

# Urban Planning Law in East Africa

*with special reference to Uganda*

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## CHAPTER 1

### *General Background*

#### (a) INTRODUCTION

The city has always held a magnetic attraction for all manner of men. To urban dwellers, it is a home and a recreational centre. To rural dwellers, it is a market place for their produce and a shopping centre. To foreign visitors, it is a stopping place on their journey to the country and a source of souvenirs. To the unemployed and to the criminal, it offers work and opportunities. If it happens to be the administrative capital of the state, it is likely to contain the major political and economic institutions of the country and, invariably, major national policies are decided there. In almost all countries, the city is the centre and symbol of modernisation. One writer has described the main cities of Africa as:

‘The intellectual and social capitals, the seats of governments, the main foci of political activity of all sorts, and the economic capitals of their respective countries, the major transport centres, the major financial nodes, and they contain the vast bulk of the newer market-oriented manufacturing establishments as well as a considerable share of the raw-material oriented plants. Indeed, one of the notable characteristics of many African countries is the rapid fading away of the signs of modernity as one leaves the urban centers.’<sup>1</sup>

Because of its fascination and attraction, the city finds itself with a large population whose problems it can hardly cope with. The ever-increasing urban population creates problems of planning, housing and unemployment. The population distribution affects political, social and economic policies of integration and increases the pressure on demand for urban land which in turn influences the costs and difficulties of providing an adequate social and economic infrastructure. Consequently, the laws which govern the city in its planning, social, economic and political affairs assume an importance of the greatest magnitude. If the city planners and administrators are to carry on an appreciable job of managing the city, it becomes imperative that these problems should be reduced in proportions by foresight and boldness. This is unlikely to be done unless the officials are given sufficient authority and are capable of formulating urban social legislation in a manner which permits imaginative practical policies related to realistic solutions.

Since 1848 there have been some thirty major Acts of the British Parliament dealing with planning under the various headings of Planning, Housing, Health and Industrial Development. But the enactment of urban and planning legislation is a continuous process. Since the 1947 Act, Parliament has found it necessary to enact new laws, and to consolidate and amend the old ones. The 1962 Town and Country Planning Act was, for instance, followed by a reforming statute of 1968, and 1971 saw the enactment of yet another Act, this time of consolidation. Legislation has made planning one of the most specialised

<sup>1</sup>William A Hance, *Population, Migration and Urbanization in Africa*, p.209, Columbia U.P., 1970.

branches of English Law which is almost exclusively governed by statute. The fact that most other branches of English law have been left to evolve largely under the principles of common law is an indication of the importance the English attach to the natural resource of land and its by-products, planning and housing. In all the developed countries, urban centres are increasingly being given priority in national policies. In most developing countries, however, this is not so, partly because of lack of finance and manpower and partly because priorities have continued to be the legitimisation of political power, problems of nation-building and the development of national economies. However, since the growth of urban population and its problems may have a direct bearing on these priorities, it is essential that urban legislation and planning should be considered if only as a means to an end. In discussing urban planning there are two objectives which need to be borne in mind, namely the economic development of the country as a whole and the control of land use for health, social and political reasons. It may be easy in the developed countries for public authorities to concentrate their energies and local funds on the control and development of urban land as a home for the inhabitants without seriously endangering the economic structure and policies of the state. Most of the basic economic institutions and industrial projects which the city attracts will have been well established, and any new ones are unlikely to have greater impact than those already experienced. Secondly, because of good and easy communications and transport services, the availability of funds and manpower, it is possible to site and direct new industries and factories outside the urban areas. These facts do not apply in the case of developing countries. Economic development and the control of land use are so closely inter-related that they must be given equal weight in planning. Consequently, no responsible public authority in a developing country can afford to isolate the two objectives. Professor McAuslan has observed that in the developed countries public authorities have begun to regard integration of land use with economic planning to be essential to development. Indeed, it was because this kind of integration was lacking in nineteenth-century England that the need to legislate for better housing and social amenities became a priority for later governments. Planning and housing are closely connected with land. Therefore the question of who owns and controls the use of land is a precondition of a realistic and feasible plan. The rights of private owners to develop their land, the power of public bodies to acquire compulsorily privately owned land for public use and the procedures which precede and predetermine these actions are matters which concern both lawyers and planners. Notwithstanding the availability of land and the existence of the powers to develop it, planning might still prove futile and unworkable unless there is an understanding of the social, economic and political pressures which exert influence on the community for which planning is designed. The basic unit in planning must thus be the human being and to understand him it is necessary to study the demography of the community and its surrounding environment.

**(b) THE NEED TO ANALYSE THE PROBLEMS OF  
URBANISATION**

Urban legislation and planning are likely to fail if the legislators and the planners lack the necessary information and knowledge about the problems they are supposed to solve. It follows that if they are to succeed, one of the predetermining factors must be the accessibility and wise interpretation of relevant information. There must be thorough investigations and empirical research into the appropriate areas of planning and housing. The causes and effect of the urban problems must be discovered and analysed according

to the circumstances and environment prevailing in the particular area. The results must be made available to the policy-makers and the planners. The search for and the interpretation of this information are not the exclusive prerogative of town planners and administrators, or of the government, but must involve sociologists, politicians, lawyers, doctors and engineers, as well as the representatives of the communities most likely to be affected by any proposed laws and policies. Periodic consultations with and amongst these people are needed at every stage of proposing remedial measures. They must participate in the implementation of the policies as well as in the review of the existing laws. There have been cases in which the urban problems were clearly identified, the appropriate laws formulated; but when it came to implementation the policy failed because the authorities concerned did not appreciate the economic, customary and environmental conditions. Predictably, the field of planning and housing has had greater attention in the developed countries than it is likely to have in the developing countries, at any rate within the foreseeable future. Nevertheless, there is no reason why the developing countries, given their limited resources in finance and manpower, should not approach the subject in a more positive, albeit modest, manner. Development does not depend on abstract ideas backed by legislative provisions, but rather on the application of concrete proposals dependent on relevant law according to the circumstances of the locality. Consequently, what may be an excellent urban plan for London or New York may prove to be a disaster for Nairobi or Kampala. In this respect it is worthy of note that planning laws in the developing countries have tended to be modelled on those existing in the more developed countries. Even when a country is fully developed, it may find that copying urban schemes from equally developed countries is unlikely to be successful, as Japan has lately found out. Japan has a highly developed economy comparable to those of the United States and some European Countries, but her political ethos is not as mature. Since the Second World War, the Japanese obsession for democracy and the rights of private property has superseded the necessity to acquire land for public utility. The result has been that voluntary purchase of land for such elementary uses as public road construction has led to astronomical compensation to owners, while compulsory purchase has taken as long as five years to materialise. The consequence has been delays in the construction of public buildings. The government has been forced to locate housing projects on the worst sites or in places where it happened to own some land or where it could buy it easily. In East Africa, Town and Country Planning Legislation is, in the main, a colonial legacy. It is founded on English laws passed some twenty-five years ago and has remained principally unaltered notwithstanding that since then Britain has revised and amended her own laws because of new factors and circumstances. Dr. V. Uchendu has rightly observed that there are institutional rigidities in most African countries which prevent the articulation of land policies in ways favourable to economic development.<sup>2</sup> It could equally be said that the same rigidities have been partly responsible for the retardation of social development. During the colonial period tribal land rights and the ownership of land by the chiefs were often entrenched in the law, except where the land was required for European settlement, public institutions and mining. With the departure of the colonial administrations the nationalist governments changed constitutional instruments and other laws pertaining to governmental powers but paid little attention to land legislation in spite of the fact that, in the majority of cases, the national economy was founded on the land. It did not seem obvious that the tying of land to the evolutionary rules of customary tenure when the countries were

<sup>2</sup>Dr. V. C. Uchendu, *The conflict between national policies and local sovereignty over land in Tropical Africa* (a seminar paper presented at Leiden, Dec. 1971).

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experiencing social and economic revolutions would deprive the people of the utilisation of the basic natural resource of the state. Similarly, adherence to the colonial land policy which prohibited migration from the villages to the urban centres has continued with little interruption, oblivious to the fact that the policy of restriction is incapable of halting the post-independence exodus to the towns.

There has been some tentative research and writing about the economic and social needs of urban areas in Africa, including Uganda; not unnaturally, Kampala has had a major share in providing empirical data. Rather than being all-embracing and systematic, the research has been limited to isolated areas and topics of urbanisation. It has tended to be sociological and anthropological rather than legal and administrative. Research workers and scholars have been more concerned with facts and behaviour which accord or contrast with the established theories of sociology and anthropology and less with applied research and discoveries. Much of the writing available is based on tribal and sectional behaviour and little has been done on national levels. Consequently, the value of this kind of information is limited. Before any realistic plans can be produced, it is necessary to know the demographic structure of the towns. The number of people who live in an area, their ages, their employment and behaviour and their economic strength are matters of vital importance if the area is to have a viable planned policy of development. The siting and establishment of industrial plants and commercial centres must be preceded by empirical data of population, migration, educational standards and residence preferences. It is interesting to note that in East Africa the colonial administrations have a better record of having cared about the problems of land tenure and urbanisation than the nationalist governments can claim since independence. As early as 1952, the then colonial Governor of Kenya pleaded for the study of these problems. He sent a despatch to the Colonial Office in London urging the relevant authorities to set up a body for the study of 'Land and Population in East Africa'. A year later the Colonial Secretary, convinced of the desirability for such a body, recommended the setting up of a Royal Commission. In 1955 the Commission's Report was published, having examined 'the problems of the land in relation to the economic, industrial and social development of the East African region as a whole and the increase of population which is taking place'. In the same year, the British colonial administration caused to be published a valuable compilation of urban policies in Uganda entitled 'Town Planning in Uganda', which was prepared by Henry Kendall, the Director of Town Planning in Uganda. The only valuable source of information since independence in East Africa is the book edited by E. W. Russell called *The Natural Resources of East Africa*. It was commissioned by the East African conservators of forests who at the time were British expatriates. No other comprehensive or illuminating study of the subject has been undertaken, despite the fact that East Africans are now in control of the development of their region with full powers. If the data is to be of any value it must be used. One of the disturbing elements in post-independence East Africa has been the ability of the Governments to ignore advice and recommended proposals. Robert W. Steel has given an excellent account of how empirical data has been used in the United Kingdom to enhance the production of plans for agricultural expansion and land utilisation.<sup>3</sup>

Equally important is the need to interest indigenous scholars in undertaking research of this nature. The available information and empirical studies have been collected and produced by expatriates. One needs to glance only at bibliographies in such books as *The City in Newly Developing Countries* and *Population, Migration and Urbanization in*

<sup>3</sup>*Journal of African Administration*, vol. XII, No. 4, Oct. 1960, p.213.

*Africa* to appreciate what has been done and by whom. Admittedly, much of these works are detailed and could be used as 'raw material' for what is likely to be achieved later. A legitimate criticism against this kind of research is that the scholars have often been guided by a strong desire to be appreciated by readers in developed countries rather than by a mission to assist local administrators and planners. Perhaps this is inevitable, as it is the developed countries which provide the funds which make the research possible. Moreover, a considerable number of the writers have been post-graduate scholars, under the academic supervision of professors, who live in developed countries and have little knowledge, let alone appreciation, of the people and problems with which the research projects are concerned. In a number of cases, the local authorities have not known the results of the research till they were published in the donor countries. Many scholars go to Africa insufficiently briefed about the appropriate methods of research and the manner in which it should be conducted. Invariably, wrong questions are asked and research subjects are approached in a manner which is offensive to the local population. Such indiscretions may lead to inhibition and suspicion on the part of the people. Mistrust leads to the obtaining of wrong answers, which may then result in distorted information and wrong interpretation of the facts.

In his *A Housing Survey in Mombasa*, E. Stren gives an interesting study of the behaviour and attitudes of the residents in the area. One of the questions asked in his survey was whether or not the residents regarded Mombasa as their home. After analysing the answers Stren concludes that more than half of the residents did not consider it their home. On the basis of this analysis, a town housing planner might be led to believe that only less than half of the residents might need permanent homes. However, this belief would be based on one important assumption: that the research conclusions had made allowance for the fact that to most East Africans, 'home' is not simply the place of permanent residence but the place where they were born and brought up, or where their ancestors were born and buried. Stren comes from a country where notions of a home are different and his survey does not indicate that he was aware of this point. The defects in research findings and conclusions are increased by the fact that research workers spend a comparatively short period on their chosen projects. A project is usually based on one section of the country but the findings are generally applied to the whole country, and, in some cases, to the rest of Africa without allowing for any margin of error or variation. In many instances the writers will try to justify their research findings by explaining them in terms of planning designs and patterns existing in their own countries. It was with this kind of projection in mind that Johnstone Muthiora said,

'Whatever approach we take we must remind ourselves that nothing could be more undesirable or unfortunate than an acceptance of a policy of keeping up with stern planning ideals, with stereotypes derived from international patterns of architecture and civil design, quite inappropriate climatically and ethnically to the needs of our particular society.'<sup>4</sup>

However, it would be wrong to castigate foreign scholars and writers for indifference to the local problems and circumstances, particularly those who have worked and written in the post-independence era of African development. There have been some who recognise and appreciate the special needs of Africa and who have devoted their entire researches to finding the right solutions. Some of them have been ready to criticise many of their fellow expatriates who do not care about local problems. Charles Abrams, one of the most prolific

<sup>4</sup>The human element in town and village planning, East African Social Sciences Council Conference papers 1968/69, Sociology papers, vol. II, p.332.

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writers on housing in developing countries, has regretted the tendency in some of the countries,

'to copy the complex codes of England, Germany or the United States as well as their zoning and planning laws, though they are irrelevant and though the talents to enforce, construe and adapt them may be completely lacking'.<sup>5</sup>

Ideally, local circumstances, talents and finance should predominate in planning and housing. But the problems of urban environment are pretty universal. Consequently, it is important that they should be studied in the context of world planning and development. Prevailing attitudes about urban policies and schemes need to be examined at both regional and international levels. The successes and failures observed may lead to a reappraisal of the situation at the national level. Modern supranational institutions and organisations and state inter-dependence have meant that a country has often to look beyond its territory to find solutions to its domestic problems. Nationalism must give way to international knowledge of planning, housing and finance through diplomacy and aid. This is more relevant to the developing nations which are handicapped by lack of finance, manpower and experts. The question of aid must be re-examined to see whether it could be realistically directed to urban development. The United Nations has of late begun to appreciate the problems of urban planning and housing. In 1951, it set up a branch of Housing, Building and Planning in its Bureau of Social Affairs. The main function of the department was to undertake general studies on urban land problems and policies, community services and facilities, tropical housing and research techniques, stabilised social construction, financing, planning, education, regional planning and co-operative housing. The programme was an ambitious one and the department has met with colossal problems of finance, personnel and expertise advice. Nevertheless, since its inception, the department has produced considerable results based on its studies undertaken mainly in the countries of Asia, the Near East and Latin America. Many of these results would apply equally to the countries of Africa. The most important contribution made by the United Nations in this field has been its willingness to release its expert personnel to advise national governments, departments and organisations in surveying, planning, financing and housing. The same body has founded educational colleges and institutions to cater for regional interests. The Organisation for Economic Co-operation and Development and other United Nations-sponsored commissions for Europe, Asia, Africa and Latin America have made studies and given advice to governments on certain aspects of housing and urban problems. There is thus a wealth of information and research findings on the problems of urban development. The commodity which remains hard to find is finance and without it every policy and scheme is a matter of theoretical imagination. Most of the United Nations bodies exist in an advisory capacity and do not give money to the governments they advise. There are however a few international organisations which have limited funds available for urban development and housing schemes. The World Bank has reluctantly agreed to consider giving loans for housing projects which are regarded as 'integral part of a directly productive project'. Some countries have received such loans and have constructed houses for staff and workers who are employed on large-scale projects of economic production. There are also regional organisations whose functions include the development of urban areas and the construction of houses. Among these may be mentioned the Colombo Plan, the Caribbean Commission, the Organisation of American States, the East African Development Bank and the Commonwealth Development Corporation. In addition,

<sup>5</sup> At p 62.

some individual governments and religious organisations support housing projects in a number of developing countries. Hitherto, the aid-giving countries have given little attention to urban development or housing unless they are directly connected with the economic or educational schemes they are interested in. The overriding consideration has been that aid is given for a productive purpose and housing falls outside that categorisation. In cases where aid has been used on housing, the buildings have turned out to be prestigious and irrelevant to the real needs of the ordinary people in the aid-receiving country. It must be said that there is a strong case for reassessing the benefits accruing from the principles of aid; certainly urban development and housing in the receiving country should be one of them.

**(c) THE CITY OF KAMPALA – AREA, POPULATION AND PROBLEMS**

Of the East African cities only Kampala can claim to have grown out of an indigenous African town. The others have developed mainly from Arab and Asian trading outposts or from European settlements under the colonial administrations. The municipality of Mengo, since 1884 the seat of government of Buganda, the largest and most developed region of Uganda, is within Kampala. Until the abolition of Uganda Monarchies in 1967, Buganda was one of four ancient kingdoms, each with a separate system of African administration organised under a semi-feudal chieftainship. In Kampala, the palace of the Kings and their tombs stand side by side with new buildings and bazaars and in contrast with modern architecture and design. Mengo was the focal point of Uganda's explorers, missionaries and colonial administrators. Inevitably, it became the centre of commerce and trade. The most important educational and religious institutions, the largest and most modern hospitals, the Press, main government offices, industrial plants and factories, the largest business enterprises and most of the professional people are all to be found in Kampala. The city reflects and symbolises the nation of Uganda, and its development is almost synonymous with the development of the country. However, the reflection is purely superficial, because the progress of Kampala is far ahead of other areas in Uganda and the city is a developed island in a territory which is largely undeveloped. If Kampala is to remain the centre of every activity of development in Uganda two things will happen. Firstly, only the people who live in or around the city will share the benefits of such development. Secondly, the city's problems of planning and housing are likely to increase more than in other towns. On the other hand, it might be more equitable and practical to let other regions share some of its functions and burdens, in which case a deliberate policy of decentralising its activities would be necessary. Currently, the city attracts large numbers of the unemployed not only from the rest of Uganda but also from the neighbouring states. The influx of migrants into the city is so great that there cannot be a sufficient number of diverse jobs to absorb the unemployed. At the same time, Kampala lacks adequate transport services, housing and recreational facilities. Partly because of these difficulties, and perhaps in spite of them, the city has in recent years witnessed an increase in juvenile delinquency, prostitution and crime. Yet Kampala is not so big that it cannot be managed well. Admittedly, its population has grown more rapidly than most other cities. In 1926, its population was a mere 4000. By 1930 that figure had doubled. By the census of 1959 the population of Kampala exceeded 50,000 persons. Ten years later, and with the extended boundaries, the last census results showed a population of 330,700 people. By any standards, this is a startling rate of population but, as indicated, the size of the city was enlarged in 1968 and the tremendous

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increase in population reflects both the newcomers and the high national rate of population growth.

It is necessary at this point to examine some of the problems which confront the planners of Kampala as an urban area. Until its extension in 1968, the city's area was no more than 11 square miles, but since that date it covers 75 square miles. This means that until 1968 over 80 per cent of the present city area had not been subject to urban planning, legislation or control. Consequently, Kampala offers great opportunities for planning and experimentation.

Although until 1969 the sub-county of Mengo was always the more populous of the two, Kampala was always by far the wealthier.<sup>6</sup> Comparative official estimates over the years show that in revenue and expenditure, the finances of Kampala exceeded those of the sub-county. In the years between 1928 and 1947 these excesses were in the ratio of six to one in favour of Kampala. After that period, the finances of Kampala increased more rapidly while those of Mengo remained almost stagnant. For instance, in 1953 Kampala's expenditure was £500,000 while that of Mengo was a mere £14,000. Much of Kampala's income came from rates and development projects while Mengo relied heavily on subsidies and grants from the Protectorate government. The financial weakness of the Mengo Municipality cannot be attributed entirely to the poverty of its residents even though this was a contributing factor. It was mainly the result of the administrative incapacity of the Mengo authorities and the rigidity of the Land Tenure system which existed in Buganda. The authorities failed to raise or hold funds available for investment. The Buganda landowners strongly opposed any reasonable level of taxation or urban rating. The highest level of taxation for the wealthiest Africans was ridiculously low and in Mengo they were not subject to the levy of urban rates. In contrast, the Kampala non-African residents and businessmen paid rates and taxes comparable to those of an average English town. The inability to appreciate the possibilities of a cash economy in preference to an agrarian subsistence agriculture within Uganda was first pointed out by Sir Apolo Kagwa, one of the first Africans ever to sit in the Legislative Council. In his famous maiden speech he said:

... Sir, I should like to draw attention to the fact that the introduction of a cash economy has disturbed the African society and shaken (it) to its very foundation - our customs. Unless the African is trained in the new economy and the art of earning money and spending it wisely he will be ruined and his progress will be impossible.<sup>7</sup>

At the time few people in Mengo or elsewhere in the native administrations of Uganda took heed of Kagwa's warning. It is noteworthy that under the Buganda Agreement of 1900 it was the chiefs who owned most of the land within Buganda, including the municipality of Mengo. At the same time, they were the same people who, under the Buganda system of local government, authorised and controlled any policies or schemes involving land.

<sup>6</sup> Although the Municipality of Mengo is geographically within the city of Kampala, Kampala is politically within the sub-county of Mengo. Under the Buganda system of local government, the kingdom was divided into counties, sub-counties and parishes. Mengo is one of such sub-counties of which Mengo Municipality is a parish. In other words, both the sub-county and the municipality are known by the same name of Mengo. Originally, Kampala was founded on the eastern side of the municipality of Mengo but through decades of development and extensions, the municipality came to be surrounded by areas within the jurisdiction of the Kampala Urban authority.

<sup>7</sup> *Proceedings of the Legislative Council*, 4 Dec. 1945. This was the first time that Africans (3) had been admitted to the Council as members.

Traditionally, the chief's power lay in his ownership of the land, for all his tenants and sub-tenants were under a customary duty to pay him homage and traditional rent as well as to obey his orders and do various onerous services for him. The alienation of his land or the tying it to industrial and housing projects would have meant the reduction of the tenant population and therefore a decrease in the chiefly powers and privileges. It is intended to discuss the land system in Uganda later on, but it may suffice here to mention some of the salient features of the Buganda Land Tenure. The system entrenches the rights and duties of landlords and tenants, the customary rules of inheritance, limits the uses to which land may be put, and bars alienation to non-Africans. The system is so sacred to Buganda influential families that few governments would have the political courage to abolish it even though it is considered a hindrance to planning and development. The former President of Uganda, Dr. Milton Obote, did everything possible to reduce the traditional influence of the defunct Buganda kingdom but failed to reform its unique land tenure system. His government passed the revolutionary Public Land Act of 1969 which more or less nationalised all the land in the country except in Buganda. The Act simply made provision for the continuance of the tenure and the protection of the rights created under it.

During the colonial period, greater emphasis was placed on the control of the use of rather than the economic development of urban land. Since independence, the reverse would appear to be the case under the nationalist governments. However, the land laws enacted during the colonial administrations have continued in force with little reform, if any. The urban centres of colonial East Africa were dominated by non-indigenous residents who were mostly Asians and Europeans. The latter included large numbers of administrators, professional people and industrialists, while the former were mainly traders, artisans and commercial proprietors. Between them, the two races controlled urban life in the region notwithstanding that they were always outnumbered there by the indigenous Africans. The presence of the African in towns was regarded as temporary rather than permanent. He was supposed to visit the town during the day, go only to certain places, finish whatever business brought him there and at the end of the day return to his village home, wherever it might be. There was but little appreciation of the fact that for many Africans, especially those who had had some education, the town transformed their lives and they no longer wished to be confined to the dull life of the village. The town had become a home and a place in which they wished to come and go as they pleased without restriction. Thomas and Scott expressed the general official attitude to the urbanisation of Ugandans when in 1935 they wrote:

'There is no evidence, however, of a tendency on the part of the natives to congregate in the townships . . . The native is fundamentally a peasant, whatever his rank or stage of education may be, and neither understands nor has any sympathy with a manner of life which is not intimately connected with land.'<sup>8</sup>

This assessment was certainly true of the older generation and particularly those whose lives revolved around the influence of the traditional chiefs. Nevertheless, the younger and more educated class had begun to reject this mode of life; but the colonial officials did not encourage them to be absorbed into the towns and in some cases restrictive measures were taken to ensure that they returned to their village homes. In cases where the administrators felt that the African could not possibly go back to the village, either because it was too far from the urban centre or because his employment required him to be a permanent resident, they carefully selected places of residence outside the urban area where

<sup>8</sup>H. B. Thomas and R. Scott, *Uganda*, p.275.

he could be housed and encouraged to keep in touch with the village customs, habits and mode of living. Even today, the people who live in these shanty towns continue to do so in a village atmosphere, surrounded by food plots, goats and fowls. The urban authorities were asked to have as little contact with them as possible. They remained under the administration and jurisdiction of the native authorities of the neighbouring parishes and sub-counties. Of the Africans living in Kampala in 1933, only one in five had a dwelling they could call their own. The rest occupied labour camps, servants' quarters and barracks. At the same time some 4000 workers of all trades and occupations came into the town every day from distant villages to work in Kampala. Most of them came and left on foot and only very few owned bicycles. Community clubs and recreational centres within the urban areas were founded and managed for the dominant communities with little provision for the Africans except insofar as they were employed in these premises.

Independence brought with it an influx of indigenous migrants to the towns. The relaxation of the prohibitive measures, the acquisition of jobs by relatives in the towns and the accommodating attitude of the non-African residents and businessmen meant that the town had become more attractive than before. Unfortunately, the urban legislation and planning left by the colonial administrations changed but little. The new government officials replaced the expatriates, the Asian community remained and the rest of the urban African residents continued to be ignored. It is only in recent years that the African governments have come reluctantly to accept the reality that the towns are as attractive to their own people as they have been to Europeans and Asians. However, the realisation has come at a time when those governments consider national priorities to be not the improvement of living conditions in the towns, but economic development and public security. It is with this information and discussion as a background that we now examine and discuss the question of land, the enabling legislation and urban planning.

## CHAPTER 2

### *Land Law, Policies and Attitudes*

#### (a) THE SYSTEMS OF LAND TENURE

The feasibility and success of planning schemes and housing programmes are dependent upon the availability of land and the ease with which it can be acquired for development. Equally important is the attitude of the people who own, use and occupy the land to be developed. For this reason it is necessary to examine the incidence of landownership and land holding in East Africa and to describe the various attitudes the inhabitants have towards the use of their land.

Before the establishment of the British colonial administrations, land in East Africa was governed by rules of customary law. The extent to which these rules differed depended on the social structure, traditions and customs of a particular tribe or tribes belonging to one ethnic group in the region. However, in spite of the many tribes inhabiting East Africa, three basic systems of land tenure may be identified as having existed before the colonial rule. The systems followed the type of political set-up any particular tribe had evolved for itself. The first system prevailed in those areas which had traditional and hereditary rulers or kings. The second system was to be found in regions where there were no kings but where the people enjoyed some kind of central administration through powerful chiefs or clan heads. The third system operated in areas with no central authority or where none of the chiefs had enough authority to command the following and loyalty of the whole tribe. It is necessary briefly to examine each type of these systems.

