was excessive. These fees were, in some cases, higher than those charged in Victoria for the same service; notwithstanding the considerably lower land values in Buganda. He found further (as we have seen), that because the existing system had been launched without much consideration or explanation, the land-owning class had been allowed to drift into the dangerous practice of purchase by private deed in open violation of the law. In fact, both the Registration of Titles Ordinance, 1922, and the Boundary Marks Law of 1911[4], had been disregarded by the *Lukiiko* and the people. The consequence was that Buganda was flooded with scraps of paper purporting to be transfers; and the Registrar of Titles, in his efforts to convert these into registrable form, had taken on himself the duties of "family solicitor" to persons dealing in land. Once Government had failed to bring the Ordinance "home to the people", this alternative approach, well intended though it undoubtedly was, could never be expected to provide a complete solution.

(iv) *The original mailo settlement survey was technically unsatisfactory in some respects.* Certain regrettable mistakes had been made; some of which, he appreciated, may have been difficult to avoid at the time. These were:—

(*a*) The work was taken up, not by any territorial or administrative unit, but by the theoretical sheet-lines of the 1:10,000 series. Thus part of an original mailo estate was surveyed in 1905 and the remainder in 1929. This, Sheppard observed, was "an unprecedented method of carrying out a proprietary survey."[5]

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[1]Land and Survey Departmental Report for 1924 shows that the total number (1,223) of new titles registered during that year, was made up as follows:—

Mailo Register ...	925	Leasehold Register ...	241
Freehold Register ...	21	Crown Lands Register	36

[2]*Op. cit.* Chapter II.

[3]Sheppard Report, Part II, p. 15.

[4]*See* Appendix A.

[5]Sheppard Report, Part II, p. 19.

(*b*) At times, due, no doubt, to anxiety to complete the work, speed of output appeared to have become the one and only consideration. Misclosures had been crudely adjusted; there had been inadequate field supervision; and many minor trigonometrical points, which should have been used for checks, had not been so employed.

(*c*) Furthermore, none of the minor and intersected points, which would have been invaluable later, were properly marked; and many had since disappeared. This was a grave error; as the cost of triangulation is rapidly thrown away if the points are not permanently marked and safeguarded.

(*d*) The original plane table sheets (on linen backed paper[1]), were badly worn and had deteriorated considerably. Distortions had developed, and, as these sheets constituted the only record of the work and evidence for all registered titles, they should have been mounted on zinc or aluminium and most carefully preserved.

(*e*) The first 238 square miles[2] had been surveyed on a scale of 4″ = 1 mile; and, afterwards, enlarged to 1:10,000 in the Drawing Office, this being a most defective procedure.

(*f*) The cairns, marking the corners of the original mailo estates, had been erected, not at the time of survey, but by a special cairn building party following afterwards[3]. As a result the cairns were not always built in their correct positions.

In consequence of all this, it was Sheppard's view that one of the most unsatisfactory features of the work was that it was impossible to state, with any degree of certainty, the standard of accuracy obtained in any part of it. Furthermore, the procedure adopted for the survey of subdivisions was "particularly vicious"; as all kinds of errors were thereby introduced, which, as the work was purely graphical, it was impossible to detect unless the survey was independently checked in the field.

(v) *Survey facilities were insufficient to cope with current mutations in ownership*. It was obvious that the three practising private surveyors could not be expected to keep abreast of the current work; and, on several points of principle, Sheppard was strongly opposed to their further employment for this purpose. As Government guarantees title to the land, it was, he argued, essential that Government should carry out the survey of the land carrying that guarantee. Focusing attention upon the unsatisfactory situation that had arisen, Sheppard noted that a private surveyor would not submit his work to the Registry until his fees had been paid in full. He recorded, with marked effect, that, in March 1938, the principal firm of private surveyors had completed but, for this reason, had not submitted, no fewer than 5,668 surveys.

It is only just to record here that no Torrens Ordinance could have operated effectively under the handicap imposed by such inadequacy in the

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[1]It is understood that cartridge paper was mounted upon linen, in the field; then "seasoned" before use.

[2]*i.e.* Sheets North. A. 36. T. II. 30, 40, 50, 60, 70 and U. I. 21, 22, 31–33, 41–45, 51, 61. *See* Thomas and Spencer, *op. cit.* p. 40.

[3]*See* Strickland, *op. cit.* p. 465.

survey facilities. The near-breakdown of the system must be ascribed more to this than to the ill-adaptation and ineffective implementation of the Ordinance itself.

(vi) *Dual control by the Titles Registry and by the Lukiiko.* The relationship between the Office of Titles and the *Lukiiko* Land Office was obscure and, over the years, some degree of duplication and confliction of interest had developed. "It is difficult enough" observed Sheppard, "to keep a single record of title unimpeachably. It is virtually impossible to keep two parallel records reliably and grossly uneconomical to attempt it."[1] The original allocation of mailo land had been in the hands of the *Lukiiko,* but these allotments, once surveyed, were registered under the Registration of Titles Ordinance; and registration was controlled not by the *Lukiiko* but the Protectorate Government. On the other hand, the Kabaka had retained personal jurisdiction over inheritance matters; and, furthermore, all land disputes were heard by the *Lukiiko* Court, of whose judgments the Registrar of Titles could take no cognizance until they had been confirmed by the High Court of Uganda.

Under these circumstances some confusion of interest was, perhaps, inevitable; and this could best be illustrated by the use made of the *Lukiiko Endagaano*. This form had been introduced "in order to make manifest to the people the hand of the *Lukiiko* in all land transactions"[2]; and had, in the first place, been devised for the perfectly legitimate purpose of regulating dealings in unregistered land. Now, however, it was being utilised to "confirm" sales of registered land although it was not registrable as an instrument under the Registration of Titles Ordinance, and there was, in fact, no check made at the Registry to ensure that the vendor was the owner of the land and free to sell it to the purchaser. The issue of the *Lukiiko Endagaano* tended to confer an altogether false sense of security, and its use usually ended by involving a landowner in far greater expense than would have been the case had he, in the first place, obtained a statutory instrument of transfer in the form prescribed by the Titles Ordinance.

(vii) *Registrations of succession to land tended to be delayed or ignored altogether.* This Sheppard ascribed as due, partly, to the apathy of the heirs, and partly to delays at Mmengo[3]. Cases, selected at random, showed that intervals of up to twenty years were occurring between the death of a landowner and the issue of Certificates of Succession. Clearly, delays of this order should not be tolerated; as, under these circumstances, the titles on the Register could never be up to date; and a Register which cannot provide certainty has lost a good deal of its value to the community.

The criticisms put forward by Sheppard, in Part II of his report, have been treated here in some detail. Together, they form a most useful and succinct appreciation of the faults that were apparent in the system of Land Registration in Buganda at that time.

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[1]Sheppard Report, Part II, p. 17.
[2]*Ibid.* p. 18.
[3]*i.e.* in the Ddiiro Office of the Buganda Government. *See* Chapter V.

We must pass now to a brief study of the corrective measures which Sheppard recommended to put the matter right.

First and foremost, he said, "it must be emphasized that the successful operation of any system of registration of title to land in Buganda must depend on two conditions:—

(*a*) that the law will be respected by the *Lukiiko* and the people, and

(*b*) that the Native Government will co-operate with goodwill.

It is on the assumption that these conditions will obtain that the following recommendations are made."[1]

Sheppard continued: "In order to bring order out of the state of chaos existing, three operations are necessary; they are:—

(*a*) The revision of the cadastral survey;

(*b*) The investigation and settlement of all unregistered claims; and

(*c*) The registration of admitted claims and subsequent dealings.

The first entails the resurvey of a considerable part of the territory of Buganda; the second, the promulgation of a Land Settlement (Settlement of Titles) Law and the appointment of Settlement Officers and staff to carry it into effect, and the third, the re-drafting of the Titles Ordinance and the establishment of suitable machinery to give effect to the new Ordinance[2]."

He then goes on to describe his corrective measures in detail; and, with some consolidation and rearrangement, they may be summarised as follows:—

(*a*) *The revision of the cadastral survey.* For the reasons recorded above, he considered that a revision of a large part of the cadastral survey was an unavoidable prerequisite to reform of the Titles Register; as it was impossible to state with any degree of certainty the standard of accuracy obtained in any part of the work carried out to date. He pointed out that the method of survey, and the scale required, must be determined by the value of the land and by the size and shape of the parcels to be depicted on the plans. Moreover, it was essential that, whatever method was employed for the revision survey, the trigonometrical framework must be reinforced; the additional points being carefully selected and permanently marked. He recommended the training of African Planetablers in far greater numbers, and considered that the authority granted administratively to certain private surveyors should be withdrawn. In making this, rather sweeping, recommendation for re-survey, Sheppard was, to a large extent, pinning his hopes upon photogrammetry; for experiments in these techniques[3], at that time relatively new and undeveloped, were being conducted elsewhere. In the event, however, this expectation proved to be vain, due largely to the lack of air-visible boundaries and to the heavy vegetation cover in parts of Buganda.

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[1]Sheppard Report, Part III, p. 27.

[2]*loc. cit.*

[3]*i.e.* the preparation of maps and plans from rectified aerial photographs.

(*b*) *Settlement of Title.* Section 51 of the Registration of Titles Ordinance, 1922, states that "No instrument until registered in manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Ordinance or to render such land liable to any mortgage." It follows from this that any dealing, evidenced only by an unregistered manuscript *endagaano,* was, at law, null and void as a conveyance. But, nevertheless, it was binding between the parties; and, Sheppard argued, Government could not equitably set it aside after having acquiesced in this practice for a period of thirty years. In order to make the Register a mirror of the actual ownership, which it purported to be, systematic settlement of title to land would be necessary, which would sift all claims thoroughly and competently throughout the mailo areas. He proposed the appointment of three Settlement Officers who would, with the assistance of assessors appointed by the *Lukiiko,* carry out this work simultaneously with the revision survey; with an appeal to the appropriate court where necessary. The draft of a Land Settlement Ordinance was submitted as an Appendix to the report.

(*c*) *The replacement of the Registration of Titles Ordinance, 1922.* It was proposed that the existing Ordinance, which Sheppard had already criticised at length, should be replaced by a very much simplified Titles Ordinance, of which he prepared a draft. Points of interest in the proposed Ordinance include the lack of provision for duplicate Certificates of Title on the grounds that they serve little useful purpose in Uganda and frequently their non-presentation hampers the registration of dealings. Also proposed were the introduction of a more efficient form of Register Book based territorially upon the loose-leaf system; provision for the decentralisation of the Register to offices in Mmengo, Masaka and Mubende districts; the prevention of acquisition of title by possession[1]; the abolition of equitable mortgage by deposit and the prohibition of attachment of mailo land for civil debt[2].

(*d*) *Elimination of dual control.* In order to bring this about Sheppard, bearing in mind his terms of reference, recommended that the survey and registration services should become a department of the Buganda Government under British guidance. Into this new department the *Lukiiko* Land Office was to be merged. The proposed new Titles Ordinance would be administered in so far as mailo land was concerned, by the Buganda Government; as would be the Land Settlement Ordinance. He also proposed a special Land Court which would be an African tribunal; but a Protectorate Judicial Officer would sit on this court. It would hear, *inter alia,* appeals under the Land Settlement Ordinance. A further recommendation required the immediate cessation of the issue of the *Lukiiko Endagaano;* and, in order to discourage the practice of sale by private treaty "off the Register", a Land (Sale and Purchase) Law was drafted.

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[1]Sheppard argued here that the acquisition of title by possession opened the door to land stealing by encroachment.

[2]He considered the last two measures necessary to protect the interests of the mailo owner. But note the Land Transfer Ordinances, 1906 and 1944.

(*e*) *Closer integration of survey and registry responsibilities.* Mindful of the unsatisfactory consequences of the evident lack of cohesion between the efforts of the Survey Section and the Titles Office, Sheppard hoped to achieve a larger measure of integration by combining both these duties in the persons of certain selected officers. His proposal was that the three surveyors responsible for the revision survey should also be Settlement Officers; and, after these combined exercises had been completed, each of these officers would become both District Surveyor and Assistant Registrar for mailo land within his district. As he put it, "the cadastral side of the work must be understood to include both knowledge and experience of settlement of title, of land and land registry laws, and of the book-keeping sides of this work".[1]

It is relevant, here, to reflect that officers coming to Uganda from the United Kingdom were unlikely to have had any prior experience of the interrelationship of the processes of cadastral survey and registration of title. A study of the latter appears in the examination syllabus of the Law Society[2], but not of the English Bar; whilst cadastral survey has, all too frequently, been regarded by survey students as a rather tedious companion of the more stimulating topographical and geodetic work. It was not until after World War II that the Royal Institution of Chartered Surveyors, in establishing a Land Surveying Section, introduced Land Registration as an optional subject in examinations. This was brought about, at least in part, by the enthusiasm of Dowson and Sheppard, through the interest aroused by their work. For the future, it seems likely that these aspects of professional work will grow in both absolute and relative importance, as expanding populations, and the trend towards commercial economies, emphasise the need for more efficient land management in the developing countries.

Further Discussion of Sheppard's Proposals

For the first time a long, hard look had been taken at the system operating in Buganda. The issue of the Sheppard Report aroused further useful comment and constructive criticism. Discussion hinged largely upon the need for re-survey and revision of the Titles Ordinance; and several protagonists arose in defence of the existing law. The argument was carried to the United Kingdom when the Attorney General sought the advice of Sir John Stewart-Wallace, H.M. Chief Land Registrar.

The crux of the problem was whether any new Ordinance should provide for "fixed" or "general" boundaries. Briefly stated, the point is this. The boundaries of land parcels can be formed either by hedges, fences or ditches, as is usual in the more developed countries of Europe[3]; or, by imaginary straight lines between boundary beacons emplaced in the ground at the turning points. The latter system lends itself to more precise demarcation of boundaries[4] (and therefore to the more accurate computation of areas) and is the justification

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[1]Sheppard to the Governor of Uganda, 12th August, 1938.
[2]Where it is restricted to the English, rather than the Torrens, system.
[3]These are the "general" boundaries.
[4]Hence the application of the term "fixed".

for the boundary guarantee which is a basic precept of the Torrens System. With "general" boundaries, on the other hand, the hedges, for example, are merely surveyed in as topographical features and no attempt is made to demarcate the boundary precisely within the thickness of the hedge. In consequence, therefore, an Ordinance based upon "general" boundaries, as in the United Kingdom[1], must guarantee the proprietorship of land "as to parcels" only and must not extend this guarantee to precisely defined boundaries or areas. It is clear, in any developing country such as Uganda, where there is no tradition of enclosure, and where public opinion would probably not support legislation enforcing it, that Government, in undertaking the demarcation of property boundaries, has no option but to emplace beacons, the positions of which are then fixed by the survey process. But the point is that, although "fixed" rather than "general" boundaries are used, it does not follow that they need, necessarily, be guaranteed to the extent advocated by Torrens. In general, the more precise the survey, the higher the cost; so that it follows that, in developing countries where land values are relatively low, the more precise forms of cadastral survey must be ruled out and the techniques adopted must be as cheap and as elementary as possible. Sheppard had recorded his criticisms of the survey method employed in Buganda; which, although adequate for the purpose of settlement and, no doubt, the best that could be provided under the circumstances, was hardly good enough to provide the standard of accuracy expected by the Registration of Titles Ordinance, 1922.

To revert to the main theme, Stewart-Wallace, as was to be expected, did not recommend guaranteed boundaries and hence did not agree that a resurvey was necessary. Instead he proposed a new Ordinance, similar to the Nigerian Law and based upon the English Acts, with "general" boundaries only; and agreed with the opinion that "simplicity is the first requisite and that the best system for any particular country can only safely be evolved in the light of practical experience gained in the Registry in that country".[2]

Further constructive comment had come from H. B. Thomas, who had then been very recently appointed Director of Surveys. He gave it as his view that "a registration system is not, to the Baganda people, an unwanted innovation, on the contrary some system is very generally desired"[3]; but he was inclined to think that too pessimistic an assessment had been made as to the condition of the survey. Whilst the wider commitments of the Sheppard Report were being subjected to further study, he favoured the introduction of a number of measures designed to resolve some of the more immediate difficulties. These would, in turn, simplify the introduction of more far-reaching reforms that may be adopted. The more important of his suggestions may be summarised as follows:—

(1) The Survey Ordinance, already in draft, should be enacted.

(2) The draft Buganda Land (Sale and Purchase) Law should also be passed.

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[1]*See* United Kingdom legislation from the Land "Registry" Act, 1862, and the Land Transfer Act, 1875, to the Land Registration Act, 1925.

[2]Note on a further discussion, between Sir John Stewart-Wallace and the Attorney General of Uganda, on the Sheppard Report, London. 12th September, 1939.

[3]Memorandum addressed to the Chief Secretary, 5th November, 1938.

(3) The issue of the *Lukiiko Endagaano* should cease immediately and all agreements should be lodged with the Office of Titles.

(4) The Registration of Titles Ordinance should be amended and registration fees reduced. Where expedient, unpaid fees should be entered as a first charge upon the title. To remove an obstacle to registration Stamp Duty on transfers of mailo land should be abolished.

(5) A Land Settlement Ordinance should be enacted.

(6) Government should carry out subdivisional surveys wherever possible and at a greatly reduced fee.

(7) The training of more African Planetablers and of Registry clerks should be put in hand.

(8) Some Planetablers and Registry clerks should be stationed at County Headquarters to carry out surveys and to transmit documents to the Titles Registry.

(9) A senior European officer should be appointed to co-ordinate survey and registration work.

(10) The Kabaka and *Lukiiko* should be encouraged to devise means of expediting the issue of Certificates of Succession.

It is evident, therefore, that his views coincided, in large measure, with those expressed in the Sheppard Report, but there was some divergence of opinion over the necessity for resurvey and over the extent to which the Registration of Titles Ordinance had proved unsuitable.

A good deal of discussion ensued upon the draft Land Settlement Ordinance, and the proposals were fully explained to the Buganda Ministers. They declared themselves generally in favour, and hinted at the possible future appointment of a Buganda Minister of Lands.

The Protectorate Government accepted Sheppard's recommendations in broad outline and took immediate steps to implement Thomas's interim proposals.[1]

Implementation Prevented by World War II

The best laid schemes often come to naught. World War II intervened to the frustration of the more far-reaching of the reforms proposed. For the Mailo Register in Buganda this was an unmitigated tragedy because Sheppard's reforms, if fully implemented, would have prevented a further deterioration of the already serious situation; and could have put the Register on the road to becoming a model for future schemes in tropical Africa. But this was denied; and, in the event, it was found possible to implement only the following, lesser, proposals:—

(1) *The enactment of the Survey Ordinance, 1939.* This was intended primarily to regulate the survey of internal subdivisions upon the mailo estates.

(2) *The enactment of the Buganda Land (Agreements) Law, 1939.* This law was designed to prevent dealings in land without reference to the Titles

[1]Dispatch from the Governor of Uganda to the Secretary of State for the Colonies, dated 12th May, 1939.

Office; and, in the view of one, more recent authority[1], was thought "likely to have far-reaching repercussions, since it sets aside native custom and extinguishes equitable as well as legal rights arising from unregistered documents". But, as it has transpired, this law has been almost entirely ineffective[2]; and its interpretation has merely imposed difficulties upon the Registry staff. Section 3 required that all agreements, relating to any dealing in mailo land, should be lodged with the Registrar of Titles. As it did not insist upon the use of the Transfer Form prescribed by the Registration of Titles Ordinance; this merely led to the accumulation, in the Registry, of a vast number of unregistrable manuscript agreements as "pending documents". The Registry staff tried to have each one of these converted into registrable form, but the task was beyond them. So, again, we see here the unfortunate results of the lack of co-ordination between Buganda and Protectorate legislation.

(3) *The enactment of the Registration of Titles (Amendment) Ordinance, 1939;* which provided, *inter alia,* that an address should be furnished to the Registrar by every proprietor of land or any interest in land; for the issue of a *special* Certificate of Title in the event of the Duplicate Certificate being lost or destroyed; and for unpaid fees to be entered as a first charge on the Register. Further, by Legal Notice 9 of 1939, certain registration fees were reduced; and, transfers of mailo land having been exempted from Stamp Duty by Legal Notice 10 of 1939, a new scale of registration fees on mailo transfers was laid down.

(4) *The large scale lodgment of caveats was discouraged*[3]*;* and, instead, greater use was made of s. 147, permitting the registration of a transfer of an unascertained portion of land, where the survey of such portion is likely to be delayed.

But the basic recommendations concerning revision of the Titles Ordinance, the provision of adequate survey facilities, and the enactment of a Land Settlement Ordinance were never implemented. So that, during the war years, history repeated itself, and survey and registration came virtually to a standstill, whilst unregistrable dealings in land continued apace. The issue of the *Lukiiko Endagaano* was, however, stopped.

The Post-war Years

Immediately after the conclusion of hostilities, the Director of Surveys, conscious of the chronically unsatisfactory situation which had, by then, developed in Buganda, raised the whole matter again officially and pressed for the implementation of the Sheppard reforms. In 1946, a rough estimate indicated

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[1]Meek, *op. cit.* p. 135.

[2]Except in so far as it has proved useful in deciding priority of claims between agreement holders.

[3]This new policy is reflected in the figures (from Land and Survey Annual Reports) for caveats entered by Africans, thus:—

1937	...	910
1938	...	607
1939	...	242
1940	...	184

that there were some 150,000 transactions in mailo land which could not be registered until survey was carried out[1]. But, owing to a delicate political situation, severe staff shortages, and departmental preoccupation with other commitments[2], little was achieved except in the training of African surveyors; and, later, in the resurvey, at a scale of 1:5,000, of some mailo estates in the vicinity of Kampala and Bukalasa in Bulemezi County.

So the immediate post-war years passed without Government being able to make any determined attack upon what had, by that time, come to be called the "Mailo Problem"[3]. Then, in 1952, when it was announced that money could be made available for approved developmental projects from part of the Cotton Price Assistance Fund, the Department put forward a scheme for the training of African staff and for the provision of other facilities upon the scale known to be necessary. But the Committee, set up to consider such proposals, included African members drawn from each of the four Provinces of the Protectorate. The result was that, as the proposed scheme (the cost of which was estimated to be of the order of £1,500,000 over a period of eight years), concerned problems within Buganda only, it did not receive the required measure of support and was accordingly not approved.

Mitchell's Investigation and Reforms

But these proposals did, at least, focus attention once again upon a problem which Government could no longer afford to ignore; and, again, the decision was taken to seek outside advice before embarking upon any costly programme of reform.

Accordingly, A. P. Mitchell whose years of experience in Egypt, Palestine, Jordan and Nigeria equipped him well for this task, was invited to visit Uganda; together with J. F. Spry, Registrar-General in Tanganyika, who had had previous experience of the Mailo Registry whilst serving in Uganda. Their terms of reference were:—

(*a*) If possible, to recommend inexpensive and practical methods by which the arrears of mailo surveys could be disposed of consistent with modern land registration practice; and to indicate any consequential amendments to present legislation;

(*b*) to indicate how the current administration of the mailo registration of title can be made to operate more efficiently;

(*c*) to recommend any other means whereby dealings in mailo land can be more cheaply and efficiently carried out than at present;

(*d*) to make any other recommendations connected or associated with the problems generally.

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[1]Survey, Land and Mines Departmental Annual Report, 31st December, 1946. p. 11.

[2]Such as the control of urban development and mining activities. Mines came under the control of this Department from 1941 to 1955, hence the change in the title of the department.

[3]Meaning a problem of record, rather than of tenure.

In the event, Spry was able to visit Uganda for some ten days only, after which he submitted a separate report; and Mitchell was left to continue the investigation alone.

It is not intended here to dwell, in detail, upon Mitchell's findings. Since the acceptance of the Sheppard Report, the main defects of the Mailo Register were already appreciated; and Mitchell's views coincided, in all but one or two important respects, with those of his predecessor.

By the time of his arrival in Uganda, in 1953, the condition of the mailo survey was depressing in the extreme; and that of the Register could only be described as positively nauseating. Mitchell proceeded to inject some life-blood into this moribund system; though, yet again, progress was hampered by further misfortunes[1].

Nevertheless, a far greater proportion of the departmental effort was, at last, brought to bear upon the problem; and great strides were made in the implementation of some of the long-awaited reforms. By 1956 the following steps, each of immediate, practical value, were either completed or were in hand:—

(i) *The interrelated process of survey and registration were brought together under the duties of one officer* whose responsibility it was to co-ordinate them into a more efficient machine. Upon first starting his investigation Mitchell had recognised, as a very disturbing feature of the previous system, the almost total lack of integration between the Survey Section and the Titles Office; with the result that an appreciable number of the subdivisions surveyed could not lead to the issue of a title; because of some hindrance in the Registry or a defect in the claim.

(ii) *Radical alterations were carried out in the administration of the Office of Titles.* The entire office had been transferred from Entebbe to Kampala, and the Mailo Register (only) had been decentralised to six branch Survey and Titles Offices throughout Buganda. The Mailo Register, itself, was to be conducted on a county basis as follows:—

At Kampala for—	Kyaddondo	At Bukalasa for—	Bulemezi
	Butambala		Buruli
	Busiro		
	Mawokota		
At Masaka for—	Buddu	At Mukono for—	Kyaggwe
	Mawogola		Bugerere
	Kabula		Buvuma
	Koki		
	Ssese		
At Mityana for—	Ssingo	At Mubende[2] for—	Buyaga
	Busujju		Bugangazzi
	Gomba		Buwekula

[1]Principally the illness and untimely death of J. A. Cavenaugh, Registrar of Titles.

[2]In 1960 it was found necessary to close the Mubende Office; the Register being distributed:— Buyaga to the Fort Portal Office; and Bugangazzi and Buwekula to the Mityana Office.

It is difficult to exaggerate the advantages which started to accrue, immediately, upon this decentralisation of the Register. At last it had been taken out to the people; and the Registrar of Titles was no longer merely a remote dignitary approachable only after an exhausting and expensive journey to Entebbe. In the person of an Assistant Registrar in each Branch Office, he was now readily available for interview, and it was found possible to insist upon the personal attendance of landowners for all normal business. The great volume of correspondence[1], much of it unproductive, consequently dwindled to the necessary minimum; and the Registry staff was thereby enabled to devote its time more to the dispensation of advice to landowners calling at the Registries and to the elucidation of the complex title situations that had developed upon certain estates.

With regard to these complexities, much greater use was now made of s. 147 of the Registration of Titles Ordinance; which permitted the registration of a transfer of an unascertained portion of land in cases where the survey is likely to be delayed. The extensive application of this section enabled the Register, which, at the time of decentralisation, consisted of old Certificates of Title accompanied by bundles of unregistered documents, to be reduced to a simple list of registered owners. Of these, many claimed unascertained parcels, the area, but not the position being known. The registration of such claims, being unsurveyed and based merely upon dealings in "paper acres" must, at first sight, appear to be an unsatisfactory procedure; probably without parallel in any other registration system. But, desperate measure though it undoubtedly was, it was fully justified under the circumstances; and was considered by Mitchell to be the "safety valve" of the whole mailo problem[2].

Whilst on this point, it would be as well, for the sake of accuracy, to correct a misunderstanding that has arisen concerning the origin of s. 147. Its introduction has been repeatedly ascribed to Ordinance 3 of 1939, *i.e.* as a result of the Sheppard Report. In fact, this clause appears as s. 145 in the 1922 Ordinance, being later amended by Ordinance 12 of 1923, s. 25, and Ordinance 3 of 1939, s. 6.

The landowners, whose interests were recorded on the Register under this section, were, for many years, called "Joint Registered Proprietors". But this description led to some confusion of thought; as these proprietors are not "Joint" in the sense used in "Joint Tenancy"[3]; and they are now, therefore, called "Proprietors of Unascertained Portions". This description is more accurate, even though its abbreviation may be somewhat unfortunate.

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[1]In 1949 it had been reported that the Titles Office was handling 2,400 letters each month. Survey, Land and Mines Departmental Annual Report, 1949, p. 34.

[2]But such registrations should have been made conditional upon the claimants agreeing to have a survey carried out as soon as survey facilities could be made available to them. As it is, their failure to pay fees and to point out boundaries, though surveyors are now available, is greatly impairing the usefulness of the Register by reducing the degree of certainty. For a suggested solution to the problem see Chapter VI.

[3]This is where an estate is acquired by two or more persons in the same land, by the same grant and at the same time. On the death of one of the parties his share accrues to the other(s) by "survivorship".

(iii) *The method of survey was changed.* It will be recalled that Sheppard had considered the survey to be inadequate, and had advocated its revision over a large part of Buganda. The work carried out, during the immediate post-war years, was based upon this opinion and consisted of the complete resurvey of estates at a scale of 1:5,000; the planetable traverses being controlled by a closer network of newly observed minor triangulation. But it had become clear that this method, when applied systematically, was too costly and too slow to cope with the vast number of mutations, both past and current. It was, therefore, in this respect, that Mitchell's views differed most widely from those of Sheppard. So a new, more elementary, technique was introduced ensuring speed and cheapness; whilst, at the same time aiming at an accuracy adequate for the protection of the landowners and Government. All the old work was accepted as adequate, unless proved otherwise in any specific locality; and new subdivisions were added by the separate traversing of each plot or block of plots. The scale of survey was selected to suit the size of each individual parcel, so that each area demarcated, when "rounded off" in the decimals, agreed with that claimed. The theory was that it is the position *on the ground* that matters; so that, provided this was assured, no harm would be incurred if the survey plans were reduced to the status of mere index diagrams[1].

(iv) *Authority to survey was being granted only in respect of those subdivisions for which a title could be issued immediately.* This ensured that each survey became a step towards the clarification of the Register; and was a natural outcome of the closer co-ordination between survey and titles staff. It also helped to convince the landowners of the shortcomings of the unregistrable manuscript *endagaano;* and so has contributed towards the discontinuance of non-statutory forms of transfer.

(v) *The training of more numerous Planetablers was put in hand.* As photogrammetrical methods continued to prove impracticable, it was obvious that the survey solution must lie in the use of a larger number of field operators, who needed to be trained in only the most elementary techniques. Fortunately, by this time, sufficient numbers of African youths with a sound elementary education were forthcoming; and the use of these lower grade officers has since proved, in general, very successful.

(vi) *Statutory provision was made for the formal licensing of non-official surveyors;* by the enactment of the Survey (Amendment) Ordinance, 1955. This provided for the establishment of a Surveyors' Licensing Board; for the issue of two grades of Survey Licence[2]; for the regulation of the work of this licensed profession; and for disciplinary proceedings in the event of misconduct. Yet there have been many factors militating against the success

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[1]The weakness in this approach is that it becomes impossible to take bearings and distances from such diagrams for the later re-establishment of boundary beacons; should this be necessary.

[2]A Class A licence authorises the licensee to act as a land surveyor in any part of Uganda. A Class B licence authorises the licensee to undertake only such land surveys (*e.g.* mailo subdivisions) as the Commissioner may from time to time in writing specifically authorise. Survey Ordinance, s. 9 (2) and (3).

of licensed surveyors operating in Buganda. Government Survey fees are lower than they can afford to charge; overhead costs are high, and there are frequently difficulties over the collection of fees. So that, although thousands of subdivisional surveys are outstanding, only a few of the Class B licensees have prospered[1]. Nevertheless, for a number of years, these licensed surveyors did render valuable assistance in the reduction of the backlog of surveys in Buganda.

(vii) *The work of the Land Registry was being more widely publicised.* Simultaneously, a great effort was made to familiarise the public with the work of the Land Registry by radio broadcasts, and by the issue of eye-catching posters. Also, the Transfer Form (prescribed by the Seventh Schedule to the Registration of Titles Ordinance, 1922) and certain other forms, were, at last, translated into Luganda. Once they were made available the landowners were weaned still further from the use of the manuscript *endagaano.*

The Encouraging Results

The eventual result of all these innovations was a most satisfactory increase in the output of work; and a most encouraging revival of interest and confidence in the Titles Register. Once it had been decentralised, the Register became more accessible in all respects; and the enthusiasm with which its clarification was undertaken is demonstrated by the following figures:—

TABLE 2

Entries on the Mailo Register

1952–1961

Year	Number of Entries	Year	Number of Entries
1952 ..	6,641	1957 ..	27,944
1953 ..	5,728	1958 ..	26,245
1954 ..	4,046	1959 ..	21,590
1955 ..	12,071	1960 ..	19,817
1956 ..	18,310	1961 ..	13,558(2)

Source: Departmental Annual Reports, 1952–1961.

The large number of entries during the years 1956–1960 was caused mainly by the clearance of many thousands of pending documents and the registration of the claimants as Proprietors of Unascertained Portions.

The next table shows the great increase in the numbers of plots surveyed and titles issued that resulted from these reforms.

[1]To date 25 Class B licences have been granted, and two later withdrawn.

[2]The reduction here was caused partly by the virtual completion of the clearance of pending documents; and partly by economic depression.

TABLE 3.

Plots Surveyed, Current Mutations[1] and Titles Issued 1954–1962.

Year	Plots Surveyed by Government	Plots Surveyed by Licensees	Total number Plots Surveyed	Current Mutations	Number of Titles Issued
1954 ..	1,961	—	1,961	—	1,123
1955 ..	2,721	—	2,721	—	2,408
1956 ..	3,294	806	4,100	—	3,847
1957 ..	5,832	1,135	6,967	7,927	6,136
1958 ..	8,395	1,737	10,132	7,665	7,634
1959 ..	8,500	1,000	9,500	6,088	8,413
1960 ..	8,156	833	8,989	4,941	7,293
1961 ..	6,431	325	6,756	2,698	5,222
1962 ..	4,843	321	5,164	2,910	6,443

Source: Lands and Surveys Departmental Annual Reports 1954–1962.

The large number of current mutations, particularly during the years 1957–1959, reflects the revival of interest in the Register, and the energy displayed by many thousands of landowners in putting their affairs in order.

Similarly, the greater number of subdivisional surveys carried out (to which number the licensed profession added a useful contribution during the same boom years), caused a most heartening reduction in the number of surveys previously outstanding; and this, in turn, led to the clarification of further sections of the Register.

At the same time, strenuous efforts were made to reduce costs, mostly by the increased employment of the lower-grade planetablers; and the results are tabulated below.

TABLE 4.

Cost of Survey and Registration 1955–1961.

Year	Cost per plot	Cost per acre
	Shs.	*Shs.*
1955 ..	413	28
1956 ..	443	29
1957 ..	277	21
1958 ..	243	17
1959 ..	255	17
1960 ..	285	17
1961(2) ..	347	21

It should be unnecessary to emphasize the importance of this reduction in costs; as a step towards making the whole survey and registration service more economical to Government and, by keeping fees down, eventually more attractive to the average landowner.

[1]"Current Mutations" reveal the number of surveys accruing from land transactions registered during the calendar year. The difference between this figure and the total number of plots surveyed in the same year, is a measure of the reduction achieved in the survey backlog.

[2]The upward trend of costs apparent by 1961, has since continued.

By August 1956, sufficient progress had been made to enable Mitchell to say that the elucidation of the mailo problem had "reached a stage which makes 'mailo' a matter of real interest instead of despair"[1].

At least, the application of more minds to the problem had led to a better assessment of its ramifications and its magnitude. But a great deal remained to be done.

The Wider Revival of Interest in African Land Tenure

Yet these, very satisfactory, developments were but part of the greater revival of interest in African land tenure, as a whole, which was taking place at this time. J. C. D. Lawrance had been appointed Uganda's first Land Tenure Officer; and, in 1955, he became the Permanent Secretary to the newly established Ministry of Land Tenure. Similar, if not identical, developments were taking place concurrently in the other territories of East and Central Africa; and, in order the better to co-ordinate activities and to pool experience, conferences on African land tenure were held at Arusha, Tanganyika, in February 1956[2], and in Cambridge, England, in August of the same year[3]. The impetus, for much of this activity, had been derived from the Report of the East Africa Royal Commission published in June 1955[4]. This report favoured the individualisation of rights in land; and hence advocated, *inter alia,* the processes of adjudication[5] and registration and the establishment of Local Land Boards. It is interesting to note that, in commenting upon mailo tenure in Buganda, the Royal Commission recommended, not that the Mailo Register should be abandoned, but that "the unsatisfactory state of the land registrations should be rectified and that the cadastral surveys should be completed[6]. . . ."

To digress for a moment, it should be recorded here that, in 1956, there occurred what was to be the last attempt by the *Lukiiko* to share out the 154 square miles of land, still remaining unallocated under the 1900 Agreement[7]. It was proposed that this land should be distributed to the Buganda royal family, members of the *Lukiiko,* Chiefs and Government officials; and to people "who showed courage" during the Kabaka's exile. But this announcement raised a storm of protest in the press; and popular opinion was vehemently opposed to this course of action at a time when the future of all Crown land in Buganda was under discussion, in accordance with Article 9 of the Buganda Agreement, 1955. Nothing further, therefore, was heard of this proposal; with the result that this unallocated balance was, in due course, vested as Public Land in the

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[1]Mitchell, A. P., *A Note on the Mailo Reforms.* August 1956. (Typescript). p. 10.

[2]See *Report of the Conference on African Land Tenure in East and Central Africa.* Arusha, Tanganyika, February, 1956. Special Supplement to the Journal of African Administration. October, 1956. H.M.S.O., London.

[3]See *Report of the Colonial Office Summer Conference on African Administration; African Land Tenure.* African No. 1186, 1956. (Not for publication.)

[4]See *East Africa Royal Commission 1953–1955 Report.* H.M.S.O., London. Cmd. 9475. June, 1955.

[5]The process whereby applications for title to land are investigated usually by a local committee, and approved prior to demarcation and survey.

[6]*Op. cit.* p. 359.

[7]As it had never been allocated to individuals, it had remained, from the legal standpoint, Crown land.

Buganda Land Board by virtue of section 12 (*a*) of the Public Lands Ordinance, 1962.

More Recent Developments

By 1958, when all the Branch Offices were functioning smoothly and the newly-trained staff was gaining in experience, the clarification of the Register, by the registration of new titles and the clearance of pending documents, had reached the stage at which conversion to a more modern registry system became a practical proposition. Consequently, upon the enactment of the Registration of Titles (Amendment) Ordinance, 1958[1], a start was made upon this immense task; with the conversion, to the new system, of the mailo titles in the *Kibuga*. Briefly, this system, which conforms more closely with that described in detail in the Sheppard Report[2] (and was later advocated by Dowson and Sheppard[3]), consists of a revised form of Titles Certificate, but retaining the separate panels for property description, ownership and incumbrances. These certificates are stored in strong, loose-leaf binders, upon a territorial basis; the Certificate for each parcel of land being filed in sequence of plot number within each Registration Block.

This conversion has required the erection of a Registration Block system, on a county basis, throughout Buganda; and has necessitated a close scrutiny of the old records, prior to their supersession, block by block, and county by county. In order to bring the more densely settled counties on to the new register as quickly as possible, these areas were converted first, and, by the end of 1963, the overall task had been about two-thirds completed.

The checking and conversion of some 85,000 titles, together with the transfer of, perhaps, a further 60,000[4] entries relating to Proprietors of Unascertained Portions, mortgages, charges, etc., is no small task to undertake. But the old form of Register, with its proliferation of loose certificates and correspondence files, could not be allowed to continue.

Once fully converted, the new form of Register will offer many advantages; not the least being a greater measure of security, the facilitation of further decentralisation should this prove necessary, and greater ease of reference between the Register and the ground. Furthermore, the new form lends itself to the abstraction of many types of statistical information; for example, number of registered interests, average size of mailo holdings, or the total of outstanding fees charged. Data, of this sort, could be of invaluable assistance to Government, and to other agencies interested in land tenure and productivity; all of whom have been hampered, until now, by a lack of statistical information. "Good work in agrarian improvement demands exact information of the kind that only a cadastral survey can give."[5]

But, regrettably, as the figures quoted above tend to show, it has not proved possible to maintain the rate of progress in survey and registration that had been demonstrated particularly during the years 1957–1959.

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[1]Ordinance No. 38 of 1958. See *Laws of Uganda*. Vol. LI, 1958 (1) p. 625.

[2]Part III. pp. 38–47.

[3]*Op. cit.* Chapter VII.

[4]These figures are subject to revision on completion of the Register conversion.

[5]Binns, B. O., *Cadastral Surveys and Records of Rights in Land*. F.A.O. Agricultural Studies No. 18. Rome, Italy, 1953. p. 44.

Making itself increasingly evident after 1959, the economic situation in the country worsened with the lowering of coffee and cotton prices on the world markets. The consequence was that there was less money available for the payment of fees; and output inevitably declined at the time the build-up of survey and registration staff was virtually completed. This trend has persisted; although there have been some signs of an improvement since Uganda's independence in October, 1962. Advantage has been taken, of this lessening demand, to transfer temporarily redundant staff to other duties; principally to the conversion of the Register, and also to the resurvey of certain estates where the previous work has been found to be faulty.

The survey technique now adopted is, in effect, a compromise between Sheppard, whose proposals are now generally agreed to have been too expensive and too slow in relation to the value of land and size of the problem in Buganda; and Mitchell, whose method eventually caused difficulties over the maintenance of the smaller scale block plans and replacement of property beacons.

It is now general policy for all subdivisional surveys to be carried out at a scale of 1 : 2,500; and, bearing in mind the inaccuracies which inevitably develop in long, uncontrolled, planetable traverses, for surveys of all plots of 100 acres, or more, to be carried out by low order theodolite work[1].

Furthermore, it is now the policy to introduce selective resurvey of those registration blocks in which very heavy subdivision has occurred; or where plotting difficulties have been encountered; stemming, usually, from discrepancies in the original settlement survey. The existing trigonometrical control is strengthened and low order theodolite traverses, for the co-ordination of a number of existing internal boundary beacons, are run across the block in such a manner as to split it into parcels of more manageable size. This work is then plotted on transparent, dimensionally stable, plastic material at a scale of 1 : 2,500; and all existing subdivisions are hung upon it; either by direct transfer from 1 : 2,500 field sheets available, or by planetable resurvey at that scale. Having been checked and inked up, the whole set of plastic sheets for that block is then duplicated photomechanically, upon the same medium, so as to provide an index plan for office compilation and another for use in the field. The latter is then supplied to the planetabler, operating in that locality, who surveys for further mutations as these occur. New work is periodically transferred to the office copy, from which the deed plans are prepared, and from which further photomechanical duplication is possible as and when the field sheets need replacement.

The point is that this treatment will be applied only to those blocks found by experience to warrant it; and the plans for the majority of estates, where there has been little or no subdivision, or where land values are notably low, will remain, as at present, based upon the settlement survey.

To digress further, for a moment, upon the subject of survey technique, it may be repeated here that conditions in Buganda have, in the main, precluded any radical departure from methods evolved nearly sixty years ago. A number of experiments have been carried out, but the application of more modern

[1]Distances are measured to 0·1 ft. and directions to 20″, on two faces. Permissible traverse misclosure. 1/500. Departmental Technical Instruction No. 26.

techniques to a system already operating for several decades, has presented peculiar difficulties in the circumstances found in Buganda. The mailo settlement survey pioneered this type of work in East Africa; and, to some extent, it has suffered the same fate as have other pioneers, in seeing newly developed and more proficient techniques pass them by; to be taken up wholeheartedly by more recently established systems elsewhere.

Cadastral survey by photogrammetry must depend, either upon the existence of air-visible boundaries, or upon the enlightened co-operation of the population in a carefully synchronised "pre-marking" programme[1], as has been operated, for example, in Switzerland. In Buganda, as has been mentioned above, there is no tradition of enclosure, nor is terrace or strip farming widespread; and the patches of bush and heavy foliage of plantains and other crops would make the wholesale clearance of boundary lines too large and too expensive a task to contemplate. The use of photogrammetrical machine-plots, of basic topographical detail, to control subsequent cadastral work upon the ground (this being a technique employed for new projects in Kigezi and other districts of Uganda), has also been found to be of little assistance in Buganda. At present, opinion appears to be that the only way in which photogrammetrical methods can be brought to bear upon this problem, is in the provision of control, by aerial triangulation, for the resurvey of selected areas, as described above. But it is probable that even this could be done just as effectively, but more selectively and hence more cheaply, by tellurometer traverses and radiations[2]. The self-reducing tacheometer, or telescopic alidade could, undoubtedly, speed up the resurvey on the ground of a complex network of existing subdivisions; but their extensive use must inevitably lead to a rise in costs, in terms of the initial purchase of the instruments and their subsequent maintenance, and also in the training and salaries of higher grade operators. It is unlikely that their extensive use would prove to be an economical proposition in a country where they could seldom be used to full advantage; due to the progress of work being so frequently interrupted by line cutting, non-attendance of landowners, boundary disputes and so forth.

Reverting, now, to the main theme; the Ugandanisation of the senior posts in the Branch Survey and Titles Offices was, by the end of 1963, virtually completed. Each Branch Office is under the control of a Cadastral Superintendent, responsible for field survey, and general organisation; whilst each Registry is managed by a Land Registry Assistant answerable to the Registrar of Titles. This partnership is, at present, working smoothly; but some of the advantages inherent in the merging of both survey and registry duties in the same individual officers (as expounded by both Sheppard and Mitchell) have inevitably been lost. So great care must now be exercised, to ensure that the large measure of cohesion achieved is not allowed to dissipate again.

As a step in this direction, and also to assist inexperienced personnel, and to ease the occasional transfer of staff between offices; the whole procedure for survey and registration has been codified for those parts of Buganda where survey

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[1]In which, prior to photography, the boundary beacons are marked (*e.g.* with white paint) in such a manner that they will be identifiable upon the aerial photographs.

[2]*i.e.* employing a micro-wave system of precise measurement of distance.

facilities are now permanently available. This procedure is intended only for those areas where a favourable climate, good soil, ease of access, and many other factors, have led to greater density of population and hence of subdivision. As has already been argued, these are, in fact, the only areas to which Registration of Titles should ever have been extended. The procedure is based upon the principle of "survey before registration" (a tenet basic to all other jurisdictions), in order to dissuade landowners from dealing in "paper acres"; and is designed so as to prevent the accumulation of further Proprietors of Unascertained Portions and to reduce the number of those already entered upon the Register. In this way it should help to bring the Mailo Register more nearly into line with accepted procedure elsewhere.

The Registration of Titles (Amendment) Ordinance, 1962, had, as its main objective, the regularisation of certain existing practices, such as the use of mailo transfers printed in the vernacular language; and also the inclusion of certain measures to assist in the clarification of the Register. Thus, the Registrar was himself empowered to make Vesting Orders, in certain circumstances, with a view to clearing some of the remaining 5,300 agreements lodged with him under the Buganda Land (Agreements) Law, 1939[1]. He was also authorised to remove caveats from the Register Book in cases where the caveators, after due notice had been given, had failed to make use of the survey facilities available.

It may be said, therefore, that, since 1955, the most strenuous efforts have been made to put the Land Register in Buganda in order. Its decentralisation, clarification and conversion have involved an immense amount of work, and staff has been built up to a size more commensurate with the magnitude of the task[2]. That the most significant rate of progress was not maintained, after 1959, has been due largely to economic, political and other factors outside departmental control.

Average annual expenditure upon this survey and registration service in Buganda stands at approximately £115,000[3]; so that it is only reasonable that Government should wish to be satisfied that the fullest advantage is being derived from this investment; and that Buganda is not being deprived of any of the benefits that can be conferred by a really efficient system.

It is time, therefore, to take stock of the situation and to examine what yet remains to be done.

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[1]These comprise the residue of the thousands of unregistrable documents "pending" at the time of decentralisation of the Register.

[2]Since 1959, approximately one hundred survey parties, each comprising seven men, have been regularly deployed upon mailo field work. The H.Q. Mailo Section; and the titles, drawing office and administrative staff of the five Branch Offices together total a further 100 men.

[3]This figure does not include such items as superannuation, capital depreciation on buildings, vehicles, survey equipment, *etc.* To be set against this Expenditure is an average annual Revenue, in terms of survey and registration fees, of approximately £37,000. (*Source:* Departmental Annual Reports 1959–1963 inclusive, making allowance for relatively small expenditure and revenue in Toro and Ankole).

CHAPTER IV

AN EVALUATION OF THE PRESENT SYSTEM OF TENURE

IN THIS CHAPTER it is proposed to attempt an assessment of the value to Buganda of the present system, of the Land Settlement of 1900, and of the methods of Land Tenure and Land Registration which have stemmed from it. It is intended, therefore, to measure this system against theoretical criteria; and, to some extent, against authoritative views based upon experience elsewhere.

THE DEVELOPMENT OF INDIVIDUAL PROPRIETARY RIGHTS IN LAND

Subject to certain safeguards, the encouragement of individual landownership by Africans was one of the main objects of the Uganda land tenure policy, enunciated in 1955[1]. Individual proprietary rights in land had, by then, already developed spontaneously in several districts of Uganda; and this process is now generally recognised as a fundamental prerequisite to land reform.

It has been pointed out[2] that this individual tenure tends to emerge—

(*a*) when the community is no longer able to resume land in individual occupation;

(*b*) when there is no longer any communal land available for allocation; and

(*c*) where the reallocation of land is difficult owing to the existence of permanent crops and permanent buildings; and that there are indications that these conditions are coming into existence all over Africa.

The delegates to the conference on African Land Tenure in East and Central Africa, held at Arusha in February 1956, had gone further by recommending that governments would be well advised to encourage the emergence of individual tenure, where conditions are right for it[3]. They considered that this would be "where one or more of the following conditions are fulfilled:

(*a*) Where the emergence of an exchange economy, particularly in areas where there is mounting pressure of population and consequent competition for land, has given, or is likely to give, the land itself an economic value;

(*b*) where perennial crops are being, or could be, grown;

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[1]*Land Tenure Proposals*. Government Printer, Entebbe, 1955. s. 2 (iii).

[2]In the *Report of the Colonial Office Summer Conference on African Administration; African Land Tenure*. Cambridge, 1956. p. 22.

[3]See *Report of the Conference on African Land Tenure in East and Central Africa*. Special Supplement to the Journal of African Administration, October, 1956. p. 4.

(*c*) where immovable farm improvements or buildings are constructed in permanent and valuable materials;

(*d*) where there is evidence that the establishment of new and more valuable crops, or the adoption of better farming methods, is being held up owing to insecurity of the individual farmer's tenure;

(*e*) where the land is, or is likely to be, used for residential or trading sites—*i.e.* in urban or peri-urban areas;

(*f*) where the tribal customs governing the existing form of tenure are out of line with modern requirements . . . ; and

(*g*) where land has been developed for new settlement by, or with the assistance of, Government or a Government-financed body such as the Tanganyika Agricultural Corporation."

Johnston's Land Settlement of 1900

These extracts serve to give us some indication of modern lines of thought, concerning individual proprietary rights to land in Africa.

With these in mind, let us now take a look at Johnston's Land Settlement of 1900, which precipitously introduced such rights to Buganda; broadly speaking upon the English model. Can it be said that, in his deliberations upon the best form of land settlement, Johnston was influenced by any of the considerations since listed at the Arusha Conference? To say the least it would appear that he was not.

Rather, it seems that he looked upon it only as an extremely useful instrument which would assist him in achieving his political objectives. By dividing the land between the Kabaka, Regents and Chiefs on the one hand and the Protectorate Government upon the other, he was, as he thought, simultaneously providing a source of Protectorate revenue, gaining the support of the Buganda leaders and also strengthening their position. As Meek points out[1], "it has been suggested that the policy of 'indirect rule', based as it was on the authority of chiefs, was largely responsible for the excessive land privileges given to the ruling classes of Buganda". To gain their support to the Agreement, Johnston was quite prepared to grant such privileges. Indeed, it seems probable that he did not consider the arguments for and against individual proprietary rights because he thought that such rights already existed and he would, therefore, merely be confirming the *status quo*. He did not concern himself with matters of tenure upon these private estates. He was much more interested in gaining control of the unoccupied land in the belief that the economic future of Buganda lay in plantation farming by Europeans.

So it transpired that, to quote Lawrance[2] his Land Settlement "caused a revolution in land tenure as complete and as drastic as any in history. All that is good and all that is bad in Buganda's system of land tenure stems from this settlement".

In Buganda, individual rights in land did not evolve gradually in the way we can see it happening in other areas today. There was no gradual transition,

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[1]*Op. cit.* p. 136.

[2]Lawrance, J. C. D., *Land Tenure in Buganda.* Presidential address to the Uganda Society, March, 1962. (Unpublished) pp. 3, 4.

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which might have enabled people to accommodate themselves to the new ideas. Rather, by a mere stroke of the pen, full proprietary rights, of a quasi-freehold nature, were introduced, without explanation, to a country in which they had not previously existed; and amongst people who, in consequence, did not understand them. It is not surprising that neither the landowners nor occupiers, nor the machinery of Government, were able to cope easily and smoothly with the consequences. Buganda has not yet emerged from the period of readjustment.

One might be led to wonder what would have happened had there been no Land Settlement in the 1900 Agreement.

Bearing in mind that the hasty granting of quasi-freehold rights lost to government much of the administrative control over that land; it has been contended, by Meek[1], "that the peasants would have attained a comparable position had there been no Agreement, and that the Government would have been better able to take measures for maintaining the fertility of the soil and for promoting schemes of agricultural development".

Undoubtedly, considerable economic expansion has taken place in Buganda since 1900. Would this, in fact, have occurred, had there been no Land Settlement? If so, then individualisation of land rights and a demand for Registration of Title would probably have arisen spontaneously long before now, in the more densely settled areas of Buganda. But this would have been a more gradual process and could have given time for a more carefully considered approach to the many problems of land tenure; and for a more rational extension of Land Registration only into those areas likely to benefit from this service.

But this is mere speculation. Events did not take this course; and, as the Foreign Office appears to have anticipated in 1900, we are still closely affected by Johnston's Agreement, which has brought him both praise and opprobrium. We are presented here with a good example of what may happen when far-reaching administrative decisions are made, without the precaution of prior research or the benefit of professional advice.

Lawrance has asserted that "by his action Johnston obliterated existing systems of customary tenure, which provided ample security for the cultivator and which were in all senses adequate for the times; that he introduced a foreign concept of individual ownership of land at a time when land had no intrinsic value and when the country required no such system and could not afford it. It is alleged too that he frankly bargained with the ruling classes to the detriment of the vast majority of the population of Buganda; in so doing he abandoned the basic principle of full rights for the actual cultivators, thereby repeating one of the worst errors of the British in India by consolidating the position of a class of landlords owning large estates, like the *Zamindars*[2] of India, exacting rent from a subjected tenant peasantry."[3]

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[1]*Op. cit.* p. 136.

[2]From the Persian, literally meaning a holder (*dar*) of land (*zamin*). These were district governors and revenue-farmers under the Mogul empire; later landed proprietors paying land-tax to the British Government.

[3]*Op. cit.* p. 3.

Elsewhere[1], Lawrance sums up his views in the words: "he was guilty, in fact, of practically every fault that an administrator can make. He took no account of existing tenures; he took no pains to secure technical advice; he abandoned his basic principle of security for the cultivator; he ignored financial implications".

Unsatisfactory Results of the Land Settlement

Inevitably, such a hasty Land Settlement has caused many problems. To quote Hailey[2], "the recognition of a proprietary right in the lands allotted to the chief introduced a usage foreign to the native system and created a series of issues all the more embarrassing because of their novelty in African conditions".

From it stemmed much of the vacillation which was to characterise land policy in Buganda; at least until 1926. During the early years of the settlement survey there was indecision over the system of tenure; and some support for the continuation of the customary forms on the newly-demarcated estates. But this view did not prevail in 1908, when the Buganda Land Law was enacted; as this defined a new form of statutory tenure termed "Mailo". Later with the rise of opposition from the *bataka* and tenant-occupiers, the Protectorate Government as represented by the 1924 Commissioners, tended, as we have seen, to favour, once again, the reintroduction of customary tenure. It was not until this reversion was ruled out as impracticable that the decision was made, in 1926, that the new form of tenure had come to stay.

With a more careful appreciation of the situation a good deal of this uncertainty could, probably, have been avoided. Indeed, it seems likely that the earlier interests of the *bataka,* at least, could have been preserved by incorporation within the new mailo system. The more important of the *butaka* estates, in particular the burial grounds[3], could have been identified, and some satisfactory arrangement arrived at whereby they continued to vest in the clan authorities. In this way some distress and a great deal of dissatisfaction could have been avoided.

Further, what might be described as an unnecessary difficulty, militating against the fuller exploitation of natural resources, owes its origin to s. 17 of the 1900 Agreement. Here it was stipulated that, "the rights to all minerals found on private estates shall be considered to belong only to the owners of those estates, subject to a 10 per centum *ad valorem* duty, which will be paid to the Uganda Administration when the minerals are worked". Elsewhere in Uganda, and this includes Official Mailo land, all mineral rights were reserved to the Crown and hence now to the Uganda Government[4].

Private mailo land constitutes by far the major gap in Government's ownership of mineral rights. This has tended to discourage mineral prospecting in Buganda, because Government has not been able to give to the prospectors

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[1]*Ibid.* p. 6.

[2]*Op. cit.* p. 762.

[3]It should be remembered that the clan lands were only rarely an actual source of livelihood for the clan members.

[4]*See* Buganda Possession of Land Law, 1908, s. 6 (*e*); Crown Lands Ordinance, 1903, s. 3; Crown Lands Ordinance (Conveyance) Rules, 1908, s. 13; and the Public Lands Ordinance, 1962, s. 24 (1).

a clear guarantee that they would be permitted to exploit any mineral deposits they might find. These prospectors have, therefore, been inclined to devote their attention more to other areas in Uganda which could, in fact, be covered by such a guarantee[1].

Article 15 of the 1900 Agreement also contains the words: "As regards the allotment of the 8,000 square miles among the 1,000 private landowners, this will be a matter to be left to the decision of the *Lukiiko,* with an appeal to the Kabaka." The wisdom of Johnston's decision to leave the *Lukiiko* in charge of land allocation has, as we have already noted, been the subject of much debate during the last sixty years. Politically, it was probably correct, but, from the point of view of practical land administration, it caused many of the problems which commonly arise from duality of control. From the start, with the *Lukiiko* making allocations and handling matters of succession, but with the Protectorate Government undertaking the survey and maintenance of the Land Register, some duplication of responsibility and confliction of interest was probably inevitable. This duality of control attracted severe criticism from Sheppard in 1938 and he proposed, as we have seen, that the survey and registration services should become a department of the Buganda Government under British guidance. This suggestion was never implemented, but the Buganda Government was encouraged to devote its resources more to matters of succession, and less to the maintenance of a parallel system of record. Today, for many reasons, which include those of professional experience and the provision of adequate staff and facilities, matters relating to Land Registration are reserved to the Uganda Government, under the Constitution of Uganda, 1962[2].

Problems so far Avoided

These are some of the difficulties that have arisen, in Buganda, as a result of imperfections in the 1900 Land Settlement, but the situation might well be worse, for there are a number of other evils, known from studies of land tenure systems elsewhere, which have not developed in Buganda, or, at least, not yet.

Under other circumstances, the individualisation of land rights might have led to excessive aggregation of land in the hands of a small minority of landowners. There are, in Buganda, a few landowners who own very large estates; and some, perhaps, who own more land than they can manage efficiently. But a maximum holding (which, in general, may be exceeded only after obtaining official consents), was prescribed as early as 1908[3], and now, with the widening of the basis of land ownership, excessive aggregation is not likely to give rise to any problems.

Similarly, because there is, as yet, no considerable overall pressure of population upon the land, the Settlement has not resulted in the creation of

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[1]It would appear, therefore, that there is a case for the nationalisation of mineral rights in Buganda, without otherwise disturbing mailo ownership.

[2]Constitution of Uganda, Schedule 7, Part II: "Matters with respect to which Parliament has exclusive power to make laws", Item 11 (*a*).

[3]Possession of Land Law, 1908, s. 2 (*a*). "No person of Uganda will be allowed by himself, or by others for himself, to hold at one time more than 30 square miles of mailo land . . ."

a large landless class of Baganda, with all the social problems connected therewith[1]. Yet, with the expected doubling of the population within the next three decades, a landless class is bound to appear, and alternative forms of livelihood will have to be found. But consideration of these problems is beyond the scope of the present work.

Likewise, excessive fragmentation of holdings, i.e. to a point where it causes a breakdown of the economic unit, has not yet reached serious proportions in Buganda. A clear warning, however, must be sounded here. Prompt action is now required if this evil is to be avoided, and consideration will be given below[2] to methods of preventing or controlling such fragmentation.

As described in Chapter II, the recognition of individual rights in the Land Settlement did lead, for a while, to the sale of land to non-Africans. But the curtailment of these sales soon became a cardinal principle of the land policy of the Protectorate Government; before they could present any sizeable problem. In fact, only 324 square miles of mailo land, representing a mere 3·6 per cent of the permissible total under mailo tenure was sold to non-Africans in this way; and since then a good deal of it has returned to African ownership.[3]

In the matter of the landlord and tenant relationship, certain unsatisfactory features did develop in Buganda, consequent upon Johnston's Settlement of 1900; and these have already been described in Chapter II. But the situation, at least as it appeared at that time, was corrected by the *Busuulu and Envujjo Law* of 1927; which did much to ensure the contentment of the peasantry by guaranteeing to them a very large measure of security in their holdings. Yet, more recently, it has become apparent that this law, although largely successful in achieving its original objective, is now hampering progress in other ways. This will be considered in greater detail in Chapter VII.

From experience elsewhere, however, it is evident that perhaps the greatest danger to which landowners may be exposed upon the introduction of individual tenure, is the temptation to incur a heavy burden of unproductive debt. Indeed the process, whereby the peasant farmer mortgages his land as security for a loan which he finds himself unable to repay, has given rise to the rather cynical view that the quickest way to separate a peasant from his land, is to admit his right of absolute ownership in it!

Using the words of the report on the 1956 Cambridge Conference on African Land Tenure[4], rural indebtedness "can best be considered under two heads:—

(*a*) productive indebtedness, e.g. borrowing for improved farming, purchase of seed, improvement of buildings, etc. We think that this type is not only sound in principle but also desirable;

(*b*) unproductive indebtedness, i.e. where the borrowed money is spent on unproductive purposes arising from social or other claims. Whilst the

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[1]Although it was probably only through the enactment of the *Busuulu and Nvujjo Law*, 1927, that this was prevented. *See* Chapter VII.

[2]Principally in Chapters V and VIII.

[3]*See* "Land Policy of the Protectorate Government in Uganda". *Uganda Gazette*, Vol. XLIII, No. 30, dated 11th July, 1950.

[4]*Op. cit.* p. 46.

temptation to incur this type of expenditure is great, and in fact often irresistible, it must, in the main, be considered both wasteful and undesirable. Either of these types of indebtedness may lead to the debtor being bound in some degree of servitude to the creditor, who is usually a moneylender. This situation is likely to arise from uncontrolled activities of a professional money-lending class and we consider that it is thoroughly undesirable".

Fortunately, in Buganda, where a cash economy is a relatively recent development, there is, in the main, no tradition of usury[1]. It is true that, in the earlier days, a number of mailo estates were mortgaged, mostly to Asian moneylenders, for purposes not connected with agricultural productivity; and, in a few cases, the owners lost their land through foreclosure by the mortgagee. But, since the establishment, by statute, of the Uganda Credit and Savings Bank in 1950, credit has been available to the farmer upon more favourable terms and a greater degree of control over its use has been exercised. Although there is still a reasonable amount of private mortgaging, in 1956, whilst commenting upon the East Africa Royal Commission Report, Sir Andrew Cohen was able to say[2]: "I do not consider that the danger of rural indebtedness accompanying such a move towards individualisation is as serious as the Commission suggests. It has not reached serious proportions in Buganda where there has been a system of individual ownership of land for the past fifty years."

Another important controlling factor has been the administrative limiting of consents under the Land Transfer Ordinances of 1906 and 1944, which has had the effect of making mailo land less attractive as a security, by limiting sale by mortgagee to African purchasers only.

In December 1963, the position was that, out of the various funds operated by the Uganda Credit and Savings Bank[3], some 1,766 loans, totalling approximately £1,000,000 were outstanding in Buganda; most of this sum being secured by legal mortgages on mailo land. So far as the Credit and Savings Bank is concerned, the default position is very satisfactory. Although forced sales of mailo land by public auction are frequently advertised in the local newspapers, it appears that, in fact, the threat of sale on behalf of the mortgagee is, in most cases, sufficient to persuade the mortgagor to repay the loan; so that only rarely does a mailo-owner lose his land in this way.

Benefits Accruing from the Land Settlement

It is clear, from what has been said above, that, although Buganda has, so far, escaped some of the more unfortunate consequences that might have resulted, nevertheless, when viewed purely from the standpoint of land administration, defects in Johnston's policy may be seen to be the cause of many of our present problems.

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[1]This appears to be generally true for all of Uganda. That agricultural debt in Buganda is not excessive cannot, therefore, be credited, in any way, to the introduction of the Mailo System.

[2]In a *Despatch from the Governor of Uganda to the Secretary of State for the Colonies on the subject of the Report of the East Africa Royal Commission, 1953–55.* Sessional Paper No. 4 of 1956/57. Entebbe. 1956. s. 136.

[3]*i.e.* Credit and Savings Bank Funds—Capital £2,630,000 approximately; African Loans Fund—Capital £308,000; International Co-operation Administration Revolving Loan Funds—Capital £285,000. This latter fund now comes under the Agency for International Development.

Fortunately there is a brighter side. In order the better to appreciate Johnston's work, and to understand why it was that the Agreement, and Johnston himself, were held in such high esteem by the people of Buganda, we must now look briefly, but more widely, at the political and social consequences of the Agreement in which his Land Settlement played so important a part.

In Johnston's own words[1], his Land Settlement was "a practical attempt to establish on a sound basis a ruling oligarchy which, under British guidance, might do for Buganda what the landed aristocracy had done . . . to give stability to the Government of England". Inequitable though the process may have been, Johnston's action did help to establish in Buganda a ruling class which, in turn, brought much needed stability to the country.

It represented, furthermore, a triumph of the generally Christian *bakungu* chiefs over the generally pagan *bataka;* a triumph of the progressives over the traditionalists and a consolidation of the power of the missionaries through their converts.

At the same time, the Land Settlement helped to creat the conditions under which economic progress became possible. It assisted and accelerated the abandonment of the old precarious subsistence economy, so that, relative to the other peoples of Uganda, the Baganda developed an economic lead. In many parts of Africa we can, at the present day, witness the evolution of the concept of land ownership, the changeover from tribal, or clan, to private rights. In Buganda, however, the same process occurred precipitously, some sixty years ago. It has created many problems but there is no doubt that, by his fortuitous anticipation of the present trend, Johnston contributed, in no small measure, to the relative prosperity of Buganda. Thus, the "World Bank"[2], reporting in 1961, gave it as its opinion that "the creation of the concept of private ownership of land in Buganda has aided that Province in its development[3]."

The stimulant, injected by Johnston's Land Settlement, acted in a number of different ways. For instance, it speeded up the changeover to a cash economy, by creating a small class of relatively wealthy landowners, who were in a position to sell or mortgage part of their land in order to raise capital. The first Baganda cotton buyers obtained cash by mortgaging their mailo land. Some of the leading Baganda families sold part of their land in order to finance higher education for their children, and this, in due course, has assisted greatly in the development of a professional middle class. That the previous systems of customary tenure could never have accomplished this, is a strong argument in favour of Johnston's radical changes.

Over the course of a few decades his Settlement has led to a drastic change in the position of the peasant occupier. With the lessening of the personal ties and semi-feudal obligations which were such an important feature of the

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[1]*General Report on Uganda;* dated 10th July, 1901. Foreign Office 2,462.

[2]The International Bank for Reconstruction and Development, commonly referred to as the "World Bank".

[3]World Bank *The Economic Development of Uganda.* Government Printer, Entebbe, 1961, p. 187.

old way of life, the mobility of labour within the country has been facilitated; and, by the processes of inheritance and sale, a large and reasonably prosperous class of landowning peasants has been built up. This, in turn, has also proved to be a valuable stabilising factor in Buganda[1]. This acquisition of small-holdings has furnished a valuable safeguard against exploitation of the peasantry.

Johnston has been charged with introducing a new consciousness of wealth and position, and hence with responsibility for discord arising from envy or privilege. This may be so, but he also instilled some spirit of healthy competition into a society where this was previously not greatly in evidence.

The actual mailo survey, itself, constituted a most valuable preliminary stock-taking of the main source of Buganda's wealth, although it has only been in fairly recent years that much use has been made of information so provided, relating to the former Crown land. Doubtlessly, it also helped a great deal in the opening up of the more remote areas, and promoted all aspects of administration by the provision of the first basic topographical maps.

Furthermore, after the initial period mentioned above, the possession of recognised and protected rights by Africans proved to be an effective barrier against possible non-African intrusion. The point was that the best lands in Buganda were already taken up by mailo allottees[2], and non-Africans were not greatly interested in the then Crown lands, as, for one reason, better lands were more easily available in Kenya. One could argue that Buganda was thereby deprived of the opportunity for agricultural expansion along plantation lines, but, as subsequent events have tended to show, any such loss has been more than outweighed by the feeling of security and contentment engendered amongst African landowners.

Finally, Johnston's Land Settlement caused Uganda to make a comparatively early start with the technical training of surveyors. Although the small number of African planetablers trained was never sufficient to solve the staffing problem, nevertheless it did form a beginning; and it led, in due course, to the establishment of a Survey Training School, and, later still, to the attainment of the R.I.C.S. professional qualification by certain of the more able African officers. The result has been that, at the time of Independence, Uganda found herself to be in a more favourable position as regards African professional staff than has either of the other two East African territories.

A Verdict upon Johnston's Settlement.

In 1915 a committee[3] recommended the extension of official and private freehold estates, on the Buganda model, to Ankole, Toro, Bunyoro and Busoga. These recommendations were, however, tersely rejected by the Secretary of

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[1]The Agreement, and, subsequently, Land Registration, gave to the Baganda a degree of security in their landholding such as few African communities have ever enjoyed.

[2]Whose disposal of them was controlled by the Land Transfer Ordinance, 1906, and, later, by the Secretary of State's prohibition on sales in 1916.

[3]Consisting of the Chief Justice, a Resident Magistrate, the Attorney General and the Land Officer.

State, as he considered that they were not in the interests of the peasants. It must be remembered that the dissatisfaction, that was eventually to lead to the "Federation of Bataka", was just beginning to make itself felt at this time. The Secretary of State had recognised a serious weakness in the Mailo Settlement, in that it had worked a grave injustice upon the vast majority of peasant occupiers. The point was stated most succinctly, in 1933, by Thomas when he said: "The end is likely to be that Buganda will become predominantly a land of small-farmer proprietors; this goal will have been reached by a costly and inequitable process, in the course of which the great majority of cultivators will have had to pay in hard cash to a few of their more favoured countrymen for the purchase of rights which in past ages had been enjoyed as one of the free gifts of life[1]."

Another observation that should be made is that, for reasons described above, principally the melancholy backlog of work and the general feeling of frustration, the present system does not commend itself to professional officers. Confronted with daily problems stemming, for the most part, from the hasty decisions and staff inadequacies of the past, it is not easy for these officers to look beyond the repeated disappointments and so to appreciate the undoubted benefits which the mailo survey has brought to Buganda.

Thus Strickland had in mind the complicated procedure necessary to keep a record of dealings in land, prior to survey and registration, when he wrote, in 1936, that "the system has little to justify it and has been deservedly condemned by many authorities[2]". Likewise Sheppard, mindful of the irregularities he had discovered, wrote: "the Mailo Settlement is another proof that Registration of Title is far better left alone unless competently conceived and carried out"[3].

But, despite the technical imperfections which have tended to obscure this fact in the minds of professional officers, Johnston's Settlement (as amended by later measures) has, in the main, proved politically, economically and socially successful. It is partially in an attempt to bring out this point that this book has been written. It is very important that those responsible for the present operation and improvement of the system should, themselves, appreciate the benefits derived from it.

So it is that both present and past authorities concur in the view, widely held amongst the people of Buganda, that Johnston's fair dealing contributed greatly to their happiness and prosperity. Lawrance, having roundly condemned Johnston for his haste and lack of foresight, nevertheless concludes, that, ". . . the mailo system has probably justified its existence. It has provided a high degree of social security, which in turn has contributed to political stability. It has produced a class of socially responsible landowners and a reasonably contented peasantry[4]".

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[1]Thomas, H. B., "The Surveyor and the Politician: an African Object-lesson". *Empire Survey Review*, Vol. II, 1933–34. p. 30.

[2]Strickland, J. G., Introduction to *An Indexed Memorandum on the Buganda Mailo System, 1936*. (Typescript, unpublished). p. 1.

[3]In a letter to the author dated 22nd February, 1951.

[4]*Op. cit.* p. 26.

The Uganda Relationships Commission, 1961, under the chairmanship of the Earl of Munster, declared: "despite the injustice, if injustice it was, of the original allocation, it was a blessing in disguise for Buganda because it put most of the best land in the Province into private freehold ownership, thereby breaking the grip of tribal custom and laying the foundation of a sound land policy"[1].

So, also, do Thomas and Spencer record their final judgment in the following words: "It is reasonable to surmise that when the early years of its establishment can be viewed from a proper distance it will be agreed that the land settlement of the Uganda Agreement perpetrated a grave injustice upon the overwhelming majority of the Baganda people. Yet, though it is inconceivable that such means for the attainment of such ends will ever again be deliberately adopted in Uganda, the future critic will probably admit that this injustice has not only hastened, as could no other means, the attainment of the goal of individual ownership, but that it forms that firm foundation, buried deep in its native soil, upon which is built the prosperity and contentment of every people[2]".

The Freehold/Leasehold Controversy.

Which is the preferable form of land tenure; freehold or leasehold? It is proposed now to digress, for a moment, in order to look briefly at some of the arguments put forward in this controversy. We shall be concerned only with the case of developing countries, where the grantor is usually the State.

In general terms, one might say that there has been, in recent years, a swing of opinion in favour of the leasehold system. Previously, eloquent but somewhat extravagant claims had been made on behalf of freehold. Thus Young, as quoted by Liversage, declared: "the magic of property turns sand into gold. . . . Give a man the secure possession of a bleak rock and he will turn it into a garden. Give him a nine years' lease of a garden and he will convert it into a desert[3]".

But, more recently, there have been second thoughts and various authorities have expressed misgivings. For example, in the United States, a Secretary of Agriculture has expressed these in the words "our system of private ownership . . . conferred the right not only to use but to abuse natural resources . . . perhaps we have gone too far in allowing freedom in the transfer and use of land[4]"; whilst an American agricultural economist has added, ". . . we were wont to hail allodial tenure in fee simple absolute as the crowning achievement of economic evolution . . . the evil results of a system of tenure under which land may be used and misused, bought and sold, with virtually no regard to social consequences, were far less obvious[5]".

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[1]*Report of the Uganda Relationships Commission, 1961,* under the Chairmanship of the Earl of Munster. Government Printer, Entebbe, 1961. p. 81.

[2]*Op. cit.* p. 72.

[3]Liversage, *op. cit.* p. 54.

[4]*Ibid.* p. 101.

[5]*Ibid.* pp. 101, 102.

Many arguments have been employed by the champions on either side; and it may be as well to list here, in outline only, some of the more important of these and to see to what extent they can be said to apply in Buganda. Some generalisation has been necessary.

Advantages of Freehold[1]

(*a*) The sense of ownership is a powerful incentive to development. But a right of absolute ownership is not, in itself, sufficient to ensure land development. In Buganda the necessary capital may be made available by the Credit and Savings Bank, but only a comparatively small group of progressive farmers have the wish or desire to develop; and even they may be hampered by the existence of *busuulu* tenancies, or by other factors.

(*b*) Ownership of land confers social status; it may be a requisite electoral qualification or become the hallmark of political freedom. In Buganda, ownership of land certainly confers social status[2], and this can, in itself, have some harmful results[3].

(*c*) It provides the most ready form of security for credit. This is true in Buganda, where a mailo-owner may obtain credit on the security of a registered mortgage. Yet such credit facilities are not limited to mailo-owners; for less security is required for advances out of the African Loans or the I.C.A. Funds, so that a *busuulu* tenant, for example, may raise a smaller loan secured only by an instrument of charge on his crops or cattle.

(*d*) It confers freedom from control by landlords, whether these are private individuals or Governments; and

(*e*) More than does leasehold, it provides opportunities for large profits when the value of land has substantially increased. In Buganda this has occurred, for example, where townships or trading centres have been established upon mailo estates.

Disadvantages of Freehold[4]

(*a*) Capital spent on purchase would be better employed in development. This is very true in the case of mailo land. A *busuulu* tenant may purchase the mailo interest, but, his capital exhausted thereby, he will merely continue the same farming methods.

(*b*) The buying of more land than can be developed is one of the principal causes of indebtedness. But in Buganda it seems unlikely that much indebtedness is incurred in this way.

(*c*) The ability to borrow money easily on the security of freehold property may be a curse to those peasant proprietors who have not learned the proper use of credit. It is possible that a similar situation might tend to arise under a leasehold system; but in this case, it could be regulated under powers of consent (or total prohibition) reserved to the lessor. In any event, this cannot

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[1]Based upon Meek, *op. cit.* p. 243.
[2]Enabling the landowner to regard himself as a modern *mutaka*.
[3]*See* Chapter V. The Inheritance of Land in Buganda.
[4]Based on Meek, *op. cit.* p. 244.

yet be a very strong argument in the case of Buganda where present indications are that agrarian indebtedness is not excessive even though credit is available on the absolute minimum security.

(*d*) Agricultural land may be used as security for borrowing for purposes entirely unconnected with agriculture. This process, whereby capital is removed from the industry, can have damaging effects. In Buganda, mortgaging of land to finance education, purchase of motor-cars and the like, has undoubtedly occurred. The land being, until recently, the only form of wealth, there has frequently been no alternative. But, with the development of the economy, loans secured by mortgages of land should be restricted more and more to projects likely to benefit the land; and control of this sort is already being exercised by the Uganda Credit and Savings Bank.

(*e*) It opens the door to speculation[1] and underdevelopment. In Buganda there has, for years, been a certain amount of speculation in mailo land; but it is not thought to have reached serious proportions. If it should do so, then a tax on undeveloped land may be a possible remedy; although there would undoubtedly be practical difficulties in its application.

(*f*) In the absence of specific laws against partition, there is the danger of excessive fragmentation. It is here that the quasi-freehold mailo system exhibits a grave weakness. Some subdivision of the original units was necessary; but if this subdivision is permitted to continue at its present rate, as the population increases, then positive damage to the soil and a decline in productivity with an increase in the number of uneconomical holdings, may result. This most important aspect will be dealt with more fully in Chapter VIII.

Advantages of Leasehold[2]

(*a*) Adequate security of tenure can be given. To ensure this a 99-year or even a 49-year term is generally sufficient, depending upon the purpose of the lease.

(*b*) The State is generally more able to ensure economic use of the land, by insisting upon measures to prevent impoverishment of the soil, bad husbandry, overstocking, or destruction of forests. Under a leasehold system, each lease can include covenants designed to encourage satisfactory land use; and infringement of one or more of these covenants would constitute grounds for re-entry by the lessor. One must hasten to add, however, there are definite limits to the degree of control that may be exercised by such covenants; beyond which limits the drafting of the lease may become too complex and may defeat its own object.

To achieve the same control where freehold or quasi-freehold rights have already been granted, as in Buganda, Government must resort to the more indirect approach of 'overriding' Natural Resources legislation. A good example of this type of legislation is the Buganda Agricultural Law, 1946[3], under Part II of which H.H. the Kabaka may make rules for the prevention

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[1]In this sense, the purchase of land with a view particularly to profits from early increases in the undeveloped value.

[2]Also based upon Meek, *op. cit.* p. 245.

[3]Native Laws of Buganda. 1957, pp. 46–54.

of erosion and desiccation of the soil, for the enforcement of strip cultivation, for the limitation of the numbers of stock and for other similar purposes. To be effective, legislation of this type requires the maintenance of a large and active field inspectorate.

(*c*) The State may take steps to meet new conditions. This may be a very important factor in a developing country such as Uganda. A parcel of land, granted in freehold upon the initial establishment of a Trading Centre, may later became an acute embarrassment and a clog on re-develpoment.[1] Whereas the grant of a fairly short-term lease, in the first instance, would have prevented this difficulty from arising.

(*d*) Any substantial increase in land values, which, in countries like Uganda, is generally due to expenditure by the State, will accrue to the State and not to the individual. Through the processes of periodical rent revision on current leases and increased premium and rental upon new leases, the annual income to the State, from land, would increase as land values rise.

Disadvantages of Leasehold[2]

(*a*) It will be obvious that very long leases (e.g. those for 999 years), will exhibit many of the merits and demerits of freehold. Terms, of this duration, have been granted in some farming areas of Kenya and are to be found also in the United Kingdom. But such leases, where they commit the public interest for so long a period, must surely be indefensible in developing countries, where great changes may be expected to occur within a comparatively short time. It is now generally felt that leases of not more than ninety-nine years, with provision for the periodic revision of rental, should offer sound security for any enterprise, provided that they include certain safeguards in favour of the lessees.

(*b*) Yet, so far as Uganda is concerned, perhaps the greatest difficulty in the leasehold system, relative to the freehold, is that the former requires greater skill and legal knowledge at the time of the drafting of the original grant, and also presupposes a greater measure of control thereafter. Is the requisite legally-qualified staff available? The accuracy of the survey may be the same, but a grant in freehold is a simple instrument and, once it has been issued, the granting authority may sit back and regard the administration of that land as no longer its concern. In effect, this is what has happened in Buganda. But a lease is a more lengthy and complicated document; although some standardisation is generally possible amongst leases for the same purpose, space being left in the printed forms for any additional clauses necessary. Once a lease has been granted, and if the land is to be efficiently administered, some form of permanent inspectorate is necessary both to assist the lessees and also to ensure prompt action in the event of breach of covenant. But, it may be argued,

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[1]Under such circumstances Government may have to resort to compulsory acquisition; a procedure frequently expensive and always unpopular. Provision for this exists in Uganda in the Land Acquisition Act, 1899.