Typical of, but by no means identical with, the first system was the land tenure which existed in the Buganda kingdom of Uganda. Notionally, all the land in Buganda was owned by the Kabaka or king. Anyone holding land in the kingdom did so at the Kabaka's pleasure. There were three kinds of landholding: clan ownership, official estates and individual tenancy. Though least in size, clan ownership was the most important in Buganda and the Kabaka himself did not interfere with it, considering that his position to the stool depended largely on the consent of the clan heads. Traditionally, the people of Buganda are divided into clans, each of which is identified by a symbolic name of an animal. Every clan has a clan leader, known as the Omutaka, the plural of which is Abataka. The Abataka are the guardians of the clan's customs, traditions and ancestral homes and tombs. Besides rendering certain ceremonial services to the Kabakaship, the Abataka settle disputes of a customary nature amongst the clan members, including the determination of inheritance rights. Each clan has within Buganda an area of land which has always been regarded as clan land or Butaka. Every clan head occupies Butaka on the same principles as the English entailed estate owner. Only he and his family may live on and cultivate Butaka; he may not dispose of it or alienate it; moreover, every clan member, wherever he might be, has

a customary right to bury any deceased relative in the clan land. An Omutaka had to be confirmed by the Kabaka, and in return the Abataka approved his accession to the Buganda throne. The Kabakas were so much aware of the importance of clan heads that they assumed the honorary status of Ssabataka, or the father of all clan heads. This status enabled the Kabakas not only to exercise general supervision over clan heads, but also to evict them if they neglected or abused their responsibilities. The clan land is sacred and the most important aspect of it is the ancestral tomb. It is inalienable and can only be used for cultivation or building houses for the clan head and his family.

The second category of landholding within Buganda was the official estates of the chiefs. The Administration of Buganda was perhaps the most sophisticated and developed throughout Central and East Africa before colonial rule. The system was feudal in character and was founded on a hierarchy of greater and lesser chiefs, all of whom were appointed by the Kabaka. At the centre were the greater chiefs, the Regents, who assisted the king in discharging the functions of the Treasury, Judiciary and royal ceremonies. Then the country was divided into counties known as Sazas, over which the great Saza chiefs presided. These were assisted by lesser chiefs like the Gombolola and Miruka chiefs, down to village level. Each of these chiefs, great and small, was entitled to acres of land which he held *ex-officio* under the Kabaka's royal prerogative. This kind of land was called Obutongole. On the death or removal from office of the chief, the land went to his successor who was not necessarily his heir, since chieftainship was not hereditary. Nevertheless, the chief might have leased the land to his relations and other people in the area, in which event they remained in occupation subject to the necessary dues and loyalty to the new incumbent. Buganda was an over-administered kingdom and, as may be imagined, official estates constituted the largest part of the country. In addition, there were royal estates reserved for the Kabakaship and royal persons. As some of the Kabakas were notoriously promiscuous and illegitimacy did not carry with it the same stigma as today, these royal estates were equally numerous and extensive. Obutongole was closely associated with political power. In the first place, no one could obtain its control unless one was appointed a chief by the Kabaka. In the second place, no tenant could exercise a right of occupancy unless he was prepared to be subservient to the chief. Subservience involved not only giving loyalty but also the payment of certain dues and the rendering of onerous services to both the chief and the Kabaka, at the chief's command.

The third concept of landholding in Buganda was based on personal claims which materialised either through long occupation or confirmation of holding by the Kabaka. Any land which was neither clan land nor Butongole could be occupied by anyone who was able later to claim ownership by prescription. Although customary law did not fix the time of prescription, in practice the claimant had to show that he had been living on the land for some considerable time and that his possession was not challenged by his neighbours. Mukwaya gives another method by which this kind of landholding could be acquired:

'Both chiefs and peasants who had some access to the King availed themselves of some opportunity to have a permanent claim to one particular piece of land recognised. It was common for a chief early in his career to choose one holding for his personal use as distinct from the holding in his official use.'<sup>9</sup>

Occupation by prescription or grant was less extensive than official estates, but economically it was more valuable since the owner was free from the traditional duties of clan heads and

<sup>9</sup>pp. 12-13.

the political pressures of the official estate owners, and, more importantly, the land was inheritable.

The colonial administration concluded the 1900 Agreement with the Buganda kingdom and *inter alia* purported to preserve the customary land tenure. In reality, land settlement under the Agreement took a completely different form from both the original customary tenure in Buganda and the colonial practices in other territories of Central and East Africa. Of the original tenures only the official estates were recognised as private estates of those chiefs who happened to be in power at the time of the Agreement. The clan heads were largely ignored and the rights of the peasants were degraded to tenancies at will from the landlords. The best arable land was taken over by the Kabaka, his family and the greater chiefs. Certain lesser chiefs and some individuals who had acquired holdings by prescription also benefited under the Agreement. The Agreement did not define the type of tenure it had created; it was simply called Mailo land. The word Mailo was the English mile or square mile and is now adopted in Buganda to indicate an estate of any area. Nevertheless, the nature of the holding and the incidence of user show that Mailo land is owned on the same principles as English freehold. The Mailo land is transmissible through succession and sale and over the years it has been sold or willed away in such a manner that there has been considerable fragmentation. The 1900 Agreement was followed by an intensive survey and demarcation of the land. The issuing of titles to holders commenced in 1909 and has remained a continuous process under the Registration of Titles Ordinance as subsequently amended. Deals in land began to worry the Buganda Government, so that in 1939 it passed an Act which made it an offence for anyone

‘to sell or buy land unless the person selling was either the registered proprietor or purchaser or donee of unsurveyed part of Mailo land and a memorial of his interest in such land had been entered into the Mailo Register.’<sup>10</sup>

The Land Succession Law of 1921 similarly prohibited anyone from dealing with any testate or intestate Mailo land unless he had a certificate of succession issued by the “Lukiiko” or Parliament of Buganda.

The second kind of land tenure was to be found in regions which accepted communal ownership of land. The land belonged to the whole tribe or clan with the council of chiefs acting as trustees and guardians of the land for the members of the tribe or clan as the case may be. The tribe claimed the land to the exclusion of other tribes or individuals. The members of the tribe had a mere right of occupancy. The occupancy lasted as long as the land was under cultivation or was being positively cleared for such cultivation. In the event of a dispute about the right of occupancy the chiefs, assisted by the elders of the area, resolved the matter. There were areas within the tribal area where cultivation was not allowed and these included grazing, ceremonial and hunting grounds. In Uganda, the colonial administration preferred the Buganda system introduced under the 1900 Agreement and attempts were made to apply the same in other areas with little success. Apart from small official estates appurtenant to the chiefs’ enclosures, the colonial administration declared the rest of the land Crown land.

The third system of land tenure was in the non-kingdom, non-chieftainship districts which did not have central authorities. Although the clan was the most important unit within the tribe, every family head was the land authority within his family. He settled

<sup>10</sup>Land (Sale and Purchase) Law, 1939. This followed the recommendations of the Sheppard Report on the Cadastral Survey and Registration of Title to Land in Buganda, 1938 (cyclostyled, unpublished); see also *Lumonde v. Kaggwa* (Katikiro we byalo bya Kabaka No. 14/43/47 of 1950).

wherever he wished and used the land in any manner he preferred. For all intents and purposes he owned the land as if he was a proprietor of freehold under English law. At death, the land would be distributed among his relations in accordance with local custom. Moreover, there was no bar against alienation to members of other tribes as, through famine and other natural scourges, the latter emigrated to those districts and begged to be given land on which they could settle and cultivate. As a result these districts possess some of the most fragmented pieces of land in individual holding. It is also a characteristic of these areas that they tend to be agricultural, overcrowded and cosmopolitan. When the colonial administrators visited these areas for the first time they found no central authority which represented the inhabitants and with whom they could have reached agreements, as they had done in areas with traditional rulers and chiefs. The land was therefore declared Crown land. It was unfortunate that this happened considering that of the three types of tenure only the last-mentioned denoted some kind of individual ownership which would later have allowed maximum development by the owners. It should be noted that the land was declared to be Crown land notwithstanding its habitation by the indigenous people who had, moreover, occupied and cultivated it from time immemorial. They continued to do so according to customary law and neither understood nor cared about the new status which was given to their land. The colonial government took cognisance of this by declaring that 'any Crown land occupied and cultivated by natives will be as secure from alienation as if protected by title deeds'. However, they insisted that persons who could not prove the custom would still be obliged to register their claims under the Registration of Titles Ordinance. In 1897 Land Regulations in respect of Uganda were made empowering the Governor to grant certificates of occupancy to land claimants. The only people who benefited were non-Africans. Many of them demanded so much of the arable and commercial land that the colonial administration was forced throughout East Africa to restrict the right of the non-Africans to own and acquire land defined as African.

We have seen that the 1900 Agreement with Buganda made no provision for the protection of the peasants. With the introduction of economic crops, especially coffee and cotton, the landlords in Buganda began to exploit the peasants. The customary tribute known as Busulu was converted into money and, in addition, the Mailo landowners began to demand other dues from their tenants. The peasants objected to this form of exploitation and with the clan heads as their champions they began to press for the revival of their customary rights. The landlords, having become accustomed to the advantages of individual ownership, resisted the peasants claims. The controversy raged for some years until the colonial government was compelled to intervene. After convincing the Mailo owners that their rights under the 1900 Agreement would be preserved, the government persuaded the Lukiiko to pass the Busulu and Envujjo law of 1927 under which the rights and obligations of the respective sides were recognised and guaranteed. The peasants acquired greater protection under the new law than they had hitherto enjoyed under customary law. The annual rent for the land was permanently fixed at 10 shillings and, apart from the customary duty to give respect to the landowner and the requirement for a small sum to be paid for the acres or parts thereof under the cultivation of economic crops, the peasants enjoyed the right of undisturbed occupancy. So long as the tenant observed his obligations under the new law, the landowner was powerless to remove him from his land. The Busulu and Envujjo law was an important measure as it established, on a permanent basis, a cordial relationship between the Mailo landowners and the peasants. Unfortunately, the political success of the measure was not complemented by the possibility

of economic development. Apart from certain abuses of the system by some landowners, who demanded high and illegal premiums as a precondition to granting tenancies, the law operated to the detriment of the landowners. The rent and other tributes remained static notwithstanding that the economic realities of future years demanded an equitable price for the land. Some of the more enlightened landowners succeeded in buying out their tenants, but where the number of tenants was large the compensation required acted as a deterrent. Nor could the tenants themselves develop the land since its use was limited to cultivation. In any event, the landowner was reluctant to authorise other uses because the system would not have entitled him to a share in the accruing benefits. Thus, from both the point of view of the landowner and of the tenant, the land was heavily encumbered. Despite the defects I have mentioned, the colonial policy towards land in Uganda and especially the prohibition of land sales between African holders and non-Africans led to the dominant position of the peasant farmers in the agricultural economy of the country.

Tanganyika was originally a German colony where the administration had created some kind of freehold titles of which the majority were held by non-Africans. It had also recognised tribal lands and established the remainder as public land. The British mandated administration which took over after the First World War simply confirmed the German-created land titles and declared the rest of the country to be public land subject to recognition of the land held and cultivated by the inhabitants under the customary law. In Kenya, the situation was entirely different. From the earliest period of British administration, Kenya had attracted a considerable number of European settlers. They selected the best arable lands in the territory and settled to found extensive farms. The European claims and titles were guaranteed under the law. The rest of the country was divided into Native Reserves and Crown land, with the latter available to all races to claim occupancy under certain conditions. Not unnaturally, the Africans began to protest against the policy which deprived them of the best lands in the country. They demanded a share in the richer areas of the Kenya Highlands which had been declared European territory. Their demands were later to develop into national political movements like the Mau Mau whose main activities came to be directed against the colonial government and the white settlers.

#### **(b) CONSEQUENCES OF THE COLONIAL POLICIES**

The acceptance of communal tenure and official as well as tribal ownership had an adverse economic result. The indigenous farmers were taught new methods of agriculture and husbandry; and Ordinances and Regulations were made to improve and control the cultivation of economic crops. Nevertheless, the land policy did not achieve its objectives. There was no incentive for the local farmer to develop the land which he did not own. Those who tried to do so found themselves hampered by the rules of customary tenure. They could not obtain more land for economic expansion; nor could they introduce schemes of planned and intensive farming. There was no positive way in which unproductive or destructive use of land could be checked. It was impossible to move people from an overcrowded tribal area to another where there was plenty of space. The prohibition of land sales to non-Africans might have kept the African in his natural habitat, but it also meant that land could not be obtained by people who had the means to develop it. More importantly, it could not be used as security to enable the Africans to get loans with which to develop it themselves. The radical changes which were taking place and affecting the

demography and economy of the region lacked comparative and realistic land reforms. This was a period when the cash crops and economic development had radically changed the attitude of the Africans towards customary land tenure. The trend in thought was towards the recognition of individual ownership even in those areas where land had been communally owned. Yet the administrations and the courts failed to accept this evolutionary change. The policy remained that land belonged either to the traditional chief or to the tribe and no individual could claim ownership. The recognised principle seemed to be that pronounced in the *Amodu Tijani* case by Lord Haldane that 'In every case, the chief or Headman of the Community or village or Head of a family has charge of land and in loose mode of speech is sometimes called the owner.'<sup>11</sup> In *Jibana tribe v. A. A. Visram* (1913)<sup>12</sup> an enterprising member of the Jibana tribe purported to sell land to the defendant. As soon as the defendant began to exercise the right of ownership, the members of the Jibana tribe drove him and his servants out and destroyed all the buildings he had put up. The defendant asked for and got government protection; then he went back to the land. The Jibana tribe sued the defendant, contending that according to their custom land belonged to God, to be enjoyed by everyone, and could not be sold either by an individual or by the elders of the tribe. Hamilton C.J. found for the tribe, but conceded that such a state of affairs was highly undesirable and that the government should use its powers to change the custom. The government did not heed the advice. In a series of other cases such as *Muhena bin Said v. The Registrar of Titles* and *Mtovu bin Mwamba v. The Attorney General* (1952),<sup>13</sup> Africans in possession of land sought declarations that they were entitled to register their claims as individual proprietors. In each case, the Court refused to do so on the ground that these plaintiffs had failed to prove that their particular tribal customs allowed individual ownership. The judges, having been brought up under the English law principles which recognised custom only if, *inter alia*, it was ancient and certain, were not prepared to exhibit the same liberalism as Okenu J. and Lord Denning showed in *Kotei v. Asere Stool* (1961) when they agreed that:

'Native law and custom in Ghana has progressed so far as to transform usufructuary right . . . into an estate or interest in land which the subject can use or deal with as his own, so long as he does customary services to the stool.'<sup>14</sup>

### (c) POST-INDEPENDENCE DEVELOPMENTS

Of the three East African countries, only Tanganyika, latterly Tanzania, has had far-reaching land reforms, albeit affecting a small number of people. Within two years of obtaining independence Tanganyika enacted the Freehold Titles (Conversion and Government Leases) Act by which all the land vested in the President of the Republic and all freehold estates were converted into government leases of a maximum duration of 99 years. Although the public land under the colonial policy continued to be occupied and used by the Africans in accordance with customary law, the new law meant that all the

<sup>11</sup>(1965) 74 Y.L.J. 848, etc.

<sup>12</sup>5 E.A.L.R., p. 141.

<sup>13</sup>(1948) 16 E.A.C.A., p. 79, vol. V; E.A.L.R., p. 54, respectively.

<sup>14</sup>See Asante, *Interests in land in the customary law of Ghana - a new appraisal.* (1965) 74 U.L.J. 848.

freehold land and urban land was placed firmly under government control. Recently, the policy was extended further by government acquisition under compulsory powers of all buildings whether commercial or privately-owned and leased. In Uganda, the various post-independence Acts have had little effect on customary tenure. The Public Lands Act of 1962 left intact all the then existing private rights in land and vested the Crown lands into local Land Boards which were empowered to exercise the same powers previously exercised by the colonial administration under the Crown Land Ordinance. For practical purposes, the local Boards were to have the same powers over land as proprietors of freehold land. However, through inexperience, political manoeuvring and nepotism, the Boards did not function as efficiently and equitably as the Act had envisaged. Consequently, in 1969, all public land was vested in a national Land Commission with the same powers originally exercised by the local Boards. The Act preserved individual ownership of Mailo land and the titles registered under the Registration of Titles Ordinance as amended. Also preserved were the customary rights of tenants and peasants. The official estates were converted into public lands and the tenants on them became tenants of the Commission. With regard to Kenya, the post-independence administration introduced a new policy of gradually replacing willing European settlers with Africans, but because only a few of the latter could afford to buy out the Europeans, the policy would be achieved in two ways. Firstly, a number of Africans might combine their finances to buy out one European owner, in which case his estate would be distributed between the number with each member of the group getting a title to his share. Inevitably, this has led to a considerable fragmentation of many of the farms formerly owned by Europeans. Secondly, the Kenya Government, assisted by financial aid from Britain, decided to buy out any European farmers who were willing to sell and the government gave them adequate monetary compensation. After acquisition, the government would dispose of the land in any manner including letting or reselling to African farmers. A significant number of European settlers have, however, continued to hold on to their farms and some of them have acquired Kenyan citizenship. The rest of the land is still occupied and used under the principles of customary law as modified by legislation and regulations. However, recent policy statements in Kenya indicate that the government intends to encourage individual ownership of land throughout the Republic.

**(d) THE ATTITUDE OF THE INHABITANTS TO URBAN LAND**

Throughout the colonial period the official policy was that Africans did not like to be urbanised and that even if they did it was undesirable to encourage them. The urban centres were therefore reserved and developed primarily for the non-Africans, mainly the European administrators and the Asian commercial community. All the towns were declared Crown lands, but because of this policy no attempts were made to extend town boundaries to limits which would have allowed maximum development for future generations. Much of the land in what would later become the suburban areas of the towns continued to be occupied by Africans under their various customs of land tenure. In Buganda, the arrival of the colonial administration meant that the chiefs' loyalty was now divided, for, besides the duties and services they owed to the Kabaka, they also had to observe the orders of the colonial administrators who resided mainly in urban centres. It became necessary for the chiefs to acquire land in and near the urban centres from where they could ably serve

the new masters. Thus many of the chiefs put claims to some of these lands, let them to the peasants and asked the Kabaka to recognise the claims as personal possessions. The landowners continued to regard land as a source of political power rather than as a source of wealth. Land was for the allurements of tenants for providing services and fruits of the land and not an investment for commercial and development purposes. It bestowed chiefly honours on the owners, including those who had not been fit to be appointed chiefs. Because of this attitude governments found it difficult to convince the owners that the sale or development of their land could yield better profits or, indeed, be in the public interest. More important is the fact that the majority of the tenants on these lands are temporary residents who have come to the towns for the sole purpose of getting enough money for dowry and tax, with intention of founding homes outside their tribal areas. The landowner finds it more advantageous to receive small returns from such tenants who occupy temporary huts and shanty buildings on his land than to sell or let to long-term developers who are likely to replace him as a political force in the area. The few who would wish to develop their holdings find themselves encumbered by rules of customary tenure, certain legislative provisions and the requirements of modern commercial transactions.

In both Kenya and Uganda the governments have encouraged the Africans to take up leases of urban lands in public ownership and develop them for residential or commercial purposes. However, because of insufficient funds, lack of housing co-operatives and inadequate planning schemes, the policy has not been as successful as was originally hoped. The policy has tended to favour the civil servants in high positions who have been able to obtain loans on the strength either of their good salaries or on the influence they exert upon loan-giving organisations. They have been able to erect buildings of such sophistication and cost that only non-Africans and personnel of foreign embassies and international organisations have been able to afford the exorbitant rents. They have been assisted further by the fact that they are entitled to housing or a housing allowance, provided by public funds. A number of highly-paid executive officers have so far abused their official positions in their bid to better themselves financially that they have been the subject of official inquiries. Some of the Africans who took up the leases found themselves unable to develop, and decided to sub-let to the non-Africans at high premiums. Mr. E. M. S. Kate, a former Permanent Secretary in the Uganda Ministry of Regional Administrations, stated at an international conference that

'one of the intentions of changing the boundaries of Kampala was to enable as many Africans as possible to be brought within the urban life. However, in these new areas, it is observed that the indigenous people are taking the opportunity to get rid of the land at good prices to non-Africans. Therefore, this is a problem we need to watch and see that the Africans are fully integrated, that is, they become town dwellers. The problem outlined about urban development and planning of Kampala is likely to occur elsewhere.'<sup>15</sup>

It may be said that Mr. Kate's statement is an over-simplification of the urban problems existing in East Africa today. The Africans are already town dwellers and they have been ever since the coming of the colonial administrations. These problems are not likely to occur elsewhere; they have already occurred. What remains is the recognition of these problems, the realisation of the residents' needs. East Africa has an abundance of statutes enabling both local authorities and the national governments to acquire land compulsorily for urban development. However, under the Town and Country Planning Acts, the same authorities have the powers to control and direct development whether of a public or

<sup>15</sup>*Land Law Reform in East Africa*, p. 299.

private nature. It may not be necessary to go into a detailed analysis of these laws, but it may suffice to mention that they are modelled on comparable English laws without a great deal of imagination as to the peculiar conditions of East Africa. The statutes and regulations have in the main reposed on government office shelves, unread and unused. Occasionally they have been resorted to, but only for some political reason or the desire to benefit certain individuals rather than the nation as a whole. It is only recently that Tanzania with its socialist policies has decided to study and use land for the benefit of the nation.

I have found it necessary to examine the various land tenures and laws at length because I believe that they have been largely responsible for the rather insignificant part the Africans have hitherto played in the development of urban centres. Earlier on I made the hypothesis that if the urban centres are to be developed at a reasonable pace it is necessary that the rural areas should compete with them in attracting the working population, especially the educated class. Neither the colonial administrations nor the post-independence governments have done enough in investing money for agricultural expansion. The African was regarded as a foreigner in the urban centres of his country by the colonial rulers. It is surprising that his own nationalist governments have done so little to change this. Admittedly, they have freed him to enter or leave the city as he pleases, but he still finds himself a tenant of the government or of the non-African land proprietor. The urgency of tackling the problems of urbanisation in East Africa has never been greater.

## CHAPTER 3

### *Acquisition of Land for Planning and Development*

#### (a) ACQUISITION

This chapter examines the laws which enable government and public authorities to acquire land for public purposes. It covers the powers of compulsory acquisition of land, the rules and procedures to be observed in the exercise of those powers, and the compensation and remedies available to persons affected.

During colonial administrations in East Africa, the official policy was that all the land in townships and trading centres was in the ownership of the Crown. Thus, section 20 of the Crown Lands Ordinance of Uganda enacted as early as 1903 provided,

‘Notwithstanding any law or custom to the contrary, it shall be unlawful for any person to occupy any Crown land within the boundaries of any township or trading centre unless such occupation is in pursuance of a valid licence or lease which in the case of a licence has been issued by the Governor or by a person who is in occupation himself pursuant to a lawful lease or sub-lease’.<sup>16</sup>

The licences were to be issued at the discretion of the Governor and they were known as ‘township temporary occupation licences’. The licensee might be authorised to erect temporary houses or huts or other temporary buildings on the land, and to plant crops on it, provided that these all satisfied the Township Authority or other body or person administering the township or the trading centre. The leases of Crown lands, including those granted in townships and trading centres, were of 99 years or less. In either case the government was entitled at any time to terminate the lease or licence if the land was required for a public purpose or if the lessee or licensee disobeyed any conditions of the lease or licence. Termination entitled the occupier to claim compensation for any buildings, crops or other improvements on the land. But, as we have seen, the towns and trading centres were limited in size and would have been inadequate to accommodate any development projects which might have followed. Moreover, a considerable part of the town would be leased to builders, traders and companies, mainly of European and Asian settlers. The area surrounding the town or trading centre continued to be occupied by the Africans in accordance with the customary tenure system, or, in the case of Buganda, under the Mailo land system. Consequently, any sizeable plan for development would invariably encroach upon some individual’s interest in land, whether of leasehold, licence, freehold or customary tenure, and because of this, it was necessary to enact laws of compulsory acquisition. The powers of compulsory acquisition in Uganda were governed by an Indian Act, the Land Acquisition Act of 1894, which was incorporated into the laws of Uganda by an Order of the Secretary of State for the Colonies by invoking Article 3 of the Africa Order in Council, 1892, under which he was authorised to adopt certain British Acts and other Acts prevailing in other

<sup>16</sup> cap. 117.

colonies in the colonies and territories of British Africa. The Order continued in force with slight amendments until the attainment of independence and provided for such matters as the declaration of the intended acquisition of land, enquiries into the area of land acquired, claims for compensation and appeals to the Court, as well as the procedures to be followed.

Since her independence, Uganda has had three constitutions, each of which introduced certain changes which radically altered the previous position. The one thing which has remained unaltered is the entrenchment of the fundamental rights and freedoms of the individual which by provision include the right to own and enjoy property. Article 13 of the 1967 constitution, the third in the series, provides,

‘No property of any description shall be compulsorily taken over and no interest in or right over property of any description shall be compulsorily acquired except where the following conditions are satisfied, that is to say . . . .’

Then the article proceeds to name and describe the circumstances under which property may be compulsorily taken or acquired. One of the circumstances in which property may be acquired is for a public purpose. The acquisition is only effective if it is made with reference to any written law which specifically refers to the taking of possession or acquisition of property, and contains a provision for the prompt payment of adequate compensation and the securing to any person having an interest in or right over the property a right of access to the High Court for the determination of his interest or right, the legality of the taking of possession or acquisition and the amount of the compensation to be paid. Until the military *coup d'état* in January 1971, the constitution was the supreme law of the land and prevailed against any other law which was in conflict with its provisions, at any rate to the extent of inconsistency. Moreover, the chapter incorporating the rights and freedoms of the individual was entrenched by Article 3 (2) of the constitution in that its provisions could not be altered or amended by Parliament except by a two-thirds majority on the second and third reading of a Bill proposing the alteration or amendment. Only the elected members of the National Assembly were entitled to participate in the voting intended to affect the entrenched clauses. Between 1969 and 1971, the case of *Shah v. The Attorney-General of Uganda* was decided in the High Court, debated in the National Assembly and discussed in learned legal journals, on the question of how far the government and Parliament could alter or ignore the constitutional provisions dealing with the rights to property. Shah, the applicant, successfully challenged an Act of Parliament which purported to deprive him of a judgment award against the government of Uganda. The government had refused to honour its obligation under a judgment decree and when Shah applied for an order of mandamus to force the Secretary to the Treasury to pay the debt, the government initiated the Local Government (Amendment 2) Act which purported retrospectively to invalidate such proceedings and to render illegal any transactions which gave rise to Shah's cause of action. In a subsequent declaratory judgment, the Constitutional Court of Uganda invalidated the Act as being in conflict with the constitution and ordered the mandamus application to be proceeded with. The order was duly granted and the Secretary to the Treasury was forced to pay the debt under the threat of a warrant of arrest. Since the passing of the 1967 constitution and the decision in *Shah v. The Attorney-General of Uganda*, the country has experienced yet another constitutional change, this time by way of a military *coup d'état*. Under a subsequent military proclamation, the constitution, though not abolished, is no longer the supreme law of the land and may be overridden by military decrees. Nonetheless, the military government has in a declaration reiterated the right to property by affirming that human rights and the

fundamental freedoms of the individual shall be preserved. Thus from the above discussion it is clear that the Uganda government's power compulsorily to acquire private interests in property is subject to the provisions of the constitution, the rule of law and to the jurisdiction of the High Court to determine the legality of the acquisition and the adequacy of the compensation offered. As we are merely concerned with land and planning our examination will be limited to those laws which deal specifically with compulsory acquisition of land.