[2]Also based upon Meek, *op. cit.* p. 245.

such an inspectorate need be no more expensive than that required to ensure effectiveness of Natural Resources legislation, under a freehold system[1].

So we are bound to conclude that, whichever system is adopted, a considerable and prolonged administrative effort by Government is required if constructive land utilisation is to be ensured and productivity maintained. Land tenure and land use in Buganda, as elsewhere in Africa, should be recognised as subjects for active and energetic administration.

It is hoped that this digression upon the freehold/leasehold controversy should provide some food for thought.

The quasi-freehold mailo titles in Buganda were granted, it would appear, with little prior reflection[2]; and they have now set the style for Uganda. Freehold now seems to be the only form of tenure acceptable to African communities, as in Kigezi District[3]; and leasehold, being commonly regarded as a less desirable form of tenure, is reserved, in the main, for non-Africans. This is an unfortunate association of ideas.

The granting of mailo titles in Buganda, in effect, denied to both the Central and Buganda Governments that degree of control necessary to ensure that the land was developed to the best economic advantage. Perhaps, in the long run, the issue of leasehold titles would have served the country better.

It must be noted that, nowadays, the main interest of Government should lie in this control; and not in exacting a rental from the agricultural community. Indeed, the rental could be purely nominal; and the lease itself periodically extendible upon the option of the lessee and the approval of the controlling authority.

In many other African countries freehold is now no longer granted; and Tanganyika has gone so far as to take the drastic step of converting existing freehold titles[4] into leases held from the Government. At the time this action was taken, Tanganyika's Minister of Lands was reported as saying: "Freehold is an alien conception to Africans, associated in their minds with exploitation and privilege[5]".

However, the circumstances in Tanganyika were very different from those obtaining in Buganda; and it does not follow that the same course should be adopted here. "Whatever the respective merits of freehold ownership of land compared with a leasehold from the State, it is surely inconceivable that Buganda will at the present time wish to follow Tanganyika's example . . . " says Lawrance[6].

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[1]Where freeholds and leaseholds are found side by side, any Natural Resources legislation would cover both; in which case the leases could be kept simple and free of complex covenants on land use.

[2]As, under previous customary law, all land had belonged to the Kabaka, it follows, on this argument, that he was the greatest loser under the 1900 Settlement. Some form of leasehold could have been a practicable possibility at that time; the revenue going to support the Kabaka and his Government.

[3]Where adjudication of title is now proceeding. Here the additional argument has been employed, that, where virtually absolute rights have already been acquired under customary law, the adjudication of such rights must lead to the issue of freehold title.

[4]It is understood that these freeholds were almost all in the hands of non-Africans.

[5]"*The Times*", 14th February, 1962. p. 10.

[6]*Op. cit.* p. 23.

The whole question, of whether freehold or leasehold titles should in the future be granted, demands the urgent attention of all Land Boards. They must weigh the various arguments very carefully and should look upon the mailo system and its history as a study from which many lessons are to be learned.

Objects and Reasons for Registration of Title

After this brief glance at the main points of interest and difficulty arising from the Land Settlement of 1900, let us now turn our attention to the Titles Register which is such an important aspect of the mailo system as we know it today.

Except under extraordinary circumstances[1], land held under the earlier customary forms of tenure could not be freely alienated. In Buganda, the *bataka* held a limited estate in the land; they had power to allocate the usufruct, but they certainly were not free to dispose of the land itself to their own personal advantage. But, wherever individual proprietary rights in land have come to be recognised, the concept of landholding has undergone a radical change, as land is then seen as a negotiable commodity which may be bought and sold upon the open market. Once this stage has been reached, some form of land conveyancing, i.e. the legal process whereby proprietary rights and other interests are transferred from one owner to another, becomes immediately necessary.

There are, in general, two alternative forms of conveyancing. There must be a system of "private" conveyancing, as still operating over a large part of the United Kingdom (which may or may not be supported by registration of deeds, and which presupposes the existence of a highly developed legal profession), or, alternatively, a system of registered conveyancing, which entails the maintenance by Government of an accurate and up-to-date Titles Register in which proprietary rights and other interests in land are recorded. The former system, as it has developed in the United Kingdom, involves the preparation of a deed which recites the circumstances of the sale, and the parties are normally represented by lawyers experienced in the abstraction of information from previous deeds and in the use of the technical phraseology of conveyancing. The procedure can be slow and expensive; and it has long been realised that this institution, this particular aspect of British life, is definitely not suitable for exportation to developing countries in Africa or elsewhere.

For this reason the alternative is undoubtedly preferable (where population densities and land values are high), and registered conveyancing, in one or other of its several forms, but more commonly after the fashion advocated by Torrens, is now extensively used[2].

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[1]For example, the grants of the use of land by tribal chiefs to early missionaries; some of which were subsequently confirmed by the issue of freehold titles.

[2]These systems have, in the main, superseded the earlier systems of registration of deeds. There are, however, several notable exceptions to this, e.g. South Africa. As we have seen the registration of deeds, under the Registration of Documents Ordinance, 1904, could have continued, with advantage, in the outlying areas of Buganda. The deeds would have been merely Succession Certificates or manuscript agreements, prepared without legal advice but checked at the time of lodgment.

Let us turn therefore to certain theoretical considerations concerning Registration of Title.

A. *Circumstances making it desirable to introduce Registration of Title*[1]

(1) Where the local customary law is no longer able to cope with new conditions stemming from such factors as increased pressure of population, with resultant land shortage; the emergence of individual rights leading to dealings in land; the development of an exchange economy usually based upon the growing of cash crops; the stabilisation of holdings by the replacement of purely seasonal by more permanent crops; and, hence, the imputation of a money value to land.

(2) As a corollary of this, where an analysis of court records and administrative experience reveals a high incidence of litigation of a nature which could be obviated by the adjudication of rights and the demarcation of property boundaries.

(3) Where land reform and agrarian development are being held up because of uncertainty or inadequacy of title. Thus a Titles Register has been introduced simultaneously with land consolidation in the Kikuyu Lands and other areas in Kenya.

(4) Where changes in the use of land are under consideration. In such cases adjudication will determine what the existing rights are before the change is made. An example of this is the Gezira Scheme in the Sudan. Prior to the establishment of an irrigation scheme, it was necessary to survey the existing holdings and to compile a register of land ownership. These rights were frequently very complex, due chiefly to the operation of the Islamic law of inheritance. The land was then taken on lease, by a development company from the registered owners, many of whom became, in turn, sub-lessees of irrigated holdings.

(5) Where land is required for public or for productive purposes[2]. In such cases adjudication is essential to establish the nature of existing rights and so to enable compensation to be paid on expropriation. The Western Extension of the Railway between Kampala and Kasese passes over many mailo estates. The titles to these estates had been initially registered, but many unregistered sales and successions had taken place subsequently. The Register was therefore, out of date, so that, when it was necessary to acquire this land for railway construction, an exercise similar to initial adjudication had to be carried out on each estate.

(6) Where it is desired to promote the consolidation of fragmented land-holdings. In certain cases formal adjudication and registration of title may be used to facilitate purchase and sale in such a manner as to encourage consolidation.

(7) Where the absence of title is impeding the extension of agricultural credit. But it may be repeated here that, in Uganda, although Credit and

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[1]Based upon the Report of the Arusha Conference, *op. cit* p. 8.

[2]See *East Africa Royal Commission Report,* Chapter 23. "Tenure and Disposition of Land", paragraphs 26 and 27.

Savings Bank funds can only be extended to farmers holding registered title, credit facilities without this restriction are available from the other funds already mentioned.

B. *Circumstances making the introduction of Registration of Title practicable*

Stated above are the more likely circumstances which tend to make the institution of registration of title *desirable*. But there is another, very important, side to the problem. The Report of the Arusha Conference[1] goes on to emphasize "that if it is to be *practicable*, as well as *desirable*, to establish such a system the following additional conditions must also be fulfilled:

(*a*) the introduction of the system has a reasonable measure of support and is not opposed by any substantial proportion of the persons whose land will form the subject of the record;

(*b*) the requisite staff and organizational ability with which to set up, and operate continuously, the working records of the system are available;

(*c*) adequate survey facilities are available to carry out cadastral work of the required degree of accuracy;

(*d*) the expense and complexity of the operation embarked upon is fully appreciated; and

(*e*) the areas of land within which adjudication and registration are to be initiated are recognizable and definable". To these conditions we may add:

(*f*) land values must be sufficiently high to warrant registration of title and to ensure that landowners, appreciating its advantages, will be able and willing to pay fees for this service.

It would be difficult to overstress the importance of these prerequisites. Failure to recognize them can only result in an imperfect system; or even in complete failure. Sufficient has been said above to show that the current problems of the Mailo Register present a perfect illustration of this truism.

However, the situation can be very different where these requirements are realised; where lessons are learned from errors committed elsewhere, and where a scheme is introduced with adequate forethought and caution. We come now to the benefits which may be conferred by a system of registration of title, if competently established and efficiently operated.

C. *The Benefits bestowed by Registration of Title*[2]

(i) An inspection of the Register shows, at all times, the legal situation of the land[3]. Consequently, any person dealing on the evidence of the Register need generally have no fear of eviction. But this is true only where the Register

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[1] *Op. cit.* p. 9.

[2] Based on Dowson and Sheppard, *op. cit.* p. 72.

[3] This is generally true, but there may, however, be certain overriding interests a record of which will not appear upon the register. Examples of these are: rights by adverse possession, public rights of way or certain unregistered charges. *See* Uganda Registration of Titles Ordinance, 1922, proviso to s. 61.

is fully up to date. Where this is not so, as in Buganda today, the value of the Register is lessened; but, it is submitted, not destroyed altogether, as in most cases any particular title can quickly be brought up to date by a little effort from the interested parties.

(ii) All dealings in land can be effected with security, expedition and cheapness[1]. Herein lies the system's greatest advantage; an advantage which ensures its superiority over private conveyancing under current conditions in tropical Africa. Security, in Buganda, is provided by the guarantee of indefeasibility which registration confers; expedition and cheapness by the supply of simple, printed conveyancing forms, and, after hard experience, the decentralisation of the Register to Branch Offices. But the history of the Mailo Register to date, and, in particular, the flooding of the country with manuscript agreements relating to dealings in "paper acres", demonstrates what may occur if a Register is not efficiently maintained.

(iii) A registered proprietor may borrow money quickly, cheaply and easily on the security of his land. Note, however, the need to guard against excessive indebtedness.

(iv) Litigation over land is greatly reduced. Under s. 11 (1) and (2) of the Buganda Courts Ordinance, 1940[2], all cases involving questions of title to or any interest in land registered in the Mailo Register are to be heard only by the Principal Court of Buganda; and the proceedings in such cases are to be forwarded for confirmation, or on appeal, to the Judicial Adviser or to the High Court. The many disputes concerning tenancies, e.g. under the Buganda *Busuulu and Envujjo Law, 1927*[3], are not held to come under this section and instead are heard by Buganda Magistrates in the courts of customary law.

It is, unfortunately, not possible to quote separate figures for the number of land cases which come before the Principal Court; but, in the opinion of the Judicial Adviser, the volume of litigation is not excessive. He considers that the proportion of land cases is at present declining, but it is not possible to say how much of this is due to the improved position on the Mailo Register, and how much is due to the increased expense of court actions, following the introduction of a new schedule of fees in 1961.

The value of the Mailo Register to Buganda may, perhaps, be made more evident by contrast with the situation in the adjacent district of Busoga; where the procedure of adjudication and registration has not yet been accepted, yet where the system of customary land law may be said to have collapsed. Compared with Buganda, Busoga has less than a quarter of the land area[4] and approximately one-third of the population[5]; but it has been estimated that, in one year, some 4,000 land disputes come before the Busoga courts and, with appeals and revisions, each of these could go through as many as five hearings.

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[1]However, where Land Registration has been extended, as in Buganda, to areas of low land values, it follows that the landowner will not regard registered conveyancing as "cheap". He will always relate the cost of conveyancing to the capital value of the land.

[2]Laws of Uganda, 1951. Vol. II, p. 1090.

[3]Native Laws of Buganda, 1957, p. 168.

[4]1963 Statistical Abstract, Government Printer, Entebbe, p. 1.

[5]Uganda Census, 1959, p. 16.

From West Africa, too, there is ample evidence of the difficulties that may arise in the absence of any system of registration of title. Concerning Ghana, it was said as long ago as 1926, that "litigation about land is a curse to the country".[1] In Accra there is a saying that "one does not buy land, one buys a lawsuit".

(v) Absentee landlords and reversionary beneficiaries need have no fear that they will lose their rights. But, it should be noted, the acquisition of title by adverse possession is permissible in Buganda. Under the Limitation Ordinance, 1958, s. 6, no action may be brought to recover land after the expiration of twelve years from the date upon which the right of action first accrued. This means that if any person, not being the registered proprietor, can establish that he has occupied land for twelve years or more, without any form of permission from the landowner, then the landowner's right to evict him is barred. Further, under the Registration of Titles Ordinance, 1922, Part V, the possessor claiming to have acquired a title to the land in this way, may apply to the Registrar of Titles for an order vesting the land in him.

(vi) The acquisition and holding of land by small proprietors is greatly facilitated. This is well illustrated by the rapid growth in the number of landowners in Buganda, and this, in turn, has brought greater confidence to the peasant community.

(vii) Complete protection is given to persons who have restrictive rights over land, e.g. a right of way, or water. Under s. 62 of the Registration of Titles Ordinance an easement created by any deed or writing is to be entered upon the title as an incumbrance. But the creation of such rights does not yet frequently occur amongst mailo-owners, and the more common *public* rights of way and water, being of more ancient origin, are protected by the Registration of Titles Ordinance, s. 61, and the Buganda Possession of Land Law, 1908, s. 2 (*h*), and do not require registration.

(viii) Absolute safety is given to creditors who lend money on the security of land.

(ix) The administration of every public service and every branch of national activity connected with land is greatly assisted in the execution of its work by the existence of an up to date and unimpeachable map and record of landed property throughout the country.

In Buganda, the usefulness of the Register in this respect has, until now, been almost entirely frustrated by its unsuitable form, prescribed by the 1922 Ordinance. However, as mentioned above, following the enactment of the Registration of Titles (Amendment) Ordinance, 1958, the conversion of the Register to a more helpful form is now nearing completion. Soon it should be a practicable proposition to abstract, from the Register, statistical information of many sorts with the minimum of effort. For example[2], it should be possible for Government, in safeguarding the long-term interests of the landowners, to determine, at any time, the number of registered mortgages and the total of the

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[1]By the Rt. Hon. W. G. A. Ormsby-Gore, as quoted by Meek, *op. cit.* p. 188.

[2]Another example concerns the control of fragmentation of holdings. This is dealt with more fully in Chapter VIII.

capital sum involved. Through periodic checks of this sort, Government could guard and take action against excessive agricultural indebtedness in the future, should the figures indicate the necessity.

It should not be forgotten, however, that suspicion is sometimes aroused amongst landowners that the Register is merely a device to assist in the assessment and collection of taxation. The information provided by it should, therefore, be used with circumspection and only in the interests of better land administration. It is essential that the landholding community should have confidence in the Register and should regard it as a valuable social service; for that is what it is intended to be.

A Judgment on the Mailo Titles Register

With these thoughts in mind let us now attempt to assess the value to the people of Buganda of the present Titles Register.

(i) *Has its establishment been justified?*

Was it correct to introduce Registration of Title under the circumstances? That it was desirable after Johnston's Land Settlement of 1900 surely cannot be denied. With the emergence of individualisation of land rights as a result of the Agreement and the consequent need for some form of conveyancing, it was clear, once the system of Registration of Documents had been rejected, that Registration of Title provided the only feasible alternative. The need for such a system was further emphasized during the next decade or so by the rapid emergence of an exchange economy based mainly upon cotton cultivation.

If we accept that it was *desirable,* was the introduction of Registration of Title also *practicable?* Here, again, the answer must surely be in the affirmative; for this was demonstrated by the eventual completion of the settlement survey despite the many difficulties encountered. The trouble lay rather in Government's inability to appreciate the magnitude and complexity of the operation and in the consequent failure to provide necessary facilities from the beginning.

Despite the practical shortcomings of the system to date, one must therefore conclude that the decision to introduce Registration of Title was essentially correct. In Buganda, we have seen the confusion that can result from a partial breakdown of the Register, with the flooding of the country by unregistrable agreements. It therefore requires no great imagination to visualise the veritable chaos that could have resulted had no attempt at control ever been made. Without a Register the public would have had to fall back upon the Provisional and Final Certificates and the only evidence of any subsequent dealing would have been a manuscript *endagaano* prepared without legal advice and liable to destruction by fire, damp or termites.

When the present Register is under criticism for its acknowledged imperfections, the right perspective may frequently be restored by reflection upon what would have happened had there been no Register at all. As Mukwaya has said: "Without a system of guaranteed titles and proper cadastral surveys

the *mailo* would have been indeterminate possessions subject to incessant and expensive litigation[1]".

This leads us to a further question. Was it necessary and advisable to introduce the Torrens system of indefeasible title protected by a government guarantee?

When the Sheppard Report was under discussion, in September 1938, hesitation and possibly some confusion of thought appear to have been caused by the earlier expression of opinion, by Lord Hailey to the Governor of Uganda, to the effect that the system of accurate surveys and the Torrens method of registration were incompatible with African methods of land tenure. It was observed that "it is possible that another way of interpreting the situation is that the methods of a Torrens system are unsuitable to conditions of local native tenure[2]".

Also, when discussing the Torrens system of indefeasible title, Hailey says: "While, however, there is little difficulty in recording and granting an indefeasible title in lands directly derived from the Crown, the process becomes more difficult where claims founded on custom or prescription have to be determined; an elaborate enquiry is necessarily required before the State can take the responsibility of guaranteeing the title which it registers."[3] He then goes on to advocate the grant of presumptive[4], rather than indefeasible, title under African conditions.

But Hailey could not have intended these remarks to apply to mailo proprietorship. Such titles, though not strictly speaking derived from the Crown, were nevertheless new grants based upon a new concept of quasi-freehold, the older forms of customary tenure having been swept away. "This, in effect, was a grant of fee simple," says Hailey himself elsewhere[5]. Mailo ownership is clearly a form of freehold, its law provided, for the most part, by the Buganda Possession of Land Law, 1908, and the Registration of Titles Ordinance; and there would, therefore, appear to be no reason at all why such easily definable rights[6] should not be recorded on a Torrens register. On this count, at any rate, the introduction of the Torrens system with a guarantee of indefeasibility of proprietorship appears to be justifiable[7].

(ii) *What are the remaining defects in the present system of Land Registration?*

Much has already been said, principally in Chapter III, of the faults listed first by Sheppard and later by Mitchell, after their investigations into the system

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[1] *Op. cit.* p. 72.

[2] *See* Record of a meeting held at Government House on 12th September, 1938, p. 3.

[3] *Op. cit.* p. 877.

[4] *i.e.* a title which holds good until questioned in the courts; when the burden of proof is upon those who seek to contest it. Hailey, *loc cit.*

[5] *Op. cit.* p. 763.

[6] *i.e.* of proprietors, lessees or mortgagees. Statutory *busuulu* tenants in possession are protected by s. 61 of the Registration of Titles Ordinance but these rights are not registrable unless embodied in a formal lease. Public rights of way, and certain other rights, are similarly protected and are not registrable unless created by deed. It should also be noted that the situation in Buganda was not complicated by the existence of old Muslim rights as upon the Kenya coast and in Tanganyika.

[7] But whether or not this guarantee should have been extended to cover boundaries and areas is another matter.

of Land Registration in Buganda. We have already seen how the corrective measures recommended by Sheppard were frustrated by World War II, and the way in which a number of the more important reforms were eventually accomplished by Mitchell. Thus a greater degree of co-ordination was achieved between the Survey Section and the Titles Office; sufficient field staff was provided by the training of planetablers, Branch Registries were at last established, thereby bringing the Register home to the people; and, more recently, a good deal has been accomplished towards the conversion of the Register into a more satisfactory form. Because of the magnitude and complexity of the task this has involved an immense amount of work, much of it "behind the scenes".

But a good deal yet remains to be done. This may be briefly described under the following headings:—

(*a*) *The Register must be brought up to date* by the survey of all holdings owned by Proprietors of Unascertained Portions and the issue to them of separate titles; by the registration of all outstanding successions and other dealings and by the clearance of the remaining "pending documents". These problems merit special attention and are dealt with more fully in Chapters V and VI.

(*b*) *The existing Registration of Titles Ordinance should be replaced* by an ordinance better adapted to conditions in Uganda. The unsuitable nature of the Australian Act has already been described in Chapter III and it is convenient to mention here that the Registrar of Titles has for years been hampered by the lack of the Australian Law Reports. Judgments of Australian Courts would not have been binding in Uganda but they would frequently have provided a very useful guide. Concerning a new ordinance more will be said in Chapter VI.

(*c*) *Further efforts must be made towards a closer co-ordination of the functions of the different authorities exercising control over various aspects of land administration in Buganda.* In effect there are two systems of law concerning mailo land. They cannot be said wholly to conflict but the hiatus between them is a fruitful source of trouble and delay. The Principal Court of Buganda is not empowered to administer the Registration of Titles Ordinance, which is the fundamental law on Land Registration and the origin of much of Uganda's statutory land law. Conversely, Buganda legislation, for example the Land (Agreements) Law, 1939, is not binding upon the Registrar of Titles; nor are the judgments of the Principal Court until duly confirmed by the Judicial Adviser or by the High Court. The Buganda Possession of Land Law, 1908, s. 2 (*g*) appears to legalise the use of manuscript agreements; yet these are not registrable under the Registration of Titles Ordinance.

In these, and many other ways, uncertainties and delays arise from the existing legislation and all of them militate against the efficient operation of the Titles Register. It is hoped that the enactment of a new and simpler Registration of Titles Ordinance will go a long way towards correcting this situation. This law must be promulgated immediately in both English and Luganda and so be made available, in an intelligible form, to the Government and people of Buganda. It should then be followed by the revision and

modernisation of the Buganda legislation on land with the reconciliation of conflicting clauses.

(*d*) *Continued attempts must be made to discourage dealings in "paper acres";* and to inculcate, instead, the idea of buying and selling plots of land agreed by inspection on the ground and demarcated by survey prior to the execution of the conveyance. We have already seen how the "paper acre" concept originated from the over-attention paid to units of area right from the 1900 Agreement; and how it inevitably took firmer root during the long period when surveyors were not available. But it is a basically wrong approach. Because of it many natural boundaries, for example swamps around a *mutala*[1], have been ignored because they do not happen to include an exact acreage; and the survey problem has been greatly accentuated by the need to set out predetermined areas.

First, an area must be set out agreeing with that previously specified; and a second operation is then necessary to fix the position of the boundary beacons by survey. Were it not for the "paper acre" concept, only the latter operation would be required. Although the two operations may be performed simultaneously by the more experienced of the Planetablers employed in this type of work, it is nevertheless obvious that the extra process involved has contributed in no small measure to the accumulation of the survey backlog. In addition, the chances of dispute upon the ground are greatly increased by the purchase of "paper acres" without any real knowledge of the limits of the land included within the agreed acreage. When the area is set out the vendor may find himself obliged to surrender and the purchaser to take a portion of land which neither of them intended; and the sale may be found to conflict with the legitimate interests of other claimants. A variety of uneconomical fragmentation occurs when a purchaser has to take the balance of his "paper acres" in the form of a small "splinter" of land some distance away from the main plot.

Much has already been done to obviate these absurdities by the Registrar's refusal to exercise his discretion under s. 147 and by insistence upon survey before registration throughout the more densely settled parts of Buganda where most dealings occur. But it has not yet been found possible fully to apply this more constructive approach to inheritance[2].

The public must be educated in the correct procedure; but, as indicated above, it is unlikely that the practice of dealing in "paper acres" will be entirely checked until there has been general enclosure[3] and the Register brought up to date.

(*e*) *Problems caused by over-extension of the system into areas where it is not warranted.* An explanation of how this came about has already been

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[1]Small hill characteristic of terrain in parts of Buganda.

[2]*See* Chapter V.

[3]Under Circular Standing Instruction No. 3 of 1959, enclosure of farms is settled government policy. In Buganda the first signs of enclosure are just now apparent, but it is unlikely that this will become widespread until increasing pressure of population on the land makes landowners more "boundary conscious".

given in Chapter III and no really effective solution to present problems can be offered here; as titles, once granted, must be honoured. Because of the high cost of work in remote areas the Department of Lands and Surveys is embarrassed by the need to maintain a record of mutations in titles there. Speaking of Registration of Title; Simpson has said; "It can be an expensive and wasteful exercise if it is applied where it is unnecessary. It will do no particular harm, but the register will fall into abeyance[1]." This wastage of effort is doubly unfortunate because, looking at Uganda as a whole, we have a situation wherein the Land Registry service is being operated, in a faltering manner, in some areas where it can serve little constructive purpose; whilst, for reasons which we cannot go into here, we do not have it in certain other areas, particularly in Busoga, where a strong case for it may be said to exist.

(*f*) *Costs are still too high.* This is true from the points of view of both the landowners, and of Government. For a system to be a success it must receive the support of the landowners, who must look upon it as a service well worth the trouble and expense. Government, too, in the long run, must be willing to subsidize a Titles Register only if satisfied that the benefit to the community is commensurate with the public expenditure involved.

Great efforts have already been made to reduce costs. The establishment of Branch Registries has greatly reduced landowners' expenses in terms of travelling costs and income lost through attendance. In terms of salaries the training of Planetablers has enabled Government to put more field parties into operation than could be done previously for the same expenditure. But costs remain very high, although some small reduction may be expected upon completion of conversion of the Register.

Another aspect of this problem is the excessive cost to the people of Buganda of their procedure for inheritance of land; mostly in terms of travelling expenses and time. This will be dealt with more fully in Chapter V.

But it is clear that the largest item in the overall expenditure stems from the present method of survey. Many landowners, particularly the Proprietors of Unascertained Portions, are reluctant to pay the survey fees which they consider too high. Yet, in fact, these fees are sub-economic and have to be heavily subsidized by Government. A more effective measure of compulsion in a new Titles Ordinance may go some way towards alleviating this situation; but a complete solution must await enclosure. Once enclosure has become an accomplished fact the existence of air-visible boundaries will permit the replacement of the present slow and expensive ground methods by more rapid and cheaper aerial survey processes. Until then, both running costs and fees must be kept as low as possible and any attempt by other branches of Government to regard the Mailo Register as just another source of general revenue must be stoutly resisted.

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[1]Simpson, S. R. (Land Tenure Specialist, Department of Technical Co-operation). Address to the 7th Cambridge Summer Conference, 1956. Colonial Office. African Number 1186. p. 19.

(iii) *Some conclusions concerning the Mailo Register*

To sum up, it may be said that the decision to introduce Registration of Title, following Johnston's Land Settlement, was basically sound. There was then, and there still is now, virtually no alternative but chaos in land administration. The technical and administrative difficulties that have been encountered have, understandably, caused some hesitation from time to time; but there has never really been any possibility of turning back.

As one of the very first systems of Registration of Title to African lands it is evident that the Mailo Register has not yet been given the chance to demonstrate its full value. Only in recent years have the problems really been understood. That mistakes have been made is painfully obvious; but what has been done has invariably been done in good faith.

Outside influences, such as two world wars, have repeatedly intervened to mar the efforts of those responsible for the processes of cadastral survey and Registration of Title. Yet it may truly be said that the main objectives have been partially, or even largely achieved. Considering the volume and complexity of the work thrown upon the Registry during this period of transition from customary to private ownership, there are, in this, some grounds for satisfaction.

Anachronisms in the Present System of Tenure

After this attempt to record some of the respective merits and demerits, firstly of Johnston's Land Settlement, and secondly of the Torrens system of Registration of Title which was subsequently established, we come now to an examination of certain problems in the overall system of mailo tenure as we find it today. The more important of these problems will merely be introduced here and left for fuller consideration in latter chapters.

To remain healthy a system of land tenure must move with the times. It should exhibit some of the characteristics of a living organism; it should be not brittle but pliable, and capable of adapting itself to changing conditions.

Unfortunately, mailo tenure has not yet shown any appreciable aptitude for adaptation; with the result that the system now contains a number of anachronisms which, if not corrected, may, as a result, retard the development of the economy. Of these, the two more serious are:—

(i) the customary procedure for succession to land in Buganda; which will be dealt with in Chapter V, and

(ii) the landlord and tenant relationship which is increasingly in need of modernisation. Chapter VII is devoted to a closer study of this aspect.

There are, in addition, a number of lesser anachronisms of which the most important is now to be considered here.

The Problem of Official Mailo Land

As we have seen in Chapter I, it was the custom, prior to 1900, for the Kabaka to grant estates to political officers or to officials of his household. These were held according to the method of tenure known as *Obutongole*. Kirwan[1] makes the

[1] *Op. cit.* p. 19.

point that ownership of land and administrative and judicial authority were so inseparably associated in the mind of the average Muganda that it was essential for an official, if he was to receive any respect at all, to be also a landowner. It is not surprising, therefore, that Article 15 of the Uganda Agreement, 1900, made provision for, or formally recognised, the existence of these "Official Estates". We may agree with Kirwan's view that these gave the chiefs "that additional natural authority they required in the difficult period following the signing of the 1900 Agreement."[1]

These official estates were allotted to His Highness the Kabaka, to certain members of his family, to the three Ministers and to the twenty *Ssaza* chiefs. For details please see Appendix B.

In 1917, it was decided that this system should be extended to the *Ggombolola* or sub-county chiefs. To the office of each of these chiefs there was attached a 49-acre plot[2]; the land being provided from the appropriate *Ssaza* chief's official allocation.

The grant of official estates to the *Ssaza* and *Ggombolola* chiefs could, no doubt, be justified in the days when these officers received little or no salary[3]; but, to quote Lawrance: "now that all chiefs are paid according to their responsibilities, the morality of the system is at least doubtful. . . . The spectacle of civil servants positively encouraged to dabble in business which may vitally affect their work, is surely undignified".[4]

From the standpoint of progressive land administration, also, objections may be raised to the continued holding of these official estates by chiefs. The Buganda Possession of Land Law, s. 6 (*b*), does in fact, allow for the payment of compensation for unexhausted improvements whenever a chief should leave his land, most commonly on transfer or retirement. But this clause has seldom been invoked and, in general, the limitation of ownership to the period of office has discouraged efficient land management. As Lawrance has said: "It prevents long-term investment in the land and encourages official mailo-owners to exploit their land, either by leasing it on an unofficially capitalized rent or by unofficially mortgaging it."[5] Where official mailo land lies within the limits of a township, the development of that township has sometimes been retarded thereby.

In recent months a good deal of popular indignation has been aroused over the continuance of these official estates; and certain political groups have been agitating for their withdrawal. There is, in fact, quite a strong case for the

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[1]*Loc. cit.*

[2]This figure was arrived at in the following manner. It was decided that one square mile of each official *Ssaza* allocation should be distributed amongst the *Ggombolola* chiefs. On the average there were, at that time, 13 *Amaggombolola* in a *Ssaza*. Hence $640 \div 13 = 49$ acres (approximately).

[3]Under the Uganda Agreement, 1900, s. 9, each *Ssaza* chief was to receive a salary of £200 a year; but under the Uganda (Payment of Chiefs) Agreement, 1908, this provision was modified. *Ssaza* chiefs' salaries were liable to reduction, the saving being used for the payment of sub-chiefs.

[4]*Op. cit.* p. 24.

[5]*Loc. cit.*

removal of this anachronism; and it is suggested that this might be done along the following lines:—

(*a*) The official estates of the three Ministers[1], the 20 *Ssaza* chiefs and the *Ggombolola* chiefs should revert to the Buganda Land Board, as and when each post next becomes vacant. The salary of the post would be adjusted, where necessary, to maintain the value of the appointment.

(*b*) The official estates of His Highness the Kabaka, the Nnamasole[2] and the Lubuga[3] should, ultimately, be surrendered to the Buganda Land Board in exchange for a Civil List[4]. This is, however, only a theoretical solution based on the English precedent and there would, probably, be nothing gained through implementing it at the present time. Revenue from the Kabaka's estates is collected by a special hierarchy of chiefs answerable to the Private Treasurer, or *Omuwanika we Nkuluze*[5]. The Buganda Land Board must first be given an opportunity to settle into its present statutory duties, before being burdened with further commitments.

Perhaps through the interest aroused in the local press, there has been a tendency to attach too great an importance to this problem posed by the official estates. Out of 9,003 square miles agreed for allocation under mailo tenure, the official estates were to total only 573 square miles, or a mere 6·4 per cent of the whole[6]. If the Ministers and chiefs, only, were to be deprived of their official estates, this would involve 208 square miles or 2·3 per cent of the original mailo allocation; and the reallocation of this area, although very much in the public mind at the present, could contribute but little to the solution of the main problems of the mailo system.

Official estates are, therefore, in the nature of a "red-herring", which should not be permitted to distract attention from the really fundamental problems of tenure.

The Need for Research and Co-ordination

Before going on to discuss these problems in later chapters one final point must be made.

Land tenure and use, in their widest sense, are subjects for administration. The form of the tenure should be kept under constant review, so that progressive measures may be introduced when indicated; or remedies undertaken whilst a relatively simple solution is still feasible.

This will involve research and also some form of advisory co-ordinating committee.

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[1]Official land is attached only to the three long established ministerial posts; out of the present total of six.

[2]Queen-mother; Queen-dowager.

[3]Queen-sister; also called Nnalinnya.

[4]*i.e.* an annual income granted to the Kabaka to provide his privy purse and household expenses.

[5]For further details *see* Haydon. *Op. cit.* pp. 150–153.

[6]The total area at present held as Official Estate approximates fairly closely to this figure. Differences are due largely to subsequent exchanges (under the Native Official Estates Ordinance, 1919, s. 8) which have been carried out upon an *ad valorem* rather than an area basis.

It would, perhaps, be naïve to suggest that Johnston should have embarked upon a period of research before signing the 1900 Agreement; although, even then, more careful prior investigation would have been practicable. But one can certainly argue that the situation should have been considered much more carefully at the time of the introduction of the Registration of Titles Ordinance, 1922; and that a case has existed for the maintenance of a small research section since that date. By now, a good deal of invaluable information upon land utilization and upon all systems of tenure in Uganda could have been collected; and some of the errors made in Buganda could have been anticipated and avoided. So far as Land Registration is concerned, it is better to have continuous research rather than periodic enquiries[1].

It is also submitted that the situation in Buganda warrants the setting up of some form of Advisory Committee, for the better co-ordination of policies relating to mailo land. It is suggested that the issues involved in the administration of the Mailo Register are too wide to be handled by the Department of Lands and Surveys alone[2]. Both Central Government and Buganda Ministries, and several other agencies would need to be strongly represented upon such a committee.

The remaining chapters of this book are devoted to consideration of some of the items which might appear upon the first agenda.

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[1]A research section could also carry out the preparatory work necessary before the revision of existing legislation.

[2]Amongst the Department's many other duties are included:— Topographical Mapping (in conjunction with the Directorate of Overseas Surveys); Titles Survey and Registration in the three other Regions of Uganda, the administration of Public Land on behalf of District Land Boards, Rating, Valuation, etc.

CHAPTER V

THE INHERITANCE OF LAND IN BUGANDA

OF ALL the problems relating to the holding of mailo land in Buganda, none are more fraught with difficulty than those to be encountered in the present system of inheritance. A law of succession, if it may be so called, must be fundamental in the life of any society, and its formulation and efficient functioning is the concern of many authorities; not merely those occupied in the proper administration of land[1]. But here we must restrict ourselves only to those aspects of inheritance which affect ownership of land and the registration of such rights. Furthermore, we are interested here, not so much in *who* acquires land by inheritance, but rather in *how* the actual procedure operates and the effect it has on landholding.

JURISDICTION IN MATTERS OF INHERITANCE

"There is very little real legislation which governs succession, including guardianship, among the Ganda," says Haydon[2]. The basic Uganda law on inheritance is contained in the Succession Ordinance of 1906 which is modelled on the English law, both as regards the making of wills and the rules for the division of property upon intestacy. But power was granted to the Governor under this Ordinance to exempt any race, sect or tribe in Uganda from its operation, and, by an Order dated 22nd January, 1906, the estates of all natives of the Protectorate (as it was then) were so exempted.

It is necessary, therefore, to fall back in the first place on section 20 of the Uganda Order in Council, 1902, which provided that native law shall apply "so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or Ordinance, or any regulation or rule made under any Order in Council or Ordinance"[3].

The native law relating to succession to land in Buganda is set out in two enactments which received legislative recognition under the provisions of the Buganda Native Laws (Declaratory) Ordinance, 1938, and the Buganda (Native Laws) Agreements, 1910 and 1937. Thus:—

(i) The Buganda Land Law, 1908, s. 2 (*f*) stipulates that: "When a Muganda dies and he has not written a will appointing a person to succeed

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[1]It also concerns, in particular, marriage, legitimacy and guardianship.

[2]*Op. cit.* p. 196.

[3]Laws of Uganda, 1951, Vol. VI, p. 88. Section 20 has now been revoked by the Uganda (Constitution) Order in Council, 1962. (L.N. 54/62), and was not replaced by the Judicature Ordinance, 1962.

succession and inheritance, administration, execution and distribution of estates and guardianship".[1]

Let us turn now to the actual machinery of succession; the procedure which must be followed in Buganda so that succession to land may be recognized and assured. As a preliminary, it is necessary, first, to define certain terms and also to refer briefly to the structure of the typical clan hierarchy.

Ganda custom requires that every deceased person[2] shall have a *musika* to follow in his footsteps; and this person will be called "the successor", although the term *omusika omukulu* is also variously translated as "principal heir" or "head successor". Other beneficiaries, the *abasika abalala,* will be referred to as "the heirs", for, although they share in the distribution of the deceased's property, they do not "succeed" in the Ganda sense of the word.

The structure of Ganda clans accords, in the main, to the following pattern although there may be some considerable variation in detail. The head of each clan, termed *Omukulu w'Ekika* or, alternatively, *Ow'akasolya* claims descent as successor in title, *though not necessarily as a descendant in blood,* from the original founder of the clan. In clan matters he acknowledges the superior authority only of His Highness the Kabaka as *Ssaabataka.* Under each *Omukulu w'Ekika* come a number of *Ab'amasiga* or heads of sub-clans, which are groups each of which traces a connection back to one of the sons of the original founder. Under each *Ow'essiga* there come, in turn, a larger number of *Ab'emituba* or heads of consanguinities, each of which traces a connection back to one of the grandsons of the original founder of the clan. Again, under each *Ow'omutuba,* come an even larger group of *Ab'ennyiriri,* or heads of sub-consanguinities, which are groups similarly tracing a connection back to great-grandsons of the founder of the clan. Immediately beneath each *Ow'olunyiriri* are *Ab'oluggya* or heads of households.

It is understood that in a large clan, such as the *Mmamba* or Lung-fish Clan, there may be as many as eighty *Ab'amasiga* and, in consequence, progressively larger but unknown numbers of *Ab'emituba, Ab'ennyiriri* and *Ab'oluggya.*

The number of separate clans varies slightly as clans merge or separate out again. Haydon recalls that "Roscoe in 1911 listed 36 clans, whereas Sir Apolo Kaggwa listed 31 clans possibly four years earlier", and he himself listed 49 clans in 1959[3].

The Procedure

What, then, is the succession procedure that must be followed upon the death of a clan member? Let us take the hypothetical (but very probable) example of a mailo-owner in Buddu County. We shall suppose that he had been *Ow'oluggya,* which is commonly the case amongst mailo-owners, and had a son who may expect to succeed him. Then, upon his death, the following administrative procedure is set in motion:—

(i) The son who, in the normal course of events, may expect to succeed his father, must first of all report his father's death to his particular

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[1]*Op. cit.* p. 208.

[2]Except children who have not previously inherited land.

[3]*Op. cit.* p. 73.

Ow'olunyiriri[1]. Straightaway, this may present considerable difficulties; for *Ow'olunyiriri* will probably be unknown to him and, very likely, will live in a different county. The son, therefore, must make enquiries of his uncles, and other family elders, to find out his identity and address. It is possible that this *Ow'olunyiriri* will be found to be living in Buddu; but it is more probable that he will be found, perhaps more than a hundred miles away, say, in Bulemezi County.

This scattering of members of the same clan is a very important feature, and has been brought about by a number of factors. Traditionally, as we have seen, the *butaka* lands of a clan were not settled, necessarily, by members of that clan. By custom, any *mukopi* was free to choose the chief whom he wished to serve; so that if he was dissatisfied with the treatment he received from one chief, he was free to move to the lands of any other willing to accept him. In this way members of each group within a clan hierarchy became scattered over several counties. This process was later accentuated by the population movements resulting from the religious wars of the late 19th century, and the further movements which took place at the time of the original allocation of mailo land[2]. The result is that, today, each clan appears to be scattered indiscriminately throughout the country. Certain ancient *butaka* lands may be known, rather vaguely, to some members of a clan, particularly as burial grounds; but, generally speaking, clan membership now means little except in matters of marriage and succession.

(ii) So the son of the deceased landowner of Buddu must journey to Bulemezi to introduce himself to his *Ow'olunyiriri.* The latter may have some scanty records of family genealogies within his *lunyiriri;* but, more probably, identification will depend upon the son being able to quote the names of his great-grandfathers and other distant relatives. *Ow'olunyiriri* will then demand a fee commonly called a *kkanzu*[3], the size of the fee depending upon his assessment of the material well-being of the claimant; and will make enquiries about the property of the deceased and as to whether or not he left a will. If the estate of the deceased was of no great value, then *Ow'olunyiriri* will content himself by providing the claimant with a letter of introduction to his next immediate superior in the clan hierarchy, his *Ow'omutuba.* If the deceased left a good deal of property, in particular land, as in our hypothetical case, he may decide to accompany the claimant personally upon a visit to *Ow'omutuba.*

(iii) The identity and whereabouts of *Ow'omutuba* will be known to *Ow'olunyiriri.* So the two set out, at the claimant's expense, to visit him; taking with them the will, if any, and notes they have prepared upon the property of the deceased. For reasons already explained, *Ow'omutuba* may live at a considerable distance, possibly in Kyaggwe County, and the whole process of identification is repeated in his presence, a further fee being payable by the claimant.

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[1]Under the Buganda Births and Deaths Registration Law, 1923, the death must also be reported to the *Ggombolola* Chief.

[2]As a consequence of all this, past settlements are now usually very difficult to trace.

[3]Literally a long tunic or surplice, reaching to the ground.

(iv) So, next, to *Ow'essiga,* who may live in Gomba, and who will, in turn, claim yet a further fee. It should be noted here that no shortcut in this procedure is permissible; and so, for example, *Ow'essiga* will refuse to deal with any claimant not formally introduced to him by *Ow'omutuba.* By this time, the necessary information will have been collected to enable a provisional list for the distribution of property to be prepared. If the deceased left a will, then this tentative distribution will probably adhere to it; although the head of clan has yet to pronounce upon its validity. If the deceased died intestate, then the distribution will be decided by the clan dignitaries, guided by the requirements of the Succession Order, 1926. It should be noted that, at each stage so far, it is open for any further claimants to come forward and request inclusion in the distribution list.

(v) The findings are then forwarded to *Omukulu w'Ekika;* and he, or his *Katikkiro*[1], is normally to be found residing in the vicinity of Mmengo[2]. He may have a rudimentary office, with a small clerical staff; and the presentation to him of the succession proposals may be made at a formal meeting of *Ab'amasiga,* held either weekly or monthly.

(vi) As our clansman of Buddu owned mailo land (presumably in Buddu, but also possibly elsewhere), the head of clan must next apply to the Office of Titles for a formal search of the Register. This search is carried out in each of the Branch Registries and, under a long-standing dispensation, no fee is charged. "Search letters", giving particulars of the deceased's mailo landholdings and covering all the counties of Buganda, then come in to the office of the head of clan; and are copied for information to the Lukiiko Land Officer.

(vii) It is at this stage that the Lukiiko Land Officer plays a part in the succession procedure. His chief duty is to assist the head of clan in matters of land distribution, and to cross-check so as to ensure completeness and accuracy. Furthermore, it may still arise, although less frequently, that a stranger may come forward claiming to have bought land from the deceased, perhaps many years previously, and producing a manuscript *endagaano.* Once the Lukiiko Land Officer, probably in consultation with the prospective successor, has satisfied himself on the authenticity of this agreement, and that the purchase price has been fully paid, he will arrange for the transaction to be regularized by the execution of a conveyance. This may be done by the three senior Ministers of Buganda, in accordance with the second paragraph of s. 5 of the Possession of Land Law, 1908[3].

(viii) If there is a will the head of clan will now pronounce upon its validity. A will may certainly be invalidated by non-compliance with the Wills Law, 1916, but this merely concerns itself with signature and attestation by two witnesses, and is otherwise silent. Clauses 3 and 4 of the Succession Order, 1926, give further advice to ensure validity, and clause 5 concludes with the words, "the terms of such a Will shall be followed in disposing of the property". But this Order does not have the force of law and it is not

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[1]*i.e* his chief assistant.

[2]The capital of Buganda, where the *Bulange* (courts and government offices of Buganda) is situated.

[3]As inserted by General Notice 222 of 1929.

clear to what extent a head of clan may vary the terms of a will, if, for example, he should consider the distribution to be inequitable[1]. The present, unsatisfactory position appears to be that the clan authorities may take it upon themselves to invalidate a will, subject to non-judicial appeal, and provided they can establish some quasi-legal grounds for doing so. Once a will has been declared invalid the clan proceeds to handle the succession as an intestacy. Likewise, the deceased is deemed to have died intestate in respect of any property not specifically mentioned in a valid will.

(ix) The clan authorities also superintend the settlement of disputes, or debts due to, or by, the deceased's estate. When all these matters have been finalized, the succession recommendations of the head of clan are drawn up in the form of a typewritten memorandum, and submitted by him to the Office of the Katikkiro[2]. In the first instance the recommendations will go to the Lukiiko Land Officer, who satisfies himself that the deceased did, in fact, own all the land listed for distribution, and that there are no omissions.

(x) Once the memorandum has been endorsed as correct by the Lukiiko Land Officer it is taken to the *Ddiiro* Office, this being part of the Katikkiro's Ministry. The *Ddiiro* is a standing committee[3], appointed by the Katikkiro to consider matters of succession on his behalf, and consists of a chairman and a number of *Ggombolola* Chiefs drawn, one from each county, for a period of duty in the *Bulange*. Every succession memorandum is brought formally before this committee by the head of clan or by his *katikkiro*[4]. The details of the proposed succession are read out by the Committee Clerk, and an opportunity is afforded, there and then, for any aggrieved person to expound his case before the committee. In its discretion and exercising the authority of the Katikkiro of Buganda, the committee may vary the particulars of the succession or may refer the whole matter back for further consideration by the clan authorities. In this case it would later have to be resubmitted to the *Ddiiro*.

(xi) Full minutes are kept of the deliberations of the *Ddiiro*, and, once this committee is satisfied, the succession memorandum is passed to the Katikkiro of Buganda. He may, if he thinks fit, order it referred back for further modification. But, in the general case, the memorandum is now ready for final approval by His Highness the Kabaka as *Ssaabataka*. A notice is published giving the date upon which His Highness will preside over the ceremonial confirmation of successors; and our claimant from Buddu must attend at the *Bulange* on the appointed date.

(xii) Following the terminology explained above, it is customary for a successor, but, usually, not the heirs, to attend personally, together with his head of clan. This affords the final opportunity for any aggrieved person to appeal direct to the Kabaka, upon whose order the succession may yet be

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[1]In fact, the process is one of invalidation rather than variation. The whole will is invalidated and a fresh start is made, although the final distribution may differ only slightly from the will.

[2]The Prime Minister of Buganda in this context.

[3]Which is sometimes loosely called the *Ddiiro* Court but is, in fact, an arm of the executive government rather than of the judiciary.

[4]Here the term again applies to the assistant of the head of clan.

referred back for further consideration. However, in the normal case, an act of fealty is now performed, after which the Kabaka grants final confirmation of succession and signs the memorandum submitted to him by the Katikkiro.

(xiii) This memorandum of succession then becomes the fundamental record, a most useful and important document. It carries details of the name of the deceased, date and place of his death, his father's name and the name of his clan, with particulars of the sub-clan, consanguinity and sub-consanguinity. It goes on to list all the children of the deceased by name, and to give a full statement of his property, in particular his land, quoting title references and acreages; and also certain movable property such as motor-cars or furniture, etc. Full particulars are then given of the manner in which this property has been divided amongst the children or other relatives named. The whole record is carefully retained for future reference by being pasted into the *Ddiiro* Succession Register.

According to Haydon, this system of dealing with succession to land was started in 1904; but the first separate Register of Succession (keeping succession records separate from other *Lukiiko* business) was opened in 1915[1]. Today there are sixteen volumes, each volume containing up to 1,500 folios.

(xiv) The full succession procedure does not end there. The successor (and any heirs) must now apply for Certificates of Succession under the Buganda Land Succession Law of 1912[2]. Taking with him a franked letter of introduction from the head of clan (this being the means of identification as a precaution against fraud), he must apply again to the Lukiiko Land Officer. The records are checked and his application is then passed to the *Ddiiro* Office where an "Instrument permitting transfer of the succession" is prepared for signature by the Katikkiro of Buganda or by one of his assistants. Then, on payment of a fee, Shs. 8 for a successor or Shs. 6 for an heir, a Certificate of Succession (*Lukiiko* Mailo Form No. 12) is made out, and this has to be authenticated by the signatures of the Katikkiro of Buganda in person and of any six of the *Ggombolola* chiefs serving for the time being upon the *Ddiiro* Committee. The matter is then referred back again to the Lukiiko Land Officer who requires the successor to provide specimen signatures and who issues a covering letter which instructs him to take the Succession Certificate to the appropriate branch Titles Registry. A copy of this covering letter, bearing a specimen signature, is forwarded direct to the Branch Assistant Registrar of Titles.

(xv) Finally, the successor must then take his Succession Certificate to the appropriate branch Titles Office, together with the deceased's Duplicate Certificate(s) of Title. The Registration of Titles Ordinance, s. 2, provides that the expression "letters of administration", occurring in the operative s. 143, shall include "in the case of the estate of a deceased native of Uganda, a certificate of succession or other document from a competent authority declaring the right of any person to deal with such estate. . . ." Provided it does not involve any subdivision, the Certificate of

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[1]Haydon, *op. cit.* p. 214.

[2]It should be noted that these Succession Certificates are issued, not by a Court of Law, but by a branch of H.H. The Kabaka's executive government.

Succession is, therefore, immediately registrable on payment of the registration fee and stamp duty. If the successor is to take part only of the deceased's land then that part must first be ascertained by subdivisional survey, on payment of fees under the Survey Ordinance, before registration may be effected. The whole procedure is not completed until the name of the deceased has been deleted from the Register and replaced by that of his recognized successor to whom the Duplicate Certificate of Title may then be issued.

(xvi) It may occasionally happen that additional land be later discovered to have belonged to the deceased; who may, perhaps, have retained in his possession a manuscript *endagaano* of which the Registrar of Titles would have no record. Supplementary succession distribution is then necessitated; a shortened form of the whole pocedure being repeated until His Highness the Kabaka approves the additional distribution and issues an instruction accordingly. This instruction is then annexed to the *Ddiiro* record, being inserted at the page of the original entry.

Advantages of the Present Procedure

This is the Ganda succession procedure. At the risk of being tedious it has been thought advisable to describe it in some detail; so that both its advantages and its shortcomings might be better appreciated. As is well known in Buganda, its shortcomings are many; so that, before these are discussed, it would be as well to mention the advantages of the system lest these should be lost in the general criticism that follows.

Firstly, the system does work, albeit with imperfections, and it is known and understood by the vast majority of the people. It is, no doubt, greatly superior to the practices followed amongst other, though smaller, tribal groups; and nothing in it appears to be contrary to the principles of natural justice. In particular, ample opportunity is given for claims against the deceased's estate to be heard. Any person considering himself aggrieved may appeal to the clan councils, to the *Ddiiro* Committee, and, finally as a last resort, to His Highness the Kabaka himself. In this way secrecy is ruled out and a very high standard of equity is ensured. Furthermore, from the administrative point of view, the *Ddiiro* Committee is to be congratulated upon the careful manner in which the invaluable succession records are maintained, for without these only chaos and fraud would result.

Shortcomings of the Present Procedure

Why is it, then, that this system has been criticized so frequently during the years since its inception? Why is it that many influential Baganda landowners prefer to form landholding companies or to grant away most of their property to their children during their own lifetime; in order to avoid the operation of this customary procedure? Why is it that, over a period of nearly forty years, repeated but, so far, abortive attempts have been made at revision; principally by past Registrars of Titles and Judicial Advisers?[1]

There are many answers; and it is proposed here to consider them under four main heads, whilst looking at the procedure as a whole:—

[1]Recommendations as to the necessity for some law on the administration of estates were made in 1926; a draft Succession Law was prepared in 1936, further efforts were made in 1938 at the time of the Sheppard Report, and again in 1955.

(*a*) *Firstly, and most obviously, it is too slow and too expensive.*

This results, no doubt, largely from the complicated nature of the clan hierarchies and from the fact that they are not organized upon any territorial basis. Indeed, it must be admitted that the haphazardly scattered distribution of clan authorities is, itself, quite sufficient to rule out any really efficient administration by them of intestate estates. The journeys that a successor must undertake backwards and forwards across Buganda are very wasteful in time and travelling costs. They also achieve very little, for the *Ab'ennyiriri, Ab'emituba* and their seniors must, inevitably, possess practically none of the local knowledge of family and property that is so helpful to executors and administrators under other jurisdictions. The expense of succession is further increased by the fees charged at each stage in the process. These fees are not regulated by law so that the successor cannot calculate beforehand what the costs are likely to be. These expenses, themselves, frequently cause further delays, whilst the successor endeavours to raise the cash necessary for him to take the next step. Indeed, notwithstanding the traditional need for a successor, it seems probable that this trouble and expense must prove to be a total deterrent in many cases where the family of a poor peasant farmer just cannot raise the funds.

Superimposed upon the clan structure is the highly centralised administration by the Katikkiro, through the *Ddiiro* Committee. This centralization may lead to greater efficiency, but it adds to the expenses of successors and heirs by requiring them to visit Mmengo, perhaps from distant parts of Buganda, on several different occasions for such purposes as possible appearance before the *Ddiiro* Committee, or for confirmation by His Highness the Kabaka, or collection of their Certificates of Succession. Even this last act may necessitate more than one journey or, alternatively, an expensive sojourn in Mmengo for it is seldom possible for the records to be checked and the Certificate of Succession, with its many signatures, to be prepared during the course of a single visit.

To be fair to the clan authorities, it should be added that their efforts to finalise succession must frequently be hampered by the lethargy of the successors and heirs themselves; who, being in occupation of the land and unlikely to be disturbed, frequently adopt an apathetic approach to the whole matter.

The overall delays, which reflect very badly on the system as a whole, have been investigated, in a sample survey, by Southwold who examined the 106 cases of inheritance of land which were confirmed in a single recent year. Some of his findings are tabulated below:—

TABLE 5.

PERIOD BETWEEN DEATH AND CONFIRMATION OF HEIRS[1]

	Average period	Average period omitting exceptional cases	Exceptions omitted
No will (56 cases) ..	6 yrs. 4 mths.	1 yr. 9 mths.	38, 34, 32, 29, 25, 23, 20, 16½, 15½, 15, 14¾, 14¾ years.
Valid will (28 cases) ..	3 yrs. 2 mths.	1 yr. 5 mths.	39, 8, 7 years.
Invalid will (11 cases) ..	2 yrs.	—	—
Women (11 cases) ..	5 yrs. 5 mths.	2 yrs. 4 mths.	36 years.

[1]Southwold, M., "The Inheritance of Land in Buganda". *Uganda Journal,* Vol. 20, pp. 88–96. This paper also includes an interesting analysis of the extent to which certain members of the immediate family of the deceased share in the inheritance.

(*b*) *It is unsatisfactory under modern social conditions.*

Clan jurisdiction in matters of succession was established in the days when individual property rights in land were very different from those understood today, and when personal possessions were comparatively few. Up to 1920, perhaps, the traditional procedure worked well enough, as land constituted virtually the only form of wealth and there were relatively few landowners. More recently, however, their numbers have multiplied and this has been accompanied, at the same time, by an increase in wealth and a diversification in the forms of that wealth. As an economy develops it tends to become more complex, yet this process has still a long way to go in Buganda. The clan system has been slow to adapt itself to changing conditions and remains poorly equipped for the task now that the volume of work has so greatly increased. The succession procedure, this relic of customary law, is showing itself less and less able to keep pace with progress in other fields.

Writing in 1941, Gwynne Williams, the Registrar of Titles at the time, said[1]: "The essential flaw in the administrative practice is that at present administration of an estate (or partial administration) is a privilege that may be exercised by a beneficiary, not a duty that must be performed. As the estate is not administered as a whole, and as succession depends on choice and not on law[2], nothing is final until the process is complete, a process which may be infinitely protracted. Furthermore, where there is any question of an estate proving insolvent or of a successor's creditors seeking to attach his interest, inaction becomes policy and not inertia."

Since then there has been little improvement and the administration of insolvent estates may be, and frequently is, neglected for years. Similarly, succession to land known to be mortgaged may be deliberately left unfinalized; to the probable inconvenience and embarrassment of the mortgagee. Even without this happening, mailo land is already of limited value as a security due to the restriction on purchasers imposed by the Land Transfer Ordinance, 1944; so that, at its worst, this added deterrent might constitute a threat to the whole system of credit in mailo areas.

In like manner, the inadequacy of the present system can create difficulties for lessees when long delays occur over the appointment of a successor. His consent may be required, for example for a sublease; and, without this, some worthwhile development project may have to be postponed. Furthermore, although the Succession Order, 1926, attempted to cover certain of these points, there is an increasing demand for a more modern approach, clearly defined by law, to such problems as those presented by the succession of minors, the establishment of trusts and the probate of wills. Some uncertainty still lingers on whether or not testate succession is justiciable by the courts, and no clear

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[1]In his *Memorandum on the Law and Practice of Succession to land in Buganda.* (typescript, unpublished).

[2]Though, in fact, as Southwold maintains, the successor may be predicted with a considerable degree of certainty from the Succession Order, 1926. This was intended to regulate intestate succession but is frequently also followed in testamentary disposition. (*op. cit.* p. 94).

lead has yet been given as to procedure upon the death of a non-Muganda African owning mailo land[1].

Obviously, in a progressive and developing society, attention to matters such as these cannot be indefinitely delayed.

(*c*) *It frequently leads to ill-advised subdivision of the land.*

Prior to 1900, subdivision on inheritance was unknown, and upon the death of a *mutaka* his land rights passed in entirety to his appointed successor. The practice whereby the successor *and heirs* all share in the land of a deceased mailo-owner must, therefore, owe its origin to the mailo settlement and to the natural desire of landowners that all their children should share in this new form of wealth[2].

This trend of opinion was regulated and confirmed by s. 12 of the Succession Order, 1926, which deals with the more normal cases of intestacy thus:—

(i) Subsection (*a*) reads: ". . . The Successor will have the largest share out (of) his or her father's estate, and other male issues shall share the property proportionally".

(ii) Subsection (*b*) continues: ". . . Daughters shall be given a share each out of their father's estate according to their age".

(iii) Subsection (*c*) adds: "If the deceased person survives his children, his male children's issues will succeed to the property of their grandfather. All grandchildren shall each have a share out of their grandfather's property".

These, and other clauses, were no doubt intended to ensure an equitable distribution of land amongst the family of the deceased; and, in so doing, they have accomplished the splitting up of the original mailo estates. This process was initially inevitable and healthy but there is a limit to the extent to which it should be allowed to continue. The original mailo allocations, being in multiples of a square mile, were frequently too large and needed to be broken down to a more manageable size. But, with further subdivision, in each successive generation, the critical stage will, sooner or later, be reached beyond which further splitting up of the parcels of land will have an adverse effect upon productivity. There are signs that this critical stage has already been reached in certain densely settled parts of Buganda; so that insistence upon further subdivision, in favour of generations of successors and heirs, must harm the economy by producing land parcels of an uneconomic size.

It would appear that many heads of clan are far too prone to order the partitioning of mailo estates, amongst possibly numerous heirs, paying scant attention to other possible solutions[3], and without realising the damage they may be doing to the economic potential of farming land.

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[1]The *de facto* solution most commonly employed appears to be the adoption by the successor of one of the Ganda clans which then deals with the succession in the normal way.

[2]The practice cannot, therefore, be defended on the grounds of "ancient custom".

[3]Some of which are described below.

Frequently, these heirs are granted proprietary rights to small plots, possibly in remote areas and partially encumbered by *busuulu* tenants; plots in which they have little interest themselves, which they cannot cultivate, and certainly do not need for their livelihood. Admittedly, in Buganda as elsewhere, the mere ownership of land carries with it a certain social status; yet little economic benefit to the country can accrue from ownership for ownership's sake. So far as succession is concerned, it is within the power of the clans to curtail unwanted and unproductive subdivision of this sort[1].

Unfortunately this is not all. Not only does needless subdivision frequently result from the deliberations of clan authorities, but the method by which this is carried out leaves them open to criticism even more severe. Being unaware of the damage they may be doing, they fall back upon the concept of "paper acres", and decide upon the parcellation of an estate as an office exercise; just as they might apportion a bank balance, and without reference to the ground itself. Such instructions as: "Starting from the northern end, A shall survey his 20 acres and, when he has finished, B shall survey his 15 acres . . ." are not uncommon. Elementary considerations like access to water supply or to roads or to other services, or variable fertility, or the occupancy of sitting tenants, are frequently ignored; and such arbitrary location of boundaries may cause incalculable harm, not immediately apparent.

As a source of wealth, land is second to none in Buganda; and its utilization merits closer attention and greater care than it appears to be receiving at present.

(*d*) *It is frequently left unfinished.*

As has already been explained, the system is too slow and too expensive. In view of these obstacles it is not, therefore, surprising that relatively few successions filter through to a final conclusion in the issue of a Certificate of Title. It is an endurance test rather than a process of law; and many fall by the wayside.

Every possible misconception, as to both law and procedure, is to be encountered; and, of these, perhaps the most prevalent is the assumption that entry in the *Ddiiro* Succession Register constitutes registration under the Registration of Titles Ordinance. This is an understandable mistake; and its continuance reveals the unfortunate hiatus which still exists, in this respect, between the functions of the Central and Buganda Governments. Many thousands of successors and heirs, whose names appear in the *Ddiiro* Register, have never even applied for Certificates of Succession; and, therefore, have never lodged them with the Registrar of Titles. The result is that the Titles Register, the ultimate legal authority, lags far behind the *Ddiiro* record and several thousand Registered Proprietors have, in fact, been dead for years. Their successors and heirs, although chosen and confirmed, have never been brought on to the Register Book.

This, in turn, has led to the widespread infringement of Buganda legislation. The Buganda Land Succession Law, 1912, s. 2, enacts that: "no one shall be allowed to deal with that land in any way at all except after obtaining from

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[1]Subdivisions arising from transactions *inter vivos* are just as numerous, but tend to be geared more closely to land productivity and use.

the *Lukiiko* a certificate of succession"[1]. This requirement has been ignored in a wholesale fashion by successors and heirs. Without first legalizing their own claim, through applying for a Certificate of Succession and having it registered under the Registration of Titles Ordinance, they have proceeded to dispose of their inheritance, by means of the *endagaano,* to unsuspecting purchasers who cannot, of course, obtain a registered title[2]. Similarly, the Buganda Land (Agreements) Law, 1939, which was intended to prohibit dealings by unregistered owners, has, as we have seen, also proved almost entirely ineffective. There have been a number of prosecutions under this law; but, on the whole, successors and others have been able to ignore it with impunity. Inevitably, this has greatly impaired the effectiveness of the Titles Register and has lessened its value to Buganda.

Succession continues to be a source of wasteful litigation; and, from the point of view of the Registrar of Titles, remains the greatest bar to the efficient working of his Register. It was recognized in 1945 that, under the situation then existing, Land Registration must be inoperative to a very great extent; for no system could function against the odds imposed. In so far as succession is concerned the situation has only worsened since then.

When considered altogether, therefore, it is clear that the shortcomings of the present Ganda succession procedure far outweigh its merits; and this to the extent that it must be a handicap upon all aspects of land ownership and administration, and hence a continual brake upon the country's progress.

Upon reflection one finds that it does not work to the benefit of the successors; or (and in the long run this may be more important) of the land. Indeed, one is forced inevitably to the conclusion that, as it is at present constituted, the main advantage must fall to the clan dignitaries who preside over it. This view is strengthened by the knowledge that, during the time interval between the death of a mailo-owner and the confirmation of his successor by H.H. the Kabaka, the rents and profits from the land accrue to the Clan Heads. As they are not required to render any account of income, they must be sorely tempted to delay finalisation. To this extent, therefore, the interests of the Clan Heads might be said to militate against those of Buganda as a whole.

Some Improvements Suggested

What must now be done to correct this situation, to modernize the process, and so to bring it more into line with those followed by advanced societies elsewhere? What improvements, being acceptable to H.H. the Kabaka, may be introduced to escape from the present difficulties?

It would be idle to recommend that the clan system be totally abandoned. Such a course of action would not receive a sufficient measure of support in the country; and, in any event, no alternative would be immediately forthcoming so that only disruption could result.

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[1]This is the English translation employed in the Native Laws of Buganda, 1957. The Luganda expression *okukola ku ttaka* was previously translated, in the 1941 edition, as "to do to that land anything at all."

[2]These purchasers "off the Register" have frequently, in turn, illegally disposed of their interests to others; and so the initial failure is multiplied.

Instead, it must be recognized that succession is the last stronghold of the traditionalists; and that, whatever the shortcomings of the system may be, many individual Clan Heads work very hard to make it function at all. Logically, although this may seem to some to be a case of trying to keep new wine in old bottles, the more practical approach would be to integrate the existing machinery into a new arrangement in such a manner as to effect the modernizing improvements with the minimum disruption. We must not pretend that this grafting together of old and new could be a simple process; it would, undoubtedly, require the wholehearted co-operation of all concerned, in particular the Clan Heads.

The following proposals are, therefore, intended to be nothing more than suggestions put forward for consideration by H.H. the Kabaka and by his Government, upon whom the ultimate responsibility must lie. It is felt that these suggestions may stimulate thought and point the way towards a more modern and efficient system which could be of great benefit to the people of Buganda, even though some of the proposals may, at first sight, appear distasteful to the traditionalists.

It will be apparent that these suggestions cover only some of the salient points and their implementation in detail will obviously require considerable further thought and study, presumably by the Law Officers of the Buganda Government.

A. *Reform of Succession Procedure.*

Let us consider, first, the confirmation ceremony performed periodically by the Kabaka. This act of fealty originated, no doubt, in the customary presentation to the Kabaka of a successor chosen to replace a deceased Head of Clan[1]. Its extension to mailo-owners followed the 1900 Agreement, but, at that time, it was not anticipated that these would come to include many thousands of peasant farmers. For administrative reasons it has already been found necessary to restrict the ceremonial confirmation, in the main, to successors and not to heirs. With the ever-increasing numbers of those holding interests in mailo land and with the expected future expansion of the population of Buganda, the projection of this system into the future is bound to become more and more cumbersome. It is therefore suggested that H.H. the Kabaka should either delegate his powers of confirmation to his *Ssaza* chiefs, or waive them entirely except for those successions in which, shall we say, a thousand acres of land, or more, are involved. This innovation could have an immediate beneficial effect in that, without seriously affecting the prerogative rights of the Kabaka, it would shorten and cheapen the process in the great majority of cases. In any event, the ceremony should be divorced from the actual machinery of probate and administration.

Secondly, there is the extremely important question of probate of wills. As we have seen, intestate succession comes within the jurisdiction of the clan authorities; but the position as regards testate succession remains somewhat obscure. At present the Clan Heads claim and exercise the right to adjudicate

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[1]Carter, *op. cit.* p. 111.

upon the validity of wills, but it would appear that the High Court has yet to pronounce finally upon the legality of this procedure.

In the interests of progress it would now seem highly desirable that the whole question of testate succession be put upon a more satisfactory basis, by the replacement of the Wills Law, 1916, by more comprehensive legislation. This would clarify and secure the landowners' powers of testamentary disposition and provide for effective supervision by the courts. Estates would be administered by executors appointed in the will and they, themselves, could possibly be clan officers. Provision would be made for a will to be proved before the Court.

Further, the Court might seek the advice of clan authorities, from time to time; in such matters as adequacy of provision for dependent relatives; but, otherwise, the clans would have no jurisdiction and so would be free to apply themselves more fully to the far greater problem of intestacy.

Turning, now, to this question of intestacy, it is proposed that the Buganda Government should appoint an Administrator of Estates. This would be a senior appointment filled, preferably, by an officer with legal qualifications. Under his control would come the existing Lukiiko Land Office and the administration of the *Ddiiro* Standing Committee; some saving being possibly effected by a merger of these sections of the Katikkiro's Ministry. The primary duties of the Administrator of Estates would be to supervise and co-ordinate the work of the clan authorities upon intestacy; to ensure that all successions, including those to insolvent estates, are handled expeditiously; to eliminate, as far as possible, unwarranted and uneconomical subdivision of mailo estates; and to bridge the present gap between the *Ddiiro* and the Land Titles Registry.

The Administrator would be empowered to charge a Succession Fee payable by all successors and heirs. Because of the difficulties involved in valuation, this fee would probably have to be upon a standard rate basis for the time being[1]. The present system of *kkanzu* gifts would be discontinued and, instead, the clan officers, or as many of them as are found to be necessary to handle the volume of work, would be in receipt of a salary according to their rank and commensurate with their time spent upon succession matters. They would, to this extent, become civil servants, although their appointment and replacement would remain a matter for clan decision. Each Head of Clan would be required to supply the Administrator of Estates with details of his clan structure, including the names and addresses of the heads of sub-clans, consanguinities, etc., as described above.

The procedure contemplated would be along the following lines. The death of a mailo-owner would be reported immediately to the Administrator upon a form obtainable from *Ggombolola* Chiefs[2]. Information would be required on the clan hierarchy to which the deceased belonged; the existence

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[1]The intention would be to make the system as nearly self-supporting as possible.

[2]Provision for this could be included in the Registration of Births and Deaths Act contemplated for 1964.

of any will, with names and addresses of executors named therein, particulars of relatives and dependents; and of movable and immovable property. If the deceased died intestate the Administrator of Estates would pass this information to the head of the clan concerned, and also, if possible, to the appropriate *Ow'essiga;* requiring them to prepare their recommendations as to the disposal of the deceased's estate[1]. Here a time limit, say six months, would be imposed, by the expiration of which the Head of Clan must submit his proposals or provide an adequate excuse for delay. Otherwise the Administrator of Estates would be empowered to take the affairs out of the hands of the clan and to conduct his own enquiries, in order to bring the matter to a speedy conclusion. Conversely, if he so wished for any special reason such as insolvency, a Clan Head could voluntarily hand over any case for completion by the Administrator of Estates. In submitting his proposals a Clan Head would be required to account for all rents and profits accruing since the date of death. These could be utilized by the Administrator to offset expenses, including survey and registration fees, and the balance would be paid to the beneficiaries.

The Administrator would take particular interest in the treatment of immovable property; and, in this respect, he would have the power to vary or reject the recommendations of the Head of Clan as regards disposition of such property. It would be his duty to guard against unnecessary and wasteful subdivision; and, before endorsing any distribution, he would satisfy himself that all possible alternatives had first been tried. Under his supervision, great care would be exercised to ensure that the land was not subjected to the virtually indiscriminate subdivision so common at present.

Clan authorities should consider how many of the deceased's children make their living by farming, and how many of them the land could be expected to continue to support. As at present, the larger part of the land should go to the successor[2], preferably in the form of one or more existing plots so that no subdivision is involved. The rest of the land should go to those of the heirs most likely to make the best use of it, and in such a manner as to minimize subdivision. The remaining heirs, and in particular married daughters who, at present may receive small, token parcel of land of little or no interest to them, should be provided for in some other way. As the forms of wealth become more diversified they should, to an increasing extent, receive movable or personal property such as a motor-car or cash. Failing this, every effort should be made, within the family, whereby the shares of these lesser beneficiaries in the land should be bought out by the successor or certain other heirs, referred to above, so that these may take the land with as little subdivision as possible. If necessary, an arrangement could be concluded within the family whereby these lesser beneficiaries are paid off over a period of time; or part of the land may be mortgaged to raise the necessary capital.

Another possible solution, to prevent the excessive subdivision of land amongst these beneficiaries, would be the establishment of a trust for sale over that part of the estate. This is a more elaborate legal procedure and should

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[1]In this they would have statutory guidance. Rules would also be laid down concerning priority as between creditors and abatement as between heirs.

[2]According to Southwold this is 40 per cent on the average.

only be adopted if simpler methods prove impracticable[1]. Briefly, the remaining land, after satisfying the claims of the successor and one or two of the heirs, would be vested in, say, two of the beneficiaries, as trustees, whose duty it would be to sell the land on the open market as soon as a purchaser could be found. In the meantime, the rents and profits would be shared proportionately amongst the beneficiaries and, upon sale, the capital realized would be similarly distributed. For obvious reasons, regulations would be required to ensure that the trustees for sale do not dispose of the land in many small parcels to different purchasers. If properly handled, such a trust could ensure that the lesser beneficiaries receive a share in the deceased's estate in a form more readily useful to them, whilst the land, escaping subdivision which could impair its usefulness, would pass probably to a local farmer.

When subdivision is recommended by the clan authorities and the Administrator is satisfied that this is both necessary and beneficial, it should be carried out, not as an office exercise in "paper acres", but through physical examination on the ground. This should be done at an earlier stage in the proceedings than is the custom at present. The disposition between the successor and heirs must be made to fit the circumstances of the land; and the land must not be carved up to fit the predetermined shares of beneficiaries. The land itself should be visited by the clan authorities accompanied by an agricultural officer and a surveyor. They should consider the way in which the land might be most sensibly subdivided; and these subdivisions would be demarcated immediately by the surveyor. The clan authorities would then decide how each plot, being itself an economic unit, would be allocated to one or other of the beneficiaries. Survey fees would be paid immediately by the clan authorities on behalf of the Administrator and the boundary mutations would be carried to the Register; all plots remaining vested in the deceased until the succession has been approved and Certificates of Succession issued referring to the plots already surveyed.

In respect of both testacy and intestacy, the Administrator's duties would not be completed until the Successor, and those heirs taking land, were fully registered under the Registration of Titles Ordinance; and, if necessary, he would withhold distribution of the balance of any rents and profits amongst the beneficiaries until this had been done. Any earlier charges entered on the Register and payable by the deceased would, of course, be regarded as a debt against his estate and would be settled by the Administrator, or clan authorities on his behalf.

Obviously, there are many other points requiring attention, and questions to be answered, before any such new procedure could be formulated and officially instituted by order of H.H. the Kabaka. The overall objective would include the preservation of the advantageous features of the present system; for example the right of appeal to the *Ddiiro* Committee. Some degree of decentralization in the work of the *Ddiiro* may be advisable; and the Land Succession Law, 1912, will, in any event, require drastic revision. The form

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[1]Furthermore, such a trust for sale would not prove very helpful in those cases where the land, being heavily encumbered by *busuulu* tenants, might not attract purchasers upon the open market.

of the actual Succession Certificate should be reconsidered, to obviate the need for most of the present signatures, and so to expedite issue without loss of security. Greater use might be made of the existing branch Titles Offices, in each of which office accommodation could be provided for a Buganda Government clerical officer. Upon the finalisation of any succession, all the necessary Certificates could then be prepared and forwarded to the appropriate Branch Office; and this clerk's duty would be to ensure that the procedure was completed without requiring the heirs to make a special journey to Mmengo to collect their Certificates.

B. *Modification of the Clan Structure.*

One further important point remains to be considered. Many of the present difficulties and delays, and much of the expense, stem from the existing clan structure. It must surely be admitted that the design of this structure is ill-adapted to its last surviving function.

Most probably it is correct to assume that, at present, each clan is represented at each level in each county; but, as we have seen, the hierarchy is not upon a county or any other territorial basis. Our prospective successor from Buddu was obliged, under the present system, to seek out his own particular *Ow'olunyiriri;* who might, until then, be unknown to him and who, in fact, might live a hundred miles away. Although there may have been some tenuous blood relationship between the deceased and this *Ow'olunyiriri,* because of the manner in which the clans are scattered this connection must be more of a hindrance than a help when it comes to matters of succession. The all-important local knowledge about the deceased and his property is, therefore, frequently sacrificed for the sake of a theoretical family allegiance which otherwise no longer has much real meaning in Ganda society.

How much better it would be if the prospective successor could, instead, go to a local *Ow'olunyiriri* of his clan; not, necessarily, the head of his particular sub-consanguinity, but the one living nearest to his father's home; possibly already known to him and much more likely to have local knowledge. Thence they would go to a local *Ow'omutuba,* also living in Buddu, and in fact the whole succession procedure would be handled by the clan authorities in the county in which the deceased had lived and died. In this way a largely meaningless and sometimes entirely fictitious family connection would be abandoned for the sake of greater accuracy, speed and cheapness in handling the succession[1].

It is therefore proposed that, for these reasons, the hierarchy in each clan be reorganized upon a county basis. Each Head of Clan would be required to draw up a schedule of names and addresses of the various officers of his clan in each county; and these particulars would be published for the information of clan members. Initially, these lists would reflect the present haphazard distribution of clan officers; but, in the course of a year or two,

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[1]Many of the larger landowners hold land in more than one county. Such landowners are more likely to leave wills, but if one should die intestate some travelling between counties would be unavoidable.

the Administrator would be able to gain some idea of the volume of work arising from each clan in each county, so that adjustments could be made in the number of clan officers accordingly. If it were found, as seems likely, that there were more *Ab'ennyiriri, Ab'emituba* and *Ab'amasiga* than were necessary for the efficient handling of intestate succession, then the numbers would be allowed to diminish by natural wastage on death; H.H. the Kabaka declining to appoint a successor in such cases. In this way the reorganization could be effected without any serving clan officer being deprived of his source of income.

An alternative way of achieving the same object of greater efficiency would be to telescope together the duties at present performed by different officers in the hierarchy. It is understood that it occasionally occurs, already, that a clan officer may, for example, at one and the same time, be both *Ow'olunyiriri* and *Ow'essiga.* This suggests that the hierarchies might, with advantage, be shortened by the gradual elimination of *Ab'emituba;* leaving only *Ab'ennyiriri,* essential for their local knowledge, and *Ab'amasiga* responsible to *Abakulu b'Ebika* for clan matters within each county[1].

It is submitted that these last recommendations, on the modification of the clan structure, though they may constitute a radical departure from tradition and cause some consternation and even derision, nevertheless deserve closer study. It is felt that most Clan Heads, being aware of the need for reform, will willingly co-operate for the greater good of the people of Buganda.

The present clan procedure is, as the Uganda Relationships Commission remarked, "a remnant of the old Buganda tribalism embedded in a much improved system of native jurisdiction, where it is now quite out of place"[2].

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[1]It should be noticed that clan officers obtain their appointments only by succession within the family and not by promotion. Thus an *ow'olunyiriri* normally has no prospect of advancement to *ow'omutuba* or *ow'essiga;* although occasionally, as in the case cited above, the same man may be separately elected successor to a deceased *ow'olunyiriri* and a deceased *ow'essiga.*

[2]*Op. cit.* p. 75.

CHAPTER VI

SETTLEMENT OF TITLE

The Registry Problem

The Registry problem cannot be regarded as solved until all those who acquire a proprietary interest in or a charge over mailo land, both wish to be and can be registered without delay. To achieve this the Register must, so far as is practicable, be brought, and thereafter maintained, up to date. This would not merely be the realization of the personal wishes of a few professional officers who happen to be interested in Registration of Title. It would be more than that. It would be a great step towards more efficient land administration and use, and thence towards greater productivity and prosperity.

In discussing Buganda mailo land, the "World Bank" mission noted that: "The number of subdivisions and transfers requiring survey and registration is estimated to be about 35 per cent of all registration"[1]. It then continues: "The absence of title and survey of these areas is hampering the development of the land market and offsetting some of the economic advantages arising from security of tenure. The mission understands that a major obstacle to the completion of the registration of title is that at present there is no legal process whereby the break in records of transfers, and the absence of records of the earlier transfers or unregistrable agreements, can be rectified. The mission is not competent to comment on the legal aspects of the problem, but in our view the economic advantages of completing surveys and registrations of title, and keeping the register up to date, warrant a review of the current legislation"[2].

Although it was dealing with the general introduction of individual titles and not specifically with the improvement of the Mailo Register, the Uganda Relationships Commission, 1961, added weight to this argument by saying: "Until titles are clear and secure there is little hope of a free market in land or of proper mortgage facilities, or indeed of other developments needed to bring capital into agriculture and encourage progressive farming"[3].

As a relic of customary law the archaic succession procedure remains the most important single inhibiting factor. But there are other difficulties that must be overcome in bringing the Register up to date; and we now turn to suggestions on how these should be tackled.

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[1] *Op. cit.* p. 187, s. 13.
[2] *Loc. cit.*
[3] *Op. cit.* p. 80, s. 219.

The total number of theoretically registrable proprietary interests in mailo land cannot be determined precisely. On the 31st December, 1963, it was estimated[1] that there were 85,000 titles subsisting, 39,000 Proprietors of Unascertained Portions awaiting survey and 5,300 pending documents awaiting clearance[2]. For our present purposes we may say that the Registrar is aware of some 130,000 interests. To these we must add a large but unknown number of unregistered successions; and a smaller, but similarly unknown number of unregistered transfers *inter vivos*. It would seem, therefore, that the overall total of interests is not likely to be less than 150,000[3]. Out of more than 2,000,000 Africans living in Buganda[4] it seems likely that as many as 1,500,000 live upon mailo land; as the other land (formerly Crown land and now Public land) is, in the main, less fertile, more remote, and in consequence more sparsely settled. If this is so, then it gives a proportion of one out of every ten persons holding an interest in mailo land; and this does not seem improbable.