Besides the constitution, there are other statutes and regulations under which compulsory powers of acquisition may be exercised, not only by the Uganda government but by other public authorities. First, the law allows amicable negotiations between persons having an estate or an interest in land and public authorities who wish to acquire the land in the public interest. No specific rules of procedure are provided for this type of acquisition. Presumably the law simply assumes that the negotiations and any resulting agreement would be in accordance with the general principles of contract. It is provided by section 18 of the Land Acquisition Act that,

- 'Nothing in this Act shall prevent the Government from entering into an agreement with a person having an interest in the land whereby,
- (a) that person's interest in land is acquired by the Government;
  - or
  - (b) that person's claim to compensation for land under this Act is settled by the grant of other land or in any other way.'

In the event of the negotiations failing or if the public authority considers them unsuitable, for example when they cause unnecessary delays, resort is made to the enabling Acts. Powers of compulsory acquisition are available under certain specific Acts dealing with public services and public works. Under the Electricity Act, the Electricity Board may, with the approval of the Minister, acquire an easement in land for the right of constructing, laying and supporting electric wires and for installing transmitters. Similar powers exist for the Ministry of Information and Communication when laying telegraph and telephone wires. Under the Water Works Act, the Water Boards are empowered to acquire land for laying water pipes and digging communal water bore holes. Under the Roads Act, the Chief Engineer may, with the approval of the Minister, acquire land compulsorily for constructing new roads, extending old ones and building camps for road builders and constructors. Under the Forests Act and the Preservation of Amenities Acts the appropriate public authorities may acquire land in order to declare them forest reserves or preserved amenities respectively. These individual Acts are designed primarily to promote the services described in the respective provisions and a large area of land is not often involved. Under the Local Administrations Act, 1967, local authorities are directed to do or perform two types of functions. These have been enumerated in a schedule to the Act and the two categories are described as either obligatory or permissive. Obligatory services include primary education, health centres, control of pests and famine and the provision of prison and remand centres. To perform these obligatory functions, a local authority is empowered to acquire land compulsorily to build, for example, a school or a dispensary or to erect a remand centre. Each of the Acts mentioned contains provisions for compensating persons whose land or interests in land have been affected by the exercise of these powers.

The greatest, and more detailed, powers of compulsory acquisition exist under Land

<sup>16a</sup> Since writing this the military government has dispossessed many non-Ugandan businessmen, particularly of British origin or nationality, of their property, and though it has promised compensation none has been paid so far.

Law Legislation when the land is required for a public purpose. Thus, section 24 of the Town and Country Planning Act, 1951, provides that the Planning Board may 'compulsorily acquire land for a public purpose' provided that such land is subsequently used only for, or in connection with, 'the scheme for which it is to be acquired and as approved or modified by the Minister'. Under the Land Acquisition Act of 1965 which provides the details of compulsory acquisition and compensation, the Minister is authorised to empower any public officer, 'to enter upon any land and survey, dig, or bore into the sub-soil and remove samples and do anything necessary' in order to ascertain the suitability of the land for a public purpose. Section 2 of the Act further provides that whenever the Minister is satisfied that land is required by the government for a public purpose, he may, by statutory instrument, make a declaration to that effect. The Act does not define what a public purpose is, nor does it re-enact the provisions of section 6 of the Indian Land Acquisition Act of 1894 which was repealed and which had provided that the Minister's declaration 'shall be conclusive evidence that the land is needed for a public purpose'. Under the Public Land Act, 1967, all public land in Uganda is vested in a Land Commission and for the purposes of performing its statutory functions and duties the Commission may

'acquire and hold land or rights, easements or interests in land, erect, alter, enlarge, improve or demolish any building or other erection on any land held by it, sell, lease or otherwise deal with such land, cause surveys, plans, maps, drawings and estimates of the land to be made and do and perform all such other acts necessary for or incidental to the exercise of its powers and duties.'

Therefore anyone wishing to develop part of public land or to acquire it for private use, whether it is leased or occupied, need only apply to the Land Commission which would be able to invoke its powers of acquisition. Unlike the land in private proprietorship, no elaborate rules of procedure for depriving those occupying land of their rights and interests were deemed necessary by the legislature. Notwithstanding the presence of a tenant or licensee, the Minister may, by written requisition, call upon the occupier to permit an authorised undertaker to have access to the land to carry out major or minor public works. Such an undertaker may be further authorised to remove from the land, stone, murrum or similar material in order to build, maintain or repair major public works. Section 34 of the Act empowers any public authority which controls public land to enter it at reasonable times and view the state of any alienated public land. Government agents may also conduct geological surveys, dig and bore into the sub-soil and remove samples. In addition, the controlling authority has the power at any time, and especially where the conditions of the grant have been infringed, to resume occupation of alienated public land. All these powers are subject to making good any damage caused to buildings and crops, and to the payment of compensation for the land or materials used or taken or affected by such work, entry or resumption of occupation. Any dispute about compensation is referred to arbitration as established by the general law of Uganda.

#### **(b) PROCEDURAL RULES**

A number of procedural rules exist for the exercise of powers of compulsory acquisition. The Minister's declaration that the land is required for a public purpose must be by way of statutory instrument. This must specify the location and the approximate area of the land to be acquired and, if a plan of the land has been made, a place and time at which the plan may be inspected. The Minister causes a copy of the declaration to be served on the registered proprietor, occupier and controlling authority of the land. If no plan is available at the time of the declaration the Minister must direct an assessment officer to mark and

measure the land and produce a plan of it. Soon after the declaration, the assessment officer causes a notice to be published in the *Gazette* and prominently exhibited on or near the land, and copies must be served on the owners, occupiers and controlling authority. The notice must state that the government intends to take possession of the land and that claims to all interests in the land may be made to the assessment officer. Further, it must give all the particulars of the land and invite everyone with an interest in it to appear personally or by agent before the assessment officer on a certain day and time and place, all of which must be clearly specified. Unless the Minister directs otherwise, the day on which the interested parties are to be heard must be not earlier than 15 days or more than 30 days from the publication of the notice. This is to enable the interested parties to state the nature of their interests, the amount and particulars of their claims to compensation and objections they may have to the published plan. The assessment officer may require that this information and the particulars of the claims should be made in writing and signed by the claimants or their agents.

Several comments may be made on these preliminary rules of procedure. It will have been noticed that the owners and occupiers are not entitled to challenge the reasonableness of the Minister's declaration. The only right they have is to question the accuracy of the plan published with, or after, the declaration. They are merely asked to declare their interests in the land and to claim compensation for these. The requirement that sufficient notice should be given to parties affected is a fundamental feature in the exercise of powers of compulsory acquisition. The provisions of the Act which concern such notice are barely adequate. The necessity to publish the notice in the *Government Gazette* may have been copied from the English law, but it serves little purpose in a country like Uganda. The Government Printer publishes a limited number of *Gazette* issues for government departments and it is not unusual for only one copy to circulate from department to department within one Ministry. The chances of private individuals having access to the *Gazette* are almost nil. Consequently, it is impossible for persons whose land rights and interests are affected by a compulsory declaration to obtain the information from the *Gazette* unless they or their friends work in some government institution which has access to the *Gazette*. Thus, publication in the *Gazette* fulfils the legal requirement without giving any information to the interested parties. In any case, both the *Gazette* and the notices displayed in public and on or near the land to be acquired are written in the official language which is English. Few landowners and occupiers are able to read and understand English; therefore little is gained by fixing the notice onto the property of or serving it personally on the person whose land is affected when it is written in a language he does not understand.

Kiapi,<sup>17</sup> has proposed that if the government wants to take action which affects private rights and intends also to inform the public of its intention, then it should create a special newsletter written in a language which the persons likely to be affected understand. He cites the cases of Kenya and Tanzania, where Kiswahili is used for information purposes. There can be no doubt that the use of the vernacular languages to disseminate government information is the most efficient method and has been effective in these two countries, especially in Tanzania where nearly everyone understands Kiswahili. However, the system of a newsletter has its own limitations. The fact that it would need to be published in at least half a dozen languages to reach all the areas of the country might prove expensive; moreover, not all the persons likely to be affected are able to read. There is one other

<sup>17</sup> Abraham, in *Land Law Reform in East Africa*, p. 157.

method which may be proposed. This is the practice of holding barazas — a method which was extensively used during the colonial administration. A baraza is a formal meeting, the holding of which will have been notified to all the people in one locality by the chiefs. The inhabitants are told that some local or government official will attend the meeting at a given place and time to explain or discuss some government policy and everyone is urged to be present. A baraza has two advantages: since it is held locally it is likely to attract as many people as possible, particularly those likely to be affected by a planning scheme; secondly, the meeting would give an opportunity to the people to discuss the merits of the scheme and to raise objections. The officials would be able to explain the benefits of the public purpose for which the land is to be compulsorily acquired. The exercise would thus directly involve the participation of the people in the planning of their area — a principle which is often missing in planning law and development. Invariably local planning committees are composed of the local people who can communicate in the local vernacular and these could be used in the giving of the notice to the people affected at a local baraza. The baraza would supplement the statutory notice to be given by the Board or the Minister of the intention to acquire the land.

A point may be made here on the requirement of serving the notice on the registered proprietors and occupiers of the premises or alternatively, on or near the premises. While it is admitted that in the final analysis personal service is the most effective, a considerable number of the registered owners tend to be chiefs or civil servants and are liable to be transferred from time to time, while many of the occupiers tend to be sub-tenants with little stake in the property. Thus, there is no guarantee that the served notices will come to the knowledge of the interested parties. For this reason, it is submitted that the time allowed in the notice is too short. A period of three months or more might be more realistic. It is also suggested that the acquiring authority might use the medium of radio as an alternative (but not exclusive) method of informing interested parties that the government or the Board, as the case may be, intends to acquire land compulsorily for a public purpose. Radio is used more extensively as a medium of information than any other in Uganda. The radio message would disclose the land affected, its location and known owners or occupiers. It would name the place and time as well as the officer who would be present when the inquiry was to be held.

#### (c) COMPENSATION

Section 20 of the Land Acquisition Act, 1965, provides,

'The Minister may, by statutory instrument, make Regulations for the assessment and payment of compensation under this Act and generally for giving full effect of the provisions and purposes of this Act.'

In so doing, the Act departed from the provisions of the Received Law which had regarded compensation to be of so much importance as not to be left to the discretion of the Minister. Part III of the Land Acquisition Act, 1899, which applied a similar Indian Act, provided detailed rules for procedure, notices, matters to be considered in determining compensation and rules for the amount of compensation, forms of award, appeals, costs, and interests to be charged and paid. With slight alterations and amendments the statutory instruments made under section 20 are in conformity with the provisions of this part. We have seen that with the declaration of compulsory acquisition of the land, the interested parties have 15 clear days within which to disclose their interests and particulars of their claims to the assessment officer. On the appointed day this officer shall proceed to hold an inquiry into

claims and objections made in respect of the land and shall then make an award under his hand specifying (a) the true area of the land, (b) the compensation which in his opinion should be allowed for the land and (c) the apportionment of the compensation among the persons known or believed by him to have an interest in the land, whether or not they have appeared before him. For the purposes of the inquiry, the assessment officer has the same powers as a magistrate's court. He can summon and compel the attendance of witnesses and order the production of relevant documents. In determining the amount of compensation to be awarded the assessment officer is to be guided by the following considerations: the market value of the land at the time of publishing the declaration; the damage sustained by removing standing crops or trees on the land, damage or loss sustained to the remaining property; the fact that as a result of the acquisition, the person interested has been compelled to change his residence or place of business; the expenses incurred from this; and the damage, if any, bona fide, resulting from the diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession. Under the Received Law, the owner was entitled to a further 15 per cent on the market value, but this is omitted in the regulations.<sup>17a</sup> Moreover, although the officer takes these matters into consideration there is no obligation for his award to be equal to their value. Certain matters are specifically excluded from his consideration. These include the urgency which led to the acquisition; any disinclination of the interested party to give up the land; any damage which, if caused by a private person, would not render such a person liable; any damage caused after the declaration; any increase to the value of the land likely to accrue because of its acquisition or future use; or any improvements commenced or affected without his sanction, after the publication of the declaration.

A copy of the award is to be served on the relevant Minister and on all interested parties and the government is obliged under section 5(4)(b) to pay compensation in accordance with the award as soon as may be after the expiry of the time within which an appeal may be lodged. Notwithstanding that an appeal has been lodged, the Attorney-General may make an appeal to the High Court which may order that payment be made into court on such conditions as the High Court deems appropriate. Under section 6 the assessment officer takes possession of the land as soon as he has made his award, but he may do so immediately after the publication of the declaration if the Minister certifies that it is in the public interest for him to do so. The taking of possession by the assessment officer has two legal consequences. The acquired land vests in the Land Commission by operation of law and any private estate or interest in the land is converted into a claim of compensation under the Act. Procedure exists under which the acquired land may be registered. The assessment officer forwards the declaration, endorsed with a certificate that he has taken possession, to the Registrar of Titles. The latter must register the title notwithstanding any inconsistency with the Registration of Titles Act. Section 8 deals with a declaration relating to the acquisition of houses, buildings and manufactories. Where only part of such buildings have been compulsorily acquired, the proprietor or occupier may request the Minister to extend the declaration to the whole building and the Minister is obliged to do so. Alternatively, under section 11, if the Minister is of the opinion that a claim for compensation in respect of any land acquired by severance is unreasonable or excessive, he may extend the declaration to the remainder of the land, notwithstanding that it is not required for the declared purpose. Any dispute as to whether or not any land forms part of a house, or building or manufactory to be acquired or whether any compensation should be paid for

<sup>17a</sup> In Kenya the 15 per cent still applies notwithstanding subsequent legislation; see *New Mungu Sisal Estates Ltd. v. The Attorney General of Kenya*, civil case no. 320 of 1969 High Court of Kenya.

land acquired for temporary occupation under section 9 must be determined by a magistrate's court on a reference to it by the Attorney-General. However, any dispute involving the total amount of compensation, or the failure or refusal of the assessment officer to include any person in the apportionment of the compensation, or the actual amount allowed in the apportionment gives the aggrieved party a right of appeal to the High Court. In determining the appeal the High Court must be guided by the same considerations as are made available to the assessment officer. The Chief Justice is empowered to make rules and regulations under which these references and appeals are heard and, in the absence of these rules or regulations, the determination will be in accordance with the Civil Procedure Code and Rules.

It is now necessary to examine the practicability of the rules dealing with compensation under the principle of compulsory acquisition of land. The rules which have been discussed seem to imply two assumptions, firstly that the owners and occupiers of the land concerned can, or have the means to, assess the value of their interests and secondly that the administration machinery is sufficiently developed to cope with any problems likely to arise. Neither of these assumptions can be fully borne out by the facts and circumstances which prevail in Uganda. With the exception of a few landowners and occupiers in and around Kampala city, especially those who own Mailo land, the majority of the people who have an interest in land are unlikely to know, or to have the means of knowing, the true value of their interests. To most of them, the value of the land is expressed in terms of buildings, crops and trees currently standing on it and not in its saleable or economic prospects in the future. As the law allows urban land required for a public purpose to be exchanged with rural land outside the development plans, many of the landowners and occupiers simply accept the exchange without considering the difference in value between their land and that offered to them in exchange. In a number of cases the acquiring authority has taken advantage of this ignorance and invoked section 18 which authorises it to acquire land by exchange through agreement instead of a direct exercise of the powers of compulsory acquisition. Often the only compensation recognised under this scheme is for the buildings and crops standing on the acquired land, but even then the compensation given is unrealistic. Owing to the scarcity of private land evaluators, the property is usually assessed by government land evaluators. These are drawn from the government department directly concerned with the promotion of the proposed plan or scheme, thus violating the principle of *nemo iudex in causa sua*. Admittedly, the principle is not strictly adhered to in other countries. For instance, in England, the principle may be modified by statute and such modification has been judicially accepted in cases like *Reg. v. Registrar of Building Societies* (1960),<sup>18</sup> *Local Government v. Arlidge* (1915), and *Wilkinson v. Barking Corporation* (1948).<sup>19</sup> Nevertheless, English law insists that the dispensation with the rule would only be valid if the parties were given an opportunity to be heard and if it was obvious that there was no real likelihood that the powers would be abused or lead to bias. English judicial authorities have been followed in Uganda as *Sikabuza v. The Director of Land and Surveys* (1960)<sup>20</sup> illustrates, but without emphasising the two guarantees mentioned in the English cases.

We have seen that section 4(3) entitles all persons having an interest in the land to

<sup>18</sup> Ex p. Building Society (1960) 1 W.L.R. 669, 2 All. E.R. 549; *Local Government Board v. Arlidge* (1965) A.C. 120.

<sup>19</sup> 1 K.B. 721.

<sup>20</sup> (1960) E.A. 808.

appear personally or by agent to state their interests, claims and objections, but very few of these appear. Many who receive the notification are afraid to object because of the almost conventional attitude to public authorities in Uganda whereby any objection to government policies and decisions is a criticism (and therefore a rejection) of the government. In the Sikabuza case the judge was forced to remark,

‘The appellant was not legally represented at the inquiry, he is an experienced surveyor of some twenty-one years standing (and though present), he took no objection at the time to the personnel of the board.’<sup>21</sup>

Only after the board had reached its decision did the appellant seek the services of an advocate. The first ground of appeal was that the board was ‘illegally’ constituted since it included in its membership a surveyor who was his rival. The appellate court dismissed it by reasoning that at the hearing the appellant, who was present, had not objected to the composition of the board. This case highlights the difficulties faced by interested parties who are not legally represented. Very few persons can afford the services of an advocate, but even those who are able to engage lawyers find that their choice is limited. The number of surveyors in private practice who can evaluate property is even smaller; for instance, in 1960 there were only twenty surveyors for the whole of Uganda and the overwhelming majority of these were practising in Kampala only. It is suggested that a law providing the free services of a lawyer or a surveyor in cases involving the compulsory acquisition of property would be a move in the right direction. At the moment legal aid is only available to persons charged with serious criminal offences like murder and treason. Because of these difficulties the government decided to establish fixed scales of compensation for buildings, crops and trees, but the compensation for the land itself remains a matter for the discretion of the assessment officer or as approved by the Minister generally or in the particular case. Even in cases where the scale of compensation is fixed by law there is no guarantee that the claimant will get the full value. The assessment depends on the age and nature of the building, crops or trees and these are determined by the government evaluator at his discretion. In 1965, a member of Parliament brought to the attention of the Minister concerned the fact that, contrary to law, the Uganda Electricity Board officials cut crops in areas compulsorily acquired before assessment and payment of compensation to the individuals concerned and, further, paid a lower rate of compensation than was allowed by the government. The Minister’s answer revealed that the first point was true and in accordance with the reality of the situation, but the government was not aware of any under-compensation.

Originally, the constitution required prompt payment of the assessed compensation in the case of compulsory acquisition but, following the proceedings in the case of *Shah v. The Attorney-General* (ibid.), the government initiated a bill that subsequently changed this provision from prompt to reasonable time. What is reasonable time is to be determined by the government or Minister concerned. There is thus no warranty that when the party has accepted the amount of compensation he will be paid at any given time. It may be that the claimant wishes to obtain his compensation as soon as possible in order to invest in some other project or start some business, and delay caused by ‘reasonable time’ may be detrimental to his plans. It is suggested that once the parties have reached agreement on compensation or, in the case of appeal, when the High Court has given its final decision, the acquiring authority should be under a statutory duty to pay the amount within a

<sup>21</sup> Sheridan J. at p. 2.

certain given period of time. Professor B. O. Nwabueze has pointed out the delaying tactics public authorities in Tanzania have resorted to in refusing to pay compensation to persons whose property has been acquired under certain nationalisation measures.<sup>22</sup> In practice, there is no bar to public authorities in Uganda doing the same.

The right to appeal to the High Court is restricted by a provision that the party must be represented by a person who has a right of audience in that court. It is difficult to discover the reason for this provision, since litigants in both criminal and civil proceedings are entitled to represent themselves in all courts whether subordinate or superior. It may have been inserted to prevent trivial or frivolous points of law delaying development plans but, as the law stands, it virtually bars most of the would-be applicants from appearing personally in the High Court. This is another reason for suggesting that legal aid should be extended to cases involving compulsory acquisition. In addition, the principle of assessors could be extended to cover the same proceedings. The High Court should be able to engage expert evaluators of property who would be allowed to visit the land and assess it and all its buildings, crops and trees on condition that part of the award would be paid towards the expenses and professional fees of the assessors. There is no reason why the government should not incur expenses in the process of reaching the true evaluation of the land it is interested in. It is interesting to note also that although the law requires the market value of the land to be taken into consideration, that value is never paid. The sum payable is what the assessment officer considers reasonable and not the objective sum according to market variations. Under the relevant English statutes the amount of compensation to be paid on a compulsory purchase must be the market value determined in accordance with the provisions of the Land Compensation Act, 1961, that is, 'the amount which the land if sold in the open market by a willing seller might be expected to realise'. The principle of the open market value is subject to a number of exceptions. These include disregard of any enhanced value resulting from exercising the powers of compulsory purchase, the setting off of the increase in value of the land remaining in the ownership or possession of the claimant, disregard of any depreciation in the land because of compulsory acquisition and discretionary allowances to cover costs of removal and trade losses sustained by the claimant. In most cases, it is a matter of speculation how much land is worth in any part of Uganda. It is only in certain areas of Kampala that land has been officially given a value. It might not be a futile exercise if the government, in collaboration with local authorities, private evaluators and landowners agreed upon a scheme under which the market value of land in urban areas could be finally assessed. The exercise would be beneficial to landowners and developers and might even reduce speculation in land deals. Speculation in land is at its worst in urban centres which witness an upsurge in planning and development. The construction of new roads, the building of hospitals and the construction of industrial plants and buildings will always affect the value of the surrounding land.

It would seem that under the Uganda Legislation of compulsory acquisition of land, once the powers to acquire land for a public purpose are invoked, the decision is unimpeachable and the only contentious matter is the nature and amount of compensation. This contrasts with the relevant English law which permits public authorities to exercise powers of compulsory purchase only with reference to legally predetermined purposes, the particulars of which are fairly known. For instance, local authorities may compulsorily purchase land if it is related to approved development plans, or when it is expedient that the land should be acquired to achieve proper planning. The Land Commission, which has

<sup>22</sup> B.I.I.C.L. conference discussion at Cumberland Lodge, London, April 1971 (unreported).

now been abolished, could only have exercised similar powers for the same objects or in relation to land which was situated in an area that had been designated as the site of a new town or in relation to land in a clearance area under the Housing Act of 1957.

In Uganda, the laws were originally enacted at a time when those likely to be adversely affected had little cause to challenge the decisions of the policy-makers; and in any event those who could found it politically undesirable. As peasants, they had little knowledge about their rights or the economic advantages of the land which was to be taken away from them. Most of the land was used for subsistence cultivation, the grazing of cattle and the provision of shelter. The simplicity of living, the absence of permanent buildings and houses and the lack of complicated machinery for commerce and industry meant that the compulsory acquisition of private land had less impact on the landowners and occupiers than it would have done if they were more industrialised and commercially oriented. Since independence however, the situation has gradually changed. At the time of the coming of the British colonial administration no land changed hands through sale or purchase. By 1930 evidence begins to appear that land was selling at modest prices. Thomas and Scott, for instance, report,

‘By succession and sale these Mailo lands now become transmissible to other natives who might not be attracted to, or might be unfitted for, the duties of chieftainship. The tribute – Busulu – of the occupiers was gradually transformed into a money rent due to private landowners.’<sup>23</sup>

Admittedly, land was still purchased for 100 shillings an acre and the leases of empty lands in Buganda were worth no more than 10 shillings a year to the landlords, but the value was increasing all the time. The system of Mailo land tenure in Buganda was creating a small class of relatively wealthy landowners. Some families sold part of their land in order to finance higher education for their children, and many landowners, and their tenants through their consent, began to erect permanent and semi-permanent buildings as residential or trading premises.

In 1964, West gives the figures of land value as ranging between 1000 shillings and 10,000 shillings per acre, depending on whether the land was within or outside the urban centres and he proceeds to comment,

‘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 another method . . . is for a landowner to come to an arrangement with an existing “busulu” 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 busulu tenant. Thereafter, the new tenants pay a rental of perhaps Shs. 120 per annum direct to the landlord.’<sup>24</sup>

By 1969 the value of most of the land around and within the city of Kampala was estimated at between 5000 and 30,000 shillings per acre by the government official evaluator. But these prices were liable to change at any time, depending on the policies and plans of the government and public authorities. Two case studies may be given to illustrate this view. In case study A, X, a mailo landowner, agreed to sell one acre of his land to Y, a civil servant. This was at Bukoto, a suburb of Kampala where the official evaluation of the land was 5000 shillings per acre. The agreement was reached orally and both parties agreed to

<sup>23</sup> At p. 101.

<sup>24</sup> Appendix B, at p. 173.

have it reduced into writing by their respective advocates. While the lawyers prepared the documents, the Kampala city authorities announced that they were going to widen and tarmacadamise the road through the Bukoto area. Immediately the value of the land in the area shot up. X informed Y that unless he was prepared to pay 15,000 shillings for the acre the deal was off. Since no contract had been concluded Y could do nothing. The change in price occurred over a period of 6 months. In the second illustration, case study B, the Obote government announced in 1969 that all official Mailo land was to be converted to public land without compensation. The statement was vague as to the status of private Mailo land and a number of landowners assumed that their land was going to be similarly converted. M, a landowner, offered for sale his land in Kibuye — some 3 miles from Kampala. The land in the area was evaluated at 10,000 shillings per acre. He offered to sell his at 4000 shillings per acre and N, a civil servant, bought 2 acres. Three months later the government enacted the Public Land Act which preserved private Mailo land. Later, N sold one of the acres of land for 15,000 shillings.