The difference between this hypothetical figure of 150,000 registrable interests, and the 85,000 interests now fully registered, gives us some indication of the extent to which the Register is at present out of date. The number of registrations outstanding would appear, upon this argument, to be about 43 *per cent* of the whole.

Bringing the Register up to date therefore presents no mean problem. It involves:—

(i) survey for all existing Proprietors of Unascertained Portions;

(ii) clearance of the remaining pending documents with survey and registration where required;

(iii) survey, where required, and registration for all unregistered successors; and

(iv) survey, where required, and registration for other unregistered dealings.

Thereafter, the Register must be kept up to date and a similar situation never allowed to develop again. To accomplish this it will be necessary:—

(i) to simplify and more fully to promulgate the law upon registration of title, and to inform the public of the disadvantages of non-registration;

(ii) to modernize and improve the present succession procedure as already discussed;

(iii) to introduce a more direct form of compulsion;

(iv) to incorporate a number of other measures aimed at greater efficiency; and

(v) to maintain survey and registry staff at all times adequate for the task.

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[1]From monthly returns submitted by Branch Titles Registries.

[2]All these figures are subject to confirmation or alteration upon the completion of the Register conversion.

[3]Contrast the figure of 58,000 *owners* given in 1953 by Mukwaya, *op. cit.* p. 30. But it must be remembered that many owners hold several interests.

[4]Uganda Census 1959, p. 35, quotes 1,834,128; annual rate of increase 3·2% *per annum* approximately.

It is evident that all this will not be achieved under the present legislation. Wider powers and a new approach will be essential. There are many interrelated aspects to this problem; and no single solution. The answer lies in the adoption of a number of measures, each mutually supporting.

Settlement of Title

To bring the Register up to date and so to make it a more accurate reflection of the situation on the ground, a limited form of Settlement of Title will be required. This process may, alternatively, be called Land Settlement or Adjudication of Title; and, in its proposed procedure, would be very similar to the method of adjudication carried out elsewhere in Uganda[1]. It would consist merely of an authoritative comparison between the ground and the Register and the granting of power to the Registrar to bridge any gaps in title that are thereby encountered. The Registrar would be empowered to vest land in those found in occupation, provided that they could establish, to his satisfaction, a *bona fide* claim to proprietorship, other than by prescription, and the claim is not disputed. It is thought likely that, if such a procedure were introduced in Buganda[2], the Registrar would need to use his full powers comparatively rarely. In most cases where, after inspection on the ground, it is found that the title is out of date, the situation could be rectified by making contact with the claimant and advising him upon the steps necessary to comply with the law. It is only where this approach proves impossible, or fails, that compulsion need be applied or the full powers exercised.

The Settlement of Title procedure may, in general terms, be outlined as follows:—

(i) Once the necessary legislation has been enacted certain officers would be formally appointed as Settlement Officers. The qualifications required for these posts would be a thorough knowledge of registration law and practice, a complete command of Luganda, and an understanding of the background history and problems likely to be met. It would seem that the more senior and experienced of the Ugandan officers, at present serving as Land Registry Assistants, could fulfil these duties admirably. It is therefore proposed that further officers be trained to take over the day-to-day running of the Branch Registries (over and above those at present in training) so that five of the more senior may be freed for this settlement work[3].

(ii) The Settlement Officers would be granted certain statutory powers. These would include the power to order the attendance of any person or the production of documents, to collect evidence on oath, and to determine boundaries. This last power is most important as it introduces an element

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[1]*See* the Crown Lands (Adjudication) Rules, 1958. L.N. No. 91 of 1958, Laws of Uganda, Vol. 1958 (2), Subsidiary Legislation, p. 187.

[2]Under the Uganda Constitution, s. 74, this introduction would probably require the consent of the Buganda Government.

[3]But there are several practical, staffing difficulties here. A number of Land Registry Assistants or trainees have recently transferred to other posts; so that, at the present rate, it would be mid-1966 before even two could be spared.

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of compulsion. Where any person fails to attend, either in person or by duly authorised representative, or refuses, or is unable to indicate the boundaries of the land which he claims, then the Settlement Officer would be authorized to order the claim to be demarcated as nearly as may be in accordance with the available evidence. Appropriate survey fees would be paid or charged upon the title as circumstances dictate. Once so settled, these boundaries would be alterable only by Court Order, and, in this event, the claimant could be required to pay further survey fees in respect of the alteration.

(iii) The Settlement Officers should work simultaneously in each of the five branch areas. They should adopt a selective approach, dealing first with those Registration Blocks which, from the number of Proprietors of Unascertained Portions and pending documents, are known to be most seriously out of date. The intention of the Registrar to apply Settlement of Title procedure to a certain Block would be announced by notice published in the Gazette and the vernacular newspapers; and copies would be posted upon the land itself and at *Ssaza* and *Ggombolola* Headquarters. A period of ninety days would be allowed for unregistered owners to put their affairs in order; for example by obtaining, from the Lukiiko Land Officer, a long-neglected Certificate of Succession.

(iv) During this period, a second notice would be issued thirty days before the work is due to commence. This would list all Proprietors of Unascertained Portions and others whose attendance would be required. It would be posted at *Ssaza* and *Gombolola* Headquarters and sufficient copies would be supplied for the *miruka*[1] chiefs to ensure that the people called are properly notified. The notice would state the date, time and place of the initial *baraza*[2].

(v) The Settlement Officer would study the situation upon the relevant Registration Block and, upon the appointed date, would take to the *baraza* the actual Register for that Block (ensuring appropriate security measures)[3], any remaining pending documents, and also correspondence files. He would be accompanied by one or more survey parties to carry out immediate surveys under his direction. He would also be prepared, as a Revenue Collector to take receipt of fees.

(vi) He would hold an initial *baraza* or, perhaps, a series of them, and, thereafter, he must be prepared to visit all parts of the Registration Block personally, as his duties and powers may not be delegated. In many ways this would be a healthy practice. There is, perhaps, a natural tendency for Registration of Title to become a purely office activity, divorced from land occupancy and utilization. This would, therefore, provide a useful opportunity for a senior member of the Registry Staff to acquaint himself with problems on the ground. The Titles Register should be seen as

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[1]*Muluka*, plural *miruka*, parish.

[2]This is a Kiswahili word implying an official meeting or gathering of people.

[3]The most effective safety measure of general application is the periodic microfilming of the whole Register at intervals, say, of five years. Facilities for this are now available in Uganda.

something more than a mere system of record, invaluable though that might be. Without this record it is impossible for Government to know "what is going on". But, coupled with this, there should also be a continuous and intelligent observation of tendencies amongst the landholding community. If these are healthy they may then be encouraged; if not, then Government may be advised upon what corrective measures should be taken.

(vii) The Settlement Officer's object would be to ascertain the boundaries of all holdings at present registered in the names of Proprietors of Unascertained Portions; to determine the value, if any, of each pending document and to arrange for it to be converted into registrable form or to be returned to the parties concerned; and to take whatever steps are necessary, to establish and register the proprietary claims of any one found in rightful possession. It is expected that most claims could be substantiated by documentary evidence, such as the production of a Succession Certificate or of a manuscript *endagaano*. In the latter case a registrable transfer should be executed immediately if the transferor is available. If not, and he is known to be dead, then the Settlement Officer should arrange for the signature of a transfer by the Buganda Ministers[1]. In these, the majority of cases, the Settlement Officer would be merely a prompter and adviser and there would be no need to invoke his special powers.

(viii) In some cases, however, it will be impossible to bridge the gap in this manner between the registered proprietor and the beneficial owner, who may or may not be in possession. In any such case the Settlement Officer should note all the evidence forthcoming, in particular verbal evidence from the *muluka* chief and neighbouring landowners, and should enter particulars of the claim upon a Schedule of Rights. In general, the claimant in possession, when his claim is supported by documentary evidence, should be preferred to all others. This Schedule is, of course, for proprietary rights only and the Settlement Officer would not concern himself with *busuulu* tenancies, except in so far that he should, where possible, avoid subdividing them while establishing mailo boundaries.

(ix) It is very probable that certain occupants will, by now, have acquired an equitable interest by adverse possession; but they will probably not be aware of their rights. If such a case is encountered the Settlement Officer should merely advise the claimant upon what action he should take[2], and should not enter his claim upon the Schedule of Rights.

(x) Except in those cases where a dispute has been referred to the Court, the demarcation of plot boundaries should be carried out immediately, upon the instruction of the Settlement Officer. As mentioned above, he would be empowered to decide the position of boundaries, if necessary, in the absence of the interested parties.

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[1]Under the Buganda Possession of Land Law, 1908, s. 5.

[2]*i.e.* he should apply to the Registrar of Titles for an order vesting the land in him under the present Registration of Titles Ordinance, s. 77, or similar provision in a revised Ordinance.

(xi) Upon completion of the Registration Block, or of any convenient part of it, the Schedule of Rights would be published in the vernacular press and also posted for a period of thirty days at the *Ssaza* and *Ggombolola* Headquarters. Objections should be made in writing within this period, to the Settlement Officer, who, upon its expiry, would hear all complaints against the settlement. If he is unable to dispose of any dispute it would have to be referred to the Principal Court (within a further period of thirty days) and an endorsement to this effect would be made upon the Schedule of Rights.

(xii) As soon as the survey had been approved the Schedule of Rights would be used as the instrument for the registration of the Settlement Officer's undisputed findings. Those findings in dispute would be registered only upon receipt of a consequential order of the Judicial Adviser or of the High Court.

This is a general outline of the procedure that could be applied in Buganda to bring the Register up to date. It is recommended that no extra fees should be payable in respect of the enquiry by the Settlement Officer. Any claimant who becomes a registered proprietor in this way would pay the normal registration fee and also an assurance of title fee; chargeable under s. 180[1].

However, no statutory provision exists at present for such a procedure. This must therefore be made, either by amending the present Ordinance, or by incorporation within an entirely new enactment. From what has been said above it will be obvious that the latter course is preferable; and we pass now to a consideration of some of the points that should be borne in mind when a new Titles Ordinance is being drafted.

The Replacement of the Registration of Titles Ordinance, 1922

There is already a considerable body of opinion supporting the proposition that any new law should be similar to Kenya's Registered Land Ordinance, 1963[2]. There is much to be said for this proposal. Bearing in mind the future objective of East African Federation it would be constructive to reduce the present divergence in registration law and practice, by bringing the different countries, as nearly as possible, on to the same system.

As regards the Kenya Ordinance itself, there are a number of features which are likely to ensure its superiority over the Uganda law.

(i) *Greater Simplicity*

It is shorter and more manageable. The breaking up of sections tends to make it more easily understandable and yet it comprises only 165 sections,

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[1]In order to compensate any person who might suffer through the operation of Registration of Title, an Assurance or Insurance Fund is usually established, built up from special fees charged mainly upon initial registration. (*See* Dowson and Sheppard, *op. cit.* p. 142). Neither assurance of title fees nor additional registration fees would, in this case, be payable by any person who had previously been registered as a Proprietor of an Unascertained Portion.

[2]No. 25 of 1963. *Kenya Gazette* Supplement No. 66. (Ordinances No. 5). Nairobi, 27th August, 1963.

covering 79 pages, which compares favourably with the 211 sections and 95 pages of the Registration of Titles Ordinance. Furthermore, it has been drafted in more simple English and the grotesque phrases enforced upon the English real property lawyer by statute and usage have been eliminated. This is a most important step forward as it facilitates translation. Using the Kenya Ordinance as a model, it may be possible to simplify the legal language still further; but it is doubtful whether any useful purpose would be served in Uganda by following Kenya's lead entirely; for example in replacing "mortgage" by "charge" and "caveat" by "caution".

(ii) *More Effective Compulsion*

Secondly, the Kenya Ordinance introduces a more clear and direct form of compulsion. In Uganda, Registration of Title has long been compulsory; but the compulsion is applied in a way which has made it almost entirely ineffectual. The Registration of Titles Ordinance, s. 51, states: "No instrument until registered in manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Ordinance or to render such land liable to any mortgage; but upon such registration the estate or interest comprised in the instrument shall pass . . . " Apart from non-acquisition of legal estate or interest, failure to register incurs no other penalty. This is virtually no sanction at all in Buganda as the landowners are essentially realists; so that, provided they remain in undisputed occupation, their failure to acquire a legal estate in the land worries them not at all. Following upon the Sheppard Report, a further attempt was made in ss. 3 and 4 of the Buganda Land (Agreements) Law, 1939, to prevent unregistered dealings in mailo land; but, as we have seen, this has been of little or no avail.

If Land Registration is to succeed in Buganda something more potent than this is required. The Kenya Registered Land Ordinance, s. 40, penalizes late registrations by prescribing increased registration fees in such cases. A measure similar to this could be enacted in Uganda. It is recommended that any new Uganda law should allow an initial period of grace (perhaps as long as two years) for the registration of all those unregistered dealings which had already taken place prior to the enactment of the new legislation. Thereafter failure to register a new dealing within a certain period should attract an immediate and obvious penalty[1].

(iii) *A More Limited Guarantee*

The controversy over "fixed" or "general" boundaries has already been touched upon in Chapter III. Torrens was a great believer in "fixed" boundaries. As Curtis and Ruoff put it: "The Torrens system contemplates that all titles will be supported by a meticulous survey"[2]. The Uganda Registration of Titles Ordinance, being based upon the Victoria Transfer of Land Acts, is a "Torrens"

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[1]It may, however, be prudent first to see how effective the Kenya measure proves to be, for it may be argued that increasing fees for late registration progressively decreases the incentive to register.

[2]Curtis, G. H., and Ruoff, T. B. F., *The Law and Practice of Registered Conveyancing*. London, 1958. p. 12.

Ordinance. Section 159 of the Ordinance permits the Registrar to disregard certain minor errors in boundary measurements and areas; but, by inference, any discrepancies exceeding these narrow limits must come within the meaning of the phrase "error or misdescription" in s. 186; and might, therefore, constitute grounds for an action for recovery of damages. In Uganda, where land values are relatively low, survey costs, although not high in themselves, are high in relation to these land values, and the standard of survey neither needs to be nor can be as high as that presupposed by Torrens[1]. The probable result of the enactment of a "fixed boundaries" Ordinance under such conditions is, therefore, likely to be a certain lack of sympathy between the demands of the Ordinance and the capacity of the survey. In the long run (and this situation has not yet been fully reached in Buganda) increasing population pressure will lead to wasteful litigation over boundary details[2], and may even involve Government in the payment of compensation[3].

The Kenya Registered Land Ordinance avoids much of this difficulty by granting a guarantee of ownership of parcels only; and by not extending this guarantee to the boundaries, acreage or position of the plot. Thus s. 21 (1) states: ". . . , the registry map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel"; and s. 148 (1) rules that: "As between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey . . . " In Uganda a similar provision was enacted in the Registration of Titles (Amendment) Ordinance, 1958, s. 39 E[4], but this applies only to land brought initially on to the Register after the 1st November, 1958, and where a survey plan has not been deposited. It is applicable only in special circumstances and does not cover the mailo titles.

It is therefore recommended that, notwithstanding the present guarantee of mailo boundaries, any new Ordinance should be a "general boundaries" Ordinance after the Kenya model. Quite apart from reducing Government's liability, so inadvisedly assumed some forty years ago[5], this measure would also permit the eventual introduction of aerial survey methods which, although they provide a standard of accuracy adequate for "general boundaries", cannot normally be expected to comply with the "fixed boundaries" requirements of a Torrens Ordinance.

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[1]Although, the accuracy with which the geometrical record of boundaries is obtained can be varied according to circumstances; and there is latitude in the Torrens system to accommodate this.

[2]According to the Judicial Adviser, Buganda, there is already an appreciable number of cases relating, for example, to a single line of banana trees planted along a disputed boundary. Usually, however, Government is not involved in these cases.

[3]But so far, experience has shown that claims for compensation have almost invariably arisen from registry rather than survey errors.

[4]Laws of Uganda, Vol. 1958 (1), p. 627.

[5]Unless expressly provided to the contrary the guarantee of the present Registration of Titles Ordinance would continue. This would necessitate the repeal of the present Registration of Titles Ordinance and a provision whereby all prior titles were brought under the new Act. The Land Titles Ordinance, 1908, has not yet been repealed and there are still 19 (non-mailo) titles extant.

A brief study of the Kenya Ordinance also raises a number of other interesting points some of which may be recorded here:—

(i) *The question of Duplicate Certificates of Title.*—Many of those with experience of the operation of Land Registration in Uganda are now of the opinion that the issue of Duplicate Certificates has been a mistake. The need to surrender the Duplicate Certificate, every time a dealing is to be registered, and the delays and expense incurred whenever a Duplicate Certificate is lost, all tend to hinder the efficient operation of the Register. These Duplicate Certificates of Title are, in fact, now something of an anachronism; and, under many other jurisdictions, they have been replaced by a simple Certificate of Search obtainable on application by an interested party.

The issue of a Duplicate Certificate has been defended on the ground that it is essential for the creation of an equitable mortgage, by deposit of the Duplicate Certificate. But such a mortgage may be equally well created by the deposit, with the mortgagee, of a memorandum by the mortgagor, setting out details of the loan and charging the land therewith.

The mortgagee would then merely enter a caveat; which is part of the present procedure.

So it would seem that the issue of Duplicate Certificates of Title could either be discontinued altogether or, if public opinion should demand it, a compromise might be permissible under the deterrent of a special fee.

(ii) *Proprietorship of Unascertained Portions.*—As has already been explained this is a concept peculiar to Uganda. No provision for it exists in the Kenya law; where, in fact, it is expressly prohibited by the Registered Land Ordinance, s. 89, which reads: "No part of the land comprised in a Register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision." All are agreed that the elimination of Proprietors of Unascertained Portions should be one major aim of Land Registry policy in Uganda; and, as a step towards this, new registration of P.U.P's. are already forbidden in those areas where survey facilities are now permanently available. Further, it is hoped that the Settlement of Title procedure outlined above would attend to most of those at present appearing on the Register. But we are left with the problem of what to do in the more remote areas, to which Land Registration should never have been extended. In these areas the registration of P.U.P's. is still reluctantly permitted. Careful consideration will have to be given to this problem when a new law is being drafted; and, because of these areas, it may be felt advisable to preserve s. 147 of the present Ordinance although in a modified form. Such registrations should be regarded as made for administrative convenience only, and should carry no guarantee whatsoever until ascertainment by survey.

As an alternative, thought might also be given to a reversion to the Registration of Deeds in these areas. The purpose of this would be to obviate the need for survey; but any conveyance would have to include a fuller

description of the boundaries of the land conveyed. Clearly, many problems will have to be solved; but the proposition is at least worthy of consideration.

(iii) *The inclusion of more land law.*—In Uganda there is no separate statute law upon conveyancing; so that, where the Registration of Titles Ordinance is silent, recourse must be made to the English Common Law and statutes of general application. This complicates the day-to-day running of the Registry, especially now that it has been decentralized. A new law could, with advantage, include as much land law as is conveniently possible; and in this respect too, the Kenya Registered Land Ordinance should prove a helpful guide.

(iv) *The introduction of planning control.*—The new Kenya Ordinance makes several references to measures controlling land dealings and use. Thus, for example, the Minister is empowered, under s. 101 (3) (*a*), to prescribe the maximum number of co-proprietors permissible in any particular case. In s. 104 (1) reference is made to the laying down by other statute of minimum areas or frontages. Under s. 105 (1) it would seem that the Registrar has been granted certain powers in cases where the partition of a tenancy-in-common[1] would "adversely affect the proper use of the land".

Such measures are both necessary and welcome. They are designed to prevent the abuses brought about by excessive fragmentation of interests and holdings; and they also have a useful secondary effect in that they help to keep the Registry staff more aware of the problems of land administration and use. In Uganda no such powers exist at present; but the need for them will be discussed more fully in Chapter VIII.

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[1]Under this form of tenancy two or more persons hold the same land in specified but undivided shares.

CHAPTER VII

LANDLORD AND TENANT

THE RELATIONSHIP between landlord and tenant in Buganda remains, for the most part, controlled by the *Busuulu* and *Envujjo* Law of 1927[1]; although, as we shall see, the effectiveness of this control has by now been considerably reduced.

The law upon the subject is a mixture of this Buganda law (now in serious need of revision), and case law resulting from the courts' interpretation of it; with a background of customary law, much of which is uncertain. A full study of the whole subject would be long and involved, and it is possible to give only an outline picture here. Some generalisation has therefore been necessary throughout.

In referring to *busuulu* tenancies[2] in this chapter the remarks are intended to apply only to those upon *private* mailo land. These, of course, comprise the vast majority of such tenancies. Upon the official estates, and particularly upon His Highness the Kabaka's official land, certain special conditions and procedures apply. It is not proposed to go into these considerations here.

FIELD STUDY AT SEETA, KYAGGWE

To provide factual information upon the position on private mailo land and to supply illustrations for some of the points discussed below, a field exercise was carried out at Seeta in the county of Kyaggwe, in December 1963. The main object of this exercise was to determine who is actually in occupation of the land, and upon what terms and conditions. A land use survey (based upon the World Land Use Survey classification) was also carried out; to see if there is any correlation between the form of occupancy and the land use. Furthermore, the opportunity was taken to determine the extent to which the Land Register is up to date in respect of the area studied. The discussion of this last aspect may cause some digression from the main theme of this chapter; but, nevertheless, it is thought that its inclusion should be of interest.

The area studied forms the major part of the Registration Block Kyaggwe 110, and totals 516·8 acres at Seeta about ten miles east of Kampala. This area

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[1]The spelling adopted is that used in the Native Laws of Buganda, Revised Edition, 1957, p. 168–178.

[2]The word "*busuulu*" is said to be derived from the Swahili word "*ushuru*" introduced into Buganda by Arab traders. "*Ushuru*" itself is derived from "*ashara*" or "ten", indicating tithe. *See* Robertson D. W., *The Historical Considerations contributing to the Soga System of Land Tenure*. Government Printer 1940. p. 37. An entirely different derivation, *i.e.* from the Luganda verb "*kusula*"—to stay or live in a place, is put forward by Richards, A. I., in *Economic Development and Tribal Change*, Chapter V, p. 127.

was selected for several reasons, the main one being that it was thought to be intermediate between the truly rural mailo estates further away, and the semi-urbanised or peri-urban estates closer in to Kampala. The estate was known to be heavily subdivided and, due to the proximity of the Branch Titles Office at Mukono, it was hoped that the Register would be found to be reasonably up to date. The subdivisional boundary beacons would be invaluable to the investigators in establishing their position upon the ground; whilst the Registry information would be of great help in finding the landowners. Furthermore, it was known that a small trading centre had developed, around a crossroads in the middle of the estate, and it was expected that this would provide examples of residential, commercial and light industrial tenancies outside the *Busuulu* and *Envujjo* Law. In fact, it was thought that this estate would provide a compact cross-section of mailo land ownership, tenancy, occupation and use. In the main these hopes were realized and the choice justified[1].

Radwanski[2] has shown that the soils at Seeta are mostly red-clay loams and the mean annual rainfall is about 55 inches. The farming system of the area in which Seeta falls is classified as "Land Rotation", with plantains as the main food crop, coffee and cotton as the main cash crops, and with the fallow under long grass or forest thicket. Cultivation is by hand implements only, but productivity in annual and perennial crops is classified as high; although, in the more densely populated areas, there are signs of soil exhaustion as a result of continuous cultivation. Topographically the Seeta area is a gradually sloping, rounded ridge running approximately north–south, with swampy valleys to the east and west and the main Kampala–Jinja road traversing it approximately at right angles to the drainage.

The field study was carried out by the students of the University of East Africa[3]. They were assisted by planetablers whose duty it was to locate the boundary beacons of each plot in turn; hedges or fences being virtually unknown in this area. A questionnaire was completed in respect of each plot and the results were then tabulated, analysed and plotted. Maps 2, 3 and 4 give the position regarding land ownership and registration, land occupancy and land use respectively.

A. Proprietorship of Mailo Land

The entire area studied, including the main road reserve, is mailo land. It was initially surveyed in two sections and the claims of two separate individuals were recognised by the issue of Final Certificates in 1915 and 1921. Since then, subdivision by sale, gift or succession has proceeded apace and without any form of planning control. Today there are 165 mailo subdivisions. The overall

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[1]Two other similar schemes, one in a more purely rural area at Ddambwe and Kamuli about five miles north of Kakiri in Busiro County; and the other in an urban area within Mmengo Municipality immediately south of Makerere College, are contemplated for the future.

[2]Radwanski, S. A., "Soils and Land Use of Buganda." *Uganda Department of Agriculture; Memoirs of the Research Division*, Series 1: Soils. No. 4. p. 108 and maps.

[3]By arrangement with Professor S. J. K. Baker of the Department of Geography at Makerere University College, and his staff.

average area of surveyed subdivisions is 3·1 acres and a breakdown reveals the following:—

TABLE 6.

SUBDIVISIONAL AREAS, SEETA.

Number of subdivisions less than 1 acre	54 or 33%
Number of subdivisions between 1— 5 acres	80 or 48%
Number of subdivisions between 5—10 acres	24 or 15%
Number of subdivisions between 10—20 acres	5 or 3%
Number of subdivisions more than 20 acres	2 or 1%

Source: Mailo Titles Register.

But it should be noted that these figures concern mere ownership and reflect the position on the Register rather than on the ground. Of the two subdivisions of more than 20 acres each, neither is available for immediate development by the landowner. One of the plots, of 22 acres, is covered largely by swamp forests, and considerable capital would have to be expended to bring this land under production. The other subdivision is of 73 acres, and this is almost entirely occupied by 24 customary tenants, each one protected from disturbance by the *Busuulu* and *Envujjo* Law.

The Registry Index Plans (the only cadastral plans available) are designed to support the Register by recording each mutation in the mailo proprietorship as it occurs. *Busuulu* tenancies are dealt with more fully below, but it should be noted here that, as they are not registrable, their limits do not appear upon the Index Plans. To this extent, therefore, there are more plots on the ground than the Index Plans themselves indicate.

Yet the opposite frequently applies in the case of ownership. A study of the Register has shown that 30 proprietors own 79 or 48 per cent of the mailo subdivisions; the largest number of fully registered subdivisions held by one proprietor being six. This would appear to suggest the beginnings of fragmentation[1] of agricultural holdings of the sort described by Lawrance[2]; but closer examination shows that this is not necessarily the case. The holding of multiple mailo subdivisions has been plotted on Map 2, and it will be found that the 30 cases fall into three main categories:—

(1) In nine cases the landowners are engaged in active consolidation of their holdings, by acquiring a number of separate but adjacent or nearly adjacent plots which could possibly be farmed as one unit eventually[3]. This is, of course, the opposite of fragmentation and can be regarded as beneficial under the circumstances.

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[1]In the sense defined by Sir Bernard Binns in *F.A.O. Agricultural Study No. 11, i.e.* "The stage in the evolution of the agricultural holding in which a single farm consists of numerous discrete parcels, and often scattered over a wide area."

[2]Lawrance, J. C. D., *Fragmentation of Agricultural Land in Uganda.* Government Printer 1963. p. 7.

[3]The best example of this is the landowner whose six plots are coloured light green in the N.W. part of the estate. As a P.U.P. he also claims land out of the two adjacent plots, upon one of which he has already built a substantial house. He stated that, because of the low return from *busuulu* tenancies, he intends to farm the land himself, but it is not clear what he proposes to do about the customary tenants who occupy most of it.

(2) In ten cases the landowners hold agricultural plots at varying distances from Seeta village; and have also acquired residential or commercial plots in the village itself. This, therefore, does not mean that their agricultural holdings are fragmented.

(3) Only in the remaining eleven cases is some degree of fragmentation to be seen. These involve 26 or 16 per cent of the plots.

It may be said therefore that, although *subdivision*[1] has now reached an advanced stage upon this estate, *fragmentation* of agricultural holdings does not yet constitute a serious threat to productivity. Evidence of both consolidation and fragmentation exist upon the same estate; and only time will tell which is the more enduring tendency. But it is probably true, in general, to say that subdivision upon this estate has now reached a point beyond which it should not be allowed to go much further; unless it is to assist in the consolidation of holdings. For a purely agricultural use, subdivision has probably already gone too far; but special conditions apply here, due to proximity to Kampala; for, apart from the village of Seeta itself, there are a number of semi-residential plots whose owners commute daily and do not derive their livelihood from the soil. Unless the situation is watched and controlled, chaotic conditions could result in another 25 years' time.

Two other points concerning mailo proprietorship should be recorded here, namely:—

(i) of the 165 mailo subdivisions at Seeta, 43 or 26 per cent are held by landowners who are reported also to own land elsewhere in Buganda; and

(ii) ten of the subdivisions at Seeta are owned by registered proprietors who formerly held these plots as *busuulu* tenants.

Since the original mailo settlement, the ownership of land in more than one locality has been very common amongst the Baganda. Until the conversion of the Register has been completed, the total number of mailo-owners may be determined only very approximately, but, basing one rough estimate upon another, it would seem that, if the number of mailo interests is of the order of 150,000[2], then the number of mailo-owners could be in the vicinity of 100,000.

It is also quite common for the same individual to be both mailo-owner and *busuulu* tenant. Thus, for example, a *busuulu* tenant may decide to buy the mailo interest over the major part of his tenancy, remaining with the balance of the tenancy still held under the *Busuulu* and *Envujjo* Law. Two cases of this were discovered at Seeta.

B. The Registration Position

An analysis of the Register, and a check upon the ground, have shown that the registration is up to date in respect of 129 or 78 per cent of the subdivisions. These subdivisions total 330·3 acres or 63·9 per cent of the whole area. In respect of a further seven or 4 per cent of the subdivisions the present owner is an unregistered successor. These seven subdivisions together total 99·2 acres or

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[1] *i.e.* the process whereby a holding originally operated by one farmer is split into a number of separate holdings operated by different farmers.

[2] *See* Chapter VI.

19·2 per cent of the total area, and include the large 73-acre plot, in the north-east part of the estate, which remains registered in the name of the original allottee. This landowner has been dead since 1958 and *busuulu* is at present being paid to his grandson, an unregistered successor. A further 11 or 7 per cent of the subdivisions are at present owned by unregistered purchasers or donees. These holdings total 26·4 acres or 5·1 per cent of the total area.

Thus registration of 147 or 89 per cent of the subdivisions is entirely up to date, or could probably be brought up to date without much difficulty. The remaining 18 or 11 per cent of the subdivisions are claimed by 24 Proprietors of Unascertained Portions, excluding the registered successor of the other original allottee; from whom most of the others have bought their land and who is generally called the "residue owner". These Proprietors of Unascertained Portions have yet to come forward to pay their fees and to point out the boundaries of their claims. However, unless there are disputes, which would have to be taken to the court, the clarification of the title situation by a Settlement Officer, along the lines suggested in Chapter VI, should be reasonably straightforward.

We may conclude, therefore, that upon Seeta Estate, where proprietary rights in land are numerous and reasonably complex, the Mailo Titles Register is serving a useful purpose. The ownership of land is, in general, well known and defined, and only three minor disputes were mentioned during the investigation. The Register has introduced and maintained more than a semblance of order into a situation which might otherwise be extremely confused.

It is, perhaps, worth mentioning here that two apparent cases of adverse possession were discovered. It would seem that applications for title by possession, under Part V of the Registration of Titles Ordinance, would be more frequent if this section of the law were more widely understood.

C. Occupancy

Land occupancy at Seeta falls into four main categories:—

(i) Unoccupied forest or unoccupied cleared land	105·1 acres or	20·3% of total area.
(ii) Owner-occupied	164·9 acres or	31·9% of total area.
(iii) Occupied by *busuulu* tenants	229·5 acres or	44·5% of total area.
(iv) Occupied by plot tenants ...	17·3 acres or	3·3% of total area.

These categories will now be considered in turn.

(i) *Unoccupied Land.* Of this, unoccupied swamp forest comprises 72·0 acres or 13·9 per cent, and unoccupied cleared land (excluding fallow) comprises 33·1 acres or 6·4 per cent of the total area studied.

Swamp forest is, in places, still very dense, but it is slowly being encroached upon by cultivation. It should be noted that ownership of this forest is already fully determined; and title surveys within it have been carried out at considerable trouble and expense. The clearance and drainage of this area will be effected as and when rising population pressure, coupled with soil deterioration elsewhere, makes the effort worthwhile.

The unoccupied, cleared land includes, in particular, the 100-feet wide reserve for the main Kampala–Jinja road; and also the reserves for the branch roads and certain other tracks. Also included within this category are certain small, unoccupied plots mostly within the close vicinity of the cross-roads. In some cases the registered proprietors of these deserted plots are unknown at Seeta and this suggests that they have been acquired by outside speculators looking for future capital gains from increased land values[1] as the trading centre expands.

(ii) *Owner-occupied*[2]. We may assume that the two original allottees themselves occupied only a small proportion of the total area, the remainder of the occupied land at that time being held by customary tenants. Today, nearly one-third of the total area is owner-occupied, and this reflects a most important trend discernible throughout Buganda. The broadening of the base of land ownership as more and more people have acquired proprietary interests in the land they occupy, has long been recognized as a stabilizing factor in Buganda politics. At Seeta, as elsewhere, this has been brought about through inheritance by an ever-increasing number of heirs, by gift, and through purchase by outsiders or by the former tenants themselves. By this process the total area of land coming under the operation of the *Busuulu* and *Envujjo* Law has already been greatly reduced. The present indications are that we must expect this trend to continue. It seems that this process of replacement of tenant by owner is more extensive and likely to have more widespread social repercussions than the more localised displacement of the *Busuulu* and *Envujjo* Law in urban and peri-urban areas.

(iii) *Busuulu Tenancies or "Ebibanja"*[3]. With 229·5 acres or 44·5 per cent of the total area under *busuulu* tenancies, this form of occupancy still predominates at Seeta. The *busuulu* tenancies number 110 in all, and are to be found throughout the estate, except in the immediate vicinity of the cross-roads. In size they vary from a maximum of about nine acres to a minimum of less than one-quarter of an acre; the average area being 2·1 acres. A number of these tenancies, particularly the small ones, are occupied upon an entirely subsistence basis by elderly persons, mostly widows, many of whom have been excused the payment of *busuulu* by their landlords[4]. Several tenants freely admitted that they pay no *busuulu,* giving, as the reason that they were never asked for it. In some cases this showed a most commendable leniency on the part of landowners towards those tenants who would find it

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[1]Recent prices indicate that the value of the rural land at Seeta lies between Shs. 200 and Shs. 500 an acre; but values for residential/commercial plots in the trading centre have now reached Shs. 1,000 an acre.

[2]This includes occupation by members of the owner's family, living rent free.

[3]*Ekibanja* (plural *ebibanja*) is a tenancy, of unspecified acreage, providing a building site for a peasant farmer and ground wherein to grow his food (and some cash crops). It is basically a subsistence holding of the traditional type, with a small house, *lusuku* or plantain garden, and other small fields. For this the annual *busuulu* is paid to the landowner; but it should be noted that, under the *Busuulu* and *Envujjo* Law, s. 2, the payment of *busuulu* does not necessarily establish the existence of a *kibanja. Busuulu* is payable by "every person who pays poll tax whether he is actually the holder of a *kibanja* or not who resides on the land of a mailo-owner." In theory, it is therefore also payable by "plot" tenants, including seasonal tenants (see below), who may all hold *busuulu* receipt tickets although their tenancy rights are not protected by the *Busuulu* and *Envujjo* Law.

[4]See *Busuulu* and *Envujjo* Law, s. 20.

difficult to pay *busuulu* at even the present very low rate. In other cases, it seemed to indicate that the absentee landlord does not consider it worthwhile to visit the estate himself, or to employ a steward, merely to collect a few shillings each year.

Similarly, the rules for the collection and payment of *envujjo* did not appear to be very strictly applied. In no case did a tenant admit to paying more than Shs. 4 *per annum* and many said that they paid no *envujjo* at all, although nearly all tenants had some area under coffee. No doubt, some could claim exemption through having less than ten trees in full bearing[1].

Another interesting feature of the *busuulu* tenancies is the frequency with which they are found to lie upon more than one mailo plot. In all, this was found to occur 21 times on Seeta estate. This commonly occurs through the splitting up, probably amongst several heirs, of the mailo interest in a parcel of land occupied by a *busuulu* tenant. His occupancy is protected by s. 15 of the *Busuulu* and *Envujjo* Law and he remains in possession unless the land is required by the new landowner, as permitted under section 16 (1)[2]. In this way complexities arise in the landlord-tenant relationship which were not anticipated by the 1927 legislation.

This is not a new problem. Haydon[3] maintains that in such cases: "The decision usually followed is that of the Judicial Adviser in a 1949 case wherein he ruled that a tenant should only pay *busuulu* to the landlord on whose land the tenant's house stood and *envujjo* alone to those on whose land he had crops but no buildings."[4] But evidence from Seeta suggests that it is now more common for the tenant to be required to pay *busuulu* to each of the mailo-owners upon whose land his tenancy lies. Fifteen cases of this were reported. In one case a *busuulu* tenancy was found to fall upon four different mailo plots due to recent subdivision. The tenant had arranged to pay *busuulu* to three mailo-owners, but, finding the financial strain too great, had entered into a share-cropping arrangement with the fourth landowner. Under this arrangement the landowner took a proportion of the coffee and plantains produced by the tenant, but received no *busuulu;* the landlord-tenant relationship thereby ceasing to be controlled by the *Busuulu* and *Envujjo* Law.

(iv) *Plot tenancies*. The expression "plot tenancy", following common usage, is here employed to denote any landlord-tenant arrangement falling outside the scope of the *Busuulu* and *Envujjo* Law[5]. As was expected, these were found largely, though not exclusively, within the trading centre that has sprung up around the cross-roads. In all there are 24 such tenancies upon Seeta estate.

Of these, 20 are concentrated in the trading centre area and are used for residential, commercial or light industrial purposes. In the general case, a

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[1]*See* Schedule II. *Busuulu* and *Envujjo* Law.

[2]This may also in itself lead to the splitting up of a former *kibanja* into two or more separate pieces, as has occurred upon Seeta estate.

[3]*Op. cit.* pp. 146, 147.

[4]J.A.C.A. 22 of 1951, P.C.C.A. 5 of 1949, Kasule *v.* Sengendo (unreported).)

[5]The term should include the seasonal share-cropping tenancies mentioned later in this chapter. These, however, were not in evidence at Seeta where the dense, permanent settlement leaves little or no room for this form of landholding.

small parcel of land, perhaps one-tenth of an acre or less, has been acquired by a purchaser from the mailo-owner. He has then developed the plot by building upon it small shops and dwelling-houses, each of which is then rented out upon a monthly basis. Here none of the traditional aspects of a customary tenancy apply, and rents were found to vary between Shs. 15 and Shs. 110 a month for each shop or section of living accommodation. In other cases, the purchaser of the mailo land had granted a tenancy over the whole, undeveloped plot to another person, who in turn, developed in the same manner as described above. No control has been exercised over the type or standard of development so that many of the buildings are of only a temporary nature; but no serious congestion has yet developed in this small trading centre so that living conditions are at present not unsatisfactory.

Of the four other plot tenancies, outside the trading centre, one has already been mentioned above. Another, in the north-east, has ceased to be a true *kibanja*[1], because a monthly rental of Shs. 15 is charged for the house upon it. The remaining two plot tenancies are both occupied by schools. Both are the subject of formal leases for 49 years. Of these, one is registered, the lessees being a Muslim missionary society, and the rental reserved is Shs. 2 *per annum* for seven acres.

Land Use

Land use at Seeta remains predominantly agricultural, the establishment of the trading centre having affected a comparatively small area only.

The total area under non-agricultural use at present comprises 105·9 acres or 20·5 per cent of the total area, and the major part of this is swamp forest and road reserve.

This leaves a total area under agriculture of 410·9 acres or 79·5 per cent of the whole. The determination of the number of actual farming units, which together make up this total, presents no small difficulty. The number of individual mailo plots under cultivation is no guide, as adjacent plots or groups of plots are not infrequently owned by the same proprietor, and, therefore, may be farmed by him as a single unit. Neither is each *busuulu* tenancy necessarily a separate farming unit; as, in a few cases, the tenant owns adjacent mailo land and so farms his land all together to support his family. But, taking these considerations into account, it has been estimated that the total number of separate agricultural holdings within the area studied is 175; giving an average area, for the farming unit in this vicinity, of 2·3 acres.

Full consideration of the factors involved in deciding upon an advisable minimum area for agricultural holdings at Seeta lies beyond the scope of this work; but it would seem, from the signs of soil exhaustion in the central part of the estate, that the average holding is already too small to support a family without damage resulting. If Seeta is to continue as an agricultural area then a better farming system, with the clearance of forest land, organised rotation and the widespread use of fertilizers, is imperative. In this, the existing complicated patterns of proprietary and tenancy rights is likely to hinder rather than help.