The emphasis here is that since independence land has become so valuable, particularly in the city of Kampala, that unimpeachable compulsory acquisition can no longer be allowed. More and more people have begun to realise the value of land as a commercial enterprise. Apart from managing fields of cash crops like coffee and cotton, they have built permanent houses, factories, and ginneries. The current Five-Year Plan of Uganda reveals the extent to which this type of development has been maintained and the possible plans for future expansion. Many of the landowners and occupiers have reached such a stage of development that they have demanded more safeguards against sudden policies which may lead to their land being taken away compulsorily. It is no longer a question of acquiring the unutilised land from the owner or occupier but the weighing and balancing of private development of the land against public ownership and utilisation for a public purpose. It is suggested that the Uganda law might be more definite if the powers of compulsory acquisition were to be exercised for predetermined public purposes. At present, it is up to the discretion of either the Minister or the Public Lands Commission whether or not any land is to be used for a public purpose. There have been cases when the declared purpose was doubted as being in the public interest. In the case of the U.P.C. school established in Kampala by the government party, the Minister of Regional Administration was challenged for his statement that the land around the school was acquired for a public purpose. The Opposition party contended that since none of their followers were likely to send his child to a school which indulged in indoctrination of a one-party state system, the powers of compulsory acquisition had been abused.

In 1966, the Government decided to establish ranches in Ankole and lands belonging to private cattle owners were compulsorily taken over. The ranches were later sold to wealthy private proprietors who were mainly government ministers and civil servants. It was shown that since the ranches were designed to increase the livestock industry it followed that the acquisition of the land was in the public interest. It is contended that the Opposition party and the cattle keepers in Ankole should have been given an opportunity to challenge the validity of the declaration, especially as the declaration affected private rights which were guaranteed by the Uganda constitution. In any event, in both these illustrations, there was plenty of other unused land which would have provided alternative sites for the school and the ranching project.

There have been one or two cases which have shown that the power of compulsory acquisition without the right to object may be subject to abuse. In the case of *Izongoza*

*v. Yhr Kigezi Administration*,<sup>25</sup> the plaintiff happened to be an influential member of a party which was opposed to the local government administration of the area. He applied to the administration to have his land surveyed and registered under the Local Administration Act and the Registration of Titles Act. The administration sent surveyors to examine the land, not for purposes of registration but for compulsorily acquiring it for a public purpose – in this case making it common land for grazing cattle belonging to the local inhabitants. When the plaintiff resisted such use of his land he was arrested and detained. He later sued the administration for wrongful arrest and imprisonment and was awarded damages. However, the acquisition of his land for a public purpose was not challenged, partly because he did not raise the matter in his pleadings and partly because, even if he had, the acquisition for a public purpose seems unimpeachable. In *Kalori Bitarikwata v. The Muluka Chief of Mpugu*,<sup>26</sup> the plaintiff adduced evidence that the chief had approached him privately to buy a piece of his land. The plaintiff had refused to sell. Witnesses to the negotiations were called and they confirmed the plaintiff's story. Then the chief proceeded to convince the local authority that the plaintiff's land should be compulsorily acquired and declared common land for the grazing and watering of all cattle in the area. The local authority sent a surveyor to the land who was able to satisfy them that the land was indeed suitable for such a purpose. The local authority exercised their powers of compulsory acquisition in good faith and as granted by the Local Administration Act, 1967. The plaintiff then challenged the acquisition as being nothing more than revenge on the part of the Muluka Chief. The court of first instance, a magistrate's court, decided that there was no evidence to show that the local authority acted maliciously or was influenced by the chief's recommendation and that, in the absence of illegality or fraud on the part of the local authority, it had no power to interfere with an administrative decision.

The Town and Country Planning Act describes the planning scheme of any area in relation to development. The latter is defined to include 'any building or re-building operations and any use of the land thereon for the purpose which is different from the purpose for which the land or building was last being used'. It is suggested that objectors to any proposed acquisition for a public purpose should be entitled at least to examine the scheme or acquisition and see whether or not it conforms with the approved scheme and development. There might be an exception to the proposal. Occasionally development plans and schemes do not materialise until some donor or developer has intimated his interest. Sometimes the donor or developer is in a hurry to start the operation of his scheme so that the government finds it difficult to delay him. In such circumstances, prolonged public inquiries and objectors' hearings might not be conducive to development. It was mainly because of this consideration and urgency that projects like the International Conference Centre and the Nile Hotel in Kampala and the ranching scheme in Ankole went ahead without sufficient notice to the public. It is also noteworthy that considerable areas of possible development in Uganda remain unmarked and unsurveyed, thus making it necessary for the government to invoke the powers of entry, examination and surveying before any planning scheme can be realistically proposed.

So far the discussion has been confined to the situation whereby acquisition is by the government or some other public authority when they are initially developing the plan or scheme. The same powers may also be exercised for the benefit of individuals or companies. For instance, under the Land Acquisition Act of 1894 acquisition could be effected for

<sup>25</sup> Mbarara Magisterial Court C.A. No. 23 of 1967 (unreported).

<sup>26</sup> Civil case no. 150 of 1968 Mulore Magisterial Court, Kigezi.

the benefit of a company. The company had to show that the work it intended to carry on was likely to prove useful to the public. The acquisition was conditional on payment by the company of definite premiums, the cost of acquisition and compensation to persons with interests in the land. It had to guarantee the fulfilment of the terms and conditions upon which it was to hold the land. Although the latest Act on compulsory acquisition of land does not reproduce the provisions of the 1894 Act in this respect, the wide definition of a public purpose is sufficient to indicate that the powers may be exercised for the benefit of an individual or a company. In 1968 some fifty individuals or companies applied to acquire public lands for various developments and sought the Minister to exercise his powers of compulsory acquisition of the interests of the tenants and licensees in those lands. The majority of the applications were approved. Those which were rejected had failed to show that their schemes would benefit the public or that the proposers had sufficient funds to succeed in operating the works indicated by their applications. Among the successful applicants were residential and commercial buildings developers, industrialists and school proprietors.

## CHAPTER 4

### *Planning*

#### (a) DEVELOPMENT PLANNING AND LAND USE PLANNING

In East Africa, urban land use planning is considered to be part and parcel of the national development plans. The basic policy currently advocated by the East African governments is economic development, and whether such development is agricultural, industrial or commercial and whether it is urban or rural, it invariably involves the use of land. Consequently, although this work is primarily concerned with urban land use planning, it must take into account development planning. The two are so closely connected that the latter is a genus of which the former is a species. The rationale and details of government policies with regard to development planning are often set out and described in the periodic Five-Year Development Plans of the respective governments and the annual departmental reports which indicate how the policy aims and objectives are to be achieved or are being achieved. Thus, introducing the current Five-Year Development Plan of Uganda, the President said,

‘This is a comprehensive document embracing development proposals in all sectors of our economy, and it is designed to benefit all sections of the Community; particularly rural areas which in the past tended to be ignored.’

Although the Plan is clearly rural-oriented, its text makes specific references to urban land use planning and development. For instance, one of the relevant paragraphs reads as follows:

‘Although this plan is clearly oriented towards rural development (which is what is relevant to the great bulk of the population), important development is planned for urban areas also. For various reasons, certain important economic activities, such as industry, will continue to be located primarily in towns and cities, and basic facilities will need to be provided for them. The urban population must also have access to adequate social services and other amenities. Particular attention is to be paid to the expansion of urban housing and sewerage services, which, due to heavy concentration of people, assume urgency in urban areas.’

The urban land use planner is minded to observe the objectives of the national development plans when he begins to formulate schemes for the planning area for which he is responsible. Moreover, unlike the non-communist countries of the developed world, planning and development in East Africa are carried out mainly by the state through governments, parastatal bodies and foreign aid. Since the planner is unlikely to have much say in the financing and staffing of both these agencies and his proposed schemes, it is only logical that he should conform to the national plans which are likely to have allowed for all these things. Thus, whereas his counterpart in the developed world is likely to be guided by the planning laws of the area and the needs of private developers and residents, the planner in East Africa may give priority to the government’s national economic development

plan notwithstanding that this plan is not the best guide to land use planning in the traditional sense.

In his introduction to *Planning Law*, Charlesworth has defined Town and Country Planning Law as that law which deals with the making of plans or schemes for the planning and development of both urban and rural land. He points out that such plans and schemes lay down the kind of development which is permitted in the different parts of the area planned and also control the form which that development must take from the points of view of public health, public safety and the amenities of the neighbourhood. It is inevitable that this kind of law should be concerned mainly with the imposition of restrictions on the use of land for the promotion of social and environmental plans and schemes. However, there are other aspects of planning which are not specifically embraced within Charlesworth's description. For instance, we have seen that the developing countries put greater emphasis on economic development as an aspect of planning and that land provides the basic resource for this kind of development. But economic development is not an end in itself. Economic growth must be coupled with the raising of the standards of living of all the people and bring about social justice and the equitable distribution of economic benefits. In this context, planning assumes another meaning and the objects which Charlesworth enumerates may be relegated to a secondary position. Some writers see the object of planning as being the removal of social inequalities in any given community. Thus, Dr. Seidman identifies the two communities of the African states — one, an urban enclave oriented to economic growth under considerable specialisation and with the norms of economic interaction determined mainly by private contract; and, second, the rural hinterland of subsistence agriculture prevented from economic advancement by a number of historical and social factors among which may be mentioned lack of educational facilities, traditional methods of agriculture and the impact of the African extended family on the accumulation of capital savings. The resulting argument is that any plan, whether urban or rural, which does not take into account these environmental differences is likely to be unrealistic. The economic imbalance between the relatively wealthier urban centres and the acutely impoverished rural areas must be taken into account in planning otherwise the situation might lead to economic growth without development, which means that urban economic development is likely to lead to a greater increase in national income without the benefits of such a rise spreading to the rest of the country. The consequences of economic imbalances are likely to be an even greater exodus of migrants from the rural areas to the urban centres and the creation of further demographic problems in the towns. Writing about *Law and Economic Development*, Dunning has argued that since contemporary Africa places the overriding emphasis upon economic development, it is important that every social institution be carefully studied to determine its probable effect in development. He regards social infrastructure to be as important as physical infrastructure and concludes that both are essential in the planning of any national economy. This view supports our earlier assertion that planning must be preceded by extensive and all-embracing empirical research to determine the problems and methods of development.

Planning may also be defined in the context of what it is intended to achieve. Professor McAuslan of the University of Warwick has enumerated five basic reasons which justify the need for and growth of land use planning.<sup>27</sup> There are the regional economic imbalances which give rise to social and economic ills. There is also the need to make as economical a use of agricultural land for development purposes as possible, especially when it is

<sup>27</sup>Teaching notes derived from materials for a book in preparation for publication (1972).

realised that land is a scarce and an ever-diminishing resource. Then there is the problem of alleviating the existence of bad housing conditions and badly sited industries which affect the social development of the population. Equally important is the need to accommodate a growing population which increasingly demands more houses. Lastly, there is the problem of making a fairer division of the costs and benefits of the development of land. The writers quoted wrote about, or had experience of, conditions in developed and highly industrialised states of the Western world where the economy is invariably founded mainly on a capitalist system of private enterprise and infrastructure. Nevertheless, the same problems and aims in development obtain in the socialist countries and the developing countries, and their writings may be of immense benefit to these latter countries notwithstanding that different methods of approach may be used to produce different results. Moreover, it has been discovered that problems of urban and planning law are quite common to most countries. Thus, while Professor McAuslan analyses the writings of Western writers before coming to his conclusions about the problems of planning, the Soviet Statute of 1958 enumerates more or less similar problems for the Planning Commissions.<sup>28</sup> The Commission's duty would include the drafting of long term and annual plans for the development of local regions to ensure that (a) local resources were utilised, (b) agriculture improved, (c) housing and dwelling services developed, (d) roads and communications bettered, (e) cultural services improved and (f) industry well sited and properly managed. It may be necessary to examine how far and to what extent the same conditions prevail and predetermine planning in the context of East Africa

There is little doubt that the same problems, in varying degrees, do exist in East Africa. However, the greatest challenge to planners in that region is not so much that these problems exist but the fact that there is as yet little development anywhere. The removal of regional economic imbalances may not be as great as the problem of establishing a strong national economy. The problem of alleviating bad housing conditions and badly sited industries becomes secondary to the need for building new houses and establishing new industries. The division of costs and benefits of development becomes less urgent when there is little development throughout the country. Nevertheless, it is important to analyse the studies of planners in the developed countries. The realisation that the conditions and problems prevailing there may have resulted from bad planning might prove to be an advantage to the developing countries when they begin their own planning, housing programmes and industrial schemes. By drawing on the experiences of the developed countries, they are likely to avoid making the same mistakes.

Urban planning is not a new institution as far as East Africa is concerned. Within a decade of the introduction of the colonial administrations in the region urban planning and law became increasingly prominent in the founding and development of the towns. It is interesting to note that one of the definitions of planning was provided by a Royal Commission engaged to produce a Master Plan for the Development of Nairobi in 1948. The Commission stated that:

'Planning is the conscious application of intelligence to national and local evolution. It is a determination not to meet circumstances as they arise but to master them with foresight. Not to meet but to forestall desperate situations. In the framing of particular plans, in the striking of a particular balance of activities based on the knowledge and consideration of the advantages and disadvantages of alternative sources, we need to have, above all, information. The work depends on the efforts of statisticians, meteorologists, administrators, civic surveyors to

<sup>28</sup> John N. Hazard and Isaac Shapiro, *The Soviet Legal System*, Part II, p. 67, Oceana Publications, New York, 1962.

mention but a few. From this body of expert knowledge which has been collected by different individuals and authorities and is now to be found in many papers and files, this Report has brought together under one cover the essential data upon which the community can make its decisions. Much room in this book has therefore been taken up in assembling and interpreting data.'

The objective of the Nairobi Master Plan which was produced in 1948 was to deal with the major planning issues which confronted a colonial capital. It sought to analyse the problems of Nairobi and to formulate principles for their solution in the context of developing multi-racial communities. It was conceived as a key plan for the general physical, economic and social development of Nairobi over the next 25 years. It will be revealing to compare the aspects of this plan with the plans existing contemporaneously in Uganda and which the then Director of Town Planning, Henry Kendall, describes in his book entitled *Town Planning in Uganda* and which was published in 1955. Kendall stated that:

'Town planning schemes must not only keep abreast of development but must be so drawn up as to be sufficiently flexible to meet changing ideas and conditions. This is difficult to achieve and success will come only if there are adequate machinery and funds to carry out the plan, coupled with a willingness to collaborate by the general public.'<sup>29</sup>

The difficulties which confront developing countries are not limited to those already observed in the developed countries. In the latter nations, the agencies of development (planners, administrators, engineers, lawyers, capital, investors), as well as the bulk of the materials needed for development, may be easily found within the countries concerned. The only problems are likely to be the scarcity of land and, where it is available, the inability to get landowners and politicians to agree on specific policies, plans and schemes of development. On the other hand, a developing country like Uganda is likely to have plenty of land but little of the other agencies of development. For instance, the population of Uganda is only 10,000,000 people which is roughly equivalent to the populations of the bigger cities in some of the developed countries, such as London, Tokyo or New York. Uganda is approximately the same size in area as the British Isles, whose combined population is in excess of 50,000,000 people. The population of Kampala, of some 300,000 people, is spread over an area which includes places which would be classified as rural and agricultural in developed countries. Economists disagree about the effect of underpopulation in development. Writers such as Colin Clark, Boserup, Smith and Blacker advance the theory that underpopulation has an adverse effect on economic development. The two latter have written specifically on East and Central Africa and both agree that the region's economic development demands an expanding population. In 1955, the Royal East African Commission stated the same view when they said:

'It has been the very sparsity of population in the past which has been one of the contributing causes of arrested economic development.'

Other experts take the opposite view. They consider the size of the population to be immaterial and argue that it is not so much the population of the state but rather the population of a particular area and that area's environment, resources and technological methods used which determine growth. Certainly there are statistical figures to support either view. With regard to the latter, it may be said that the overpopulated countries of Asia are not necessarily economically developed whereas there are smaller countries in the West, such as Switzerland, Holland and Sweden, which are highly developed but have only

<sup>29</sup>Para. 21.

small populations. Langdale-Brown states:

‘The physical capacity of an area only has reality in relation to the human population and its social organization and aspirations. Soils which are prized resources to one tribe . . . may be valueless or even a hindrance to another which has not developed the same skills or social organization.’<sup>30</sup>

In spite of what the economists say there is little doubt that the density of population in any urban environment often determines priorities in policy and planning. The sparsity of population in certain areas of the city may mean the absence of certain services such as electricity, water supply, recreational centres and tarmac roads, not because there is no demand for them but because they would be uneconomic, since the residents in those areas are unable to support their establishment and subsequent upkeep. The small revenue that can be expected from a sparsely populated area and the high cost of running an urban administration have a detrimental effect on planning. Roads are likely to be more extensive and the estates to be served much larger, thus off-setting the apparent advantage of cheap labour. It was perhaps with this view in mind that the Commission which prepared the Nairobi Master Plan commented,

‘The good life of a town can only be achieved if there is a sufficient number of persons to pay for it. The cost of an ample water supply must be spread over a large number of individuals in order to be economically possible.’

Having made this observation, the Commission recommended that any further development of Nairobi should be confined within the then existing boundaries notwithstanding that they were planning at the time for what they thought would soon become the political, social and commercial capital of the whole of East Africa.

Having discussed what is involved in planning, it may be useful at this stage to give a more specific definition of planning. Among the many definitions of the word ‘plan’ in the *Oxford English Dictionary*, a plan is said to be ‘a design according to which things are, or are to be, arranged’. It should be noted that it is not implied that the things will in fact be arranged. In other words, a plan is not a command or a decision to act. The same dictionary goes further by defining another aspect of a plan as ‘the way in which it is proposed to carry out some proceedings’. It cannot become a reality or be implemented unless there is a decision to act accordingly. In legal terms these definitions can be translated into the field of physical planning, where a land use plan is then the design or the document according to which land uses are to be arranged in a particular area. The design of a plan and its publication as a legal document, binding the public, does not result automatically in a change of land uses. It will be implemented only when someone actually decides to change the land use within the area covered by the plan, and then he will be compelled to do so according to the plan. A plan will in most cases cover a large area, involve a number of land uses and concern an even greater number of people. As a result, its implementation is likely to be piecemeal, unless the planning authority can produce a comprehensive and systematic programme of implementation which would be legally binding. As already indicated, planning is not restricted to the production of land use plans only. Lewis Keeble has given a shorter but relevant definition of planning as

‘the art or science ordering the use of the land and siting of buildings and communication routes, so as to secure the maximum practical degree of economy, convenience and beauty.’<sup>31</sup>

<sup>30</sup> In *African Affairs*, vol. LXXV, No. 261, p. 307 (Oct. 1966).

<sup>31</sup> Cited in R.E. Brasseur’s *What sort of Plans?*, a conference paper, Department of Geography, Makerere University, Kampala, 1968, Occasional Paper No. 10.

Once the policy-maker has indicated the general objectives, it becomes the task of the expert planner to initiate, formulate and finalise plans and schemes which will best promote the intentions of the policy-maker. Planning then becomes a specialised technique requiring the ability to analyse the policy and to relate it to the demographic and economic data of the region planned. Equally important is the examination of the political and social structures of the community to which the policy is to apply. Planning will also involve the examination of alternative choices of development projects, the means of carrying them out and the capacity to cost them in terms of finance, materials and personnel. The planner may determine and suggest the tools with which to achieve certain norms of development and forecast the consequences of the projects and the stated norms. The means and the analysis may be provided by economists. The infrastructure of the plan might be proposed by the administrator. The mechanics of operations might be the responsibility of engineers and technologists. The sociologists may examine the social consequences of the policy and the plans. Lawyers may be called upon to discuss possible methods of enforcement and to draft the necessary legislation. For these reasons it is pertinent to describe and evaluate the people who have been and who continue to be responsible for urban planning in East Africa. Equally relevant are the means of planning and development which are available to these people – for these people and the means make up what may be called the agencies of planning.

## (b) THE AGENCIES OF PLANNING

### (i) *Introductory note*

We shall now examine the agencies of planning, with special reference to Uganda. It has been observed that the techniques of planning require the services of administrators, engineers, lawyers, doctors and developers. The participation of the residents and the general public may also be necessary in the formulation of any plans and schemes. Since planning is not an end in itself, but an initial step in development, it is important that its implementation should be considered. Implementation is likely to need capital and materials. Thus, the agencies of planning include the professional planners, the technicians, the investors and developers, the residents and the public as well as capital and materials. The purpose of this part of the chapter is to examine and discuss the availability of these agencies and the extent to which they have been and continue to be used or utilised in the field of urban planning in East Africa and especially in Uganda. Public participation will be discussed later.

During the colonial period, urban planning was the responsibility of the colonial administrations. The shape, development and the problems of the towns in East Africa are partly the consequences of colonial policies and practices. It is only since the 1960s that the indigenous peoples of East Africa have been in control of and taken over the direction of their towns' growth and development. With the coming of independence, the colonial administrations departed from East Africa but reliance on foreign money and expatriate planning advisers continued. Recent studies in the field of planning and development in developing countries have shown the lack of sufficient capital and manpower. Studies like *Urbanization in Developing Countries*, *Urbanization in Africa*, *The Towns of Africa*, *Industrialization and Urbanization in Africa South of the Sahara*, *The City in Newly Developing Countries*, *Housing in the Modern World* and *Problems of Foreign Aid*, have compiled information, made comparisons, analysed land use and planning and discussed the

problems peculiar to developing countries.

(ii) *Foreign aid and experts*

In 1964 a conference was held in Dar es Salaam to review foreign aid to East Africa. The information made available to the participants revealed that the region was so lacking in indigenous agencies of planning that it relied heavily on foreign aid, experts and materials. The conference noted that all the East African development plans assumed a very heavy reliance on foreign monetary aid and materials, ranging from 75 to 90 per cent. Well over 70 per cent of the planners, technologists, senior administrators and managers, all carrying considerable responsibilities of policy, planning and finance, were expatriates. It was also observed that while the number of expatriates in the lower ranks of the Civil Service was diminishing, the reverse was the case in the planning and managerial ranks. The conference was attended by high level planners and administrators as well as academic personnel representing the East African countries. Of the 60 delegates who attended, only 13 were indigenous East African citizens. The remaining 47 were expatriates. The conference had three working groups and these were presided over respectively by a British national, an American and a Russian. Twenty-two working papers were presented. All but one had been prepared and written by expatriate advisers and scholars. Only one paper had an East African as a co-author.

It is therefore not surprising that both development planning and urban planning in East Africa have, since independence, depended largely on the recommendations and specific proposals of foreign missions and experts. The Master Plan of Kampala was the result of foreign experts' advice. The recent Master Plan of Dar es Salaam was formulated by Canadian planning experts and the Nairobi Master Plans have been proposed by, firstly, a United Nations Mission, and, secondly, by a British town planning expert. While it is not proposed to go into the detailed examination of these Master Plans, it will be useful to discuss generally the limitations and handicaps these foreign experts encounter, and to examine how useful and relevant their contribution to urban planning in East Africa has been.

Planners in developing countries tend to be foreign experts loaned for the purpose through either bilateral agreements with foreign governments or through the United Nations specialised agencies. Often they come for short-term periods of operation; and invariably they make their recommendations before they are fully conversant with local conditions. Few of them have sufficient knowledge of the background to governmental policies and fewer still appreciate the national and local politics or the social consequences of any given plan. On the other hand, as we shall see later, the influence of these experts on the national leaders and local planners is so great that often their suggestions are accepted without much opposition. In some cases, the plans they 'sell' to local leaders and bureaucrats are likely to be replicas of plans existing in their own home countries or of those they have sold elsewhere or, indeed, are their own theoretical ideas which have never been put into practice. Some of these plans may work well, or prove relevant to a particular country, and criticism may be unimportant unless it can come up with realistic and alternative programmes or can evidence disastrous results. Be that as it may, there is a considerable body of opinion that towns in the developing countries have often provided areas of experimentation and a field for trial and error for international urban planners and experts.

It must first of all be conceded that these planning experts are always invited by, or go

to the developing countries with the blessing of, the national governments and local administrators. In the East African states the most important Ministries are those of Economic Planning and Finance or their equivalent. They are the Ministries which recommend and co-ordinate planning schemes for the approval of the Cabinet. In Uganda, experts from the two Ministries meet jointly in the Planning Commission which is the final authority for considering plans before final approval by the government. Any plan or scheme, whether economic or social, national or regional, urban or rural, must have the blessing of this Commission before it can be proceeded with. Inevitably, every department which wishes to convince the Commission of the feasibility of its plan must not only show that the plan is economically viable but also that the department has had the advice of internationally renowned experts. Hence, before submitting its report, a department is likely to have convinced its Minister or head about the desirability of having expert opinion as a supporting aspect of the departmental policy. The experts invited will have made specific recommendations and given detailed plans of how the proposed policy should be implemented. It is noteworthy that since independence the two Ministries in Uganda and the Planning Commission have continued to be dominated by expatriate economists, planners and statisticians. The fact that they are expatriates is not, and should not be, the basis of criticism. The criticism levelled against them is the short time they stay in the country before making overriding proposals of planning and development. Often, it is not so much the plans they produce but rather the reputation they enjoy as planners in their respective countries which weighs with the appropriate public authorities that invite them.

Two extracts from studies made about planning may be given to illustrate the value of the knowledge of local conditions and the effect of the lack of it in planning. Commenting on the unequal contest between the planners and spokesmen of the Plan presented by the Greater London Council on the one hand, and the objectors to the same Plan, on the other, Donald Hagman says:

‘The persons who are present on behalf of the G.L.C. have lived with the G.L.D.P. (Plan) full time for months or years. And they are only the top of the iceberg; hundreds of persons on call for the G.L.C. are better informed about the G.L.D.P. and its rationale than any objecting witness could be. The groups appearing at the inquiry are of all sorts – governmental or quasi-governmental bodies, planning and amenities groups, developers and so forth. England is highly politicized by voluntary associations concerned with planning and amenity.’<sup>32</sup>

Admittedly London is one of the three largest capitals in the world and is entitled to attract the concern of its experts and residents when its future development is the subject of a public enquiry. It is equally conceded that perhaps none of the small English provincial cities would experience the same rigorous procedures and attract the same number of people at the hearing of its planning proposals. However none of them, or any town in the developed countries, is likely to be treated in the same way as towns in developing countries are often treated. Commenting on the latter, Fred Riggs says:

‘Alien models are deliberately and sometimes even vigorously thrust upon local policy-makers by foreign organizations. The United Nations and its specialized agencies, as well as the United States . . . and other bilateral aid programmes, provided the funds and resources for such efforts. The possibility of obtaining foreign aid (with its three P’s: participants, paraphernalia, and posts) readily tempts decision-makers, especially when they are not subject to strong domestic counter-pressures, to adopt the foreign models.’<sup>33</sup>

<sup>32</sup> *Journal of the American Institute of Planners*, vol. XXXVII, No. 5, p. 294, Sept. 1971.