[1]Although this term has not yet been fully defined by the Judiciary.

More probably, however, with the expected increase in the population of Kampala, Seeta will develop as a semi-residential area, with the elimination of many of the present agricultural holdings.

As will be evident from Map 4, the form of agriculture practised at Seeta is of the traditional variety with larger groves of coffee and plantains and smaller patches of other food crops. Whether the land is occupied by the mailo-owner or by a *busuulu* tenant appears to have no effect upon the form of land use[1]; neither does ownership by Proprietors of Unascertained Portions. The only discernible correlation between land tenure and use appears in the case of plot tenancies which, at Seeta, are almost entirely reserved for non-agricultural purposes.

The Busuulu and Envujjo Law, 1927.

Having seen, from this cursory study of the situation at Seeta, the way in which *busuulu* tenancies fit into the overall pattern of land ownership, occupancy and use, let us now take a brief look at the law itself, at its objects and its shortcomings. The full text of the *Busuulu* and *Envujjo* Law, 1927, is given in Appendix A.

Past Amendments to the Law.

Since it was first enacted in 1927 the law has been amended as follows:—

(i) By a more clear definition of the expression "gourd of *mwenge* (beer)" in section 4. (Legal Notice No. 75 of 1934).

(ii) More fully to ensure good husbandry, by inserting the present section 18A (*e*). This created an offence on the part of the tenant if "during the time he occupies his *kibanja,* he fails to keep the *kibanja* in good condition or properly to look after the land". (Legal Notice No. 73 of 1942).

(iii) By more comprehensive amending legislation governing the right of the mailo-owner to sue for *busuulu* (section 3); the rights of certain classes of persons to live upon mailo land without the owner's consent (section 8 (1) (*a*) and (*b*)), and changes in the ownership of mailo land (sections 15 and 16). (Legal Notice No. 51 of 1944).

(iv) By the clarification and extension of section 2 concerning those liable to pay *busuulu.* (Legal Notice No. 250 of 1946).

(v) By the reduction, from six months to four months, of the period, under section 12, during which the tenant may leave his *kibanja* derelict without the risk of reallocation by the landlord. (Legal Notice No. 96 of 1951).

(vi) By more comprehensive amending legislation increasing the commutation rate in respect of *envujjo* on beer brewing (section 4); increasing the *envujjo* on certain crops and substituting a general for the formerly differential rate (section 5), and granting to a tenant the right to dispose of trees planted by himself (section 9). (Legal Notice No. 278 of 1954).

(vii) By the addition of maize to the list of scheduled crops subject to *envujjo.* (Legal Notice No. 294 of 1954).

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[1]Except in so far as nearly all of the new and permanent houses are built upon owner-occupied land.

It will be seen that most of these amendments are in favour of the landlord; but they are of a generally minor nature and so the law remains substantially unchanged. Since 1954 there has been no further amendment.

Points of Interest in the Present Law

Amongst the points of interest in the present law the following deserve special attention:—

(i) In section 2, *busuulu* remains fixed at Shs. 10 *per annum*. In 1927 this sum was regarded as the cash equivalent of one month's labour and, as such, was a reasonable annual rental for a *kibanja*. Today, with the increased wealth of the country and the fall in the value of money, it frequently represents only a small fraction of the annual value of the land occupied. It should also be noted that, under section 4 of the Buganda Land Tax Law, 1939,[1] tax payable at the minimum rate of Shs. 1/50 *per annum* may be deducted from the *busuulu* so that, in the normal case, the landlord now receives Shs. 8/50 *per annum* only, in respect of each tenancy.

(ii) Subject to certain qualifications, set out in the Schedule to the Law, *envujjo* is still payable upon the growing of certain cash crops, *i.e.* cotton, coffee and maize, up to a maximum of three acres for any one crop. Where this maximum is exceeded the dues payable to the landlord are to be fixed by mutual agreement. *Envujjo* is also payable upon beer brewed by the tenant and upon bark-cloth trees. (sections 4, 5, 6.)

(iii) Subject to the payment of these dues, and other lesser obligations, the tenant shall be left in quiet possession of his *kibanja;* and, upon his death, it shall pass to his successor (sections 8 (*b*) and 14). In practice, there is almost always a successor to take over a tenancy; so that here we have a situation wherein a tenant possesses a virtually perpetual right of occupancy in return for an annual rental fixed by statute at what is now a grossly uneconomic level.

(iv) Under the law, eviction of a tenant is possible only if an order is granted by the court. These are rare and may be given only in the following circumstances:—

(*a*) If it is proved, to the satisfaction of the court, that a tenant, who has failed to pay the *busuulu* due by him in respect of three consecutive years, could in fact have paid when payment fell due (section 3).

(*b*) If the land is required for public purposes (sections 11 and 17).

(*c*) If the court is satisfied that the tenant should be evicted "for other good and sufficient cause" (section 11). There is a measure of discretion here but the courts have, so far, tended to apply a narrow interpretation to this clause; and are only now beginning to allow its extension to cover the case where a landlord wishes to move a tenant in order to develop the land himself.

(*d*) If a tenant should leave his *kibanja* derelict for more than four months (section 12).

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[1]The Native Laws of Buganda, 1957, p. 210.

(*e*) When a change in the ownership of the mailo land occupied by a *busuulu* tenant has taken place, and the new owner wishes to occupy that land himself for residential and agricultural purposes[1]. But there are strict limitations to the right of eviction in this case (section 16).

(v) The tenant's rights to his improvements are fully recognized. Thus, if he should be evicted, for any reason except neglect of his *kibanja* (section 12), the court will normally order the payment to him of compensation for improvements, such as for trees he has planted or buildings in good repair[2]. The law in Buganda therefore protects the tenant, in this respect, to a far greater extent than does the English law. Payment by a landlord for a tenant's coffee trees may frequently be prohibitively expensive.

(vi) During the period of his tenancy, a tenant is required to keep his *kibanja* in good condition and properly to look after the land (sections 10 and 18 (*e*)). Upon vacating his *kibanja* he must leave the land and buildings in good condition (sections 10 and 18 (*d*)). This has been taken to mean that the tenant may remove a corrugated iron roof or steel window frames from his house, provided he puts on a grass roof or fits wooden shutters and so leaves the house in tenantable repair.

(vii) The law gives to the tenant no right to sublet or transfer his *kibanja,* (section 8 (2)). But this is, in fact, very frequently done, with the consent of the landlord. Section 18 (*b*) seeks to prevent a tenant from subletting his holding, or any part thereof, for purposes of profit. But this is also widely done with the consent of the landlord, chiefly in peri-urban areas.

(viii) The landlord is left free to remit or reduce any dues payable to him by the tenant (section 20). From experience at Seeta and elsewhere it is evident that such remittance is widely practised.

(ix) It is important to note that any incoming tenant must receive the approval of the landlord or, in practice, of his steward (section 8 (1)). There is nothing in the *Busuulu* and *Envujjo* Law compelling a landowner to accept an applicant. It is this which enables him to "contract out", under certain circumstances, by refusing to reallocate a vacated *kibanja,* and by granting plot tenancies instead.

The purpose and scope of the Busuulu *and* Envujjo *Law.*

The intention of the legislators, in 1927, was not to prepare a blueprint for a balanced and equitable relationship between landlord and tenant. They were, instead, more intent upon correcting the unfortunate injustices that had been seen to stem from the mailo settlement of 1900. The law was, therefore, heavily biased in favour of the tenant, whose interests they were seeking to protect.

The Uganda Agreement of 1900 and the Buganda Land Law of 1908 had, together, constituted a drastic departure from tradition in favour of the landlords. In restoring and strengthening the position of the peasant-occupiers some return to tradition was therefore inevitable. The result has been described by Thomas

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[1]One example of this was encountered upon Seeta estate.

[2]This compensation is payable either by the landlord or by the incoming tenant. It is assessed by *babaka* (court representatives), under s. 13, who visit the land, count the trees, *etc.* and agree upon a total sum.

and Spencer as, ". . . probably the first instance of a rent restriction act in tropical Africa."[1]

The 1927 legislation was drafted in terms suitable for an agricultural tenancy only; from which we may assume that this was the only form of tenancy known at the time. Its object was partly to restore and to preserve the old order of things; and it did not anticipate the economic development that has now occurred. For this reason the *Busuulu* and *Envujjo* Law has become an anachronism under present-day conditions.

Its consequences.

The *Busuulu* and *Envujjo* Law was largely successful in its immediate objective, and the discontent amongst the peasantry was quietened. The tenant found himself in a more advantageous position than he had been prior to 1900; when, as a tenant at will of *mutaka* or *mutongole,* he was liable to be arbitrarily dispossessed and his hereditary rights were not necessarily respected. Writing in 1933, Mair[2] said: "In law the security of the *mukopi* is greater than it was before, since he is protected against arbitrary eviction, the chief can no longer plunder his possessions, and his obligations are defined by a law which fixes the landlord's share of economic crops at a much smaller amount than that which some chiefs had previously demanded". As Wrigley put it: "In this way a long stride was made towards the official ideal of peasant proprietorship. For henceforth every cultivator in Buganda would be possessed of an interminable, heritable tenancy, subject only to quit-rent and tithe, the real value of which was eventually to dwindle into insignificance. . . . The rights of the landowner were restricted to collection of fixed and moderate dues and to the exploitation of such land as was not included in any peasant holding"[3].

Apter has also pointed out that further consequences resulted, in turn, from this increased security in landholding. The *Busuulu* and *Envujjo* Law was largely instrumental in preventing the development of a landless, peasant class. In general, there has been little need for migration to the towns; and the Baganda have remained a rural people[4]. It has also made it virtually impossible for all but the largest landowners (who very likely now have alternative and additional sources of income) to live upon the rents and profits from their land, without actually farming it themselves.

In view of the criticisms which follow it is well to record the advantages which accrued initially from the enactment of this law. But sufficient time has now passed to reveal its weaknesses also. Owing to changes in the conditions of life in Buganda over the last 35 years, there are now many arguments calling for drastic amendment or repeal.

Failings in the Present System

In 1954 the Agricultural Productivity Committee observed that the *Busuulu* and *Envujjo* Law ". . . has some very unsatisfactory features from the aspect

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[1]*Op. cit.* p. 72.

[2]*Op. cit.* p. 200.

[3]Wrigley, C. C., *Crops and Wealth in Uganda.* E.A. Studies No. 12. E.A. Institute of Social Research, Kampala, 1959. p. 54.

[4]Apter, D. E., *The Political Kingdom in Uganda.* Princetown, 1961. p. 187.

of efficient land use"[1]. More recently, the Uganda Relationships Commission, 1961, concluded that: "The law of 1927 was effective in redressing the hardships of the tenant class. But now, after more than thirty years, it has produced many of the evils of a rent restriction system based on out-dated values and practices"[2].

Let us now turn to a summary of the main failings of the present system. Some of these shortcomings adversely affect the landlord; others the tenant. They all, directly or indirectly, militate against efficient land use and so form a threat to Buganda's future prosperity.

1. As mentioned above, with the decline in the purchasing power of money, the *busuulu* of Shs. 10 *per annum* in many cases no longer bears any relation to the annual value of the tenant's land. This has several unsatisfactory results. The landlord is inclined to lose interest in the land. The return from it is so low that it matters little to him whether it is farmed well or not. Under s. 18 (*d*) of the *Busuulu* and *Envujjo* Law the tenant commits an offence if, on vacating his *kibanja,* he fails to leave the land and building in good condition. Yet in practice, out of indifference, landlords seldom bother themselves about this.

In many cases the grossly uneconomic return means that the landlord has little or no capital to put back into the land, or with which to develop that part of it which he occupies himself. Landlords commonly make no attempt to maintain and improve the quality of their land by clearance and drainage schemes, or by the use of fertilizers[3]. Good pasture land may be ruined through failure to control the grazing by fencing.

Alternatively, in order to compensate himself, for what he regards as loss of income, by increasing the return from his land, he may resort to other methods, all of them unsatisfactory, and some of them definitely harmful. Upon a transfer of tenancy, he may demand a premium from the incoming tenant, or he may introduce a greater number of seasonal tenants, interested only in a quick return. More will be said of this below.

2. On some of the larger estates, not fully occupied by *busuulu* tenants, the haphazard distribution of the tenancies may lead to land wastage. The landlord may be left with worthless strips and awkwardly shaped plots between tenancies, and development is made impracticable[4]. At present, only a small but increasing number of landowners have the knowledge and capital to develop their own land; and these have frequently found themselves frustrated by the difficulty of moving a tenant so as to consolidate their own land in one piece for mechanized farming, for grazing or for systematic rotation. The rationalization of the tenants' holdings would be a constructive move from the point of view of land productivity; but, up to now, this has often been blocked by the tenants' refusal to move when offered full and reasonable compensation.

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[1]*Report of the Agricultural Productivity Committee, 1954.* p. 32.
[2]*Op. cit.* p. 82.
[3]In any event, they could not raise the rent correspondingly.
[4]Also, a form of harmful fragmentation is thereby produced.

There are also cases like the landowner at Seeta who has acquired a number of adjacent mailo plots. If they were not encumbered by customary tenancies they would, together, form a valuable farming unit. Under different circumstances he would either raise the rent or farm the land himself. As it is, he can do neither.

3. But in practice the position of the tenant is not always so favourable as may at first sight appear. The advantage to him of the severely restricted rental has, to some extent, been offset by the landlord's demand for a premium. This is a device which the landlord has been induced to adopt to supplement his income, and was, according to Haydon, ". . . first seen in Buddu and Kyaggwe, spreading to Bugerere in 1945, Kyaddondo in 1946 and to the rest of Buganda by 1948[1]". The practice is not extended to incoming heirs. A tenant may, however, be able to retrieve some of his outlay upon vacation of a tenancy, by similarly charging a premium to the incoming tenant.

4. Nor is the security afforded to the tenant by the law any longer so effective, particularly where land values are high. Inevitably, the landowners have found ways to circumvent the law in urban or peri-urban areas. "In this situation of conflict between legal provisions and economic realities, evictions from customary holdings are not altogether unusual", declared Southall and Gutkind[2], in their description of circumstances in Kisenyi[3]. Here, and elsewhere in urban areas, landlords have resorted to various methods in order to divest themselves of unwanted customary tenants, thereby freeing the land for more lucrative exploitation outside the scope of the *Busuulu* and *Envujjo* Law. The threat of prosecution upon some fabricated charge; the entanglement of an uneducated tenant by enforced signature of ambiguous agreements; or general bullying, culminating in forcible eviction, have all been employed. The tenants are generally aware of their legal rights and know that it is open for them to seek redress in the courts; but they seldom do so. They hesitate to go to court against influential landowners and cannot sustain themselves during the delays that inevitably result before the hearing is concluded. Generally, in urban areas, they prefer either to accept any compensation offered and get out, or come to an arrangement with the landowners under which they may receive a share of the profits resulting from the subletting of their tenancy for residential or commercial purposes.

5. Another threat to the tenants' security may arise as a result of the exchange or leasing of the mailo land. In the past, cases have occurred where, as a result of an exchange[4], the mailo land has ceased to be mailo and has become Freehold. What then happens to the customary tenants' rights of occupation? Usually the practice has been for the incoming landlord to regard

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[1]*Op. cit.* p. 145. As the payment of premium is "unofficial" and considered rather underhand, the figures seldom, if ever, come before the courts. At present (1964) it appears that the prices for a cleared *kibanja* vary between Shs. 600 and Shs. 2,000 or, very occasionally more than this; depending upon such factors as area, fertility, standard of house, quality of coffee or plantains, *etc.* These figures compare fairly closely with those quoted by Haydon.

[2]Southall, A. W., and Gutkind, P. C. W., *Townsmen in the Making*. E.A. Studies No. 9 E.A. Institute of Social Research, 1957, p. 33.

[3]A densely settled part of Mmengo Municipality.

[4]For example, the "sugar exchanges" in Kyaggwe County, whereby more remote Freehold land was exchanged for mailo land nearer to the sugar factory.

them as tenants at will, and to evict them with suitable compensation for houses and crops. But the tenant appears to have lost his legal right to remain in possession.

Similar difficulties have also arisen where mailo land has been leased, particularly to non-Africans. The customary tenancies are not registrable and their limits are frequently not easily ascertainable on the ground. The incoming lessee will probably wish to clear the land for plantation farming, but the rights of the customary tenants and the lessee, in such circumstances, have not been defined. Situations such as this are bound to arise where custom and contract overlap.

6. Lack of definition of the boundaries of customary tenancies also leads to insecurity. On the pretext that it is not being cultivated, or is superfluous, part of a tenant's holding may be taken away by the landlord's steward and allocated to a newcomer. Driven by his desire to increase his income, a landlord may, in this way, whittle down the size of existing tenancies. So a *busuulu* tenant may find his holding being steadily reduced; and over-cropping with exhaustion of the soil may soon result.

7. Typically, a *busuulu* tenancy provides mere subsistence for its occupier, with usually, a small margin of cash from coffee or cotton. He has little or no surplus capital available for reinvestment in the land in the form of improvements. There is little incentive for him to make much effort. As he lacks a Certificate of Title he cannot borrow capital on the security of a registered mortgage. It is true that an advance might be made to him from the African Loans Fund or the I.C.A. funds, secured merely by a charge upon his crops. But his holding is frequently so poor as to rule out this assistance also.

8. *Envujjo,* like *busuulu,* is unrelated to the economic value of the land. In 1954, the Agricultural Productivity Committee reported that: "The levy on cash crops paid by tenants under the law to mailo-owners is, in our view, fundamentally unsound".[1] *Envujjo* is the modern equivalent of the former feudal obligation of the tenant to render tribute in kind to his chief. But the landlord-tenant relationship has now largely lost any political quality. For the most part, the landlords are now merely landlords and do not perform any duties of a judicial or administrative nature or provide any services beyond the use of their land. The original reason for the payment of *envujjo* has, therefore, now disappeared.

Envujjo is payable upon the cultivation of certain scheduled crops, up to maximum of three acres for each crop. As such it is a tax upon production. In respect of cultivation beyond this maximum, the tenant is not protected by the *Busuulu* and *Envujjo* Law and his rental is, instead, fixed by mutual arrangement with the landlord. Very often the latter will here make heavy demands, in order, as he sees it, to compensate himself for the low return from the rest of the tenancy. This may lead to one of two results, both of them harmful. In order to avoid these heavy dues the tenant may be obliged to limit his cash crops to the area protected by the law; in which case his

[1] *Op. cit.* p. 32.

specialization, for example in coffee, will be restricted. Alternatively, if he decides to grow more than three acres of the scheduled crops, over-cropping may result from his anxiety to achieve a worthwhile margin of profit after meeting the landlord's demands.

As was obvious at Seeta the assessment of *envujjo* presents several difficulties. The mental estimation of acreage by untrained persons is frequently grossly inaccurate, especially where the view is obscured by standing crops or the mind deceived by slopes. Furthermore, the inter-planting of scheduled and non-scheduled crops such as coffee and plantains is a very common practice. How then is *envujjo* to be accurately assessed?

9. It has been argued that the present tenancy laws militate against the mobility of land resources[1]. Because so much mailo land is encumbered by customary tenancies it is less attractive as an investment, and the market in proprietary interests in mailo land has, therefore, remained partially undeveloped[2]. At the same time the *busuulu* tenant has no proper power of alienation. His rights in the land are not recognized by the issue of any formal certificate, nor can he dispose of any residual term as could a leaseholder. As the Uganda Relationships Commission pointed out: "This encourages transactions such as demanding a premium on surrender of a tenancy, introducing a new tenant, and so forth, which, though natural, are sometimes regarded as under-hand"[3]. We should recall the general advice given by the East Africa Royal Commission, 1953/55, to the effect that: "In so far as barriers to free land exchange are not removed, to that extent will the prosperity of the peoples of East Africa be retarded"[4].

10. Mention has been made above of the introduction by landlords of seasonal tenants; and it would be well to emphasize more strongly this most unsatisfactory feature of the present system. Because of the low returns permitted by the law, landowners in some areas are reluctant to accept any further *busuulu* tenants; and, instead, they may grant short-term tenancies for one, two or three seasons. The tenants are commonly immigrants to Buganda[5], and they often cultivate the land upon a share-cropping basis. They are interested only in quick returns and neither know nor care about any consequent damage to soil fertility. The result is, in the words of the Agricultural Productivity Committee, that "the land is being mined and not farmed"[6].

11. Finally, the subdivision caused by the existence of many customary tenancies tends to condemn many of the more fertile areas of Buganda to

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[1]World Bank. *The Economic Development of Uganda.* p. 187. s. 14.

[2]But this has also tended to keep the price of mailo land down; and this in turn has facilitated purchase by peasant occupiers.

[3]*Op. cit.* p. 82.

[4]*Op. cit.* p. 430. s. 35.

[5]For a full study of immigrant labourers in Buganda *see* Richards, A. I., *Economic Development and Tribal Change.* In particular, Chapter V describes their work as agricultural labourers and their acquisition of interests in mailo land as customary or as seasonal tenants. Investigation upon the heavily subdivided estate at Seeta revealed the use of immigrant labour upon only one farming unit. This is in keeping with Richards' comment on p. 124, "We found *miruka* in Busiro and Kyaggwe where no porters were employed at all." *See* also Appendix B, items 10 and 11.

[6]*Op. cit.* p. 32.

traditional methods of agriculture at subsistence level, or only very slightly above it. Effective farm planning for the landowner may be seriously hampered; whilst the interests of many *busuulu* tenants are bound to complicate the introduction of any group farming scheme[1]. What is more, due to the small agricultural holdings, frequently irregularly or awkwardly shaped, the mechanization of farming is made difficult or impossible, and any "estate" production may have to take the form of tea, sugar, or cocoa "outgrower" schemes[2].

Urban Development upon Mailo Land

A further word is necessary about the special conditions which now obtain in those areas where there has been urban development upon mailo land. These apply, most particularly, to Mmengo Municipality, including such centres of population as Katwe, Kisenyi, Nnaakulabye, Mulago, Bwayise, Ndeeba, and Nateete. They also apply, to a lesser extent, to small trading centres that have developed in rural areas, such as Seeta already described.

In these localities, by the methods mentioned above, the customary tenancies have, by now, been largely eliminated. The *ab'ebibanja* have, in the main, been replaced by *abapangissa* or "plot tenants". Different localities have reached different stages in this same process; and this has contributed to the patchwork pattern of development in Mmengo.

The situation in Kisenyi and in Mulago was described by Southall and Gutkind in 1957[3]. Rentals of Shs. 15 a month for a living-room or Shs. 40 a month for a shop were then common in Kisenyi. Remarking that there are only a few customary tenants left in the Kisenyi area, they go on to point out that: "There is a wide difference between these customary tenants and the plot-holders, who must pay at least fourteen times as much in fees for about a tenth the amount in land. It is no wonder that urban landowners prefer to allot plots rather than customary holdings, and are anxious to get rid of such customary tenants as remain. . . . No landowner would dream of granting a new customary tenancy in Kisenyi today and all those few that remain have been whittled down to a small part of their original size. Most of the problems which arise in relation to these holdings under urban conditions are not covered by the *Busuulu* and *Envujjo* Law"[4]. In Mulago the few remaining customary tenants comprise a fortunate class, "looked upon with considerable envy by the ordinary plot-owners . . ."[5].

Much of the building for residential and commercial purposes has taken place upon land vacated by customary tenants and thereafter developed by the landowner himself. Alternatively, the landlord might lease the vacant land, probably to a non-African, who may erect modern multi-storey buildings. Yet

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[1]This term is not limited only to co-operative groups within the co-operative movement. It also includes companies or partnerships.

[2]Wherein, for example, smallholders living near to a tea factory might enter into an arrangement with the management, whereby they receive advice and other assistance and take their crop to the factory for processing.

[3]*Op. cit.* pp. 31–50, and 113–135.

[4]*Loc. cit.* p. 32.

[5]*Loc. cit.* p. 115.

another method, mentioned above, is for a landowner to come to an arrangement with an existing *busuulu* tenant. The tenant will introduce to the landlord perhaps four or five newcomers, prepared to pay a premium for the right to occupy a small part of the *kibanja*. Each premium of perhaps Shs. 1,000 is shared between the landlord and the *busuulu* tenant. Thereafter, the new tenants pay a rental of perhaps Shs. 120 *per annum* direct to the landlord.

There are several such variations upon the same theme. But each of these manipulations results in a parcel of mailo land passing, largely or entirely, outside the control of the *Busuulu* and *Envujjo* Law.

Summary of the Present Position

The Uganda Relationships Commission, 1961, described the present situation as ". . . an uneasy compromise between customary tenure and absolute freehold . . . . The original grants in mailo and freehold tenure were a bold attempt to set out on the right lines, but they are now entangled again with traditional tribal practices".[1]

It undoubtedly served a useful purpose when first enacted, but the *Busuulu* and *Envujjo* Law has now become an inhibiter of progress. Though Buganda has grown richer and her economy more varied, this law still seeks to gear land tenure to subsistence farming and the social relationships associated with it. It still attempts to apply a single rigid system to the whole of Buganda; a standard rental for land varying greatly in capital value. The law has not, on the whole, been modified to keep abreast of changing circumstances; and it is now proving definitely hostile to the needs of development. Where it ignores economic realities the operation of the law has frequently broken down.

Clearly this law has outlived its usefulness; and the stage has now been reached wherein a more balanced landlord and tenant relationship should permit more economic utilization of land resources. Custom should now give place to contract.

The Objective

The ultimate objective must be to create a situation wherein all mailo land is either owner-occupied or held by a tenant upon a freely-negotiated lease in which the rent is related to the value of the land. This should also lead to the establishment of a wider market in land; and, it is hoped, to the emergence of a larger class of professional farmers out of a mass of semi-subsistence cultivators[2]. Obviously, greater flexibility is required than can be provided by rigid legislation of the present type.

But there must be a long period of transition. Hurried measures would, perhaps, be misunderstood and might prove disastrous. The departure from the present *Busuulu* and *Envujjo* Law and the evolution of a contractual relationship must be gradual, for there are many practical difficulties.

Because of the purchase of the mailo interest by *busuulu* tenants, and because of the "contracting out" by landlords in urban areas, the total area under

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[1] *Op. cit.* pp. 81 and 83.

[2] See *Report of the Agricultural Productivity Committee,* Summary of Conclusions and Recommendations, p. 119.

busuulu tenancies is probably declining[1]. The estimation of the total number of tenancies presents no small difficulty. It has been suggested in Chapter VI that possibly 1,500,000 people live upon mailo land. A sample census has indicated that the average size of a household in Buganda is 3·8 persons[2]. From this it follows that the number of households upon mailo land may be of the order of 400,000. The heads of perhaps 100,000 households are mailo-owners, and perhaps a further 50,000 hold plot tenancies of one sort or another. This leaves some 250,000 family heads as *busuulu* tenants. Many mailo owners are also *busuulu* tenants and many tenants hold more than one *kibanja*. So we may conclude that the total number of *busuulu* tenancies most probably lies somewhere between 250,000 and 300,000.

It cannot be seriously suggested that such a large number of customary tenancies could be converted into contractual leaseholds except over a long period of time. If such leaseholders are to receive the protection provided by registration, then survey will be required and this will be an enormous task in the absence of air-visible boundaries. Furthermore, time will be needed for the Buganda courts to acquire more knowledge and experience of contract law. At present many of them have little or no conception of the duties and powers of contractual parties.

Most authorities are agreed upon the need to change over to a system of contract. But, as the East Africa Royal Commission, 1953/55, has warned ". . . the present statutory relationship cannot be removed merely by repeal of the law and the substitution of contractual tenancies without doing an injustice to the tenants who, today, have permanent rights of occupation . . ."[3]. So the objective must be achieved by evolution rather than by revolution. A process must be found, whereby the legitimate interests of both landlord and tenant are preserved, whilst, at the same time, more economic and efficient use of the land is assured.

Interim Proposals

At the time of writing a Select Committee of the Buganda *Lukiiko* is considering the revision or repeal of the *Busuulu* and *Envujjo* Law, 1927. It is hoped that the preceding information and the following suggestions may be of some assistance to this Committee in its deliberations. These suggestions are:—

(i) Where possible, existing *busuulu* tenants should be encouraged to buy, from the mailo-owner, the land they occupy[4].

(ii) Following the advice of the East Africa Royal Commission[5], and of the "World Bank" Mission[6], it is recommended that the *Busuulu* and *Envujjo*

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[1]Although virgin land is still being cleared for cultivation. However, this does not necessarily mean that the total number of tenancies is declining; for, as indicated above, there is a tendency for landowners to reduce the size of existing *bibanja*.

[2]*Uganda Census 1959—African Population*, pp. 33, 34.

[3]*Op. cit.* p. 359.

[4]Further thought should be given to possible legislative control of this process. For example, the present tenant might be permitted to purchase up to a fixed acreage (which might vary from county to county) at a sub-economic figure. Thereafter, any additional acreage he requires would be on economic terms for purchase or rental.

[5]*Op. cit.* pp. 359–360.

[6]*Op. cit.* p. 188. s. 15.

Law should be made inapplicable to all future settlers on mailo land. Conditions of occupation would depend solely upon contractual arrangements with the mailo-owner, and simple, model leases could be provided for different purposes. Care would have to be taken to ensure that this does not lead merely to larger numbers of harmful seasonal or share-cropping tenancies.

(iii) Existing statutory rights and obligations could also be replaced where both landlord and tenant so desire. But such occurrences are likely to be rare, so long as the tenant remains in his present privileged position. He could expect to gain the advantages of greater security of tenure, greater ease in raising credit and the right to sell the unexpired term. In return, he would be required to pay an economic rental.

(iv) For the reasons already given, the payment of *envujjo* should be abolished altogether.

(v) The payment of *busuulu* should be more closely related to the annual value of the land. This could be accomplished by the introduction of differential rates, kept under constant review. *Busuulu* could be assessed simply as 5 per cent of the capital value of the land[1]. So, at Seeta, where the average value of rural land is at present thought to be about Shs. 350 an acre, and the average area of a *kibanja* is 2·1 acres, an economic *busuulu* would amount to about Shs. 37 *per annum*. Elsewhere, the capital value of the land may be less; but the average area of a tenancy more. In Bugerere, the capital value of the land may be about Shs. 60 an acre, but it is understood that tenancies of ten acres are quite common. This would give an economic *busuulu* of Shs. 30 *per annum*.

But there are at least three major difficulties in this approach. There are the administrative problems of assessing and applying differential rates upon a county or sub-county basis, and of determining areas. There is also the difficulty of deciding the true capital value of mailo land in different localities. The price statistics, published by the Department of Lands and Surveys, are based upon recent sales in each *Ggombolola*. But the purchase price quoted upon a conveyance is not necessarily the true market value of the land. A landowner may sell to a member of his clan more cheaply than to an outsider; or he may enter a lower figure upon the transfer form in order to reduce his liability for stamp duty[2]. What is more, the price figures are frequently based upon too small a number of transactions to give reliable averages.

For practical reasons, therefore, the continued use of a flat rate for *busuulu* throughout Buganda may be unavoidable[3]. But, at the very least, this figure

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[1]5% may seem low, but is reasonable under the circumstances as it is largely net compared with other forms of property investment. In Uganda the Public Lands Ordinance, s. 21 (2) has recently confirmed that 5% is considered, by Government, to be a fair return on landholding.

[2]Because of administrative difficulties it has been found impossible to check the value of all properties being conveyed.

[3]As an alternative idea, a broad zoning scheme could be considered, based on the *ggombolola*. Each zone would carry one of four or five different standard rates for *busuulu*.

should be made immediately more realistic, and thereafter periodically reviewed. The price statistics for the period 1959/61[1] give an average of Shs. 80 an acre for Buganda[2]. If the average size of a *busuulu* tenancy is five acres, this gives an overall economic *busuulu* of Shs. 20 *per annum*. In view of the proposed abolition of *envujjo*, this could be raised to Shs. 25 *per annum* without causing hardship.

It is therefore proposed that this should be done, with the prospect of further increases in the near future. A maximum *busuulu* would be laid down, and it would remain open to the landlord, as at present under s. 20 of the *Busuulu* and *Envujjo* Law, to reduce, or waive the payment altogether, at his discretion. This would become more necessary in the case of elderly tenants, and also in the case of those tenancies which fall upon the land of more than one mailo-owner. It will also be necessary, if settlement in sparsely-populated areas, for example by the Langi people in Buruli county, is not to be discouraged.

(vi) In the interests of more progressive land utilization, more extensive use should be made of the phrase "or for good and sufficient cause" in the *Busuulu* and *Envujjo* Law, s. 11; or, alternatively, the law should be revised so as more clearly to permit the removal of customary tenants to facilitate fuller land development. It is proposed that where a landowner has produced a development plan for his estate and the court is satisfied that he has sufficient capital available, he should be allowed to evict customary tenants on payment of fair compensation approved by the court.

Preferably, it would be a case, not of total eviction, but rather of more rational reallocation of land to customary tenants, so as to provide for their subsistence and, at the same time to clear part of the estate for mechanized farming. On many of the larger estates there is room for both tenancies and plantation development. It is not anticipated that this measure would lead to an immediate, wholesale eviction of tenants. At present only a few landowners have sufficient capital available to develop their own land; and, in any event, eviction would be possible only by order of the court. The compensation payable to the tenant should, where the court thinks fit, include an element for disturbance.

(vii) Finally, every effort should be made to demonstrate the advantages of a departure from subsistence agriculture. The organization and management of group farming schemes, farming co-operatives or outgrowers' schemes must be left to the experts and lie beyond the scope of this work. It suffices to say that, together, they present an important means for increasing productivity in Buganda and for escaping from the present impasse. In some cases the landlord might take his tenants into partnership. He would supply the land, capital machinery and management; and they the labour. Very likely the tenants could earn more in this way than by cultivating their own smallholdings. In other cases, where the cost of initial development and compensation for customary tenants is very high, the landowner may become

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[1]Which, for the reasons stated above, present probably too low a figure.
[2]*See* Appendix B.

a partner in a development company. Or, again, in the establishment of an outgrowers' scheme, the selection of outgrowers from amongst the customary tenants might, for example, be made conditional upon their acceptance of a contractual rent.

Several such methods are being explored at the present time.

An Alternative Approach to the Problem

Another possible solution to the problem posed by customary tenancies is based upon experience gained in India and Ceylon[1].

This view accepts that, after the passing of new legislation, no new *bibanja* would be created. Instead, any new settler upon mailo land would have to come to a contractual arrangement with the mailo-owner and obtain a registered leasehold title.

The treatment of the existing customary tenancies would, however, be fundamentally different. It is proposed that, for these, a new form of statutory tenure should be created. This would enable the present *busuulu* tenants to obtain registered titles to their land; so that their *bibanja* might be more freely bought and sold or used as security for loans; and no premium would be payable to the mailo-owner.

According to this proposal, any infringement of the new law defining this form of tenure could not result in the reversion of the land to the mailo-owner; but rather to the land being sold by court order in the open market, and the balance of the proceeds of sale would go to the outgoing tenant.

The dues at present payable to the mailo-owner would be consolidated into a form of quit-rent; which, after one initial revision, would thereafter be allowed to remain static so that it would, in the course of time, become purely nominal.

Clearly, these proposals are greatly to the advantage of the present *busuulu* tenants and are based upon the view that it is they, rather than the mailo landlords, who have the better right to ownership of the land they occupy; the present law notwithstanding.

Several aspects of such a radical proposal would have to be considered more fully. It would go some way towards one solution of the problem of official estates; but it would tend to perpetuate the present pattern of land occupancy and use and would make the implementation of development schemes much more expensive and difficult. Some interim form of *kibanja* title certificate would be essential, as the rapid implementation of such a scheme would, in the absence of air-visible boundaries, be bound to fail through the imposition of far too great a strain upon the survey and registration facilities.

There are several other difficulties, too, and the proposal is not likely to meet with much support from members of the *Lukiiko,* most of whom are mailo-owners.

But all suggestions should be considered with an open mind, in a sincere attempt to find the solution which would best serve the interests of Buganda.

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[1]And has been put forward principally by C. M. F. Bruce, Director of Economic Planning and Development, and W. Jayawardena, Attorney-General in the Buganda Government.

CHAPTER VIII

PLANNING IN RURAL AREAS

THE PRECEDING CHAPTERS have dealt with the historical background, and with the development of the Mailo System since its origin in Johnston's land settlement of 1900. An attempt has been made to compile a critical appreciation of the situation now reached; and in particular, of the part that can and should be played by Registration of Title.

It is evident that, although much has been achieved, there are several serious weaknesses in the present position. Suggestions have been put forward upon ways of dealing with them. Present trends, which militate against good land use, include indifference and neglect by landowners, over-cropping by tenants, wasteful and ill-considered subdivision, and incipient fragmentation. Because, as yet, there is no serious land shortage in Buganda, these evils have not reached an acute stage; and so have not yet forced themselves upon the attention of the general public. Nevertheless, unhealthy signs are easily discernible.

So now is the time to act. Now is the time to recognize the symptoms and to start to apply the remedy. From their very nature, neglected land problems become progressively more difficult of solution. Experience in other countries has shown that, once the acute stage has been reached, the theoretical solution may prove to be a practical impossibility. But, provided the danger is appreciated now, and a greater effort made to conserve Buganda's land resources, any really catastrophic results may be averted.

Much has already been done by the Uganda Ministry of Agriculture and Co-operatives, working in conjunction with the Buganda Ministry of Natural Resources; yet these efforts, in the main, are directed towards the improvement of farming methods and of marketing facilities; all of which are of fundamental importance, but lie outside the scope of this work. Less attention has been paid to what might be called the more intangible aspects. No substantial attack has yet been made upon the problems arising from land tenure.

Could land use planning in rural areas assist in correcting unsatisfactory trends in land ownership and occupancy? Yes, in the long run it probably could.

Any rural area may, under s. 6 (3) of the Town and Country Planning Ordinance, 1951[1], be declared a planning area. The legislators doubtlessly did not contemplate the extension of planning to an area so wide as that covered

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[1]As amended by Ordinance 15 of 1956. Rural but peri-urban areas already declared to be planning areas under this section, are Bugembe, outside Jinja in Busoga District, and Kamakuzi around the township of Mbarara in Ankole; both outside Buganda. The revision of the whole Ordinance is now under consideration.

by mailo tenure. Nor, for many practical reasons, does such extension seem likely within the foreseeable future; although selected areas of dense settlement should come progressively under planning control[1]. In the meantime much damage may be done.

But certain, separate, measures of a planning nature are immediately practicable and should be put into effect. Together they fall far short of a comprehensive scheme, but they could constitute a step in the right direction and offset some of the more obvious malpractices.

The Prevention of Excessive Subdivision or Fragmentation

In rural areas, subdivision has, so far, proceeded without restraint. Landowners and Heads of Clans have been left entirely free to break up the initial mailo estates as they have thought fit. Much of this subdivision has been both necessary and beneficial; but, as we have seen, sooner or later a stage must be reached beyond which the process should not be allowed to continue unchecked. This is particularly true of agricultural land.

At Seeta, subdivision has increased the number of mailo plots from 2 to 165 in less than fifty years; so that the average agricultural holding is now only 2·3 acres. How long should this be allowed to continue? Signs of harmful fragmentation are already appearing. What will be the situation in another generation's time?

Fortunately, the means are at hand whereby the position may be at least partially regulated. All mailo land appears upon the Titles Register; and a more effective form of compulsion has already been recommended in Chapter VI. Here is an opportunity to make more constructive use of the Register; to realize more of its potential value; to benefit from the heavy investment over the last fifty years.

The Register alone makes possible the effective statutory control of subdivision. It is necessary, first, to decide upon the minimum economic acreages required, in each locality, for different purposes; particularly for cultivation or ranching and for residential and commercial uses. This could only be done by consultation with agricultural, veterinary and physical planning officers; and, in many localities, it would probably be necessary first to analyse the ownership and occupancy position in a small area after the fashion of the scheme carried out at Seeta. The next step would be for the Legislature to grant powers to the appropriate Minister to specify such minimum acreages, upon a county or sub-county basis, by notice in the Gazette; and for the Registrar of Titles to refuse registration in respect of any subdivision smaller than the prescribed minimum for that purpose. There are many difficulties and the scheme should be implemented with caution, and only after experience has been gained in pilot areas. Moreover, there must be discretionary powers to judge each case upon its merits; as an application for survey of a plot of sub-economic area might,

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[1]It should be noted that Mmengo Municipality (formerly known as the Kibuga) which lies largely upon official or private mailo land, is already subject to the Buganda Town Planning and Building Law, 1958, *see* Laws of Uganda, Vol. 1958 (2) p. 277. L.N. 136/58. A "minimum area" policy has been adopted here, but it is understood that this has not, so far, met with much success.

for example, prove to be an attempt by the landowner to bridge a gap between two plots he already owns.

The whole idea is by no means new. It is already extensively practised in other countries. For example, Spain, in addition to 1954 legislation upon minimum units of cultivation, now has a Family Farms Act, 1962. Under this Act, rural estates of an area less than twice the prescribed minimum for family farms, shall constitute agricultural units which are absolutely indivisible for all legal purposes[1].