<sup>33</sup> *In Administration in Developing Countries*, Boston: Houghton Mifflin, 1964.

The East African Conference on the 'Problems of Foreign Aid' noted,

'It was nevertheless felt that strong political strings have been attached to some proposals in East Africa and that on occasions aid has had to be refused for this reason. More subtle but perhaps less significant influence may be exerted on social and political policy through recipient countries working out their plans with an eye to meeting the requirements of prospective donor countries. Foreign assistance may thus lead to "plan distortion".'<sup>34</sup>

Much of the evidence on which the planners base their proposals for development is collected by expatriate researchers with, as already mentioned, little knowledge of the local conditions and circumstances. The combination of the error in empirical data and conditions in the aid programmes may result in a distortion which is out of character with the needs of the people. A former Uganda Minister of Foreign Affairs once said that many of the experts sent to developing countries have little knowledge of the countries' problems and often have preconceived ideas on how best to deal with them. The work they carry out is often unnecessarily academic and does not take into account the realities and urgency of the needs of the people. Aid distorts priorities and nullifies the whole rationale of planning.<sup>35</sup> Much of what the Minister said has been observed and analysed by a number of writers who do not substantially contradict his statement. Gitelson points out the inadequacy and inaccuracy of the statistics. Dr. Obote, the ex-President of Uganda, was worried about the lack of understanding among expatriate advisers of the needs, motivation and aspirations of the people and the government. Professor Ghai has directed attention to the danger of preconceived notions and principles in research for the development of Africa. Discussing urbanization Johnstone Muthiora draws attention to

'those who still view the Africans in the context of circular migration – The Africans move to the town to work and save money and then return to settle in the village permanently. This extinct notion has contributed to the lack of proper planning in Africa.'

Smith speaks of

'the inclination of some lawyers to view "development" needs (and the resulting law jobs) largely in terms of central planning and industrialization, that is, in terms of what is needed to bring African Societies to the state of Western Societies.'

He adds:

'Once this premise is established it is argued that the institutions supported by the customary legal system are impediments to development.'<sup>36</sup>

Mr. Archie Mafeje of the Economic Department at the University of Dar es Salaam has scathingly criticised the standard economic theory designed mainly by Western-oriented economists for the underdeveloped countries. The theory which he criticises starts from the basic premise that all these countries have in common a certain desirability called 'dual economy'. Continuing his criticism, Mafeje says,

'since its introduction in 1953 by Boeke, leading Western economists such as Lewis, Higgins, Fei, Hirschman and many others have sworn by it. Young economists, despite the changing ideological perspective, continue to use it unquestioningly.'

<sup>34</sup>*Report of Study Group II*, pp. 279-81.

<sup>35</sup>*Uganda Argus*, 7 Nov. 1968.

<sup>36</sup>Dr. Obote, *Uganda Argus*, 19 Nov. 1968, Muthiora, *ibid.*, p. 333; Smith in *American Journal of Comparative Law*, vol. 20, pp. 228-9, 1972.

One of the exponents of the dual economy is Dr. Ann Seidman, whom Mafeje criticises for minimising the contribution to the economy which the subsistence sector of development brings. Mafeje observes that when one begins with a preconceived idea about development one's own model determines one's selection of facts and the interpretation to support the models. It is perhaps inevitable that in planning one must begin with a model. It is not the model which is criticised, or the fact that it has been used. What is questionable and what is important is the manner in which it has been used and the evidence available to support its adoption and the rejection to consider other equally adoptable models. For a scheme which has worked successfully in one country to apply to another there must be satisfaction that the planning problems, the social, political and economic circumstances and the demographic data of both countries are more or less identical. In his article 'Urbanization and Social Change in Africa', Epstein has remarked that most of the detailed studies of urbanization and urbanism in Africa to date have been made by social anthropologists. He then proceeds to analyse the writings of a number of them and identifies misconceptions and defects. He points out that writers do not always agree as to what is urbanisation, urbanism and development in Africa and that their findings and conclusions on the subjects are remarkably dissimilar. He then states,

'Yet, as our knowledge of African urbanism accumulates, it also becomes clear that such formulations do less than justice to the complexity of the phenomena, and can lead to an obscuring of certain important problems calling for analysis.'

Epstein's article provoked no less than ten subsequent articles criticising, appraising and pointing out defects and misconceptions in his own arguments and conclusions; perhaps this exercise sums up the dilemma facing urban planners and developers in Africa. The experts and the advisers are not in agreement as to what should be done and the materials of research findings at their disposal are often conflicting.

One of the difficulties which confront the foreign expert attached to an aid programme is the lack of communication between his office at the scene of operations and the donors or controlling principals. It has been said that the process of approving recommended projects often takes as long as two years, and sometimes three, after they are first submitted. Even after approval, similar periods of delay may occur before the operational phase begins because of prolonged negotiations on what exactly is to be done or because of recruitment difficulties. In the meantime, the local planners wait impatiently for their foreign experts to arrive. Any ideas of their own they may have had are shelved because the matter is no longer in their hands.

One of the consequences of engaging foreign experts is that the country concerned relies less on its own local personnel. Often, and as soon as a donor institution or government has expressed interest in a particular project, the policy-makers in the receiving country, who are not necessarily conversant with the particular project, make immediate preparations to receive the donor's experts and equipment without first evaluating their own local resources. The arrival of the experts is followed by an intensive but brief encounter with the problems to be solved. The main discussions tend to be limited to the offices of the policy-makers. There is little consultation with local experts and the experiences of local planners are usually taken lightly. The main preoccupation of the experts is likely to be the discovery of who has the authority to approve their ideas rather than who is most likely to assist them in gathering local information and evaluating local conditions and circumstances. It is only rarely that local opinion about the proposals is sought. Ernst Weigt made the observation in 1968 that

'It is rather surprising that the "impact of nationhood" on town planning very often instead of resulting in the emergence of genuine indigenous ideas for the Africanisation of the settlements has meant that town plans which are fundamentally still those of colonial times have only been modified by addition -- in the city centres -- of buildings in super modern European or even American architectural styles, standing in sharp contrast to the rather primitive living quarters of the ordinary African.'<sup>37</sup>

It may be useful at this point to give some illustration of the manner in which foreign panels of experts have advised and planned for the development of the East African towns. The illustrations are taken from mission reports which made plans for both Nairobi and Kampala. A contrast is made between pre- and post-independence missions. In 1948 the Municipality of Nairobi invited a panel of three experts from South Africa to prepare a report and produce a Master Plan for Nairobi. From the beginning the team's objective was to

'deal with the major planning issues which confront the colonial capital. It seeks to analyse the "Nairobi Problem" and to formulate principles for its solution, which in a wider context may point to characteristic development problems of similarly placed young multi-racial communities. The Nairobi Master Plan is conceived as a key plan to the general physical, economic and social development of Nairobi over the next 25 years.'

The report shows that the team made three visits to Nairobi, each of which was of less than three months' duration. It devoted itself to a study of the layout of the town and analysis of its social structure. They are supposed to have interviewed at length the local personalities and to have learnt to appreciate their viewpoint. After some weeks apparently the team split up, so that each member could pursue the problems which most concerned his department most. Of the sociologist's report a commentator in a UNESCO publication has said,

'The report is not what one would expect of a social survey but is a brief, more or less journalistic description of the history and population of the town. It is of interest here as a background to the other two reports of Nairobi which concern special aspects of urban life.'

The report gives the breakdown population of Nairobi as being in the proportion of 1 European to 3.4 Asians and 6.5 Africans in a population of over 100,000 inhabitants. The team gives acknowledgement to 92 people, who are specifically named as having been consulted. Of these none was African, five were Asians and the remainder Europeans. It is no wonder that the team concluded:

'The town if it is of importance will be European in style and have international connections. banks and business houses will use it for their headquarters.'

The practice of ignoring the views of the Africans who formed the majority of the populations in the colonial towns was part of the colonial policy and as Ernst Weigt remarks,

'The Africans, even if they formed the majority . . . had little or no influence on layout and outlook of these towns, they were in them as an element of instability often possessing rights of residence only when employed by the privileged town-dwellers -- the Arabs, Indians and Europeans. It was they (the town dwellers) who decided the town plan and the segregation into living quarters, in the first instance according to race, then according to wealth and social status.'<sup>38</sup>

<sup>37</sup> In *Ostafrikanische Studien*, Band 8, Geburtstag 1968.

<sup>38</sup> Ibid.

On the question of segregation, the team preparing the Nairobi Master Plan noted,

‘segregation devices banish catching diseases from the better class suburbs.’

Since independence Kenya has had several foreign missions to advise on planning and housing. One of these missions, consisting of Professor Bloomberg and Dr. Charles Abrams, visited Kenya in 1964/5 at the invitation of the United Nations Commission for Technical Assistance. They spent considerably more time in Kenya than the South African team even though they were only concerned with planning aspects of housing. They also visited Uganda to see what was happening in the same field in a neighbouring state. The mission undertook more interviewing sessions and saw a big cross-section of Kenyans. Their recommendations are extremely comprehensive and detailed and deal more specifically with the problem of housing the low income class of people in Kenya. Besides working for United Nations, the members of the mission had also had varied experiences in the developing countries. Abrams is the author of *Housing in the Modern World*. The use to which they put their experience is borne out by their report and recommendations. They have reviewed various projects which they personally saw operating in other developing countries and they either reject some and recommend others for Kenya or make special proposals for the conditions they regard as being peculiar to Kenya.

The next proceedings to be examined are those of the U.N. Urban Planning Mission to Uganda in 1963 which we have already referred to. Its official leader, Mr. Alvin H. Scaff, a sociologist, made a progress report of the mission to a conference organised by the East African Institute of Social Research at Makerere University in 1964. According to that report, the mission was originally invited to advise the public authorities of Kampala on the redevelopment of Kisenyi, which is a slum area sandwiched between the Municipality of Mengo and the urban centre of Kampala City. As soon as the team arrived they realised that Kisenyi was ecologically a part of the city and therefore requested that the area of their operations should be extended. Eventually the team was

‘charged with the examination of development problems in the Greater Kampala Area with latitude to select those areas that are appropriate to our combined abilities and that seem suitable for recommendations and action.’

Although the team was supposed to work with and collaborate with the Town Planning Department of the Ministry of Regional Administration, in practice they worked more closely with the Municipality of Mengo and the team was interested in making a re-development project operational during their stay in Kampala, even though their terms of reference required them only to investigate and make reports to the Uganda authorities and the U.N. agency for which they worked. Admittedly, this produced a number of empirical data for the area especially of the economic structure of the area and the housing conditions of the low-income group of the inhabitants. Nevertheless, concentration on the project must have taken some considerable time which might have been spent on the subject matter of the team’s objective for visiting Kampala.

It has been stated that in East Africa development projects, whether urban or rural, are approved and co-ordinated by the departments of Economic Planning, Development and Finance. The plan is only important if its development can be guaranteed and a planner is unlikely to proceed with the planning process unless he is assured that his proposals are likely to be fulfilled. Consequently, it is relevant to discuss the personnel of these departments. By and large, the bureaucratic machinery, particularly in the field of planning and development in East Africa, continues to depend largely on expatriate senior staff. Currently, the Personal Assistant to the Tanzanian President for Economic Affairs is Professor K. Svendsen of Denmark. Dr. Idrian Resnick, an American, is the chief Economic Adviser in the Ministry of Economic Planning, while Dr. R. Green, another American, is

the chief adviser in the Department of the Treasury. The situation is more or less the same in both Kenya and Uganda. The department of Planning in Uganda is staffed largely by a mixture of professional experts from Britain, some other Commonwealth countries and several East European countries. Moreover, a number of development projects currently operating in the towns are managed and directed by aid programmes either initiated in those countries or run by the United Nations specialised agencies. It is not unusual for these experts, representing as they do different disciplines, cultures and ideologies, to disagree. They are further handicapped by the short periods they spend in these countries. Although most of them, if not all, have every good intention of assisting in the development of the host country, the little time available to them does not permit a full appraisal of the situation. The Economic Research Bureau of Dar es Salaam was set up to gather and collate research materials and evidence to aid the government and other public authorities in the planning and development of Tanzania. The Bureau has a staff of 50 members, 11 of whom are Tanzanians or other Africans. Four of the Africans are employed merely as assistants to the Bureau and carry out tasks of a routine nature. The Director and the more senior members of the Bureau are expatriates, mainly from the United States of America. The average period which most of them spend in the country is two years and in some cases is less than one year. It is arguable whether a period of two years or less is sufficient to enable any stranger to study and appreciate the needs of a people he has met for the first time. The Bureau's annual report of 1970/71 showed that since 1966 there have been some 310 major and minor publications dealing with or relevant to planning and development in Tanzania. Of these only 48 papers are accredited to Tanzanians or other East Africans. Undoubtedly, some of these publications are extremely valuable in compiling empirical data for planning and development in the country. On the other hand the majority of them may be (and have been) criticised as being insufficiently evidenced and hastily written with various misconceptions and preconceived ideas of planning and development.

In his Retirement Note to the Minister of Finance, Mr. J.G. Huddle, an expatriate senior civil servant who had been in the Colonial Service for over 20 years said,

'I think more and more Government Departments are now coming to the conclusion that we have gone in too freely for what are often incorrectly called experts from outside to help us with our problems. They have many possible disadvantages. As soon as an expert is known to be coming all difficult decisions connected with his inquiry tend to be postponed. After he arrives the expert consumes much time in gathering his local knowledge. Too often his report is hastily prepared and does not take due account of local realities. I wonder whether the Hicks/Tress and Ani Reports were really worth all the time, effort and money.'<sup>39</sup>

Perhaps not all senior civil servants in the administration of Uganda are prepared to be as critical as Mr. Huddle. When a Ugandan teacher complained that at the (Ugandan only) Technical College, Kyambogo,

'the expatriate decides *what* courses are suitable, *how* they shall be taught and run and *who* shall teach them while the Ugandan merely teaches the courses already prepared for him'

the Permanent Secretary to the Ministry of Education, Mr. W.W. Rwetsiba, a Ugandan replied that,

'It sounds strange that in Uganda's sixth year of independence, some people still regard foreigners as strangers coming out from the moon and whose presence here is for no other purpose but to hamper the progress and advancement of the indigenous people.'<sup>40</sup>

<sup>39</sup> F.C. 3063, 15 Dec. 1963; see also G. K. Helleiner, Socialism and economic development in Tanzania, *Journal of Development Studies*, vol. 8, no. 2, Jan. 1972.

<sup>40</sup> *Uganda Argus*, 10 July 1968.

The Principal of the College, Mr. E. C. Summers, an expatriate, explained further,

‘Although Ugandans are frantic to develop and to be really independent, it is difficult to produce young Ugandans ready to jump into the top posts. After all, a recent graduate is not a fully-fledged engineer, but Africans are very impatient. Some of them fail to realise that one needs experience as well as a degree, in order to be an effective teacher.’

There was no doubt that both Mr. Rwetsiba and Mr. Summers misunderstood the argument, which was that courses at the Technical College should be based on the needs of Uganda and should include subjects dealing with certain aspects of the Uganda administration instead of being replicas of British syllabuses and institutions. It was unfortunate that the correspondence in the newspaper did not continue long enough for someone to ask the Principal of the College how one can acquire teaching experience without teaching. On the face of it, this last example may not seem to be relevant to planning, but its relevance lies in the fact that it is at this educational institution that engineers, technicians and surveyors — and therefore the future planners of the towns in Uganda — are taught.

It may be appropriate to conclude this part of the chapter by reproducing the advice given to the Minister of Finance by the expatriate, J.C. Huddle. After 16 paragraphs of his report he continues,

‘17. Far more often should we rely on local experience and even “off the cuff” decisions which can always be modified if need be. There are still bound to be occasions when we do want to call in outside expertise. When we do, we should make sure the terms of reference are very carefully worked out, consulting all the Ministries and other interests concerned. An enquiry should not be allowed if we cannot be sure that the expert is clearly suitable. The expert should not be allowed to go before his report has been studied by the Uganda Department concerned, preferably in draft so that he can re-write it in the light of their comments. This latter is I think the most vital point of all. I think it would be surprising how much more careful the experts would be if they knew they had to face up to this examination.’

The East African Conference on the Problems of Foreign Aid had the same viewpoint when they recommended that the selection panels of the experts should take into consideration both the professional and technical qualifications of the candidates and such panels should include representatives of the recipient governments. Arrangements for the assessment of the effectiveness and achievements of the experts should be made compulsory and

‘only in this way will it be possible to profit from any lessons learned from their successes or failures.’

In addition to the above proposals it is suggested that in accepting bilateral or multilateral aid programmes the recipient state should have a clause inserted which obliges the team of experts to accept local experts and planners as equal members of the team at any time the local experts are available and released to serve. Moreover, the acceptance and operation of any plan produced should be subject to the concurrence or separate comment of the local experts and to publication and public discussion.

### (iii) *Local planners*

The East African Statistics Department has revealed an acute shortage of manpower, particularly in the professional disciplines of engineering, surveying and law. During the colonial period technical education was concentrated on the production of what are technically called sub-professional planners. These could be and still are used in the gathering of data, and in the administration of technical staff such as building inspectors, draughtsmen

and sanitary engineers. A number of those who proved more experienced in the field of planning were placed in charge of smaller planning areas within the country. The metropolitan government was able to draw on its home manpower resources for any major task of planning. A small number of the sub-professional staff was occasionally sent abroad, especially to the United Kingdom, to do further training. Several of these would return as fully-fledged engineers and planners and therefore joined their expatriate counterparts in the departments of planning. As independence approached, they began to understudy the expatriates so that they could take over responsibility when the expatriates left. With the coming of independence, two things happened. Firstly, these local experts and planners were called upon to leave their professional careers and become either politicians or administrative civil servants. The engineers became Ministers, Permanent Secretaries or regional Chief Engineers; the doctors became Chief Medical Officers in the hospitals. Many members of the professional class were taken on to assist the new nationalist governments, not in planning but in the administration of the new sovereign state. This is part of the reason why it was found necessary to recruit more expatriate staff to replace some of the local personnel who became absorbed by the governments. The local planner ceased to be the professional technician and became part and parcel of the policy-making machine of the state.

Secondly, as most of the local planners had been trained overseas and, perhaps not unnaturally, had a high regard for the educational institutions where they trained, they felt it inadvisable to entrust the task of planning to locally trained personnel or to local planners who had not had the privilege of attending these institutions. Now that they were the policy-makers and the decision-makers they could take advantage of their new role to visit the countries in which they had trained in order to invite former associates and professors to carry out the planning tasks in their departments. Moreover, such was their faith in those they invited, that they felt it unnecessary to pair them with, or give them the assistance of, local planners. The result was that the plans remained colonial, or at least reflected the ideas and practices of the guests' countries.

There was another factor that tended to act to the disadvantage of local planners. The generation which took over after independence was less educated and certainly possessed less graduates in administration than the generation that has since emerged. The older generation saw, or imagined, that because the new generation was more educated and undoubtedly more professionally-oriented, it would, if given the chance, replace the old administrators. Any credit for better planning and constructive ideas given to the latter would only accelerate this replacement. Consequently it was better that persons who had no designs on the established posts (that is, the expatriates) should do the planning rather than the 'ambitious, academic young men of this new generation'. A number of the new graduates and professional young men found the situation so intolerable and frustrating that they sought other outlets of employment in private industry, private practice, international organisations operating in the area, and in the Universities. A number of them returned abroad, not to study but to work. The rivalry and disillusionment were not confined to single departments. For example, the Report presented to the Addis Ababa Conference on Aspects of Development Planning shows that rivalry between Ministries and the degree of departmental autonomy made it difficult to co-ordinate plans. Since the number of local experts is small, they are often called upon for work which has little connection with the specialisations for which they were trained or originally hired. They may have to accompany Ministers to overseas international conferences, become chairmen of national corporations, or, in some cases, diplomats. The importance of identifying manpower requirements in

the developing countries in specific fields of planning and development and of directing the education policy to that purpose cannot be over-emphasised. It is only recently that the Uganda government has perceived this need in relation to the courses and intake of students at Makerere University and the establishment of the National Research Council.

The National Research Council was created to co-ordinate research in Uganda. Before the establishment of the Council, Ugandan research was in a chaotic state because of the large number of research departments, institutions and organisations carrying out projects, sometimes of a similar nature, without co-ordination. As a result many scholars and a great deal of money were involved in small fields of research whose findings and recommendations tended to be similar. For example, at one time the Kampala City Council, the Department of Planning, the Institute of Social Research and the Departments of Geography, Social Work and Administration and the Faculty of Law at Makerere as well as a United Nations Mission, were each and independently engaged in research in the urban and rural development of the city of Kampala. This was obviously a misuse of manpower and research funds. Moreover, of the foreign researchers, very few, if any ever published their findings or deposited copies of their reports in Uganda. The objects of the Council are not only to co-ordinate research and control research funds, but also to examine each proposed field of research and grant permission for the research to be carried out. The Council is composed so that it represents all disciplines, including law and planning, and its members include representatives from Government departments, educational institutions, social organisations and members of the public.

Having examined the nature and sources of the planners in Uganda, it is now necessary to look at the actual town planners — the physical planners. Under the Local Administration Act of 1967 as amended in 1969 and the Urban Authorities Act, cap. 27, of the Uganda Laws, each town is administered by a council and a number of permanent officials, on the same pattern as an English Municipal Council. The 1967 Uganda constitution had provided that councillors would be elected by popular vote of the electors within the towns, with a proviso for an interim period during which the Minister responsible for local administrations would appoint the councillors. In fact from the time the constitution came into force and until the military *coup d'état* in 1971 councillors in Uganda towns continued to be appointed by the Minister, mainly because from 1966 to 1971 emergency regulations existed in Uganda. After the *coup d'état*, councils were suspended. Since then their functions have been carried out by the appointed permanent officials of the towns, who include a Town Clerk, a Chief Engineer, Supervisor of Public Works, a Medical Officer, a Sanitary Officer, a Treasurer and a Surveyor. Each of these officers is head of a town department which employs varied numbers of professional and semi-professional personnel. Although every local administration is a body corporate, having perpetual succession and capable of suing or being sued in its name, it is controlled and directed by the Central Government. The councils must consist of such numbers as the Minister may, by statutory instrument, approve. The Government controls the election and appointment of their senior officials, the meetings of the councils when they are still in existence, approves bye-laws and, in most cases, any transactions or business the administrations may wish to engage in. Although the 1967 constitution establishes the Committees of councils, the Minister was empowered to delegate any of their powers and the responsibilities of the council to any other authority. Meetings of the council had to be approved by the Minister. All the standing orders and regulations as to the conduct of business, quorum and conduct of members had to be approved by the Minister. The Minister or any other person nominated by him was entitled

to address the council at any time. He was further empowered to take over from an administration all or any of its functions if he was satisfied of its inability to function either for lack of staff or facilities.

Thus, local administrations in Uganda were mere agencies of the Central Government after the 1967 constitution and the enactment of the Local Administration Act of the same year. It was under this kind of control that the planning committees of the councils transacted business. The *Kampala Official Handbook of 1970* states that the council met at the end of each month and that its functions were carried out by 12 Committees, namely, Administration, Appointments Board, Education, Finance, General Purposes, Housing, Joint Plans, Lands, Liquor Licensing Board, Public Health, Public Works and Traffic Control. We may find the Joint Plans Committee of relevance here; this would consist of members from the Lands, Public Health, Public Works and Traffic Control Committees together with the permanent officials from those appropriate departments. Between 1967 and 1971 the composition of the Kampala City Council changed three times and during this period only candidates who supported the Government party were appointed councillors. None of them was qualified or had experience as a town planner, though they represented various professions and trades within Kampala. The task of the Joint Plans Committee and the council consisted mainly of approving the planning proposals submitted by the officials of the council, and the proceedings of the council reveal that these were few and far between. Of the permanent officials only the Chief Engineer and the Town Clerk – one a qualified engineer and the other an administrator – had been in office for a sufficient length of time to have had any impact on the urban planning of Kampala. At a conference on the urban planning of Kampala the City Engineer delivered a short paper on some aesthetic aspects of town design in which he said,

‘Those of us who have travelled a good deal abroad know how the impression of a place and of a people largely depends on the beauty or otherwise of the cities and the buildings and the bridges in the cities . . . Having spent some years now as Kampala’s City Engineer I am particularly concerned with what form this city will take in years to come . . . It is important therefore, that all of us involved in the planning and implementing the various plans for the future growth should take interest in the aesthetic aspects of town design . . . Beauty in architectural design and Town Planning can be found in many an old and charming English village . . . The designers of these villages . . . by a lively sense of fitness for purpose and by the use of pleasant local materials . . . the result is often a positive beauty in the whole grouping. Such a desirable aim is very worthwhile, and should be very possible, given the will to achieve it. Uganda architects may well learn from these villages.’<sup>41</sup>

It is disappointing that the chief planning officer of Kampala was restrained at an international conference held in his own city from revealing any proposals for alleviating the planning problems of Kampala, none of which is in any case mentioned in his paper. It may be that the narrowness of his article confined him to making the observations extracted above; or it may be that he genuinely believes that the architectural design of Kampala should be modelled on that of an English village to produce the beauty he describes. Be that as it may, the contention we made earlier that local planners are often influenced by the planning practices of the countries in which they obtained their professional qualifications is amply illustrated by the views of Kampala’s Chief Engineer. It is also interesting to recall that after the military *coup d’état* both the Chief Engineer and the Town Clerk of Kampala were suspended pending a public inquiry into the allegations that both they and a number of other permanent officials had not performed their duties, but had instead concentrated on using the City’s employees in constructing houses and buildings to let for private gain.

<sup>41</sup> *Perspectives on Urban Planning for Uganda*, Occasional Paper No. 10, p. 130.

Uganda has 30 urban planning areas and, though some of the areas are too small and poor to require a resident professional planner, the number of qualified urban planners is very small. It has been estimated that Uganda needs about 40 planners. Currently there are only 22 people trained or engaged in urban planning. Of these only 11 are professional planners, 2 of whom are not presently working in the field; one is currently overseas doing a higher degree in planning. Of the total 17 actually working in planning, 11 are expatriates and of the remaining 6 Ugandans only one has had more than a short course in planning. All these planners, whether expatriate or Ugandans, are what are traditionally called engineers or surveyors and, having observed that planning is an interdisciplinary exercise, the need to train and hire more becomes greater. Mr. L. H. Muench has given an account of the institutions in Africa which offer courses in urban planning. These include the Universities of Ibadan and Zaria in Nigeria, Kumasi in Ghana and the Haile Selassie University in Ethiopia. In East Africa, a course was started but discontinued at Dar es Salaam, and the course offered at Nairobi is limited in its content.<sup>42</sup> It would seem desirable that an Institute of urban planning be established for the East African region which could perhaps be created under the auspices of the East African Community. It is further suggested that such a course be multi-disciplinary to take in postgraduate students of the disciplines which we have indicated ought actively to participate in urban planning. Initially the course might offer a 2-year diploma, to be developed after some years into a full time postgraduate degree course. It is submitted that such a course might be premature for any of the East African states on their own, especially when other manpower requirements are taken into account; but it would be ideal to serve the whole region of East and Central Africa.

### (c) THE LAWYERS AND PLANNING

As lawyers tend to be analytical and conceptual in their approach to the study of law, especially those brought up under the principles of the Common Law of England, their main preoccupation is likely to be the analysis of the law as it is, rather than as it ought to be. They are advised to avoid discussion of political, social and economic matters because these are not sufficiently legal. But they often concede that these issues predetermine the legal systems and the laws under which they are governed. As law students they are likely to have been instructed that, in order to score high marks in law examinations, they must analyse statutory provisions and cite judicial precedents for their reasoning. It is only when they are studying subjects like jurisprudence or the history or sociology of law that they come anywhere near to considering the socio-political and economic problems of society. This attitude has often led to the rejection of certain disciplines as the concern of lawyers, particularly academic lawyers. Among these may be mentioned urbanisation and planning — subjects that have so far remained almost the exclusive province of legislators, administrators and civil engineers, with sociologists and anthropologists providing the necessary data for planning and development of the cities and towns. Admittedly, there have been lawyers who chose to specialise in the topic of urban planning but, compared to other law subjects properly so called, these specialists remain few and far between. A number of them have argued forcefully that lawyers constitute an important group in the planning and development process.

Professor McAuslan of the University of Warwick has provided a learned critique of the

<sup>42</sup>L. H. Muench, in *Perspectives on Urban Planning for Uganda*, p. 288.

English lawyer's attitude towards planning law. McAuslan has identified three important factors which shape lawyers' attitudes to land use planning. Firstly, there is the nature of the traditional common law remedies available in the courts for dealing with various forms of interference with land. Secondly, the lawyer's traditional contact with land which he first learns as a student is very much oriented towards the rights and powers of the individual landowner and how he may deal with his land, protect his estate from squatters and prevent others from interfering with or trespassing on his land. Lastly, the normal clientele and the professional life-style of lawyers induce between them scepticism of the benefits of planning and a stress on the rights of property-owners. Lawyers are taught and hired to protect the rights of their clients and these rights are protected through actions in tort for trespass, nuisance and the rule in *Rylands v. Fletcher*<sup>43</sup> and that since planning is, in inception, intended to bring about these torts it must be fought by lawyers on behalf of their clients. McAuslan does not discuss the role of the lawyers who represent the planning authority or the judges, in case of judicial proceedings, who finally determine the dispute. However, it may be inferred from the theme of his article that they too would be much more concerned with the technicalities of the law of whether or not the enabling statute authorised the purported act; and whether or not the alleged trespass or nuisance was in accordance with the principles of the common law and equity rather than with the aspects and reasonableness of planning.

In an international prize-winning essay, Elbert M. Byrd Jr. has eloquently described the role of the lawyer in the economic and social development of his country within the framework of the Rule of Law. Like McAuslan, Byrd sees the traditional role of the lawyer, this time in the United States of America, as designed to protect the most important class of society and particularly the landowner.<sup>44</sup>

'It seems not too unreasonable to conclude that the orientation of these lawyers was favourable to the wealth class, and that to buttress the monopoly of that class was the principal reason for the existence of the lawyers.'

Byrd analyses the attitudes of the American legal profession and the role judges have played and concludes that,

'This summary review indicates that the organized legal profession has emphasized subjects dealing with its monopolistic position or 'standards' or with those opposing changes in the socio-economic realm, or with those, perhaps most important of all, partaking in diversionary characteristics, diverting the public eye from topics involving self-analysis and evaluation while it chases nebulous "patriotic" goals, and denounces "subversion", "do-gooders", "one-worlders" and those opposed to the "American Way of Life".'

Roscoe Pound, one of the greatest and most highly respected jurists of that country, would have disapproved of those lawyers who wished to see the legal profession abandon its traditional role in society. He expressed the fear that the greatest danger to the profession was the possibility that it would be 'socialized, unionized or bureaucratized', and yet if the legal profession is to claim its full share in planning it is possible that that is what will happen to those of its members who are participating in the process of planning. While Byrd concludes by appealing to the lawyers to have the wisdom and willingness to play a positive role transcending temporal and geographical, economic and social development,

<sup>43</sup>(1868) L.R.H.L. 330.

<sup>44</sup>The role of the lawyer in the economic and social development of his country within the framework of the rule of law *Journal of the International Commission of Jurists*, vol. V, no. 1, p. 48 (1964)

Professor McAuslan is more specific for he sees law and planning as being concerned with the same function in society,

'If we could see planning in the way I have suggested we would see that it is in our interests to foster its success, for in so doing we would foster the maintenance of an ordered civilised society, capable of peaceful change when change is needed, and that is wholly in line with our own ideals.'

It is not only in the West that concern about the lawyer's role in planning has been expressed. It has been observed that in the Soviet Union State Corporation Directors

'were too busy to attend the many sessions required . . . They sent their legal advisers to save time. These men thought in legal terms, and even the arbitrators in seeking a solution found the rules of the civil code convenient.'

At one time the lawyers became so much involved in the legal traditions and technicalities that planners and policy-makers found it necessary to exclude them from the discussions. When it was later found that lawyers could not be dispensed with entirely, new laws had to be written redefining the functions of law in Soviet planning and development,

'Socialist law is necessary . . . to formulate and consolidate the principles of socialist democracy . . . (It) establishes the relationship between measure of labour and measure of compensation for labour; it strengthens the obligation to perform the plan in the activity of socialist economic organisation, regulating the economic communication between them.'<sup>45</sup>

In order to extend the composition of a planning committee to include as many people as possible, the relevant Soviet statute provides that the committee shall bring into its work an active group of leaders in industry and agriculture and members of the local intellectuals for the preparation of individual measures to develop the economy of the country. Thus, planning in the Soviet Union is structured in such a way as to include all the people who can usefully contribute ideas to the development of the area and would, by definition, include lawyers. The preparation of the plan involves a variety of people who, in England, would perhaps be expected to appear at a public enquiry following the approval and publication of the plan as agreed by the planners and approved or modified by the Minister. Moreover, lawyers are engaged in the formulation of regulations for the implementation of the plan. Thus, the Decree on Responsibility For Failure to Perform Plans and Duties to Deliver Produce is couched in legal language as follows:

'It is decreed that failure of managing and other responsible officials of enterprises, economic organizations, state farms, ministries and government departments to perform plans and duties to deliver production to other economic administrative regions or Union Republics and also for all Union needs is a grave violation of state discipline and shall incur disciplinary, property and criminal responsibility.'

In the United Kingdom, United States of America and the Soviet Union, and indeed in most other developed countries, there are sufficient numbers of lawyers and the only likely difficulty is to find an adequate number of them committed to planning as an integral part of the profession. In the developing countries, however, the problem is not merely one of selecting the right kind of lawyer for planning but of having sufficient numbers to choose from.

In East Africa this does not apply to the three capitals of the region, Nairobi, Dar es Salaam and Kampala. These cities have sufficient numbers of lawyers who could engage in planning. The legal profession in the region, has, since the advent of the colonial

<sup>45</sup> N.G. Aleksandrov and others, *The Foundation of the Theory of the State and of Law*, pp. 202-204 Moscow 1960.

administrations, been dominated by non-indigenous lawyers, particularly from the Asian and European communities. The overwhelming majority of these lawyers, and a considerable number of the indigenous lawyers too, were trained either in the United Kingdom or India. Not surprisingly, the legal system and legal reasoning in East Africa have been and continue to be influenced largely by the statutes and judicial precedents of these two countries. The impact of the Reception Clauses and the training of lawyers in the territories have been such that much of what Professor McAuslan says about the English lawyer's attitude towards planning applies equally to East African lawyers. Planning and development in the towns have been the responsibility mainly of the governments and local authorities and partly of the richer urban communities with sufficient funds to afford the services of lawyers. All the urban planning and development cases which found their way to the highest appellate courts such as the Privy Council, and, since independence, the Court of Appeal for East Africa, involved both the governments or their agencies and the wealthier landowners or developers of the towns, particularly of the European and Asian communities.

The idea that planning is a form of government policy to 'nationalise' land and interfere with private land rights has not been alien to East Africa. Admittedly, there have been cases when both the lawyers and the judges recognised the special conditions and circumstances of the region as reflected in the arguments, submissions and decisions of cases like *Premchand Nathu & Co. Ltd. v. The Land Officer; Singh v. Kaus; De Nazaret v. De Souza; Mroto bin Mwamba v. Attorney-General*; and *B. Bedhar v. The Special Commissioner and Acting Commissioner for Lands*.<sup>46</sup> Analysis of these cases indicates the degree of localisation that legal draftsmen, advocates and judges permitted in the ordinances, regulations, submissions and judgements notwithstanding English and Indian statutes and precedents to the contrary. On the other hand, there are other laws and cases, notably the Public Health Ordinances, the building regulations, *Jones v. Gordhan Bogha* (No. 2) and *Khimji v. Hassam*,<sup>47</sup> in which both the legal profession and the judges simply applied English or Indian laws and precedents with little regard to local customs, conditions and circumstances and oblivious of the needs of the inhabitants. It is also true to say that very few people, including lawyers, see the profession as having much to contribute to planning apart from drafting and interpreting planning regulations and challenging planning schemes and proposals.

It has been observed that the membership of the Uganda Town Planning Board as constituted in 1919 did not include lawyers. From that date until 1948 lawyers as such did not participate in the actual urban planning discussions. It was only with the appointment of a professional town planner in 1949 that members of the Attorney-General's Office began to be invited to the Board's meetings, mainly for the purpose of advising the Board on planning regulations. The practice was formalised three years later, when, with the enactment of the Town and Country Planning Ordinance, the Attorney-General or his representative became a full member of the Board. The main role played by lawyers was the drafting of ordinances, statutes and regulations and representing the parties in any dispute involving planning. Private advocates came into contact with the planning mechanics when they were instructed by their clients to represent them in fighting planning regulations which interfered with or took away their interests in land, or in challenging the adequacy of

<sup>46</sup>E.A.C.A. Civil App. No. 67 of 1960 and P.C. App. No. 24 of 191; (1935) 17 K.L.R.I.; (1953) 20 E.A.C.A. 124; (1953) 2 T.L.R. (R) 327; and (1957) E.A. 104, respectively.

<sup>47</sup>Cap. 269; *ibid.*; criminal case no. 1325/1949 of Kampala District Court; Civil Appeal no. 92 of 1957, respectively.

compensation which had been awarded in the event of compulsory acquisition of land. It is submitted that if planning is to have any order and is to serve the community's interests, lawyers, like any other professions we have discussed, must be brought in to the process of planning at both informal and formal levels. The community is unlikely to benefit from the services of the legal profession unless legal education is so structured that it re-emphasises community needs and services. It necessarily follows that legal education and the contents of the legal courses both at the university and the professional school levels must occupy the attention of manpower planners.

The coming of independence meant that those who had studied law in the law institutions of the colonial power and whose prejudices, sentiments and sense of justice were perhaps more colonial than indigenous were put in charge of policy-making and planning departments of the Government. They became the custodians of the colonial legal relics. It is possible to educate as many lawyers as are needed in planning and development, but unless the policy of legal education and its curriculum are designed to accord with local needs and circumstances, mistakes will continue to be made.

Because the majority of the people who are likely to be affected by urban planning and development in the towns are largely poor and uninformed, it is essential that the professional etiquette of the lawyers and their scales of fees be reconsidered. Professional standards must be ideally kept in all societies; but nowhere are these standards of such paramount importance than in a developing region where the average individual is basically ignorant of his legal rights and obligations. Allegations have been made in East Africa against certain legal practitioners. The East African Law Reports carry a considerable number of cases against advocates for overcharging legal fees and for negligence. Invariably, the letter A in the 'Digest of Cases Reported' includes a list of cases against advocates.

#### (d) THE HISTORY OF URBAN LAND USE PLANNING IN UGANDA

Urban planning in Uganda has been institutionalised and controlled since 1918. In 1915 a planning expert, Professor Simpson, was sent to Uganda to examine its towns and make recommendations about their future planning and development. At the time Kampala as a colonial administrative centre had been in existence since 1890 and a number of unplanned and uncontrolled developments had taken place which prompted a later planner, Mirams, to make the following remark,

'It is by these and other signs that one is made to realise how terrible are the ravages created when our so-called civilisation forces its way uncontrolled into the heart of a new country. Need it be wondered that the more thoughtful members of the community feel overwhelmed with convinced despair when they view this state of chaos and almost licensed breach of all reasonable development.'

Among his recommendations was the that a central Town Planning Board should be established to deal with the urban problems not only of Kampala but of all other administrative and trading centres throughout the Protectorate. He was mainly concerned with the health of the residents and the beauty of the towns and centres. This is reflected in the membership he proposed for the created Planning Board. It was to consist of the Principal Medical Officer as chairman and the Chief Sanitary Officer, the Land Officer, the Director of Public Works and the Medical Officer of Kampala as members.

None of these officers was a qualified planner, and in fact the Board did not have a qualified planner until 1949. In spite of its limited objectives and the short time spent on its preparation, Simpson's work was enormous. His own tentative plan for Kampala guided the town's administrators for nearly 20 years. Kendall, who was later director of Town Planning in Uganda in the 1950s, commends Simpson's work in the following words:

'In planning thought he was well in advance of his time, for it must be remembered that large-scale experiments in town planning had only just begun in the United Kingdom at the beginning of the century, and that the Town Planning Institute (in the United Kingdom) was founded only in 1914.'

But because the Board was non-professional, no Master Plan was ever produced or adopted. Decisions were taken on problems as they arose, with little consideration given to the future orderly development of the town. Kendall remarks that

'the Board lacked the advice of a trained planner although the various qualified officials were consulted from time to time . . . the absence of an overall plan created a lack of continuity and ad hoc decisions became the rule rather than the exception . . . There appears to have been little real collaboration between the major departments of Government in regard to over all planning policy. The records of past minutes display wide divergence of opinion by members with the chairman being quite incapable of resolving them.'

The importance the government attached to the Central Town Board may be illustrated by the fact that the Governor of the Protectorate frequently attended their meetings and often advised them and sought their advice. Their influence on the development of Kampala is exemplified by their memorandum embodying a description of three alternative proposals for the future development of Kampala. The memorandum was written in 1919 and suggested three alternative Plans marked A, B, and C. The Plans were discussed by the influential members of the community and by the Governor and his advisers. The Governor dispatched the plans to the Secretary of State for the colonies who approved the adoption of Plan C and since 1920 Kampala has developed in accordance with the zones indicated in that plan. The Plan was based largely on the previous recommendations of Professor Simpson.

The next important expert to advise on the development of Kampala came to the scene in 1929. This was Mr. A. C. Mirams, a well-known English planning consultant and valuer. He was invited to Uganda and asked to advise the government,

'in regard to the general layout of Kampala and Jinja with special reference to the future expansion, the siting of public buildings, co-ordination of arrangements for roads, drains, sewers, electric light and power lines, the problems of native location, the best means of refuse disposal and the revision of the existing rules of the township generally and the preparation of a Town Planning Ordinance.'

Mr. Mirams, who had had considerable experience of similar towns in the Far East, did much more work for Kampala than was envisaged in his terms of reference. His investigations, findings, proposals and recommendations were compiled in 2 volumes and his report is divided into 24 chapters. They cover matters such as historical background, geological and meteorological conditions, the location and composition of populations, land and land tenure, roads and the dependent problem of traffic, housing, architectural control of buildings, co-operative housing for lower income groups, bazaar areas, drainage of swamps, improvement of health, siting of industries and the new railway station, sewerage and refuse disposal, quarries and brick fields, open spaces, recreation and playgrounds, and the proposed legislation to ensure the carrying out of the development plan. Mirams'

influence was considerable. It has been observed that the present built-up areas of Kampala, both commercial and residential, are a direct result of his recommendations. Subsequent plans have since been guided by his report. The policy of calling upon the services of expert planners whenever things got out of hand was largely unsatisfactory. Mirams had been invited because the local 'planners' did not know what to do with 'the speed with which Kampala was developing and expanding apparently uncontrolled', and yet their duty was supposed to be the control of such development by a definite plan. However, they were more concerned with ad hoc problems of health, commerce and residence than with a plan for the future development of the town.

It was not until 1949 when Kendall, an experienced town planner, was appointed to the post of Director of a newly established Department of Town Planning in Uganda, that some semblance of order and foresight began to impress themselves on urban planning in the Protectorate. Kendall, who was highly qualified in the field of town planning and had had similar experience in Malaya and Palestine, organised his department so that more ideas were discussed and more regular meetings of the Central Town Planning Board held. The impact of a full time town planner in Uganda may be illustrated by comparing the frequency and business of previous Board meetings and of those he was able to call and influence. In the first 30 years of its existence the 'lay' Board had only 32 meetings to its credit and on average only about 20 items were discussed at any of these meetings. On the other hand, during the first 6 years of the Board with Kendall as director there were 57 meetings, an average of 8 meetings a year, and the records show that the least number of items discussed in any one year of that period was 43 while the biggest was as high as 121. Within a year of becoming the first director of the department, Kendall initiated the passing of the Town and Country Planning Ordinance,<sup>48</sup> which he considered necessary because, in his own words,

'planning in Uganda was based on the 1932 English Town and Country Planning legislation instead of the 1947 Act.'

The Ordinance has since then been amended slightly, but under its new name of an Act it continues to be in force in Uganda today.

Kendall, his successors and the Department of Planning could not cope with all the planning problems, partly because the department was small and partly because they were in charge of urban planning in the whole of the Protectorate and therefore could not be expected to pay great attention to any one particular town. Kampala was the only exception, for being the largest and the commercial centre of Uganda, it was only natural that the energies of the planners should be concentrated on its development. Upon this point, Professor Langlands of the Makerere University makes the following comment,

'Clearly the greatest amount of written material exists on Kampala, as the largest and geographically most complex of the country's towns.'

The planners were further handicapped by the fact that much of their time was spent on non-professional administrative duties. As head of the department, the director was in charge of a big staff who were employed throughout the country. According to the government's

<sup>48</sup>Amended by Ordinance 15 of 1948, then repealed and replaced by Ordinance 25 of 1951, amended slightly by cap. 212, repealed and replaced by Act 27 and then modified by the provisions of the Land Acquisition Act and Public Land (Compensation for Resumption) Act, 1965. Throughout these amendments only the authorities to exercise the powers under the Ordinance and the compensatory provisions changed.

standing orders, he was expected to co-ordinate the work of his department with the policies of other government departments and to advise the various Ministers on the implication of their policies to urban planning and development. It is therefore to their credit that in spite of these varied tasks the planners found sufficient time to carry out their professional duties in the field of urban planning and development. In perspective, J. R. Hather of the same department since independence, has reviewed the work of his predecessors and commented thus,

‘The series of urban plans produced . . . were very limited in their application to the total needs of urban populations (and) were usually the result of hasty ‘through-the-windscreen’ surveys, and lacked any prior attempt to quantify the problem. No positive provisions were made in these plans for their implementation and to a considerable extent they were restrictive in nature and content. But at least during this phase the basic fabric of a planning department was kept in existence, and the hope of planning was retained, during a period when these early efforts towards urban planning might easily have disintegrated completely.’<sup>49</sup>

Since independence, the Uganda governments have gone back to the old system of calling upon foreign experts to come and help them solve the problems of urbanization and planning. Shortly after independence a conference was held at Addis Ababa and, mainly as a result of the deliberations there, the Uganda government made representation to have an urban planning team recruited through the United Nations. The initial terms of reference for the team were to produce a Master Plan for Mengo. The team appointed consisted of an urban sociologist as leader, an adviser on local government finance, a physical planner and a public health engineer. The team became convinced that its terms of reference were unnecessarily restrictive and should be amended to include the whole of Kampala and that more money should be given for their expanded work. This request was granted and the team was accordingly designated ‘The Kampala-Mengo Urban Planning Mission’. The team was based in the Town Planning Department of the Ministry of Regional Administrations and collaborated with the then Mengo Municipality and the Buganda Local Government. It made its report to the government in 1964. Among its important recommendations were that

- (a) Kampala should base its plans for expansion upon commercial, institutional and residential uses and not upon major industrial expansion of the land.
- (b) Long-range Master plans for both water supply and sewerage should be prepared with the assistance of the United Nations Special Fund.
- (c) A panel of East African University experts should be organised for the purpose of making their technical knowledge and advice more readily available to government and
- (d) The team’s work should be continued by another U.N. Mission comprising a physical planner as team leader with the support of associate experts in the fields of architecture, housing, regional planning, social and economic analysis.

In fact the last recommendation was immediately taken up and the U.N. Kampala-Mengo Regional Planning Mission continued the work for two years from 1964 to 1966. The terms of reference for the latter team included the concept of a metropolitan region and extending its long-range projections up to the year A.D. 2000. The work of this team was finally published in 1968 in a series of studies entitled ‘Kampala-Mengo Regional Planning Studies’. Among the team’s recommendations is one which seems to conflict with the first team’s observations. The new team observed that

<sup>49</sup> Peri-urban planning – the Kampala experience, in Sessional Paper No. 10, Department of Geography, Makerere University.

'the development of industries in Kampala is of very considerable importance and immediate steps should be taken to secure the reservation of land for industrial expansion and to instal urban services.'

In 1967 a third U.N. Mission was recruited with the name of U.N. Physical Planning Mission and with the object of expanding the work of the 1964-66 Mission. The Mission noted that both the works of its two predecessor teams lacked a considerable amount of basic survey data and therefore it had to make a detailed survey of present land uses and the basic essentials of a master plan programme. The work of the team was produced and published in the form of a report in 1969.

In addition, 1968 saw the submission of the Final Report by a firm of consulting traffic engineers who had been engaged by Kampala City Council. This firm prepared a Transportation Plan for Kampala area up to the year 2000. The World Health Organisation has also commissioned a firm of consultant engineers to prepare within two years a Master Plan for water supply and main drainage of Kampala up to the year 2000. The findings, proposals and recommendations are placed before the government of Uganda for approval and many of them have in fact been approved and implemented or are in the process of implementation. In cases where the Mission's or experts' advice has been accepted, the Department of Town Planning is called upon to formulate a Master Plan incorporating the recommendations.<sup>49a</sup>

## (e) THE PLANNING PROCESS

### (i) Procedure

The Town and Country Planning Act governs urban and rural land use planning in Uganda. The Act establishes a national Town and Country Planning Board which is responsible for formulating general policies of town planning subject to the general directions and approval of the Minister of Regional Administrations. Section 6 (2) of the Act provides,

'If, in respect of any area, being, or being within, a Municipality or town, the Board, upon representations made by or after consultation with the local authority concerned is of the opinion that an outline scheme should be made in respect of such area and makes recommendations to that effect to the Minister, submitting therewith a plan of the area, the Minister may, by statutory order declare such area to be a planning area.'

Thus, the Board is empowered to make representations to the Minister about what areas in the country should be declared planning areas. At present, all the towns in Uganda have been so declared by various statutory instruments published by the Minister in the *Gazette*. It is also the responsibility of the Board to formulate outline schemes for these planning areas, but it is not responsible for making detailed plans of the area. For this purpose the Act created local planning committees, the members of which are partly nominated by the Board and partly elected by the local authorities concerned. It is then the committees which make specific and detailed plans for the planning area. The detailed plans must conform to the outline scheme of the Board and be in accordance with the general directions of the Board as approved or modified by the Minister. All these three bodies, the local authorities, the Board and the Minister, must be guided by the national development plan.

After a planning committee has made a detailed plan for its area the plan must be deposited with the Board. The Board may require the local planning committee to improve

<sup>49a</sup> Similar procedure followed in Nairobi and Dar es Salaam.

the plan generally or in some specific respect. Notice of the deposit must be published in the *Gazette* and in at least one newspaper circulating in Uganda. The notice must indicate the period in which any person may inspect and make representations with regard to the scheme. Section 16 of the Act provides that any person may, within two months of the depositing of the scheme, inspect and make representations to the Board. At the end of the two months, the Board must submit the scheme together with any representations and the Board's comments on these to the Minister for his approval. The Minister may approve with such modifications as he thinks fit. Once approval is given, the scheme takes effect as if enacted by the Act although the Minister can subsequently revoke or modify the approval, notwithstanding the effect of this provision.

**(ii) *Representations and public participation***

The Act does not provide for any consultations to be made with any person or body before the scheme is published and approved by the Minister. Consequently, town planning in Uganda and the production of specific plans are the exclusive prerogatives of the local committees, the Board and the Minister. The only occasion when any private person becomes involved is when the Board or the committee requires him to state in writing and by registered post his estate, interest or right in the land to be affected, or the interests of some other person or persons he personally knows to be interested in the land. Any wilful falsification of the required information is an offence punishable by fine or imprisonment.

It is arguable whether, in the circumstances of Uganda, landowners and residents within a planning area should be consulted. There are two schools of thought on this subject. Some people argue that consultation with interested parties should be a condition precedent to making a land use plan, that lack of consultation is undemocratic and has in the past led to undesirable results. For instance, although racial segregation was never an official policy in Uganda and although races preferred to live together, various records of the early meetings of the Central Planning Board show that its members thought otherwise:

‘The Secretary (of the Board) brought to the notice of the Board that European plots, leasehold and freehold had been recently transferred to Asiatics in the Nakasero Bazaar. The Board considered this practice was contrary to the principle of racial segregation, and the secretary was instructed to draw attention of His Excellency, the Governor, to the matter, quoting specific instances.’

It is noteworthy that European proprietors in the area were selling to the Asians without any objection from the two communities, and yet the Board took it upon themselves to insist on segregation. The later plans of the Board show a clear observance of racial segregation. The issue became so serious that the Secretary of State for the Colonies was forced to intervene by sending a memorandum to the Uganda government to the effect that His Majesty's Government disapproved of racial discrimination and of segregation in the Protectorate of Uganda. In spite of this warning the Board's practice continued unchecked and later this led to an adverse comment by the East African Royal Commission in 1955. The argument is that had the Board consulted the residents of Kampala they would almost certainly have been satisfied that the majority did not wish to see segregation introduced in the town. The sociologists and anthropologists who have studied Kampala since the colonial administration are unanimous in concluding that the inhabitants did not practise racial discrimination, at any rate as far as residential quarters were concerned. Any official acceptance of racial discrimination satisfied only a minority of the residents.