The extension of this principle to Uganda has already been advocated by several authorities. Thus, the East Africa Royal Commission recommended: "There should be a prohibition on the registration of subdivisions of land below a certain size".[2]

But let us not expect too much of this process. It would undoubtedly help, and for this reason should be adopted; but it is unlikely to provide a complete solution to the problem. It is the position, not on the Register, but on the ground that matters. To quote the Arusha Conference Report; ". . . if public opinion is not sufficiently convinced that harmful fragmentation and subdivision must be prevented, these may continue clandestinely and the register may come no longer to represent the true facts of the situation".[3] Clearly, the public must be fully informed of the reasons for these restrictions; and inspection on the ground will be required in densely settled areas.

The whole proposition carries with it an important corollary. The restriction of physical subdivision is likely, in due course, to lead to an increase in the number of co-owners. These will probably be tenants-in-common, rather than joint tenants. The proliferation of tenants-in-common, each with an absurdly minute share in the land, could ultimately produce a situation as unsatisfactory as excessive fragmentation itself. Should it become apparent, from the Register, that this situation is developing, then it would be necessary to limit, by legislation, the number of co-owners allowed to appear on the Register. In many cases it would probably be best to establish a trust, the trustees being the registered co-owners; the remaining co-owners being unregistered and merely beneficiaries under the trust. The latter would share in the rents and profits but not in the occupancy and use of the land itself.

Closer Correlation of Subdivision with Good Land Use in Rural Areas

At present, except in planning areas, a surveyor must survey according to the wishes of the landowner. He has no powers to do otherwise; even though it may be apparent to him that his survey is impairing the usefulness of the land. To recapitulate a little, subdivision can frequently be described only as indiscriminate, bearing little relation to actual or potential land use. A "paper acre" claim can sometimes be satisfied only by the survey of an extra splinter of land, possibly some distance away from the main plot, in order to make up

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[1]*See* F.A.O. Publication *Food and Agricultural Legislation,* Vol. III, No. 4 and Vol. XI, No. 3.

[2]*Op. cit.* pp. 356 and 429, s. 22.

[3]*Op. cit.* p. 14.

the specified acreage. A purchaser from a large landowner may refuse to take a section of the latter's boundary swamp; so that a narrow strip of land must be left between the subdivisional boundary and the outer boundary of the estate. The potential value of this land, possibly for sugar-cane, may thus be impaired by severance from the main body of the estate. Irregular boundaries and awkwardly-shaped plots, with many acute angles, tend to make future mechanization more improbable; and so limit land use to traditional subsistence agriculture. Considerations such as water supply, or access to existing roads, or the presence of customary tenants[1], seem to be frequently ignored; and thus piecemeal and haphazard subdivision proceeds. Costly reorganization will be necessary before the full productivity of the land can ever be realized.

Ideally, where subdivision has not already gone too far, the landowners should be required to produce a simple development plan for their estates. A few are already doing this; and it would serve to bring home to the remainder something of the responsibilities of land ownership. A landowner would be required to submit an application, accompanied by a sketch plan of any proposed subdivision, to an approving authority, say a local committee at *Ggombolola* level. No survey would be undertaken without the production of an approved development plan; and the Registrar of Titles would register, in the usual way, only on completion of survey.

This is a thought for the future. Yet consideration should be given, immediately, to the establishment of some interim measure of control over subdivision; so that this might be correlated more closely with land use. It is suggested that powers might be granted under s. 35 (*k*) of the Survey Ordinance, 1939[2], whereby the Commissioner of Lands and Surveys could, as a general policy, require the rationalization of subdivisional boundaries; and whereby he could, in certain specified areas, refuse a request for survey if it was contrary to good land utilization. In this way, each subdivision would be tested to determine whether it tended towards or against the most beneficial development of the land. Provision would have to be made for arbitration in the case of dispute.

Further Considerations

Arguments have already been put forward in support of enclosure, as a step towards better husbandry and as the most feasible solution to the problem of survey. But enclosure would tend to crystallize and perpetuate the existing settlement pattern; and, before this occurs, rudimentary planning might in some cases be carried out with advantage. Where customary tenants are being regrouped so as to free land for plantation agriculture, the opportunity might be taken to put down a simple village layout; and incentives might then be provided in the form of a borehole for water supply, or, possibly, electricity. In like manner, some rationalization and simple planning might be advisable prior to the grant of a formal lease to a former customary tenant.

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[1]Occasionally, subdivision of the mailo interest over a customary tenancy may be done deliberately, in order to inconvenience and force out the unwanted tenant.

[2]As amended by Ordinances 18 of 1955 and 4 of 1962.

Also, the existing Buganda Land Tax Law, 1939[1], might be modified in the interests of more efficient land use. The fundamental purpose of any such law must remain the collection of revenue; but with careful manipulation, useful secondary objectives may also be achieved. The law might be redesigned so as to penalize malpractices and to encourage more desirable trends in land use. A tax designed to fall more heavily upon Proprietors of Unascertained Portions could be of great assistance to the Titles Registry.

These are miscellaneous ideas upon methods that might be adopted to encourage better land use in rural areas prior to the establishment of formal planning.

The progressive application of attention, by the Buganda Planning Board, to more areas in Buganda is recommended, as and when conditions permit. Consideration is already being given to the extension of planning control over a wider area around Masaka; and, in due course, it will be necessary to apply similar treatment to the other towns.

In view of the expected increase in the population of Uganda's capital city, it would appear that there is already a case for the regional planning of a wider area around Kampala and Mmengo[2]. As a necessary preliminary to such regional planning, Land Use Maps should be prepared; preferably by interpretation from aerial photography. These maps should be upon as large a scale as possible, say 1:25,000 for the whole area, with selected localities at 1:10,000. There is a general need for more research of this nature within an area around Kampala, and wide enough to cover both Entebbe and Jinja.

A Word of Warning

The objects of such planning, and, indeed, of all the other suggestions put forward in this work, are the more efficient use of land in Buganda and its safeguarding for the future. Land is the greatest of Buganda's material assets; and no people can afford to dissipate the source of its livelihood and prosperity. Each and everyone concerned with the use of land must learn to adopt a really responsible attitude towards it; otherwise, Buganda might fall an easy victim to evils that have developed amongst agrarian communities elsewhere.

At present there is a tendency to defend all practices, both good and bad, on the grounds of custom. It is the custom not to plant hedges; it is the custom to divide up land amongst all the children of a deceased proprietor; it is also the custom to crush in more and more tenants in order to increase the immediate profits from the land. But there is nothing necessarily sacrosanct about custom. It would be wise to re-examine certain customs before they do irreparable damage. In commenting that the greatest impediment to progress towards a modern land tenure policy is suspicion, the Uganda Relationships Commission

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[1]Native Laws of Buganda, 1957, p. 210.

[2]The population of Greater Kampala (which may be loosely defined as including the urbanized or semi-urbanized areas around the city of Kampala, principally Mmengo Municipality and Nakawa and Kawempe Townships), is at present approximately 200,000 people; and it is expected to exceed 750,000 within the next twenty-five years. These figures are based, by the author, upon data kindly supplied by Dr. A. H. Scaff of the United Nations' Urban Planning Mission at present engaged upon a study of development problems in Mmengo Municipality.

warned that, ". . . it is often difficult for the population to realize the paralysing effect of their accustomed ways . . . There is too little awareness of the need for reform. . . ."[1].

But, it may be argued, there are still vast expanses of spare land waiting to be occupied; although these are naturally in areas remote from present centres of population and are frequently of low fertility or infested by the *tsetse* fly[2]. In areas already settled there is some scope for the greater intensification of farming methods. In that case, is there any real need for concern? Are not these warnings grossly exaggerated?

Perhaps they are, but let the complacent and the apathetic ponder upon this fact. The population censuses carried out in 1948 and 1959 indicated that, between those dates, the population of Buganda increased at the rate of nearly 3·2 per cent *per annum*[3]. If this rate of increase is maintained, then the 1959 population of Buganda will be doubled in some seventeen years from now.

If reforms are not instituted shortly, what will the situation be like then?

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[1]*Op. cit.* p. 83.

[2]Since World War II there has been considerable expenditure upon Land Settlement Schemes in various parts of Uganda. In general these schemes have had the dual purpose of relieving population pressure and also of providing barriers to the spread of the *tsetse* fly, but many problems have been encountered and only partial success achieved. Official re-settlement schemes of this nature are frequently unpopular and always expensive.

[3]*Uganda Census, 1959, African Population.* p. 35. *See* also Appendix B, item 9.

APPENDICES

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APPENDICES

APPENDIX A

AGREEMENTS, LAWS AND ORDINANCES:

1. Agreements.
2. Laws and Ordinances; dealing directly with Mailo Land.
3. Other relevant legislation.

APPENDIX B

ABSTRACT OF STATISTICS:

1. The Mailo Settlement.
2. The Mailo Settlement: Initial Allocations.
3. The Mailo Settlement: Official Mailo Estates.
4. The Mailo Titles Register: Number of Titles Registered.
5. The Mailo Titles Register: Recent Costs, Revenue and Expenditure.
6. Buganda: Population Density and Price of Mailo Land.
7. General Information: Buganda—Areas.
8. General Information: Buganda—Land Utilization.
9. General Information: Buganda—Increase of Population by District.
10. General Information: Buganda—Population by Tribe and Sex.
11. General Information: Buganda—Main Tribes by District.
12. General Information: Buganda—Acreages of Main Crops, 1962—African Growers.

APPENDIX C

SELECTED BIBLIOGRAPHY UPON THE MAILO SYSTEM:

1–23. Official Statements and Investigations.

24–38. Special Studies and Monographs.

39–69. General Literature.

CHAPTER IX

SUMMARY OF MAIN CONCLUSIONS AND RECOMMENDATIONS

1. The efficient development and proper use of land depend as much upon the evolution of a sound system of land tenure as upon the adoption of improved agricultural practices. (*Preface; p. v*).

2. The Mailo Register has been a pioneer in Land Registration in East Africa; and from its merits and failings many useful lessons may be learned. (*Preface; p. vii*).

3. There has never been any comprehensive programme of research into land tenure in Uganda. (*Preface; p. vii*).

4. Officers responsible for survey and registration are in daily contact with the land and landowners; and should be encouraged to take as wide an interest as possible in the problems of land tenure. (*Preface; p. viii*).

5. The success of Registration of Title in Uganda, as elsewhere in East Africa, depends ultimately upon the provision of "air visible" boundaries. (*Preface; p. viii: Chapter III; p. 48*).

6. No system of land tenure can be efficiently managed, to the public advantage, without the full support and co-operation of the community. (*Preface; p. ix*).

7. It has long been evident that, at the time of the land settlement of 1900, the status of the traditional "landowners" was misunderstood. But it also seems unlikely that the old, customary systems of tenure could have later adapted themselves spontaneously to rapidly changing economic conditions. (*Chapter I; p. 7*).

8. It may be said that, with the enactment of the *Busuulu* and *Envujjo* Law in 1927, the initial, formative period in mailo tenure came to an end. Since that date a number of anachronisms have developed. (*Chapter II; p. 22: (Chapter IV; p. 75*).

9. The extension of the settlement survey into the remoter parts of Buganda led to the application of Registration of Title to areas where it is still not warranted. Registration of Documents could probably have continued to serve a useful purpose in such areas. (*Chapter III; pp. 23–25*).

10. The inadequacy of survey facilities was the primary cause of the malpractices which arose; particularly the dealings in "paper acres" evidenced by unregistrable agreements, and the misuse of the caveat. The situation was

aggravated by unsuitable titles legislation, and by failure to decentralize the Register. (*Chapter III; pp. 26–28*).

11. Many later difficulties in Land Registration would have been avoided had not World War II prevented the implementation of most of the recommendations of the Sheppard Report, 1938. (*Chapter III; pp. 37–38*).

12. The encouraging results achieved, due to Mitchell's reforms, especially during the years 1957–1959, indicate a wide measure of confidence in the Titles Register amongst the landholding community; and show what can be accomplished with public support. (*Chapter III; pp. 43–45*).

13. So far as Land Registration is concerned, now that staff has been built up to a size more commensurate with the magnitude of the task, and the register conversion is nearing completion, the Mailo Register is in a better position to provide a valuable service to Buganda. (*Chapter III; p. 49*).

14. Most of the shortcomings in the present system of land tenure can be attributed to Johnston's hasty land settlement of 1900. Nevertheless, from the political and economic standpoints, the people of Buganda have derived great benefits from this settlement. (*Chapter IV; pp. 58–60*).

15. With Buganda "mailo" experience in mind, the whole question of whether freehold or leasehold titles should, in the future, be granted, demands the urgent attention of the Kingdom and District Land Boards. (*Chapter IV; p. 65*).

16. Where individual rights in land have come to be recognized in Africa, and hence a market in land has developed, some form of Registration of Title becomes a necessity where population densities and land values are relatively high. (*Chapter IV; p. 65*).

17. When the present Titles Register is under criticism, the right perspective may frequently be restored by reflection upon what would have happened had there been no Titles Register at all. (*Chapter IV; p. 70*).

18. The adoption of a Torrens system of Registration of Title was, it would seem, justifiable; but, under the circumstances, the guarantee offered was too wide; and the Ordinance was not sufficiently adapted to conditions in Uganda. (*Chapter IV; p. 71*).

19. As one of the very first systems of Registration of Title to African lands it is evident that the Mailo Register has not yet been given the chance to demonstrate its full usefulness. (*Chapter IV; p. 75*).

20. The holding of Official Mailo Estates is now an anachronism; but this should not be permitted to distract attention from more fundamental problems in the present system of tenure. (*Chapter IV; p. 77*).

21. Land tenure should be regarded as a subject for active administration, and the form of any tenure should be kept under constant review. There should, therefore, be a research section and some form of Advisory Co-ordinating Committee. (*Chapter IV; p. 77*).

22. So far as Land Registration is concerned, it is better to have continuous research rather than periodic enquiries. (*Chapter IV; p. 78*).

23. The present procedure for the inheritance of land in Buganda must act as a handicap upon all aspects of land ownership and administration, and hence is a continual brake upon the country's progress. It is too slow and too expensive; it is unsatisfactory under modern social conditions; and it frequently leads to ill-advised subdivision of the land. Moreover, no system of Land Registration could function efficiently under the burden imposed by it. (*Chapter V; pp. 87–92*).

24. The Buganda Wills Law, 1916, should be replaced by more comprehensive legislation, clarifying and securing the landowners' powers of testamentary disposition, and providing for effective supervision by the courts. (*Chapter V; p. 94*).

25. An Administrator of Estates should be appointed by the Buganda Government. His primary duty would be to supervise and co-ordinate the work of the clan authorities upon intestacy. (*Chapter V; pp. 94–97*).

26. The hierarchy in each clan might be reorganized upon a county basis; and otherwise modified in order that it could the better fulfil its function in succession matters. (*Chapter V; pp. 97–98*).

27. A Settlement of Title procedure should be introduced in order to bring the Mailo Register up to date. (*Chapter VI; pp. 101–104*).

28. The Registration of Titles Ordinance, 1922, should be replaced. The new Act should aim at greater simplicity, and a more effective degree of compulsion; but should offer a more limited form of guarantee. (*Chapter VI; pp. 104–106*).

29. Upon some mailo estates (such as Seeta) the process of subdivision has now reached an advanced stage. There is also incipient fragmentation, though this does not yet constitute a serious threat to productivity. But the situation must be watched. (*Chapter VII; pp. 111–112*).

30. The Mailo Titles Register has (in respect of estates such as Seeta) introduced and maintained more than a semblance of order where the proprietorship situation would otherwise be extremely confused. (*Chapter VII; p. 113*).

31. The Buganda *Busuulu* and *Envujjo* Law, 1927, was largely successful in the purpose for which it was originally designed; but it is now inhibiting progress and the stage has been reached wherein a balanced landlord-tenant relationship should permit more economic utilization of land resources. (*Chapter VII; p. 126*).

32. The ultimate objective should be to create a situation wherein all mailo land is either owner-occupied, or held by a tenant on a freely negotiated lease in which the rental is related to the value of the land. (*Chapter VII; p. 126*).

33. The changeover from custom to contract must inevitably take years. Suggested interim measures include the non-application of the *Busuulu* and *Envujjo* Law to future settlers upon mailo land; the abolition of *envujjo* altogether; and the closer relation of the *busuulu* rate to the annual value of the land occupied. (*Chapter VII; pp. 127–130*).

34. There are several serious weaknesses in the present system of tenure. These have not yet reached an acute stage, but, nevertheless, now is the time to act. Neglected land problems become more difficult of solution, until the theoretical remedy may prove to be a practical impossibility. (*Chapter VIII; p. 131*).

35. Pending the application of more formal planning to rural areas, certain measures of a planning nature should be introduced now. These should be designed, in particular, to prevent excessive subdivision or fragmentation of holdings, and to achieve a closer degree of correlation between subdivision and good land use. (*Chapter VIII; pp. 132–134*).

36. There is nothing necessarily sacrosanct about custom. Customary practices relating to land must be re-examined, and, where necessary, revised before they can do irreparable harm. (*Chapter IX; p. 135*).

37. All these conclusions and recommendations should be viewed in the light of the fact that the 1959 population of Buganda is likely to be doubled by 1981. (*Capter VIII; p. 136*).

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AGREEMENTS, LAWS AND ORDINANCES

1. Agreements

Title, Date, Reference	Purpose, Abstracts, Comments
Uganda Agreement, Mengo, 10th March, 1900. (Laws of Uganda, 1951, Vol. VI, p. 12)	Signatories:—Sir H. H. Johnston and the Regents and five chiefs on behalf of the Kabaka, Chiefs and People of Uganda (now known as Buganda; G.N. of 1st July, 1908). Articles 15–18 set out the Land Settlement from which the present Mailo System has sprung. Article 15: The land of the Kingdom of Uganda shall be dealt with in the following manner— Assuming the area of the Kingdom of Uganda, as comprised within the limits cited in this agreement, to amount to 19,600 square miles, it shall be divided in the following proportions:

	Sq. miles	
Forests to be brought under control of the Uganda Administration		1,500
Waste and uncultivated land to be vested in Her Majesty's Government, and to be controlled by the Uganda Administration		9,000
Plantations and other private property of His Highness the Kabaka of Uganda ..		350
Plantations and other private property of the Namasole		16
(*Note.*—If the present Kabaka died and another Namasole were appointed, the existing one would be permitted to retain as her personal property 6 square miles, passing on 10 square miles as the endowment of every succeeding Namasole).		
Plantations and other private property of the Namasole, mother of Mwanga ..		10
To the Princes—Joseph, Augustine, Ramazan, and Yusufu-Suna, 8 sq. miles each ..		32
For the Princesses, sisters, and relations of the Kabaka		90
To the *Abamasaza* (chiefs of counties) twenty in all, 8 sq. miles each (private property)	160	
Official estates attached to the posts of the *Abamasaza*, 8 sq. miles each	160	
		320
The three Regents will receive private property to the extent of 16 sq. miles each ..	48	
And official property attached to their office, 16 sq. miles each, the said official property to be afterwards attached to the posts of the three native ministers ..	48	
		96
Mbogo (the Muhammedan chief) will receive for himself and his adherents ..		24
Kamswaga, Chief of Koki, will receive		20
One thousand chiefs and private landowners will receive the estates of which they are already in possession, and which are computed at an average of 8 sq. miles per individual, making a total of		8,000
There will be allotted to the three missionary societies in existence in Uganda as private property, and in trust for the native churches, as much as		92
Land taken up by the Government for Government stations prior to the present settlement (at Kampala, Entebbe, Masaka, etc.)		50
Total ..		19,600

Title, Date, Reference	Purpose, Abstracts, Comments
UGANDA AGREEMENT, Mengo, 10th March, 1900—*continued.*	After a careful survey of the Kingdom of Uganda has been made, if the total area should be found to be less than 19,600, then that portion of the country which is to be vested in Her Majesty's Government shall be reduced in extent by the deficiency found to exist in the estimated area.* Should, however, the area of Uganda be established at more than 19,600 square miles, then the surplus shall be dealt with as follows:— It shall be divided into two parts, one-half shall be added to the amount of land which is vested in Her Majesty's Government, and the other half will be divided proportionately among the properties of the Kabaka, the three Regents or native ministers, and the *Abamasaza* or chiefs of counties. The aforesaid 9,000 square miles of waste or cultivated, or uncultivated land, or land occupied without prior gift of the Kabaka or chiefs by *bakopi* or strangers, are hereby vested in Her Majesty the Queen of Great Britain and Ireland, Empress of India, and Protectress of Uganda, on the understanding that the revenue derived from such lands shall form part of the general revenue of the Uganda Protectorate. The forests, which will be reserved for Government control, will be as a rule, those forests over which no private claim can be raised justifiably, and will be forests, of some continuity, which should be maintained as woodland in the general interests of the country. As regards the allotment of the 8,000 square miles among the 1,000 private landowners, this will be a matter to be left to the decision of the *Lukiiko*, with an appeal to the Kabaka. The *Lukiiko* will be empowered to decide as to the validity of claims, the number of claimants and the extent of land granted, premising that the total amount of land thus allotted amongst the chiefs and accorded to native landowners of the country is not to exceed 8,000 square miles. Europeans and non-natives, who have acquired estates, and whose claims thereto have been admitted by the Uganda Administration, will receive title-deeds for such estates in such manner and with such limitations, as may be formulated by Her Majesty's representative. The official estates granted to the Regents, native ministers, or chiefs of counties, are to pass with the office, and their use is only to be enjoyed by the holders of the office. Her Majesty's Government, however, reserves to itself the right to carry through or construct roads, railways, canals, telegraphs, or other useful public works, or to build military forts or works of defence on any property, public or private, with the condition that not more than 10 per centum of the property in question shall be taken up for these purposes without compensation, and that compensation shall be given for the disturbance of growing crops or of buildings. ARTICLE 16: Until Her Majesty's Government has seen fit to devise and promulgate forestry regulations, it is not possible in this Agreement to define such forest rights as may be given to the natives of Uganda;

* The total area (excluding open water) of Buganda was, at the completion of the original Mailo Survey in 1936, placed at 17,310 square miles, and since the deficit falls on the British Government's share, this share may be estimated to comprise some 8,307 square miles. Thomas and Scott, *op cit.* p. 63.

op cit. p. 63.

Government's share, this share may be estimated to comprise some 8,307 square miles. Thomas and Scott,

1. AGREEMENTS—*continued*

Title, Date, Reference	Purpose, Abstracts, Comments
UGANDA AGREEMENT, Mengo, 10th March, 1900—*continued.*	but it is agreed on behalf of Her Majesty's Government, that in arranging these forestry regulations, the claims of the Baganda people to obtain timber for building purposes, firewood, and other products of the forests or uncultivated lands, shall be taken into account, and arrangements made by which under due safeguards against abuse these rights may be exercised gratis. ARTICLE 17: As regards mineral rights. The rights to all minerals found on private estates shall be considered to belong only to the owners of those estates, subject to a 10 per centum *ad valorem* duty, which will be paid to the Uganda Administration when the minerals are worked. On the land outside private estates, the mineral rights shall belong to the Uganda Administration, which, however, in return for using or disposing of the same must compensate the occupier of the soil for the disturbance of growing crops or buildings, and will be held liable to allot to him from out of the spare lands in the Protectorate an equal area of soil to that from which he has been removed. On these waste and uncultivated lands of the Protectorate, the minerals rights shall be vested in Her Majesty's Government as represented by the Uganda Administration. In like manner the ownership of the forests, which are not included within the limits of private properties, shall be henceforth vested in Her Majesty's Government. ARTICLE 18: In return for the cession to Her Majesty's Government of the right of control over 10,550 square miles of waste, cultivated, uncultivated, or forest lands, there shall be paid by Her Majesty's Government in trust for the Kabaka (upon his attaining his majority) a sum of £500, and to the three Regents collectively, £600, namely, to the *Katikkiro* £300, and the other two Regents £150 each. NOTE.—This Agreement was revoked by the Buganda Agreement, 1961, Article 1 (2).
TWO FURTHER MEMORANDA RELATING TO THE UGANDA AGREEMENT, 1900. (LAWS OF UGANDA, 1951, VOL. VI, pp. 26–28)	(i) *Note on Land Settlement—13th October, 1900—* When the Special Commissioner (Sir H. H. Johnston) allotted 8,000 square miles out of the land in Uganda to be divided amongst private landholders, it was found in the final distribution that when each person had received full satisfaction of his claim there still remained over a certain area of land undistributed. Out of this area 1,000 square miles was therefore allocated in accordance with a list dated 25th July, 1900, this list having received the Commissioner's approval. It may be summarized as follows:— *Sq. miles* To the Kabaka, Katikkiro, and other chiefs, etc. .. .. 198 To the Ssaza Chiefs .. .. 189 To the Sub-Chiefs .. .. 613 TOTAL .. 1,000 It was then reported that this left 200 sq. miles yet to be distributed.

1. AGREEMENTS—*continued*

Title, Date, Reference	Purpose, Abstracts, Comments
MEMORANDA RELATING TO THE UGANDA AGREEMENT, 1900—*continued.*	(ii) *Memorandum—13th February, 1900 (i.e. just prior to the main Agreement)*— Sir H. H. Johnston agreed that, provided the main Agreement (then being translated) was signed, he would allot the following areas of land in further compensation to the following:— Apolo Kaggwa (Regent) .. .. .. *Sq. miles* 20 Stanislas Mugwanya (Regent) .. .. 15 Zakaria Kisingiri (Kangao, Regent) .. .. 10 TOTAL ... 45
THE UGANDA MEMORANDUM OF AGREEMENT (FOREST), 25th October, 1907. (LAWS OF UGANDA, 1961, VOL. VI, p. 31)	This Agreement defined the extent to which areas of forest could be included in native (mailo) estates. In general, patches of forest of more than half a square mile in extent were not to be included in native estates but were vested absolutely in the Government as Government Forest land. NOTE.—This Memorandum of Agreement was revoked by the Buganda Agreement, 1961, Article 1 (2).
THE BUGANDA AGREEMENT (ALLOTMENT AND SURVEY), 24th April 1913. (LAWS OF UGANDA, 1951, VOL. VI, p. 41)	Intended to clear up certain doubts as to meaning and intention of 1900 Agreement. The principal Agreement had set out no procedure for the allotment of land to the Kabaka, Namasole, etc., but the *Lukiiko* had in fact made such allotments. These allotments were confirmed and a procedure set out whereby the *Lukiiko* should make further allotments in the same way as allotments were being made to the chiefs and private landowners. It had frequently been found on survey that the parcel of land provisionally marked out by a claimant to satisfy his claim under a Provisional Certificate was either greater or less than the area specified in such Provisional Certificate. The procedure to be followed in such cases is therefore set out and such terms as " Surplus Estate ", " Deficient Estate " and " Lapsed Allotment " are defined. Certificates of Right to be negotiable amongst natives of Buganda (Article 9). NOTE.—This Agreement was revoked by the Buganda Agreement, 1961, Article 1 (2).
THE UGANDA AGREEMENT (CLAN CASES), 13th June, 1924. (LAWS OF UGANDA, 1951, VOL. VI, p. 54)	Disputes relating to the headship, membership or " other matters affecting clans " are not to be justiciable by the courts. In such cases the decision of the Kabaka shall be final. NOTE.—This Agreement ceased to have effect by virtue of the Uganda Independence Act, 1962, section 1 (3) but *see* Buganda Clan Cases Declaratory Law, 1962.
THE BUGANDA AGREEMENT, 18th October, 1955. (LAWS OF UGANDA, VOL. 1955, p. 383)	Article 9 provided for the payment by the Protectorate Government to the Kabaka's Government of revenue (rentals, mining royalties, etc.) accruing from Crown land in Buganda; and for discussions to take place upon the status of this Crown land. NOTE.—This Agreement was revoked by the Buganda Agreement, 1961, Article 1 (2).

NOTE.—This Agreement was revoked by the Buganda Agreement, 1961, Article 1 (2).

1. AGREEMENTS—*continued*

Title, Date, Reference	Purpose, Abstracts, Comments
THE BUGANDA AGREEMENT, 31st October, 1961. (LAWS OF UGANDA, VOL. 1961, p. 427)	Article 1 (2) revokes the following:— Buganda Agreement, 1900; Uganda Memorandum of Agreement (Forest), 1907; Buganda Agreement (Allotment and Survey), 1913; Buganda Agreement, 1955. Provided that the said revocation shall not affect any title to mailo land. Article 7 (1) (*a*) provides that the Legislature of Uganda shall have executive power to make laws with respect, *inter alia*, to land registration. (*b*) provides that the Legislature of Buganda shall have exclusive power to make laws with respect, *inter alia*, to traditional and customary matters relating to Buganda alone. Article 13 (1) relates to the compulsory acquisition of land in Buganda. Articles 19, 20 and 21 deal with Crown land in Buganda, Government Forests and Mineral rights. NOTE.—By virtue of the Uganda Independence Act, 1962, section 1 (3) this Agreement ceased to have effect as from 9th October, 1962. But *see* Uganda (Independence) Order in Council, 1962, section 23 and Schedule 7 to the Constitution of Uganda.

2. LAWS AND ORDINANCES. Dealing directly with Mailo Land (i.e. Buganda Government Laws and Uganda Government Ordinances together in chronological order)

(L.N.=Legal Notice. G.N.=General Notice).

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
—	LAND ACQUISITION ACT, 17th August, 1899. (LAWS OF UGANDA, 1951, VOL. III, p. 1587)	This is the Indian Land Acquisition Act, 1894, applied to Uganda by order of the Secretary of State dated 17th August, 1899. This Act regulates the acquisition of land needed for public purposes and sets out rules to be followed in determining the amount of compensation to be paid on account of such acquisition. Very seldom used.	

2. Laws and Ordinances—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
Cap. 191 ..	Fees and Royalties Ordinance, 1st January, 1903. (Laws of Uganda, 1951, Vol. IV, p. 2488)	Fees may be prescribed, *inter alia*, for surveys by a Government Surveyor. By notice under section 3 survey fees were fixed for the survey of *original estates* recognised under the Uganda Agreement, 1900; estates of the Kabaka and his family and official estates being exempted. (Laws of Uganda, Vol. VIII, p. 2334).	Amended L.N. 224/62.
—	Registration of Documents Ordinance, 23rd February, 1904. (Laws of Uganda Protectorate, 1910, p. 509).	Section 4 provides for *compulsory* registration of all documents conferring right, title or interest in immovable property; except those of a testamentary nature. Section 8.—Such document shall contain a description of the property sufficient to identify the same. Note.—Identification could be by boundary description and abuttals; not necessarily by survey. Section 10.—Penalty for non-registration within the prescribed time. Section 11.—Every document presented for registration under section 4 shall be registered at the registry of the District in which the property affected is situate. Section 21.—Public notice may be given of documents affecting immovable property.	Amended Ord. 8/1904, 4/1905. Repealed as to documents affecting title to land by Ord. 11/1908 (R. of L.T.O.) Superseded by Ord. 13/22.
—	Land Transfer Ordinance, 8th February, 1906. (Laws of Uganda Protectorate, 1935, Vol. II, p. 1152).	No land in the occupation of, or held by, any native of the Protectorate, or any right, title or interest in or over any immovable property so occupied or held shall be transferred to any person not being a native of the Protectorate without the consent in writing of the Commissioner.	Amended by Ord. 10/11. Repealed Ord. 6/44.
Cap. 34 ..	Succession Ordinance, 15th February, 1906. (Laws of Uganda, 1951, Vol. I, p. 613)	Section 334 granted to the President the power to exempt any race, sect or tribe in Uganda from the operation of this Ordinance. By General Notice dated 22nd January, 1906, the estates of all the natives of Uganda were so exempted.	Amended L.N. 10/63, 269/63.

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
—	REGISTRATION OF LAND TITLES ORDINANCE, 12th June, 1908. (LAWS OF UGANDA PROTECTORATE, 1910, p. 393).	Provides for the establishment of a Land Titles Registry and for the registration of all transactions affecting land brought under the operation of the Ordinance. No evidence shall be receivable in any civil court of the sale, lease, mortgage, charge, etc., of land the registration of which is directed by the Ordinance, unless such dealing is effected by an instrument in writing and the name of the purchaser or transferee (as the case may be) has been inscribed in the Register. Any person deprived of land or any interest in land registered under the Ordinance in consequence of fraud, registration of other proprietor, or error, shall be entitled to compensation from the Government. Compensation may be paid in land or in money. Rules may be made, *inter alia*, for prescribing the forms to be used and for providing district registries and for the devolution of the duties of the Registrar of Titles. This Ordinance is still operative but has now been largely superseded by the Registration of Titles Ordinance, 1922, in which section 34 (1) refers.	—
—	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908. (NATIVE LAWS OF BUGANDA, 1957, p. 154)	[Because of its importance in defining the incidents of Mailo Tenure this law is stated here in full.] THE POSSESSION OF LAND LAW (15th June, 1908) 1. This Law shall be called the Possession of Land Law. MAILO 2. The words which are herein written are the words which shall govern every owner of land when the Government have surveyed his land and have finally recognised that this land is his. To hold land in this way will be known as holding mailo, and land of this description will be called " mailo ".	L.N. 261/62, 269/63.

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
—	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued*	(*a*) No person of Uganda will be allowed by himself, or by others for himself, to hold at one time more than 30 square miles of mailo land, except with the approval in writing of the President and the *Lukiiko*, or as trustee or guardian of another person, or except that if the owner of mailo inherits other mailo he will be able to hold his original holding of mailo and the inherited mailo, notwithstanding that the total holding exceeds the amount allowed by this Law or the President and the *Lukiiko*. (*b*) The owner of a mailo will be permitted to sell his land to another man of Uganda, or give it to him as a gift, or to will it to him in writing, or to hand it to him in any other manner not in conflict with this Law or any other law. The land which was allotted to the Kabaka in the Agreement, 1900 (namely 350 miles), shall be Kabakaship mailo of the Kabaka for the time being. (*c*) The owner of a mailo will not be permitted to hand over his mailo to one who is not of Uganda or to a church or to a religious or other society, except with the approval in writing of the President and the *Lukiiko*. (*d*) The owner of a mailo shall not permit one who is not of Uganda to lease, occupy or use his mailo except with the approval in writing of the President and the *Lukiiko:* Provided that the owner of any mailo other than a mailo situate within the *Ggombolola of Omukulu we Kibuga* may, without such approval as aforesaid, but with the approval in writing of the *Ssaza* Chief of the *Ssaza* in which such mailo is situated, permit one who is not of Uganda to occupy or use such mailo or any part thereof for a period of not more than one year or from year to year, but so that the area so occupied or used shall not exceed two acres in the case of any one tenant.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued.*	(*e*) The owner of a mailo will be permitted to dispose of his mailo by will in writing to people of Uganda who are alive or conceived at the time when the mailo-owner dies. But to will mailo to a man who is not of Uganda or to will mailo to a church or to a religious society so that they may have it after the owner's death for religious or similar purposes, to the disherison of his lawful heirs, or to will it to any person who is not conceived at the time when the owner of the mailo shall die, all these will not be permitted. (*f*) When a Muganda dies and he has not written a will appointing a person to succeed to his mailo, a successor will be ascertained according to the rules of the law of succession of the Baganda. (*g*) All transactions concerning mailo shall be written on paper in duplicate, and the fees thereon and the duties thereon shall be the same as are from time to time in the whole of Uganda, and one copy shall be stored by the Government and the other held by the owner of the mailo. The whole of this order shall be the same in the Kingdom of Buganda as it is in the whole of Uganda. (*h*) Any person who becomes the owner of mailo, let him not think that he alone is the owner of the old roads on it which the people have used of old, and let him not think that he has become the owner of running waters which were drawn by people long ago, and of springs and ponds which people have drawn of old. And if running waters should arrive upon his mailo, and if springs and ponds should come upon it, let him not think that he has become the exclusive owner of these waters, unless they shall dry up before they have reached his neighbour's land.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued.*	Thus a man who becomes the owner of mailo where there are roads which have been used by all the people long ago, or there are waters which have been taken by all the people long ago, he will not be allowed to close those roads or to prevent people from drawing from the water. The law of easements for Uganda generally will govern easements in respect of mailo. The meaning of " easement " is this:— When a person is permitted to do a thing or to stop a thing being done on land belonging to another, this permission is called easement. For instance, a man X wishes to reach his house and is permitted to walk on a road which passes over his neighbour's land because he has walked on that road for a long time, his neighbour will not be allowed to stop him from so passing. This permission is an easement. Other examples are:— If the land of an owner of mailo borders the land of his neighbour so as to render it natural support, such neighbour will not be allowed to do an act to spoil his neighbour's land. For example, a man, the owner of mailo, has built his house near the boundary of his mailo; the owner of the neighbouring mailo will not be allowed to dig a deep hole on his land which would cause that land and the house built on it to fall. If there is water flowing in a channel which people have not made, and it passes over the land of a mailo-owner, his neighbour will, under no circumstances, be allowed on his land to stop these waters so that they do not flow to the land of the said mailo-owner. This does not prevent a man from asking the *Lukiiko* to divert a path which passes near his house which is not a main road.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued.*	The *Lukiiko* may, by written order, forbid the watering of cattle at any particular pond or well upon being satisfied that such pond or well is required for the use of people for drinking purposes. The owner of a mailo will not be permitted to prevent any other person from herding cattle, goats or sheep or other animals on waste or uncultivated land on his mailo until it is fenced. (*i*) The owner of a mailo will give the Government duty on stones of value which may be found on his mailo, as written in Part 17 of the Uganda Agreement, 1900. (*j*) The owner of a mailo will not be compelled to give to a chief who is superior to him any portion of the produce in money or kind. (*k*) The owner of a mailo who contravenes any provision of paragraph (*c*) or (*d*) of this section shall be liable on conviction to a fine not exceeding Shs. 500 or to imprisonment not exceeding six months or to both such fine and imprisonment. 3. (1) The *Lukiiko* may cause wells, tanks, reservoirs, pipes or other works for the supply of water for the benefit of the public to be constructed or installed and maintained on any mailo. Compensation shall be given for the disturbance of growing crops or of buildings, and due regard shall be had to the interests of such owner so as not to cause unnecessary interference with his enjoyment of the land. (2) The owner of a mailo upon which any such works have been so constructed or installed who prevents any person having reasonable access to such works in order to take water for customary purposes shall be guilty of an offence and shall be liable to a fine not exceeding Shs. 100 or, in default of payment, to imprisonment not exceeding one month.	