Immediately after independence, and through government pressure, the Board declared a new general policy of persuading more Ugandan Africans to live in the city. This was to be achieved by letting to the Africans the city's commercial and residential plots at low premiums, while increasing the premiums paid by Asians and other non-Ugandans. There were two types of Ugandans who took up these cheap leases. Firstly, there were the Baganda who had homes of their own either on the outskirts of the city or in the counties of Buganda and who did not wish to establish new homes in the city. They accepted the leases, not to develop the land personally, but to sublet to Asians. The latter paid large sums of money for the subleases while the new African tenants avoided forfeiture of the leases by retaining reversionary interests. Secondly, there were the civil servants who wanted to invest in the land by constructing houses to let to Asians and non-Africans who could afford exorbitant rents. The civil servants had no intention of living in the newly built houses themselves since the government's policy was to house all employees in this category. Had the Board made consultations it might have discovered that these people had no inclination to settle in the city. It would have discovered that the majority of the Buganda applicants possessed land of their own in the pre-urban areas of Kampala and only wished to obtain capital to develop those lands. Moreover, such consultations might have led to the making of a prohibitive provision about the sub-letting of these leases.

of these leases.

It has been observed that in the Soviet Union local planning committees are obliged to invite local residents to participate in the formulation of development plans. In both the United Kingdom and the U.S.A. provisions are made for adequate publicity and consultation about proposed schemes of urban development before they are finally approved. Moreover, in the developed countries, especially in the West, there is sufficient Press coverage of the proceedings of the planning committees. The coverage is often preceded by public debates, discussions and protests. The merits and disadvantages of the schemes can be fully discussed in public. Describing the objects of the latest English Act on the subject of planning, David Foulkes writes,

'Under Part II of the 1971 Act local planning authorities must prepare for submission to the Minister a structure plan for the area. This formulates the authority's policy and general proposals for the development and other use of land in the area. When preparing the plan the authority must ensure that adequate publicity is given to the matters they propose to include in the plan, that persons who may be expected to want to make representations on those matters are made aware of the opportunity to do so, and that they are given adequate opportunity for making such representations.'<sup>50</sup>

Donald G. Hagman has described the type of representation expected under English planning law. A representation is said to be an expression of views of what the plan to be offered to the Minister (for approval) should be. In reference to the Greater London Council scheme, Hagman noted that the Planning Committee had statutory consultations with the London boroughs and other authorities adjacent to the Greater London area and that the original proposals of the Committee were changed as a result of these consultations. English local authorities may also prepare local plans for any part of their planning areas, provided that such plans conform with the structure plan of the area. The local plan must receive similar publicity and pass through the same forms of procedure as the structure plan before the Minister's approval is sought. It is worth noting also that, notwithstanding the consultations made locally during the process of proposing a plan, the Minister may instead

<sup>50</sup> *Introduction to Administrative Law*, 3rd ed., p. 99, Butterworth.

of approving the plan order further consultations and inquiries. For instance, when the Greater London Council's Development Plan was submitted to the Minister he ordered an inquiry and in doing so said,

'Since the plan is comprehensive, complex and controversial, since a high level of concern has been expressed about the motorways proposals and since 20,000 objections have been received. I feel that the plan should be subjected to the most searching scrutiny.'

The inquiry which resulted has been described as the most expensive ever held in the field of urban planning processes.

Consultation may also be justified on the ground that it avoids wastage of public funds. This may be exemplified by the decision of the Kampala City Council in 1969 to tarmac and build individual vendors' cubicles in the Wandegeya market. This was a scheme which did not get any publicity and which was implemented before consulting the market users. The Council decided to charge 50 shillings each per month for the new cubicles. The market users protested that the price was too high but continued to sell their goods outside the market building. The Council was forced to let the cubicles to the vendors at a nominal fee, thereby losing the revenue it has expected from the development.

There is also the opposite view that consultation and public participation in the planning process are unnecessary. There are equally strong reasons for this view. In 1968 a Committee was appointed in England to report on the best methods 'of securing the participation of the public at the formulation stage in the making of development plans for their areas'. Among the possible disadvantages reported by the Committee was, *inter alia*, the worsening of delays through the injection of public involvement in the intricate process of preparing a development plan and thus nullifying the government's expressed intention to speed up the planning process. Another disadvantage may be the degeneration of a public inquiry from planning principles to party politics. When the Greater London Development Plan was being considered by the Council a number of amendments were submitted by the members. Those submitted by the Labour members of the Council were defeated by the same number of votes as the Conservative majority on the Council. The same votes approved the amendments proposed by Conservative members. Yet it cannot be imagined that all the Conservative members' amendments improved the plan while the Labour members' amendments worsened it.

Sometimes the political point at issue may be trivial. For instance, in 1969 the Jinja Town Council decided to beautify its road signs by painting them green. This action was taken after the Council had apparently consulted the residents of the town. As it happened the government objected to the use of this colour because it was the colour of an opposition party's flag. The Minister of Regional Administrations directed the signs to be repainted in another colour and this was done at considerable public expense. It may therefore be concluded that it would have been cheaper if, instead of consulting the residents the Council had simply sought the approval of the Minister. Unfortunately this was one of those tasks which did not require approval from the Minister. It may also be argued that in a developing country like Uganda, where the majority of the inhabitants are ignorant of and perhaps indifferent to planning, time and money should not be spent on seeking their views. This argument is fallacious, for even in developed countries the majority of the inhabitants tend to be indifferent to what the government or the local authority are doing. It is only the enlightened, the pressure groups and the people intimately affected by a plan who proceed to make representations, and the same influential groups may be found in developing countries.

The majority of the people who permanently reside, and therefore claim the enjoyment

of the amenities provided, in the East African towns have been the more sophisticated communities of immigrants, civil servants and employees of institutions like schools, hospitals, industrial and commercial zones and business premises. Moreover, it is the same type of elite who own much of the land or who are tenants in urban land. The circumstances and living conditions of these people are not very different from those in a provincial town in any developed country. For this reason, it is submitted that if the residents of such a town are justified in demanding the right to be consulted about the planning of their towns, the residents of an East African town are justified in claiming the same right. The only difference might be in the nature of the procedures to be followed. Although both the Town and Country Planning Act and the regulations made under it do not provide for public consultation and participation there have been two planning missions in Kampala which used this type of procedure. The conclusions from the Reports of these missions show that the residents were very keen to discuss the details of the proposed schemes. Moreover, one of the missions, the United Nations Planning Mission to Uganda, reported that it had benefited from the consultations. The leader of this mission reported,

‘a series of weekly seminars held in Mengo one of the local government staff and one for the Councillors. Problems of urban problems had from the early days of the Mission received a systematic treatment and mutual discussion within the seminars. . . . Some of the participants offered to participate in the joint development of their land in accord with the plans that the team might produce.’

Consultation could be had at public meetings, which in East Africa are called barazas and have already been discussed in connection with the powers of compulsory acquisition of land. The principle proposed is that every time a local planning committee decides to initiate a detailed plan for its area it should organise local barazas and declare the general principles of its scheme. It should then invite comments from the people attending the baraza. It is the practice of East African governments to explain their policies to public barazas and these barazas are known for the large crowds they attract. It is reasonable to assume that an even greater number of people would attend if they knew that it was the planning and development of their town which was the subject of the baraza. There is no doubt that residents whose homes, land and jobs are likely to be affected would wish to be present at the meeting and to represent their own views. It is further proposed that after the local planning committee has analysed the views expressed at the baraza it should formulate a draft plan and submit it to interested associations of school teachers, university lecturers, hospital workers and various unions for comments. The barazas and associations could finish the deliberations within periods of one to three months. The Planning Committee would review the draft plan to accommodate any opinions so far expressed and then deposit the plan with the Board for submission to the Minister. It is submitted that such a procedure would be similar to Soviet Union law which requires local planning committees to invite influential residents to participate in the planning proceedings. It is also proposed that the Town and Country Planning Act should be amended to give the Minister discretion as to whether or not to order an inquiry into the plan submitted for approval in view of the objections or representations made at the baraza and in the meetings of the associations. This requirement would necessitate the planning committees to record any views and opinions expressed on the plan and present them to the Minister.

### (iii) *The plan*

Having discussed the mechanics of planning, it is now necessary to examine the

evolution of the plan. A plan lays the scheme of how a specific area shall be developed in the future and what type of activities may be carried on in defined places of the area as indicated on the plan. All modern states find it necessary to subject certain activities to some form of control. There are a number of reasons why this is so. Sometimes control is imposed simply to raise revenue. Sometimes it is imposed to restrict a particular activity in the public interest; and the interest may be based on economic, health or security reasons or simply for environmental reasons. It may be introduced for the protection of local amenities and of the countryside. It may be desirable to keep the operation of the activity in conformity with national or international standards or values. Invariably, the control is effected through three well-established methods, namely, registration, licensing and inspection. Persons who wish to engage in the specific activities are required to fulfil and to operate under certain conditions. Failure to observe the conditions may lead to penalties. Within an urban administration it is the plan and its species, the specific schemes, which predetermine all these matters. Whether one wishes to establish a factory, erect a block of flats, open up a commercial trading centre or found a school, one must examine the details of the existing plan of the area from which one is likely to discover what areas are permitted for one's choice of activity and what one needs to do before one can commence the operational phase of that particular activity.

Plans are usually in two parts. The first part is the text which defines, describes and delimits the activities that may be carried out in the planning area. These activities are classified under different zones which may be residential, commercial, transportation, open parks, civic centres, recreational or industrial. Appended is usually a cardinal map drawn to identify the areas described in the text. The zones are normally coloured differently for identification purposes and the text will not only describe the zones but also specify the type of buildings which may be erected in them. The plan will also prescribe the procedure to be followed by anyone wishing to commence any development projects which are covered by the schemes of the plan, and penalties likely to be incurred in the event of default.

As an illustration the Plan of Jinja Municipality of 1960 may be examined. The general text to the plan gives the objects of the scheme as,

‘to control the development of the land comprised in the Planning Area, to secure proper conditions of health and sanitation, communication, amenity and convenience in connection with the laying out and use of land; to preserve existing buildings and other objects of architectural or historic interest; to protect existing amenities and places of natural interest or beauty.’

The scheme then goes on to define and describe the zoning structure of the plan and to provide for such things as roads, erection and use of buildings and use of land, recreational and playing fields, special industrial buildings and specified roads. Each of these things is described in great detail. For instance, among the buildings which may be erected in the residential area zone are blocks of flats; and a block of flats is defined by the scheme as,

‘a building other than a Double Dwelling, Special Block of flats or Terrace of Houses, of a minimum of two storeys in height, designed to contain exclusively more than two self-contained dwelling units and includes within its meaning the provision of such facilities and accommodation for the preparation and communal consumption of meals, as may ordinarily be required for the normal convenience of the inhabitants of the block of flats.’

The other types of dwellings mentioned in this definition are separately defined. Having enumerated and dealt with all the zones, the scheme describes certain uses of land which require the special consent of the Town Planning Committee notwithstanding that such

uses are indicated on, and permissible under, the scheme. Moreover, the Committee is empowered to withhold its consent if the proposal in its opinion conflicts with the proper planning of the area, or to grant its consent subject to further modifications and conditions which are not necessarily indicated in the particular scheme. Further, the Committee is entitled to change the use of any building, or part of any building, land or plot of land, either for a temporary period or subject to such conditions as it deems fit, contrary to the provisions of the scheme.

After the text, the scheme provides, first, a simple table (which is reproduced here as an Appendix on p. 77) which describes the zones and what may be erected in them or how they may be used and what erections of buildings or uses of land require the permission of the Planning Committee. This is followed by an accurate cardinal map (which is not, however, reproduced here) putting the zones in perspective and coloring them so that they can be identified. A similar plan for the City of Kampala empowers the City Planning Committee

‘to grant a relaxation of any restriction imposed by this scheme on the use of any land or building or any other restriction contained in this scheme after considering the effects of such relaxation on the adjoining properties. Every such relaxation shall be reported to the Town Planning Board.’

Each town planning committee is authorised to consider and propose new schemes or alterations to the existing schemes irrespective of whether or not there is a scheme in operation at the time. Thus, it may be difficult for any developer to know at any one time which schemes prevail and which zones are open to him for development. Consequently, whenever one wishes to develop the land or change a land use, even in those areas where the plan does not require the Committee’s consent, one is always advised to make inquiries at the Planning Committee’s offices before proceeding with the particular activity. The plan is a mere guide; it does not guarantee that anything contained in it is either permissible or prohibited. When the Kampala plan was almost completely prepared, the Planning Committee received instructions from the Town Planning Board to give careful consideration to ‘the important matter of advertising’ and as a result the Committee inserted a new clause in the plan to the effect:

‘while the local authority is aware that permission must be given for adequate advertising in commercial zones, it nevertheless reserves the right, under the scheme, of complete control of the type, size and character of advertisements and of the places where such advertisements would be exhibited.’

#### (iv) *The implementation and enforcement of the plan*

From a development viewpoint the most important stage of a plan is its implementation because that is when both the policy-maker and the planner begin to see the practical results of their efforts. It is then that the theoretical expressions of planning begin to acquire shape and meaning. At the beginning, the planner is anxious to know whether the words he has used convey the same meaning to land users, developers and the public at large. He is not sure whether the details of his scheme are practical and, if so, whether they are enforceable. His anxiety remains until some one begins to carry out operations under the plan. It is then that the implementation of the plan is revealed.

In *Premchand Nathu & Co. Ltd. v. The Land Officer* the appellant company possessed a certificate of occupancy granting it a term of years in Crown land on condition that it undertook to erect buildings on the land of a value of not less than 60,000 shillings. The

<sup>50a</sup> (1960) E.A. 738.

buildings were to be commenced within 3 months after the planning authority of the area had approved the designs of the buildings. The company was under a duty to submit the designs to the authority within 6 months from the grant of the certificate of occupancy. The erection of the buildings was to be completed within 24 months from the time of the grant. Failure to fulfil all these obligations made the company liable to forfeit the lease. As events showed later all these time limits could not be observed, for, in practice, the local authority took longer to give the necessary approvals and the company was beset by problems of lack of manpower and building materials. Consequently, the planning authority had periodically to extend the time limit for completion. When, after some 6 years, the company had still not complied with the conditions, the right of occupancy was revoked without giving notice. The appellants contended that as section 14 (1) of the Conveyancing Act 1881 applied to the right of revocation and required giving notice, the purported revocation was invalid. They relied on a number of East African cases, notably *Bashir v. The Commissioner of Lands* (2), (1960) A.C. 44 and the judgment in *Director of Lands and Mines v. Sohan Singh*.<sup>51</sup> The Privy Council dismissed the appeal on the ground that the Conveyancing and Property Act did not bind the Crown in the context argued by the appellants, and that accordingly the right of occupancy was validly revoked without notice. The two cited cases were distinguished on the ground that their particular circumstances had required the invocation of equitable principles with regard to giving notice, whereas in the particular case those principles had not been specifically pleaded by the appellants.

*Premchand Nathus's* case did not completely clarify the law for there was another case previously decided by the Court of Appeal for Eastern Africa and dealing with the occupation of Crown land which appeared to suggest that the Crown did not have absolute right to revoke leases in its land. This was the decision in *Hassanali R. Dedhar v. The Special Commissioner and Acting Commissioner of Lands*.<sup>52</sup> The facts of the two cases were similar except that Dedhar's lease was divided into plots. The respondent wrote to him enquiring about his failure to build on some of the plots within the stipulated time. The appellant replied that he was building on the plots one by one, and he had just submitted building designs for approval for the rest of the land. This letter was not replied to by the respondents. After some further correspondence, the respondents intimated that they were going to take forfeiture proceedings. The appellant replied that he had already submitted the building plans of the land to the local authority for their approval. The respondents wrote back that they were unable to consider those plans in view of the forthcoming proceedings for forfeiture. The court held that the principles on which relief should be granted are as set out in section 14 of the Conveyancing and Property Act, 1881. They took notice that building conditions in Crown leases are not always strictly enforced, and held that since the appellant had done his best to remedy his default and the respondents' own attitude prevented him from doing so, the appeal would be allowed. Briggs J.A., reading the judgment of the court, said:

'It is thus clear that the respondent made it impossible for the appellant to carry out his obligation to build and I think we must in the circumstances assume in favour of the appellant that, had he not been so prevented, he would probably have performed the obligation.'<sup>53</sup>

<sup>51</sup>(1960) A.C. 44, 1 T.L.R. (R) 631, respectively; also *Province of Bombay v. Municipal Corporation of Bombay*, (1947) A.C. 58.

<sup>52</sup>(1957) E.A. 104. Cf. *Creery v. Summersell* (1949) ch. 751 and *Commissioner of Lands v. Shamdass Horra*, Kenya Supreme Court, civil case no. 504 of 1952 (unreported).

<sup>53</sup>At p. 107.

It was thus possible for one set of planning conditions to lead to three entirely different decisions, all well argued and possibly correct under circumstances that the planner could not have contemplated when he framed the plan. This partly explains why planning is such a continuous process. Thereafter, draftsmen were instructed to formulate a much more specific provision dealing with forfeiture that in any case of breach of the planning regulations no notice shall be necessary or given.

In *Puram Chand Many v. The Collector*<sup>54</sup> the court was faced with interpreting the meaning 'market value compensation' under the Indian Land Acquisition Act, 1894. It is important for the planner to know what compensation is likely to be paid in the event of compulsorily acquiring land for the plan projects. The court defined the market value as

'the price which a willing vendor might be expected to obtain from a willing purchaser.'

However, the court felt that this definition was not adequate and it was necessary also to define a purchaser. A purchaser is

'one who, although he may be a mere speculator, is not a wild or unreasonable speculator . . . He must be of good ability and well qualified to put the land acquired to the best advantage.'

Moreover, it is not sufficient merely to point out that similar land in the same general locality has been purchased at the same price. In considering whether to use an actual sale of comparable land as a yard-stick of value, the court must consider whether the purchaser,

'has paid so high a price that the court may consider that he has not displayed the ordinary caution which a purchaser of land should display'.

If the value of the land is to be fixed by reference to the potential future use of the land its future

'must not be entirely conjectural. It must be estimated by prudent business calculations and not by mere speculation and impractical imagination.'

In *Mohamed Ahmed v. R.*,<sup>55</sup> a resident magistrate, having found that the house in which the appellant lived was unsafe within the meaning of section 59 of the Public Health Ordinance and beyond repair, ordered its demolition; and when the order was not complied with the magistrate directed the appellant to vacate the premises. The appellant applied to the High Court for an order of prohibition. The application was refused and the appellant appealed to the Court of Appeal. Although the appellate court dismissed the appeal on other grounds it held that:

'Before the court can make a demolition order, it must be satisfied, not only that the condition of the premises constitute a nuisance, but also that repairing to or alterations of the premises are not likely to remove the nuisance.'

The planner may find that a developer has substantially departed from the specifications of his plan and nevertheless be bound by the completed work of the developer as was held in the *City Council of Nairobi v. Ata Ul Haq*.<sup>56</sup> In that case the Council argued that the works of the respondent had not been completed in accordance with the contract and they therefore were entitled to deduct from the moneys due to him for the defects in the works.

<sup>54</sup>(1957) E.A. 125.

<sup>55</sup>(1957) E.A. 523.

<sup>56</sup>(1958) E.A. 794.

The court found as a fact that the Council's inspectors had allowed a low standard of work to be carried out by the respondent and that, although they were not stopped from alleging breaches of the contract, the actions of their agencies and the fact that they failed to take mitigating action in respect of, *inter alia*, patent defects would be reflected in the amount of damages to be awarded.

The cases discussed so far have been confined to implementation by judicial action. There are other methods of ensuring implementation without the necessity of going to court first. These were mentioned earlier as registration, licensing and inspection. The controlling authority may wish to register all prospective developers; its licensing officers will ensure that such developers are professionally qualified, that they are of good character and that they have the necessary funds; and its inspectors will ensure that they carry out the permitted activities within the terms and conditions of the plan. The Uganda Trade (Licensing) Act, 1969, may be taken as an illustration of this method. The act was enacted to encourage Ugandans and to discourage non-citizens in Uganda from dominating the commercial and trading areas of the country. Consequent upon the coming into force of the Act, and notwithstanding the commercial and trading zones of the towns, no person could erect commercial buildings or engage in trade in areas other than those which were declared by the Minister to be areas of general business. The Act was to control persons who traded and the areas and the goods or business enterprises in which such trade would be carried out. All traders and industrialists had to be licensed before they carried out their specific trade or industry. The Act contains a schedule which prescribes fees and types of licences required for certain areas, businesses and trades. The licensing authority has the power to refuse a licence without giving any reason for the refusal. Appeal against refusal may be made to the Minister, whose decision is final. To ensure that the provisions of the Act were being complied with, the Act created the offices of inspectors. These are authorised to enter, at all reasonable hours, any premises to examine licences which the licensee is obliged to exhibit in some conspicuous place on the premises. They may also examine account books and ask any questions and seek any information which is relevant to their being satisfied that the Act is being complied with. The Act creates offences and prescribes penalties against the violators of its provisions. Basically, the success of the Act depends on the vigilance and integrity of both the licensing officers and the inspectors. Recent Commissions of Inquiry have revealed that these qualities have been lacking. In addition, the infrastructure created by the provisions of the Act has been too inadequate and imprecise to effect complete implementation.

It has been argued that money is one of the agencies of planning. Certainly money is necessary if the plan is to be implemented. It has also been said that development projects in East Africa are mainly financed by foreign investors and foreign aid. It is equally arguable that any regulations passed to protect foreign investments are designed to ensure the implementation of the plans. The three East African governments found it necessary to enact laws for the protection of foreign investments within the region, laws which are known as Foreign Investment Acts. Under such an Act the foreign investor has only to prove that his assets have been brought into the country concerned in accordance with its fiscal and exchange control regulations. The government then guarantees the repatriation, in the approved currency and at the prevailing official rate of exchange, of the investor's profits after taxation, any other approved proportion of the net proceedings of sale of all or any part of the enterprise, and lastly the principal and interest of the loan or investment specified in the certificate of operations. The Act further provides that in the event of

compulsory acquisition of the property or works in which the money is invested, the government undertakes to provide compensation for an approved proportion of the value of the investment as prescribed in the certificate of operations to be paid within 6 months from the date of taking possession compulsorily. Various projects within urban planning schemes are currently supported by foreign investments and aid which are protected by the Foreign Investment Act.

In discussing the enforcement of planning regulations in Uganda, it is important to bear in mind that public authorities, rather than private persons or firms, are responsible for the majority of urban development. For this reason there are certain predominant aspects of planning in countries where the reverse is the case which play only a small part in the planning law of Uganda. Uganda has a dearth of cases dealing with topics like planning permission, enforcement notices and improvement or betterment compensation. On the other hand, in a country like England one is likely to discover that court decisions involving these topics dominate planning case law. It is theoretically possible for planning disagreements to exist in Uganda between local authorities and the Planning Board, on the one hand, and between local authorities and the Minister, on the other. In practice, however, these disagreements are rarely expressed in public; nor do they form subjects of litigation in Uganda courts. Under the Local Administrations Act, 1969, local authorities in Uganda were firmly placed under the control and direction of the central government. They do not enjoy the same freedom and the semi-autonomy that local authorities and governments enjoy in many other countries. Both politically and administratively, local authorities in Uganda are extensions of the government and their officers and employees are agents of the various Ministries of the central government. Moreover, unlike the local authorities in more economically developed countries, they depend almost entirely on government grants for their financial requirements. They are therefore not in a strong position to challenge the planning decisions of the central government Ministers as many authorities do in the United Kingdom and the U.S.A. Consequently, whatever the Minister approves is likely to pass as law without public protest from the local authority affected.

There have been one or two occasions when a local authority was bold enough to challenge a Minister's planning decision, but in each case the challenge was ineffectual and in one particular incident it led to the dismissal of the councillors. The latter was the case of Gulu Town Council. The town's planning committee proposed an industrial scheme for the area which was approved by the local authority. The authority made representations to the Minister concerned. However, for political reasons and contrary to the advice of expert planners, the Minister decided to award the industrial scheme to a rival local authority instead of approving it for the Gulu planning area. The Gulu Council sent a delegation to the Minister to express their disappointment and to persuade him to change his decision. The delegation was sent away by the Minister without being heard. Shortly afterwards the government dismissed all the protesting councillors and appointed new ones by statutory instrument notwithstanding that the former had not completed their term of office.

The conclusion to be drawn from this discussion is that with the Minister's approval planning and zoning regulations can either be ignored or infringed without the local authority or the planning body taking any measures. A few enforcement provisions do exist in the Town and Country Planning Act to operate against private developers, but because of what has been said they only affect those who have not had the Minister's consent. The Act provides that no one may erect or demolish a building or works, or establish or change

a land use without the permission of the local planning committee. In the event of a refusal by the committee to grant permission, the aggrieved party may appeal to the Planning Board. A further right of appeal exists from the Board to an arbitrator appointed by the Chief Justice in accordance with section 17 (ii) of the Act. There is also a provision to cover persons who develop land within the planning area without permission and contrary to the planning scheme. Where a person carries out a development without permission and this development is contrary to the scheme of the area, the local committee may serve him with an enforcement notice to remove or change the development. Failure to comply with the notice is an offence and the local authority may remove or demolish the development and claim the expenses involved as a civil debt against the person who is in breach.

Section 17 (i) authorises a local authority to acquire compulsorily any land within the planning area, if the land is required for roads, open spaces, gardens, schools or other public institutions. The same power may be exercised to acquire any land which has not been developed in accordance with the outline or detailed scheme. The authority must, however, be satisfied that the owner or occupier has failed to take reasonable steps to develop the land himself in accordance with the scheme. Section 18 provides that a landowner or occupier who is affected by the implementation or enforcement of a planning scheme shall be compensated. He must show that the implementation of the scheme has either injuriously affected his property or rendered his own development of the land abortive through revocation or modification of the scheme. In the latter event, he must prove that he has previously incurred expenditure.

The forecast of many of the experts discussed elsewhere in this book is that the burden of developing urban plans and schemes will gradually move from public authorities to landowners, occupiers and private developers. The government will not be able to finance or to find all the capital necessary for all the development. Moreover, it has been noted that post-independence governments have, at least in theory, encouraged the indigenous people to assume greater responsibility in developing the urban centres. Once this move is achieved, the topics which have hitherto played a minor role in the planning and development law of Uganda will assume greater importance. The Minister's authority may be confined to approving planning schemes while local authorities and planning committees take over the responsibility of granting planning permission and enforcing planning regulations. Detailed rules of implementation and enforcement will be essential if development is to proceed on an orderly basis. However, before these changes are introduced, the government must translate its theoretical policies of encouraging private development into concrete and practical terms. As yet, no such concrete measures have been taken.