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued.*	(3) Any person who causes or attempts to cause any damage to such works or pollutes or interferes with the supply of water therefrom shall be guilty of an offence and shall be liable to a fine not exceeding Shs. 500 or to imprisonment not exceeding six months or to both such fine and imprisonment. 4. When a man has more mailo than is allowed by this Law, or by the President and the *Lukiiko*, the *Lukiiko* shall write him a letter instructing him to cut off the portions in excess. And when three months have passed from the day on which the letter was written, if he has not cut it off or sold it to another or done any other acts as they have instructed him, the *Lukiiko* may take any part of the mailo of that man which they like of the same amount that is in excess of the total allowed by this Law or by the President and the *Lukiiko*. And when they have taken this portion they may— (1) sell to a man of Uganda this piece of mailo, or (2) deal with this piece as the President and the *Lukiiko* may approve. When they have done so, and should they think it fit to compensate him, they will compensate him, should they think it not fit to compensate him, they will not compensate him. 5. When a Muganda owner of a mailo dies and there is no one to succeed him as directed by the Law, and if there is no one to whom he has willed it, the mailo shall be in the hands of the President and the *Lukiiko* to have and to deal with as trustees for the Baganda, and the proceeds shall go to the *Lukiiko* fund or in such other way as may be determined. When an owner of a mailo has agreed to sell his mailo or some part thereof and dies before he has signed an Instrument of Transfer of such mailo, then the mailo shall be in the hands of the *Katikkiro*, the *Omulamuzi*	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June 1908—*continued.*	and the *Omuwanika* of Buganda, who shall be able to sign an Instrument of Transfer or such other documents as may be necessary to transfer such mailo to the person or persons who are entitled thereto. (G.N. 222 of 1929). OFFICIAL MAILO 6. Every man who has land for his chieftainship shall hold it as follows:— (*a*) For all the time that he holds his chieftainship he will be allowed to take all the profits from the land which he has, except as written in the words below. (*b*) A man who has land like this, when he leaves his chieftainship and ceases to have this land, this man or his representative will be permitted to claim from the profits from the land a portion to compensate him for the work only which he may have done to improve that land during the time which he had the land. The *Lukiiko* shall decide as to this compensation, and they will also decide the period of years in which to compensate him. And this compensation shall be like a debt on the land as if a man owed it. Whenever there is a dispute as to the amount of this compensation, or the period in which it is to be paid, they shall inform the President, whose decision shall be final. (*c*) To hold land in this manner will be called to hold "Official Mailo" and shall be governed as directed above in part 2 (*d*), (*g*), (*h*) and (*j*). (*d*) The total of official mailo shall not be counted in the total of mailo allowed by part 2 (*a*). (*e*) As written in Article 17 of the Uganda Agreement, 1900, a man who holds land in this manner, i.e. official mailo, shall not have the stones of value therein.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA POSSESSION OF LAND LAW, 15th June, 1908—*continued.*	OF EVERY KIND OF LAND 7. Every description of land which people of Uganda shall have, mailo and official mailo, the Government will be allowed to take them for the works of improvement of Uganda as written in Article 15 of the Uganda Agreement, 1900.	
—	BUGANDA LAND LAW, 1909, 15th June, 1909. (LAWS OF UGANDA PROTECTORATE, 1935, VOL. VI, p. 1447).	Applied to unsurveyed land. All transactions to be verified by the *Lukiiko*. Certificates of Ownership were issued under this Law.	Amended by G.N. 321/1912, (Buganda Land Law, 1912).
—	BUGANDA LAND (SURVEY) LAW, 15th August, 1909. (NATIVE LAWS OF BUGANDA, 1941, p. 14).	Allottees who have not claimed land before 31st December, 1909, to be deemed to have waived their claims. No allotment to be less than 160·0 acres. Shortage Certificates were first issued under section 5, later repealed.	
—	BUGANDA BOUNDARY MARKS LAW, 15th August, 1911. (NATIVE LAWS OF BUGANDA, 1957, p. 164).	Boundary marks to be erected at the expense of the *Lukiiko*. Duty of mailo-owner thereafter to maintain boundary marks at his own cost; penalty for non-compliance. Penalty for removing or damaging boundary marks.	
—	BUGANDA LAND SUCCESSION LAW, 31st October, 1912. (NATIVE LAWS OF BUGANDA, 1957, p. 26)	Provides for Certificates of Succession to Land to be issued by the *Lukiiko*. These certificates to be in accordance with a will, or if no will, in accordance with the customs of succession in Buganda. The form of Certificate of Succession is prescribed: one copy to be retained by Government (taken to mean the Uganda Government as the term " Lukiiko " was then used for what is now known as the Buganda Government). Each Certificate of Succession to be signed by the *Katikkiro* and six members of the *Lukiiko*.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
—	BUGANDA WILLS LAW, 30th September, 1916. (LAWS OF UGANDA, 1951, VOL. VII, p. 1233)	Wills must be signed in the presence of two witnesses who must also sign.	Does not appear in the 1957 Edition of Native Laws of Buganda; but understood to be still valid.
Cap. 122 ..	NATIVE OFFICIAL ESTATES ORDINANCE, 15th May, 1919. (LAWS OF UGANDA, 1951, VOL. III, p. 1606)	Holder of Official Estate deemed to be a corporation sole. Applications to lease official mailo shall be submitted through the *Lukiiko* to the President; the consent of both the *Lukiiko* and the President being required. No lease shall be sanctioned where the term exceeds 49 years; and the rent to be paid by the lessee shall be the full annual value of the land. Mortgaging of Official Estate not expressly forbidden.	Amended L.N. 213/56; 161/62; 269/63.
Cap. 166 ..	ACCESS TO ROADS ORDINANCE, 15th November, 1920. (LAWS OF UGANDA, 1951, VOL. IV, p. 2170)	Enables an owner or occupier of land not having convenient access to a highway to obtain permission through the Commissioner of Lands and Surveys to construct an access road over land held by another person.	Amended L.N. 213/56.
Cap. 118 ..	CROWN LANDS (DECLARATION) ORDINANCE, 22nd March, 1922. (LAWS OF UGANDA, 1951, VOL. III, p. 1584)	All land and any rights therein shall be presumed to be the property of the Crown unless they are recognised by the Governor by document to be the property of a person; or until the contrary be proved.	Repealed Ord. 22/62. Public Lands Ordinance.
Cap. 121 ..	NATIVE LAND IN BUGANDA (PROVISIONAL CERTIFICATES), 31st May, 1922. (LAWS OF UGANDA, 1951, VOL. III, p. 1605)	Copies of Provisional Certificates of Claims issued under the Uganda Agreement, 1900, to be retained and to be available for search. Certified copies to be provided upon payment of prescribed fee.	Amended L.N. 213/56.
Cap. 123 ..	REGISTRATION OF TITLES ORDINANCE, 1922 (operative 1st May, 1924). (LAWS OF UGANDA, 1951, VOL. III, p. 1609)	A detailed Ordinance based upon the Torrens System of Registration of Title and superseding (though not	Amended Ord. 38/58; 46/58; 37/62.

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	REGISTRATION OF TITLES ORDINANCE, 1922 (operative 1st May, 1924)—*continued.*	repealing) the Registration of Land Titles Ordinance, 1908. Every Certificate of Title issued under the Ordinance will be received in any court as evidence of the particulars set forth in it and of the fact that the person named in the certificate as proprietor is the owner of the estate. The Ordinance sets out the manner in which land shall be brought under the Ordinance and provides for Duplicate Certificates of Title; form of the Register Book; title by possession; registration of all forms of dealings; endorsement where necessary on instruments of consents under the Land Transfer Ordinance; the entry of caveats; powers of attorney and attestation of instruments; surveys, plans and boundaries; rectification of titles; special powers of High Court and Registrar; actions and other remedies; and it sets out the forms to be employed and the fees to be charged.	Act 26/63. L.N. 213/56; 280/56; 7/57; 84/59; 161/62; 139/63. G.N. 254/24; 89/25; 336/63.
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928. (NATIVE LAWS OF BUGANDA, 1957, p. 168)	[Because of its importance in controlling the landlord/tenant relationship on mailo land, this law is stated here in full]. THE BUSUULU AND ENVUJJO LAW (1st January, 1928) 1. This law shall be called the Busuulu and Envujjo Law. 2. Every person who pays poll tax whether he is actually the holder of a *kibanja* or not, who resides on the land of a mailo-owner, and every person male or female who does not pay poll tax but is the holder of a *kibanja*, shall pay *busuulu* at the rate of Shs. 10 per annum: provided that no tenant shall be refused the privilege of working for one month in lieu thereof. 3. In default of such payment the tenant shall be liable to be sued before the competent court:	L.N. 261/62, 269/63.

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	Provided that in every year no tenant shall be liable to pay *busuulu* until he shall have discharged the following obligations, namely, poll tax and graduated tax: Provided further that after 30th September in any year the mailo-owner may demand his *busuulu* even though the graduated tax shall not have been paid. The right of the mailo-owner to sue for *busuulu* shall be limited to the *busuulu* owing for the year in which he sues and for the three preceding years. If, in any suit for the recovery of *busuulu*, it be proved to the court that a tenant has failed to pay the *busuulu* due by him in respect of three consecutive years, but that he had, or could by the exercise of reasonable diligence have obtained, the means to pay when the *busuulu* for each of the said years became due or at any time thereafter, the court may make an order of eviction as provided by section 11 of this law. 4. Payment of this *busuulu* shall give to a tenant the right to cultivate as he wishes for himself and his family all food and all other kinds of produce save only those specified in the Schedule to this Law, and to sell them without hindrance or other payment save only that he shall generally obey the provisions of this Law and shall also render the following *envujjo*, namely, one gourd of *mwenge* (beer) on every occasion of brewing of *mwenge*, such gourd to contain as much liquid contents as is equal to 4 gallons (Imperial measure); but a tenant shall not be refused permission to make a payment of Shs. 4 in commutation thereof; and also on the bark-cloth trees in his *kibanja*, namely, one bark-cloth tree on every five trees up to a limit of two trees, provided that no *envujjo* on bark-cloth trees under the number of five in the possession of a tenant shall be taken.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	5. For the growing of cotton, coffee and other economic crops as shall from time to time be set out in the Schedule to this Law whether grown within the limits of the *kibanja* or elsewhere on the land of the mailo-owner, by permission, the tenant shall pay to the mailo-owner *envujjo* at the following rates wherever in Buganda his holding may be: (*a*) For the first acre or part of an acre under cultivation of such economic crop—Shs. 4. (*b*) For each additional acre or part of an acre up to three acres under cultivation of such economic crop—Shs. 4. 6. Where the area of cotton, coffee or other economic crops exceeds in respect of any one crop a total of three acres, such excess shall not fall under the provision of this Law, but shall be a matter of mutual agreement between the mailo-owner and the tenant. 7. The mailo-owner shall give a written receipt for all rents, dues and services rendered to him under this Law. 8. (1) Nothing in this Law shall give any person the right to reside upon the land of a mailo-owner without first obtaining the consent of the mailo-owner except: (*a*) the wife or child of the holder of a *kibanja;* or (*b*) a person who succeeds to a *kibanja* in accordance with native custom upon the death of the holder thereof. (2) Nothing in this Law shall give to the holder of a *kibanja* the right to transfer or sublet his *kibanja* to any other person. 9. Nothing save as provided for in this Law shall be deemed to affect the rights of the mailo-owner as an owner of land under the 1900 Agreement, but it is hereby expressly provided that:	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	(*a*) The mailo-owner shall give to his tenants without further payment than that of *busuulu* the right of access to pasturage, salt-licks (unless specially dug out), the right to cut timber (other than trees of special value and those specially planted by mailo-owner), and to get firewood and generally to enjoy all such rights on his mailo as are permitted to the Baganda on Crown lands under the Forests Agreements, but it is expressly enjoined that such rights must be used reasonably and not for the purpose of personal profit, also that no trees for buildings shall be taken until the mailo-owner has been notified: Provided that a tenant may, for personal profit or otherwise, cut, sell or otherwise dispose of any tree which has been planted by himself, or by any person whom he has succeeded to the *kibanja* under the provision of subsection (1) of section 8 of this law. But the tenant shall not plant in his *kibanja* trees for profit, which trees spoil the *lusuku* and other crops, but shall plant them in a special area in his *kibanja*, and shall do so after consulting the landowner. (*b*) The mailo-owner shall be allowed to take a 10 per centum due of fish so long as he shall carry out all sleeping sickness instructions with regard to the upkeep of landings and other fishing places: Provided that when the mailo-owner is unable to provide any men for such work he shall receive only 5 per centum and the Kabaka's Government shall receive the other 5 per centum. 10. The tenant shall on his part render to the mailo-owner all respect and obedience as is prescribed by native law and custom, more especially he shall, while he continues on his *kibanja* and up to the time of departure from it, take good care of the land and of the buildings and all that is on it and shall leave everything in good condition on departure.	

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	11. No tenant may be evicted by the mailo-owner from his *kibanja* save for public purposes or for other good and sufficient cause and unless a court having jurisdiction shall have tried the case and made an order of eviction. Such order of eviction must be in writing and in triplicate; one copy shall be given to the mailo-owner, one copy to the tenant or his representatives, one copy shall remain in the file of the case. All appeals in such cases shall be taken according to the usual procedure of appeals provided that while a tenant is still prosecuting his appeal or until his time for appeal has expired he shall remain in undisturbed possession of his *kibanja* and in enjoyment of the fruits thereof until such time as the order of eviction shall have been received from the final Court of Appeal. 12. When a tenant shall have left his *kibanja* derelict for more than four months with neither wife nor other occupant approved by the mailo-owner or without obtaining the consent of the mailo-owner the latter shall have the right to give the *kibanja* to another but before he shall do so, he shall first report the matter to the court having jurisdiction and obtain its consent and an order to that effect. In such cases no compensation shall be payable under this Law. 13. The court in making an order of eviction shall take into consideration the claim of the tenant to obtain from his mailo-owner or the incoming tenant, compensation for improvements to the *kibanja*, such as trees that he has planted, buildings in good repair and the like, and shall clearly specify in the order for eviction the amount so payable, or shall make any other order that appears just, and until this due has been discharged or order complied with no order of eviction shall take effect:	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	Provided always that the following procedure shall be adopted after careful and just consideration and after investigation by *babaka*, namely, that any sum allowed as above shall be set-off as against counterclaims made by the mailo-owner on account of damage to the holding by neglect or by bad cultivation or on account of trees given to the tenant for the construction of his house, or for breach of right and proper native custom in this connection: Provided, however, that nothing shall prevent the tenant gathering from his *kibanja* the produce from cotton, coffee and the like, so long as he shall not have abondoned it. 14. A tenant on succession to a *kibanja* shall remain in quiet possession thereof in accordance with native custom. 15. Save as provided in section 16, the rights and duties of a tenant under the provisions of this Law shall not be affected by any change in the ownership of the mailo land on which he resides. 16. (1) When a change of ownership of any mailo land takes place and the new owner desires to occupy any part of that land for the purpose of residing and growing crops thereon, but such part is, or forms part of, a *kibanja* held by a tenant, the new owner may, within six months of the change of ownership taking place, apply to the court having jurisdiction for an order of eviction against that tenant. (2) An order of eviction under this section shall not be made unless the court is satisfied that there will be no sufficient and suitable area on that land for occupation by the new owner unless such order is made. (3) All the provisions of section 13 shall apply to an eviction ordered under this section and no tenant against whom such order is made shall be required to vacate his *kibanja* until the last day of the year next following that in which the order is made.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued*	17. Nothing in this Law shall affect the right of the Uganda Government or of the Kabaka's Government to evict any tenant whose *kibanja* or any part thereof shall have been acquired or leased for public purposes from the mailo-owner: Provided always that where the Kabaka's Government is concerned such compensation as may appear just to the *Lukiiko* shall be payable to him. 18. The following acts or omissions shall be offences against this Law:— A. On the part of the tenant, if— (*a*) he refuses or neglects without good cause to render the *envujjo* allowed under section 4; (*b*) he sublets his holding, or any part thereof, for the purposes of profit; (*c*) he misuses the right given under section 9 (*a*) to cut timber or gather firewood for his own use; (*d*) on vacating his *kibanja* he fails to leave the land and building in good condition; (*e*) during the time he occupies his *kibanja* he fails to keep the *kibanja* in good condition or properly to look after the land. B. On the part of the mailo-owner if— (*a*) he demands *busuulu* before it is payable; (*b*) he prevents or hinders the tenant from cultivating food of other produce or scheduled crops in accordance with the provisions of sections 4, 5 and 6; (*c*) he seeks to evict the tenant without an order of the court, or during the prosecution of an appeal by a tenant under section 11, or until the time for an appeal has expired; (*d*) he disturbs the quiet possession of a tenant succeeding to a *kibanja* in accordance with native custom.	

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA BUSUULU AND ENVUJJO LAW, 1st January, 1928—*continued.*	19. For every offence against this Law as aforesaid there may be inflicted a penalty not exceeding Shs. 100, or, in default of payment, the court may order in its discretion an offender to be punished with imprisonment of either description up to a limit of three months. 20. Nothing in this Law shall be deemed to prevent the mailo-owner exempting his tenants from the payment of *busuulu* or dues or from decreasing these obligations accordingly as he may think fit to consider their necessities, but this shall be a matter for his sole discretion. 21. Nothing in this Law shall affect the Possession of Land Law. 22. The Schedule may be altered by the Kabaka at any time after consultation with the *Lukiiko* and subject to the approval of the President. SCHEDULE Cotton. Coffee—When the tenant has more than ten trees in full bearing. Maize—When the tenant has more than one acre.	
—	BUGANDA MAILO SURVEY (FEES) LAW, 31st March, 1933. (NATIVE LAWS OF BUGANDA, 1957, p. 188).	Consolidates two earlier laws:— (i) The law to provide food for labour cutting Mailo Boundaries, 1921; (ii) The law relating to the payment of fees for the preparation of Final Certificates, 1922. Makes the *Lukiiko* responsible for the recovery, from the landowners, of unpaid moneys due to the Uganda Government in respect of survey fees, labour charges and fees for the preparation of Final Certificates. Powers given to the *Lukiiko* (*a*) to distrain on movable property, or (*b*) to enter into possession by receiving rents and profits or (*c*) to apply to the High Court for an order for attachment and sale.	L.N. 261/62.

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
Cap. 73 ..	AFRICAN ADMINISTRATIONS (INCORPORATION) ORDINANCE. 31st August, 1938. (LAWS OF UGANDA, 1951, VOL. II, p. 1054)	Any body incorporated under this Ordinance may hold land; but shall not acquire land or any interest in land nor dispose of the same without the consent of the President. It shall be lawful for any corporation sole holding land as Official Estate under the Native Official Estates Ordinance to transfer land to any body incorporated under this Ordinance.	
Cap. 125 ..	SURVEY ORDINANCE, 31st May, 1939. (LAWS OF UGANDA, 1951, VOL. III, p. 1710)	Regulates the survey of land and provides for the licensing and control of private land surveyors.	Amended Ord. 18/55, Ord. 4/62, Act 26/63, L.N. 213/56.
—	BUGANDA LAND TAX LAW, 1st July, 1939. (NATIVE LAWS OF BUGANDA, 1957, p. 210)	Every native owning more than ten acres of land in Buganda shall be taxed as follows:—If he has six or more tenants the rate shall be Shs. 25 per annum; if five or less tenants the rate shall be Shs. 5 per annum. Official Estates are exempted from tax. Tax is payable by anyone recognised as owner of the land and who is entitled to receive *busuulu* or *envujjo* whether he has been legally confirmed in possession of the land or not. Every native owning ten acres or less or liable to pay *busuulu* and *envujjo* for an *ekibanja* shall pay Shs. 1/50 per annum; which sum he may deduct from the *busuulu* payable to his landlord. Provision for remission of the tax.	—
—	BUGANDA LAND (AGREEMENTS) LAW, 1st October, 1939. (NATIVE LAWS OF BUGANDA, 1957, p. 186)	No agreement relating to a dealing in mailo land shall have any validity unless it is lodged with the Registrar of Titles. It shall be an offence for any person to purport or attempt to sell any mailo land, or to accept any money in respect of the purchase price thereof, unless he is the Registered Proprietor of such land or unless he has been registered as the proprietor of an unascertained portion or is a caveator.	—

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
	BUGANDA LAND (AGREEMENTS) LAW, 1st October, 1939—*continued.*	No sale may be effected until all fees due to the Uganda Government or to the Kabaka's Government have been paid. Penalties prescribed.	
Cap. 77 ..	BUGANDA COURTS ORDINANCE, 1st September, 1940. (LAWS OF UGANDA, 1951, VOL. II, p. 1085)	Section 11—A case involving question of title to or any interest in land registered in the Mailo Register under the Registration of Titles Ordinance, shall be tried only by the Principal Court, except a case arising under Part VII (Caveats) of that Ordinance.	
Cap. 114 ..	LAND TRANSFER ORDINANCE, 15th November, 1944. (LAWS OF UGANDA, 1951, VOL. III, p. 1559)	Requires that official consent be obtained before any non-African may occupy or enter into possession of any land of which an African is registered as proprietor; or make any contract to purchase or to take on lease or accept a gift *inter vivos* or a bequest of any such land or of any interest therein other than a security for money. In certain circumstances a company may be deemed to be an African. Provision for penalties and for forfeiture.	Amended L.N. 18/56, Act 26/63.
—	BUGANDA LAW TO EMPOWER THE KABAKA TO ACQUIRE LAND FOR PURPOSES BENEFICIAL TO THE NATION, 31st October, 1945. (BUGANDA NATIVE LAWS, 1957, p. 182)	The Kabaka may, after due reference to the *Lukiiko*, require any native of Buganda, being the owner of land required for any purpose beneficial to the nation as approved by the President, to sell, exchange or lease it to the Kabaka (as Trustee). In the event of disagreement the land shall be compulsorily acquired upon terms to be referred to an Arbitration Committee. Right of appeal.	L.N. 269/63.
—	BUGANDA AGRICULTURAL LAW, 14th December, 1946. (BUGANDA NATIVE LAWS, 1957, p. 46)	Part I—Grants powers for the control of the type and quantity of scheduled food crops and of the storage, marketing and consumption of such crops. Part II—Deals with land utilization and the enforcement of good husbandry. The Kabaka may make rules, *inter alia*, for the prevention of soil erosion, the rotation of crops and resting of the soil, the limitation of livestock and the conservation of grazing land.	For Proclamation and Rules *see* G.N. 234/47; 235/47; 295/48.

2. LAWS AND ORDINANCES—*continued*

Laws 1951 Edition	Title, Date, Latest Reference	Purpose, Abstracts, Comments	Subsidiary Legislation
Cap. 211 ..	UGANDA CREDIT AND SAVINGS BANK ORDINANCE, 27th July, 1950. (LAWS OF UGANDA, 1951, VOL. V, p. 2749)	In general every loan, the security for which is land, shall be secured by a first mortgage on the lands in respect of which it is made by a deed in the form provided by and subject to the provisions of and registered under the Registration of Titles Ordinance.	Amended Ord. 21/52; Ord. 23/54; 9/56; Ord. 35/58; 26/59; Ord. 25/60; L.N. 161/62.
—	BUGANDA CLAN CASES DECLARATORY LAW, 7th December, 1962. (LAWS OF UGANDA, VOL. 1963, p. 42, L.N. 21/63)	H.H. The Kabaka and his Lukiiko Council shall decide all cases relating to headship, membership and all other matters affecting clans to the exclusion of all other courts whatsoever; and the revocation of the Uganda Agreement (Clan Cases), 1924, shall not affect such right.	—

THE UGANDA (INDEPENDENCE) ORDER IN COUNCIL, 1962—(LAWS OF UGANDA, VOL. 1962, p. 777)—

Section 23.—The continuance of the system of mailo land tenure in force in the Kingdom of Buganda immediately before the commencement of this Order shall not be affected by reason only that the Buganda Agreement, 1961, ceased to have effect as from 9th October, 1962.

SCHEDULE TO THE ORDER—THE CONSTITUTION OF UGANDA—

Section 119.—Deals with the acquisition of land in Buganda by the Government of Uganda.

SCHEDULE 7 TO THE CONSTITUTION OF UGANDA—

Part I.—*Matters with respect to which the Legislature of Buganda has exclusive power to make Laws.*

Item 9.—Traditional and customary matters relating to Buganda alone.

Part II.—*Matters with respect to which Parliament has exclusive power to make Laws.*

Item 11. (*a*)—Land Registration.

3. OTHER RELEVANT LEGISLATION

	Title of Ordinance or Law	Laws 1951 Edition *Cap.*	Reference	Comments
1897	Land Regulations	113	Laws of Uganda, 1951, Vol. III, page 1556 ..	Amended Reg. 8/1902; repealed as to Crown Lands by Crown Lands Ordinance, 1903.
1902	Uganda Order in Council	—	Laws of Uganda, 1951, Vol. VI, page 82 ..	Revoked by L.N. 54/62, 251/62.
1903	Crown Lands Ordinance	117	Laws of Uganda, 1951, Vol. III, page 1573 ..	Amended Ord. 45/58; repealed by Ord. 22/62—Public Lands Ordinance.
1908	Crown Grants (Execution) Ordinance ..	119	Laws of Uganda, 1951, Vol. III, page 1586 ..	Amended Ord. 4/51; Ord. 26/54; Ord. 27/57; repealed by Ord. 22/62—Public Lands Ordinance.
1909	Land (Perpetual Succession) Ordinance ..	—	Laws of Uganda, 1923, Vol. II, page 801 ..	Repealed by Ord. 11/39, Trustees Incorporation Ordinance.
1912	Crown Lands (Ascertainment) Ordinance..	—	Laws of Uganda, Vol. 1910–12, page 97 ..	Repealed by Ord. 3/22—Crown Lands Declaration Ordinance.
1915	Stamps Ordinance	193	Laws of Uganda, 1951, Vol. IV, page 2507 ..	Amended Ord. 13/56; 24/60; L.N. 161/62.
1922	Registration of Documents Ordinance ..	124	Laws of Uganda, 1951, Vol. III, page 1706 ..	Amended Ord. 40/62.
1929	Waterworks Ordinance	130	Laws of Uganda, 1951, Vol. III, page 1798 ..	Amended Ord. 6/51; L.N. 161/62.
1933	Electricity Ordinance	131	Laws of Uganda, 1951, Vol. III, page 1814 ..	Repealed Ord. 17/61.
1938	Townships Ordinance	102	Laws of Uganda, 1951, Vol. III, page 1397 ..	Amended Ord. 7/55; repealed Ord. 16/58.
1939	Trustees Incorporation Ordinance ..	126	Laws of Uganda, 1951, Vol. III, page 1717 ..	Amended L.N. 161/62.
1941	Buganda Law to preserve the amenities of the *Lubiri*	—	Buganda Native Laws, 1957, page 164	—
1944	Buganda Planting of Trees Law ..	—	Buganda Native Laws, 1957, page 54	—
1945	Cattle Grazing Ordinance	152	Laws of Uganda, 1951, Vol. IV, page 2050 ..	Amended L.N. 161/62.
1946	Co-operative Societies Ordinance ..	210	Laws of Uganda, 1951, Vol. V, page 2726 ..	Repealed Act 34/63.
1947	Buganda Town Planning Law	—	Buganda Native Laws, 1957, page 178	Repealed by Town Planning and Building Law, 1958.
1947	Aerodromes (Control of Obstructions) Ordinance	164	Laws of Uganda, 1951, Vol. IV, page 2162 ..	Amended L.N. 224/62.
1947	Forests Ordinance	133	Laws of Uganda, 1951, Vol. IV, page 1911 ..	Amended Ord. 9/60.
1948	Local Government (Rating) Ordinance ..	104	Laws of Uganda, 1951, Vol. III, page 1455 ..	Amended Ord. 26/51; 6/55; 8/58; L.N. 145/62; 10/63.

3. OTHER RELEVANT LEGISLATION—*continued*

	Title of Ordinance or Law	Laws 1951 Edition *Cap.*	Reference	Comments
1949	Municipalities Ordinances	103	Laws of Uganda, 1951, Vol. III, page 1411 ..	Repealed Ord. 16/58.
1949	Mining Ordinance	129	Laws of Uganda, 1951, Vol. III, page 1739 ..	Amended Ord. 30/53; 21/58; L.N. 10/63.
1949	Rent Restriction Ordinance	115	Laws of Uganda, 1951, Vol. III, page 1561 ..	Amended Ord. 16/54; 10/62; L.N. 213/56; 10/63.
1949	Roads Ordinance	165	Laws of Uganda, 1951, Vol. IV, page 2165 ..	Amended Ord. 30/60; L.N. 224/62.
1951	Town and Country Planning Ordinance ..	—	Laws of Uganda, Vol. 1951, page 127	Amended Ord. 21/54; Ord. 15/56; Ord. 3/60.
1952	National Parks Ordinance	—	Laws of Uganda, Vol. 1952, page 12	Amended Ord. 3/57; L.N. 161/62.
1958	Urban Authorities Ordinance	—	Laws of Uganda, Vol. 1958 (1), page 374 ..	—
1958	Soil Conservation (Non-African Land) Ordinance	—	Laws of Uganda, Vol. 1958 (1), page 486 ..	—
1958	Limitation Ordinance	—	Laws of Uganda, Vol. 1958 (1), page 672 ..	—
1958	Buganda Town Planning and Building Law	—	Native Laws of Buganda, 1957/58, Supplement p. 7	—
1961	Electricity Ordinance	—	Laws of Uganda, Vol. 1961, page 85	Amended Act 26/63; L.N. 224/62
1962	Public Lands Ordinance	—	Laws of Uganda, Vol. 1962 (St.) p. 116 ..	—
1962	Aerodromes (Control) Ordinance ..	—	Laws of Uganda, Vol. 1962 (St.) p. 270 ..	—
1963	Co-operatives Societies Act	—	Laws of Uganda, Vol. 1963, page 244	—

ABSTRACT OF STATISTICS

1. The Mailo Settlement

Based upon a Despatch from Wilson to Hayes-Sadler, No. 140, dated 18th December, 1902.

The Agreement laid down the following limits to allotments: —

	(*Square miles*)	(*Square miles*)
Principal Chiefs:		
The Kabaka	350	
Others of the reigning family	148	
The three Regents (Private and Official)	96	
Mbogo	24	
Kamuswaga	20	
The twenty *Ssaza* Chiefs (Private and Official)	320	
		958
Sub-Chiefs and Private Landowners		8,000
Sir Harry Johnston's Memo of 13th February, 1900, added 45 sq. miles to the Regents' Estates		45
Grand Total		9,003

The *Lukiiko* Memorandum of 25th July, 1900, added 387 sq. miles to the area of the Principal Chief's estates and decreased that allotted to the Sub-chiefs and others by the same amount. The distribution therefore became: —

	(*Square miles*)	(*Square miles*)
Principal Chiefs:		
Allotted by the Agreement	958	
Allotted by Sir H. Johnston's Memo ...	45	
Allotted by the *Lukiiko* Memo	387	
		1,390
Sub-chiefs and Others:		
Allotted by Agreement	8,000	
Less—Transferred to the Principal Chiefs as stated above	387	
		7,613
Grand Total		9,003

The following table shows the general result of the final distribution of estates, in greater detail: —

Allottees	*Agreement 10–3–1900*	*Memo of 13–2–1900*	*Lukiiko Memo 25–7–1900*	*Total*
		(*Square Miles*)		
Principal Chiefs:				
Kabaka	350	—	100	
Nnamasole	16	—	10	
„ (mother of Mwanga) ...	10	—	—	
Princes	32	—	—	
Princesses	90	—	15	
Twenty *Ssaza* Chiefs				
(Private)	160	—	189	
(Official)	160	—	—	
Three Regents (Private) ...	48	45	69	
(Official) ...	48	—	—	
	169			

Allottees	*Agreement 10–3–1900*	*Memo of 13–2–1900*	*Lukiiko Memo 25–7–1900*	*Total*
		(*Square Miles*)		
Mbogo	24	—	4	
Kamuswaga	20	—	—	
	958	45	387	1,390
SUB-CHIEFS AND OTHERS:				
Actually distributed by *Lukiiko*	7,413	—	—	
Reserved to satisfy claims of Private Landowners, possibly	20	—	—	
For future allotments ...	180	—	—	
				7,613
GRAND TOTAL				9,003

2. THE MAILO SETTLEMENT: INITIAL ALLOCATIONS

Extracts from the original *Lukiiko* Allotment Lists: —

COUNTY	SQUARE MILES ALLOCATED				NUMBER OF ALLOTTEES			
	1st List	2nd List 25–7–1900	3rd List 13–5–1905	TOTAL	1st List	2nd List 25–7–1900	3rd List 13–5–1905	TOTAL
Buddu ..	709	92	19	820	401	28	15	444
Buggangazzi	330	21	10	361	142	6	10	158
Bugerere ..	179	21	5	205	60	7	5	72
Bulemezi ..	872	71	26·5	969·5	585	19	23	627
Buruli ..	407	30	10	447	186	8	3	197
Busiro ..	383	70	14·5	467·5	240	18	16	274
Busujju ..	216	14	12	242	101	5	12	118
Butambala..	107	14	6	127	41	6	6	53
Buvuma ..	161	20	2	183	51	7	2	60
Buyaga ..	400	30	11	441	163	10	10	183
Buwekula ..	345	44	12	401	123	13	10	146
Gomba ..	247	20	5	272	133	8	5	146
Kabula ..	130	20	2	152	32	5	2	39
Kyaddondo	229	50	14	293	104	15	11	130
Kyaggwe ..	685	93	12	790	388	28	11	427
Koki ..	178	20	3	201	95	3	3	101
Mawogola ..	146	20	9	175	36	6	8	50
Mawokota	278	40	9	327	124	11	9	144
Ssese ..	133	20	6	159	66	7	8	81
Ssingo ..	985	92	12	1,089	579	26	14	619
"King and his Chiefs"	—	198	—	198	—	16	—	16
TOTALS ..	7,120[1]	1,000[2]	200	8,320	3,650	252	183	4,085[3]

[1] This includes 160 square miles allotted to the *Ssaza* chiefs as Official Mailo and a further 160 square miles allotted to them as Private Mailo land.

[2] This includes (as shown) 198 square miles allotted to the " King and his Chiefs " and also 189 square miles allotted to the *Ssaza* Chiefs in accordance with the Note on Land Settlement dated 25th July, 1900.

[3] This includes some duplication of names, *e.g. Ssaza* chiefs appearing separately in their Official and Private capacities.

In addition the following estates were specifically allotted in the text of the Uganda Agreement, 1900: —

	Sq. miles
H.H. The Kabaka	350
The Nnamasole	16
The Nnamasole (mother of Mwanga)	10
Princes (4 in number)	32
Princesses, *etc.* (88 in number)	90
Apolo Kagwa, Regent (Official)	16
Apolo Kagwa, Regent (Private)	16
S. Mugwanya, Regent (Official)	16
S. Mugwanya, Regent (Private)	16
Z. Kizito, Regent (Official)	16
Z. Kizito, Regent (Private)	16
Muhu Mbogo	24
Edwardi Kamuswaga	20
TOTAL ...	638

Note 1 : Private and Official Estates for the *Ssaza* Chiefs were also specifically allotted but, in the event, these were included in the First *Lukiiko* Allotment List (*see* above).

Note 2 : According, therefore, to the original Agreement, Article 15, and to the Allotment Lists subsequently prepared to implement certain clauses in it, allotments of 638 square miles and 8,320 square miles were made, totalling 8,958 square miles, i.e. the total area allotted to the Kabaka, Chiefs and people of Buganda under the Agreement. The addition of 45 square miles for the Regents, granted by Memorandum dated 13th February, 1900, was dealt with separately; bringing the grand total of Mailo Land to 9,003 square miles.

Note 3 : However, many of the original allotments were allowed to lapse, some being reallocated. The eventual result was that on 31st December, 1940, the balance still to be allotted was 154 square miles, 161·65 acres.

Note 4 : Regarding the number of initial allottees, there were some duplications of names in the original lists. The total number was eventually reported, on 31st December, 1921, to be 4,138.

3. THE MAILO SETTLEMENT: OFFICIAL ESTATES

Out of the total of 9,003 square miles available for allocation to the Kabaka, Chiefs and people of Buganda, the following were to be held as *Official Estates* :—

Kabaka	350 *sq. miles*	(*See* Buganda Possession of Land Law, 1908 s. 2 (*b*)).
Nnamasole	10 „ „	(Out of total of 16 sq. miles. *See* Uganda Agreement, 1900. Article 15).
Three Ministers ...	48 „ „	
Twenty *Ssaza* Chiefs ...	160 „ „	
Lubuga	5 „ „	(*See* 2nd List dated 25th July, 1900).
TOTAL OFFICIAL ESTATES	573 *sq. miles,* i.e. 6·4 per cent of whole.	

Source of Information : Lukiiko Allotment Lists and other records of the Department of Lands and Surveys.

4. THE MAILO TITLES REGISTER: NUMBER OF TITLES REGISTERED (excluding P.U.P.'s entered on "parent" titles)

At end of year	Number subsisting	At end of year	Number subsisting
1923	6,757	1943	22,049
1924	7,682	1944	22,691
1925	7,980	1945	23,545
1926	8,369	1946	24,294
1927	8,880	1947	24,866
1928	9,556	1948	25,544
1929	10,496	1949	26,243
1930	11,368	1950	27,023
1931	12,194	1951	27,753
1932	14,167	1952	29,760
1933	15,357	1953	31,943
1934	16,700	1954	33,064
1935	17,577	1955	35,472
1936	18,509	1956	39,031
1937	18,814	1957	45,136
1938	19,224	1958	52,704
1939	19,746	1959	61,062
1940	20,347	1960	68,285
1941	20,987	1961	73,458
1942	21,294	1962	79,890
		1963	85,089

Source: Annual Reports—Department of Lands and Surveys.

Note: Separate figures for Mailo Titles not available prior to 1923.

5. RECENT COSTS, REVENUE AND EXPENDITURE

Item	1958	1959	1960	1961	1962	1963
	Shs.	*Shs.*	*Shs.*	*Shs.*	*Shs.*	*Shs.*
Cost of survey and registration per plot	243	255	285	347	468	543
Cost of survey and registration per acre	17	17	17	21	25	35
	£*	£*	£*	£*	£*	£*
Survey and registration fees ..	43,242	44,312	49,465	35,387	25,636	31,502
Stamp Duty	245	291	312	407	341	2,981
TOTAL REVENUE ..	43,487	44,603	49,777	35,794	25,977	34,483
TOTAL EXPENDITURE	108,386	112,274	120,220	117,919	118,712	113,242

* All these figures contain a relatively small element for survey and registration of Native Freehold Estates in Toro and Ankole.

Source: Annual Reports—Department of Lands and Surveys.

6. BUGANDA: POPULATION DENSITY AND PRICE OF MAILO LAND

Region: District or County	Land Area	Population density per land square mile	Average Price of Mailo Land, per acre 1959–61	
	Sq. miles		*Shs.*	
BUGANDA	16,138	114	80†	
WEST MENGO	4,588	150	—	
Kyaddondo	276	739	255†	
Busiro	458	279	115	
Ssingo	2,582	59	70	* (part only).
Mawokota	375	220	50	
Butambala	139	290	110	
Gomba	596	91	55	
Busujju	162	178	75	
EAST MENGO	5,101	119	—	
Kyaggwe	1,124	245	90	
Buvuma	121	20	40	*
Buruli	1,197	19	20	*
Bulemezi	2,134	102	80	
Bugerere	525	167	60	
MUBENDE	2,668	37	—	
Bugangazzi	627	35	40	*
Buyaga	1,005	41	30	*
Buwekula	1,036	35	25	*
MASAKA	3,781	116	—	
Buddu..	1,786	204	135	
Mawogola	930	36	120‡	* (?)
Koki	567	50	40	*
Kabula	324	26	40	*
Ssese	174	30	55	*

* Denotes those counties in which, from low population density and land prices it appears that Registration of Title is not warranted.

† Rural areas only.

‡ This figure is suspiciously high.

Sources of Information: (1) Uganda Census, 1959—African Population, p. 35.
(2) Department of Lands and Surveys—Prices of Mailo Land, 1959–61.

7. GENERAL INFORMATION: BUGANDA—AREAS (as at 31st December, 1962)

Square Miles

District	Land	Open Water and Swamp	TOTAL
Mengo	9,689	4,728*	14,417
Masaka	3,781	4,197*	7,978
Mubende..	2,668	33	2,701
TOTAL—BUGANDA ..	16,138	8,958*	25,096

* Including territorial waters of Lake Victoria.

Source: Lands and Surveys Department and 1963 Statistical Abstract, p. 1.

8. GENERAL INFORMATION: BUGANDA—LAND UTILISATION (as at 31st December, 1962)

	Square Miles
Allotted to individual Africans (including Freehold)	9,005
Restricted Sleeping Sickness Areas	—
Central Forest Reserves	446
National Parks, Game Reserves and Animal Sanctuaries	21
Local Forest Reserves	281
Land (outside townships) alienated to non-Africans (including Leases) ..	360
Land within boundaries of Gazetted Townships	76
Other land (mainly Public Land after 1st March, 1962)	5,949
TOTAL LAND—BUGANDA (excluding swamp and open water) ..	16,138

Source: Lands and Surveys Department and Forest Department. 1963 Statistical Abstract, p. 1.

9. GENERAL INFORMATION: BUGANDA—INCREASE OF POPULATION BY DISTRICT

District	1948 Population	1959 Population	Increase per cent	Annual Cumulative Increase per cent
West Mengo	489,802	688,185	40·5	3·1
East Mengo	409,794	606,694	48·0	3·6
Mubende	84,878	99,069	16·7	1·4
Masaka	317,688	440,180	38·6	3·0
BUGANDA ..	1,302,162	1,834,128	40·9	3·2

Source: Uganda Census, 1959. African Population, p. 35.

10. GENERAL INFORMATION: BUGANDA—POPULATION BY TRIBE AND SEX

Tribe	Males	Females	TOTAL	Per cent
Baganda	488,553	517,548	1,006,101	54·9
Banyarwanda	134,463	82,433	216,896	11·8
Rundi	85,953	50,902	136,855	7·5
Banyankore	54,131	34,213	88,344	4·8
Banyoro	35,907	35,399	71,306	3·9
All others	192,938	121,688	314,626	17·1
TOTAL ..	991,945	842,183	1,834,128	100·0

Source: Uganda Census, 1959. African Population, p. 36.

11. GENERAL INFORMATION: BUGANDA—MAIN TRIBES BY DISTRICT

Tribe	East Mengo	West Mengo	Masaka	Mubende	TOTAL
Baganda	298,448	410,605	268,748	28,300	1,006,101
Banyankore	19,957	27,552	37,259	3,576	88,344
Banyarwanda ..	46,969	80,599	85,929	3,399	216,896
Banyoro	4,867	10,253	1,804	54,382	71,306
Rundi	51,689	58,231	26,595	340	136,855
Others	184,764	100,945	19,845	9,072	314,626
TOTAL ..	606,694	688,185	440,180	99,069	1,834,128

Source: Population Census, 1959. 1963 Statistical Abstract, p. 10.

12. GENERAL INFORMATION: BUGANDA—ACREAGES OF MAIN CROPS, 1962—AFRICAN GROWERS

FOOD CROPS		CASH CROPS	
Crop	Thousand Acres	Crop	Thousand Acres
Plantains	510	Coffee, Arabica ..	2
Maize	170	Coffee, Robusta ..	538
Millet	89	Cotton	278
Groundnuts ..	143	Tobacco	—
Beans	153		
Sweet potatoes ..	91		
Cassava	69		

Source: Department of Agriculture and 1963 Statistical Abstract, pp. 39, 40.

A Selected Bibliography upon the Mailo System

(Each section by order of date of publication; and including some suggestions for further reading).

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