## *General Observations and Conclusions*

AS AN attempt has been made to incorporate proposals for reform into each chapter it now only remains to make general observations and conclusions. The opinions expressed on the working of the East African policies and land laws seem to indicate that the region's land would be better utilised if it were in public ownership. Of the three territories only Tanzania has effected a policy of public ownership by nationalising all land and buildings. In both Kenya and Uganda the existence of private ownership of land in urban centres has been associated with difficulties in providing social services and orderly development. Yet, development in the two countries, as in Tanzania, is carried out by the government through appropriate public bodies. The multiplicity of land tenures complicates administration and slows planning and development. Professor James of the University of Dar es Salaam has stated that the philosophical foundation of the Tanzanian land policy is partly rooted in traditional African beliefs and attitudes and partly based on the notion that security of tenure must depend on the continued use of land.<sup>57</sup> The first part of Professor James's contention is rejected on the ground that Tanzania's policy is the consequence of its government's decision to pursue a socialist national policy in planning and development, rather than of a desire to revive the so-called traditional African attitude to land ownership. It has been argued that there is not one but many African attitudes, depending on the structure of the community and the region it belonged to. The policy is related to socialist ideas as expressed in documents like the Arusha Declaration, Self-Reliance and the Ujamaa Villages principle. Admittedly, in advocating the policy of public ownership the Tanzanian government found it politically expedient to explain it in terms of traditional African attitudes. The exercise was intended to legitimise rather than rationalise the policy. The Tanzanian leaders, and in particular the President, Mwalimu Julius Nyerere, have shown remarkable dedication to what has been described as African socialism.

In opting for public ownership of land the control necessary is limited to land use. Greater economic development may be achieved by land use regulations, assuming that the other agencies of development exist and are usefully employed. On the other hand if private ownership is permitted, a government desiring greater and controlled economic productivity is likely to meet with problems. In order to achieve its goals it may be forced to issue land regulations restricting sale and use of land as well as imposing taxation on such sale and use. In a developing country like Uganda or Kenya, the regulations are likely to discourage investors who come mainly from foreign countries.

With the exception of mailo landowners in Buganda, and recently the buyers who have

<sup>57</sup> *Land Law Reform in East Africa*, p. 207; Julius Nyerere, *Mali ya Taifa in Huru na Umoja*, 1958, p. 53.

replaced the white settlers in Kenya, private ownership of land has not had the same sanctity as is found in countries whose legal systems permit it. The majority of the population have continued to regard land as unsaleable and to be used only for shelter, the growing of food and the grazing of cattle. Consequently, a declaration of public ownership of land is likely to be more acceptable to the people as a whole than if private ownership was fully entrenched in the traditional attitudes of the people. The Tanzanian land nationalisation measures were challenged by only a few people, mainly from the non-indigenous population and the urban African tenants. When the Uganda Public Lands Act converted official estates into public land without compensation, no chiefs objected, notwithstanding that they had since 1900 regarded those estates as personal possessions. The removal of land from private to public ownership is necessary to give the biggest developer in East Africa, namely the government and its agencies, the basic commodity in development. Planners and developers would no longer have to wait for long periods in the hope that the owners would give the necessary consent.

The process of effecting the policy of public ownership in Uganda is likely to be a simple one. The Public Lands Act has to a large measure nationalised public land. All that is needed is to amend its provisions so as to remove the sections which preserved mailo land and other types of freehold, and those which authorise the Land Commission to grant limited freeholds. In cases of the freeholds already granted, an Act similar to Tanganyika's Freehold Titles (Conversion and Government Leases) Act of 1963 would suffice to extinguish them. It must be conceded however that objections are likely to be raised by the mailo landowners of Buganda. For nearly 50 years they have enjoyed land rights which are almost tantamount to absolute ownership and they would feel cheated if those rights were suddenly taken away from them. Consequently, in the case of Buganda, it might be politically expedient to allow the policy to stay in abeyance for some 5 years. In the meantime the government might organise an educative programme in which the mechanics and advantages of public ownership are discussed with the owners.

Where the land is currently being developed by the owners or occupiers in accordance with the plan or schemes of the planning area, the owners might be allowed leaseholds ranging from 25 to 100 years, depending on the type of development. However, in all cases, public authorities should be granted the power of compulsory acquisition of the land for a specific public purpose. In any event, any tenant who fails to develop the land in accordance with the planning schemes and regulations should be liable to eviction. Eviction should not however be automatic. The principle of public ownership is likely to be legitimised and accepted if the tenants and developers are assured of security of tenure. It is proposed that the right of forfeiture should be exercised only after the tenant or occupier has been served with an enforcement notice requiring him to occupy or develop the land in accordance with planning regulations within a specific period. In default of such notice the evicting authority should apply to a magistrate's court for an eviction order.

This brings the discussion to the question of compensation. It is proposed that the mere declaration of land as falling within public ownership should not, by itself, involve the payment of compensation, except in the initial period when the owner or occupier proves that he spent an ascertainable sum of money or some other consideration to buy the 'ownership' without any development or improvement. Compensation should only arise when the question of developing the land by persons or bodies other than the occupier arises. In that event, the occupier should be compensated for visible improvements which he personally made or which he bought from a predecessor. The improvements should

include any clearance made on the land, works constructed or buildings erected and any crops grown or trees planted. The value of the compensation should be determined by a local compensation committee which, it is proposed, should be created under the planning and development regulations. It is further proposed that there should be a right of appeal from this Committee to a central Compensation Board similarly created and independent of both the Central Planning Board and the Minister. The system is likely to encourage impartiality and enhance expert decisions in planning. To ensure that legal problems are fully appreciated, both the Committee and the Board should contain members with legal qualifications. The right to compensation should be independent of the implementation of the planning schemes so that developers who have obtained permission may proceed with implementation even if there are compensation proceedings pending.

Two important points emerge from an examination of planning in East Africa. Firstly, there is the lack of administrative machinery capable of formulating, co-ordinating and directing the policies of planning and housing. Secondly, neither the existing machinery nor the planners have shown much imagination in designing plans for the region which suit local conditions and circumstances. The large number of public bodies directly or indirectly concerned with planning and housing inevitably leads to lack of co-ordination and rivalry. There is an urgent need to rationalise the administration and infrastructure of planning and housing. While the Minister should continue to be responsible for the overall policy, local authorities, particularly in the big cities, should be given more powers and greater voice in the plans of their areas. The Central Planning Boards should confine their activities to advising the Minister and leave the detailed plans to the local planning committees. In the past the latter have waited for directions from the Boards while the Boards have found it impossible to give attention to the problems of every urban centre in the country. Communication between the local planning committees and the Minister should be a direct one.

Hitherto, planners have insisted on high standards of urban development. This policy has tended to drive many developers in the lower income groups to peri-urban areas, where they have engaged in unplanned and uncontrolled development. It is not fully realised that the latter kind of development has social and economic effects since the slum dwellers and the health hazards of the shanty towns intermingle with the life of the planned, high standards of the city. Sooner or later, the city has to be extended to accommodate the growing population and the city planner is then faced with the removal of slum dwellings and the clearance of shanty towns which he helped to create. Inevitably, this will involve spending part of the money which was earmarked for development. Sociologists have observed that there is no simple solution to the problem of slum dwellings. Southall has, for instance, noted that the slum dwellers of Kampala

'feel under stress because of their mistrust and fear of government which they see in the form of police spies, tax collectors and urban planners intent on destroying their houses and driving them out.'<sup>58</sup>

Conflicts are likely to occur in planning and development priorities. Economic planning, which is the priority of the East African governments, places emphasis upon maximum utilisation of material resources, while social development, which should be the ultimate aim in planning, places emphasis upon maximum growth of human endowments.

<sup>58</sup>In *Determinants of the Social Structure of African Urban Population, with Special Reference to Kampala (Uganda), Social Implications of Industrialisation and Urbanisation in Africa, South of the Sahara*, UNESCO, p. 558.

Admittedly, there is a close link between the two for without economic development it becomes impossible to realise social development. However, if the argument is accepted that the former is a means with which to achieve the latter, then present East African planning and development policies need to be re-examined. In housing, policies have tended to cater for the middle and upper income groups of society on the assumption that it is they who contribute most to the advancement of the national economy. These groups are, however, capable of looking after their own interests and the responsibility of governments should be to assist the less able groups in the community. The overriding consideration in planning and development should be the alleviation of human misery and the accommodation of all people irrespective of whether or not they are employed and who employs them.

In the political, economic and social changes taking place in East Africa, there is little doubt that the problems of urbanisation, urban land, planning and housing will increasingly bring pressure to bear on the communities and governments concerned. The solutions to these problems will involve the collection and analysis of statistical data and other information supplied by all the disciplines which engage in the study of man and his environment; this collection and analysis will necessarily call for improved empirical research services which are of valuable assistance in the training of personnel for planning and administering urban development. Inevitably, lawyers will be invited to participate in finding these solutions. They will need to discuss the relevant problems in the context of the national plans and laws. They will need to communicate with and take part in other disciplines engaged in planning and development. It is only then that the legal profession will appreciate planning, not as intended to interfere with private rights but as an aspect of an ordered and orderly community; and only then will law cease to be regarded as an obstacle to, and become accepted fully as an instrument of, planning and development. There is still the problem of educating the general public, including those currently responsible for planning, that lawyers can and should play a much greater role in planning than merely providing the legal techniques of drafting, interpreting and arguing points of law. For instance, it has been suggested that lawyers should be members of the compensation bodies and the suggestion could be extended further to include them not only in the Central Planning Board but also in local planning committees.

APPENDIX - JINJA OUTLINE SCHEME, 1960

	Residential A	Residential B	Residential C	Residential D	Special residential	Residential settlement area	Commercial	Civic centre	Light industry	Heavy industry	Special industry	Other uses	Any other zone
Residential A	P	P	P	P	X		X		X	X	X		as determined by the Committee (subject to clause 3 of Plan)
Residential B	P	P	P	P	Sc		X		X	X	X		as determined by the Committee
Residential C	P	P	P	P	Sc		X		X	X	X		as determined by the Committee
Residential D	P	P	P	P	Sc		X		X	X	X		as determined by the Committee
Special residential	X	Sc	Sc	Sc	Sc		X		X	X	X		as determined by the Committee
Residential settlement area													
Commercial													
Civic centre													
Light industry	X	X	X	X	X		X		X	X	X		
Heavy industry	X	X	X	X	X		X		X	X	X		
Special industry	X	X	X	X	X		X		X	X	X		
Other uses													
Any other zone													
Special building	Sc	Sc	Sc	Sc	Sc		Sc		Sc	Sc	Sc		
Special industrial building	X	X	X	X	X		X		X	X	X		
Heavy industrial building	X	X	X	X	X		X		X	X	X		
Light industrial building	X	X	X	X	X		X		X	X	X		
Food processing industrial building	X	X	X	X	X		X		X	X	X		
Warehouse and storage building	X	X	X	X	X		X		X	X	X		
Business premises	Sc*	Sc*	Sc*	Sc*	Sc*		P		Sc	Sc	Sc		
Commercial premises	X	X	X	X	X		P		Sc	Sc	Sc		
Public buildings	Sc	Sc	Sc	Sc	Sc		Sc		X	X	X		
Watchman's and caretaker's quarters	X	X	X	X	X		Sc		Sc	Sc	Sc		
Residential buildings	Sc	Sc	Sc	Sc	Sc		Sc		Sc	Sc	Sc		
Block of flats	Sc	Sc	Sc	Sc	Sc		Sc		Sc	Sc	Sc		
Special block of flats	X	Sc	Sc	Sc	Sc		Sc		X	X	X		
Terrace of houses	X	Sc	Sc	Sc	Sc		Sc		X	X	X		
Double dwelling	Sc	Sc	Sc	Sc	Sc		Sc		X	X	X		
Dwelling	P	P	P	P	P		X		X	X	X		

Key: P. Permitted use in the particular zone subject to the provision of the Scheme.  
 X. Indicates use not permitted in that particular zone.  
 Sc. Indicates use not permitted but special consent may be granted by the Committee for use in that particular zone.  
 \* Hotels only and in relation to light industries plots fronting on to Obojo road development shall be restricted to such light industrial uses as Committee may specifically approve, and development shall in all cases provide the erection of show room on full frontage of the plots.

## Selected Bibliography

### 1. BOOKS

- ABRAMS, CHARLES (1964) *Housing in the Modern World*, Faber & Faber, London; *Man's Struggle for Shelter*, M.I.T. Press, Cambridge, Massachusetts.
- ADU, A.L. (1965) *The Civil Service in the New African States*, Allen & Unwin, London.
- ALLOTT, ANTHONY N. (1970) *New Essays in African Law*, Butterworths, London.
- BREESE, GERALD (Editor) (1969) *The City in Newly Developing Countries*, Prentice-Hall, Englewood Cliffs, New Jersey.
- CHARLESWORTH, J. (1948) *Principles of Planning Law*, Stevens & Sons, London.
- CLARK, PAUL G. (1965) *Development Planning in East Africa*, East African Publishing House, Nairobi.
- COLE, J.S.R. and DENISON, W.N. (1964) *Tanganyika – The Development of Its Laws and Constitution*, Stevens & Sons, London.
- CULLINGWORTH, J.B. (1969) *Town and Country Planning in Britain*, Allen & Unwin, London.
- DILLEY, MARJORIE (1937) *British Policy in Kenya Colony*, Nelson, New York.
- EKWENSI, C. (1954) *People of the City*, Andrew Bakers, London.
- EPSTEIN, A.L. (1958) *Politics in an Urban African Community*, Manchester University Press, Manchester.
- FOULKES, DAVID (1971) *Introduction to Administrative Law*, Butterworths, London.
- FRIEDLAND, W.H. and ROSEBERG, C.G. (Editors) (1964) *African Socialism*, Stanford University Press, Stanford.
- GHAI, Y.P. and MCAUSLAN, J.P.W.B. (1970) *Public Law and Political Change in Kenya*, Oxford University Press, London.
- HAAR, CHARLES M. (1959) *Land Use Planning*, Little, Brown & Co. Boston.
- HANCE, WILLIAM H. (1970) *Population, Migration and Urbanization in Africa*, Columbia University Press, New York and London.
- HAYDON, E.S. (1960) *Law and Justice in Buganda*, Butterworths, London.
- HAZARD, JOHN N. and SHAPIRO, ISAAC (1962) *The Soviet Legal System*, Oceana Publications, New York.
- HEAP, DESMOND (1969) *An Outline of Planning Law*, Sweet & Maxwell, London.
- HODGKIN, T. (1956) *Nationalism in Colonial Africa*, Muller, London.
- INGRAM, K. (1958) *The Making of Modern Uganda*, Allen & Unwin, London.
- LAWRENCE, C.D. (1963) *Fragmentation of Agricultural Land in Uganda*, Government Printer, Entebbe.
- LESLIE, J.A.K. (1963) *A Social Survey of Dar es Salaam*, Oxford University Press, London.
- LIVERSAGE, V. (1945) *Land Tenure in the Colonies*, Cambridge University Press, London.
- MAINI, KRISHNAN M. (1967) *Land Law in East Africa*, Oxford University Press, Nairobi.
- MANDELKER, DANIEL R. (1963) *Managing our Urban Environment*, The Bobbs-Merritt Company, Indianapolis, Kansas City.
- MAUDSLAY, R.H. and BURN, E.H. (1970) *Land Law, Cases and Materials*, Butterworths, London.
- MEEK, C.K. (1946) *Land Law and Custom in the Colonies*, Oxford University Press, London.
- MERRETT, A.J. and SYKES, A. (1963) *The Finance and Analysis of Capital Projects*, Longmans, London.
- MORRIS, H.F. and READ, JAMES (1966) *Uganda – The Development of its Laws and Constitution*, Stevens & Sons, London.
- MUKWAYA, A.B. (1953) *Land Tenure in Buganda – Present Tendencies*, Eagle Press, Kampala.
- NDEGWA, PHILIP (1965) *The Common Market and Development in East Africa*, East African Publishing House, Nairobi.

- NYERERE, JULIUS (1962; 1965) *Ujamaa – The Basis of African Socialism; Freedom and Unity*, Oxford University Press, Dar es Salaam.
- ORAM, NIGEL (1962) *Towns in Africa*, The New African Library, London.
- POWELL-SMITH, VINCENT (1969) *Topham's Real Property*, Butterworths, London.
- ROTHCHILD, DONALD (Editor) (1968) *Politics of Integration – An East African Documentary*, East African Publishing House, Nairobi.
- SAFIER, M. and LANGLANDS, B.W. (Editors) (1969) *Perspectives on Urban Planning for Uganda*, Makerere University, Kampala.
- SCHOFFIELD, NORMAN A. and SALES, HARRY B. (1966) *Housing Law and Practice*, Shaw & Sons, London.
- SCHUMPTER, J.A. (1961) *The Theory of Economic Development*, Oxford University Press, New York.
- SEMUGOOMA, S.M. and O'CONNOR, A.M. (1968) *The Peripheral Zone of Kampala*, Makerere University, Kampala.
- SOUTHALL, A. and GUTKIND, P.C.W. (1957) *Townsmen in the Making – Kampala and its Suburbs*, Uganda Bookshop Press, Kampala.
- TELLING, A.E. (1970) *Planning Law and Procedure*, Butterworths, London.
- THOMAS, H.B. and SCOTT, R. (1935) *Uganda*, Oxford University Press, London.
- THOMAS, H.B. and SPENCER, A.E. (1938) *A History of Uganda Land and Surveys and of the Uganda Land and Surveys Department*, Government Printer, Entebbe.
- TOTHILL, J.D. (Editor) (1940) *Agriculture in Uganda*, Oxford University Press, London.
- WATSON, W. (1958) *Tribal Cohesion in a Money Economy*, Manchester University Press, Manchester.
- WEST, H.W. (1964) *The Mailo System in Buganda*, Government Printer, Entebbe.
- WORTHINGTON, E.B. (1946) *A Development Plan for Uganda*, Government Printer, Entebbe.

## 2. ARTICLES

- ABEL (1969) Customary law of wrongs in Kenya. 17 *American Journal of Comparative Law*, 573, 614.
- ALLOTT, ANTHONY N. (1961) The changing law in a changing Africa. 11 *Sociologus* 115.
- BARBER, W.J. (1967) Urbanization and economic growth in the city. *Modern Africa*, edited by H. Minor. Pall Mall Press, London.
- BENTSI-ENCHILL, K. (1969) The Colonial heritage of legal pluralism. 1 *Zambia Law Journal*, vol. 1, 25.
- BRUSHFIELD, J.N.N. and RETTON, A.J. (1955) Land registration in Buganda. *Empire Survey Review*, vol. 13, pp. 194-202, 243-52.
- CULLINGWORTH, J.B. (1959) Some administrative problems of overspill. *Public Administration*, p. 343.
- DUNNING, HARRISON C. (1972) Law and economic development in Africa: the law of eminent domain. International Legal Center, New York.
- EDEL, M.M. (1938) Property among the Cigas in Uganda. *Africa*, vol. II, pp.325-41.
- GHAI, Y.P. (1972) Research on law and development in Africa. International Legal Center, New York.
- GUTKIND, P.C.W. (1963) Town life in Buganda. *Uganda Journal*, vol. 20; (1963) The royal capital of Buganda. Moulton, The Hague.
- INGRAM, K. (1956) Some aspects of the history of Buganda. *Uganda Journal*, vol. 20, no. 1, pp. 1-12.
- KANYEIHAMBA, G.W. (1971) Constitutionalism and liberty in Uganda. *Mawazo*, vol. 3, no. 1, p. 27.
- KIRWAN, J. (1948) Customary land tenure and the legal system in Buganda. *Digest of African Local Administration, Colonial Office*, no. 4.
- LEAKE, H.M. (1932) Studies in tropical land tenure. *Journal of Tropical Agriculture*, vol. 9, no. 12, pp. 371-5.
- MAIR, L.P. (1933) Buganda land tenure. *Africa*, vol. VI, no. 2, pp. 187-205.
- McAUSLAN, J.P.W.B. (1966) Administrative law in Kenya. British Institute of International and Comparative Law, Commonwealth series no. 5, pp. 23-71; (1971) The plan, the planners and the lawyers. Public Law, London.
- MITCHELL, SIR PHILIP (1952) Cd. No. 290, H.M.S.O.
- OUMA, J.P.B.M. (1969) The supply of building materials to Kampala. Makerere University, Department of Geography sessional papers.
- RICHARDS, A.I. (1954) Economic development and tribal change. East African Institute of Social Research, Makerere University, Kampala.
- ROGOFF (1968) The criminal and urbanisation. *East African Medical Journal*, p. 341.
- RUSSELL, A.H. and HATHER, J.R. (1956) Aspects of development within the urban area of Greater Kampala. East African Institute of Social Research, Makerere University, Kampala.

- SCHANDER, A. (1956) Eliminating native slums in South Africa. *Optima*, vol. 6, no. 4, p. 122. Rhodes House, Oxford.
- SEIDMAN, R. (1966) Law and economic development in independent English-speaking sub-Saharan Africa. *Wisconsin Law Reports*, p. 999.
- SIMPSON, S.R. (1954) Land tenure – some explanations and definitions. *Journal of African Administrations*, vol. VI, no. 2, pp. 50-64, London.
- SMITH, DAVID N. (1972) Man and Law in Urban Africa – a role for customary courts in the urbanization process. International Legal Center, New York.
- SORANI, N.V. (1964) In *Economic Development and Cultural Change* 12, No. 2. University of Chicago.
- SOFIER, C.R. (1955) Jinja transformed. East African Institute of Social Research, Makerere University, Kampala.
- STRICKLAND, J.G. (1936) An indexed memorandum on native land tenure in the kingdom of Buganda. Department of Lands and Surveys, Government Printer, Entebbe; (1936) The Uganda Mailo system, *Empire Survey Review*, vol. 3, pp. 422-7, 460-2.
- TEMPLE, P.H. (1963) Kampala – influences upon its growth and development. East African Institute of Social Research, Kampala.
- THOMAS, E.N. (1962) Land studies in geography. *Human Geography*, series B, no. 24.
- THOMAS, H.B. (1927-8) An experiment in African native settlement. *Royal African Society*, vol. 27, pp. 234-49; (1933) The surveyor and the politician. *Empire Surveyor Review*, vol. 2, pp. 28-32.
- WEIGT, E. (1968) In *Ostafrikanische Studien*, Band 8, Geburtstag.
- WEST, H.W. (1963) Reflections upon the problems of land registration in Buganda. East African Institute of Social Research, Makerere University, Kampala.

### 3. JOURNALS AND REVIEWS

- African Affairs*, vol. lxxv, No. 261.
- African Urban Notes*, vol. 3, No. 4.
- American Journal of Public Health*, Vol. 58, No. 10, pp. 2043-9, 1968.
- Corona* 1956-60. H.M.S.O. London.
- Current Anthropology*, No. 8, 1967.
- Denning Law Society*, 1964-9, Dar es Salaam.
- East Africa Journal* 1966-72, Nairobi.
- East African Economic Review*, 1954-69, Nairobi.
- East African Geography Review*, vol. 1, 1963, Kampala.
- East African Law Journal* 1960-72, Nairobi.
- East African Medical Journal*, No. 45, p. 341, 1968.
- Empire Survey Review*, Vol. 13, pp. 194-202, 243-52, London.
- Encyclopedia of Housing Law and Practice*, Vol. 1 (1958), Vol. 2 (1971). Sweet & Maxwell, London.
- Encyclopedia of Planning – Law and Practice*, Vol. 1 (1959), Vols 2 and 3 (1972). Sweet & Maxwell, London.
- Environmental Pollution Quarterly Notices*, June/July 1971.
- Ethiopian Observer*, vol. V, No. 4, Addis Ababa.
- Geographical Review*, vol. 53, New York.
- Industrial Location and the East African Common Market*, Economic Development Review, no. 148, 1968.
- International Social Development Review*, U.N. Publication, 1965.
- Journal of Administration Overseas*, vol. XI, No. 2, 1972, London.
- Journal of African Administration*, vol. XII, No. 4, 1960.
- Journal of the American Institute of Planners*, vol. XXXVII, No. 5, 1971.
- Journal of Development Planning*, U.N. Publication by the Economic Commission for Africa.
- Journal of Development Studies*, vol. 8, No. 7, 1972.
- Journal of the International Commission of Jurists*, 1964.
- Journal of the Uganda Society*, 1956-71, Kampala.
- Journal of Tropical Agriculture*, vol. 9, No. 12, pp. 371, 375, 1932, London.
- Law and Society Review*, vol. 6, No. 4, 1969, and vol. 6, No. 3, 1972.
- Long-range Planning*, vol. 4, No. 4, 1971.
- Makerere Law Journal*, vol. 1, No. 1, 1971, Kampala.
- Makerere Medical Journal*, No. 12, 1968, Kampala.
- Modern African Studies*, Vol. 9, No. 4.
- Planning Outlook*, vol. 6, 1969, vol. 18, 1970.
- Property and Conveyancing*, Library No. 2, 1963. Sweet & Maxwell, London
- Social Problems*, vol. 18, No. 2, 1970.

*Studies in African Economics*, No. 2, 1971-2. New York and London.  
*The Native Problem in Africa*, vol. 1, Section iv, pp. 559-642, 1928. Macmillan, New York.  
*Uganda Protectorate Law Reports*, vol. 1, 1904-1910. Government Printer, Entebbe.  
*West African Medical Journal*, vol. 18, No. 2, pp. 38-42, 1969.

#### 4. CONFERENCE, STUDY AND COMMISSION REPORTS

BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW (1966) *East African Law Today*. Commonwealth series no. 5.  
 BUCHANAN, C.M. (1956) *Report on Urban Local Government in Uganda*. Government Printer, Entebbe.  
 INTERNATIONAL UNION OF LOCAL AUTHORITIES (1967) Symposium. Martinus Nijhoff, The Hague.  
 LITHERLAND, S. and others (1966) *Kampala-Mengo Regional Planning Studies*: nos. 1-13. Department of Town and Regional Planning, Kampala.  
 MIRAMS, A.E. (1930) *Jinja, Report on the Town Planning and Development: 1930*, Kampala; *Report on the Town Planning and Development*, Government Printer, Entebbe.  
 NEHANIV, B. and others (1961) *Report on Survey of the Present Land Uses and Market Plan - programme for Kampala*, Department of Town and Regional Planning, Kampala.  
 OBOL-CHOLA, JAMES (Editor) (1969) *Land Law Reform in East Africa*, Adult Education Centre, Kampala.  
 THOMAS, H.B. (Chairman) (1938) *The Labour Situation in the Uganda Protectorate*, Government Printer, Entebbe.  
 ADULT EDUCATION CENTRE (1969) *Housing Problems in Uganda*, Kampala.  
 THE BUGANDA LAND HOLDING QUESTION (1923) Kampala (private circulation).  
 CENTRAL AFRICAN COUNCIL (1949) *Report on African Housing*, Government Printer, Nairobi.  
 EAST AFRICAN SOCIAL SCIENCES COUNCIL (1968-69) Political Science, Sociology, Geography, History and Law papers, Makerere University, Kampala.  
 INSTITUTE OF PUBLIC ADMINISTRATION (1964) *Problems of Foreign Aid*, Dar es Salaam.  
 JOINT EAST AFRICAN BOARD (1943) *Memorandum on Post-war problems in East Africa*, H.M.S.O., London.  
 PROJECT PLANNING ASSOCIATION OF TORONTO, CANADA (1962) *National Capital Master Plan*, Dar es Salaam, Department of Planning, Dar es Salaam.  
 REPORT OF THE CONFERENCE ON AFRICAN LAND TENURE IN EAST AND CENTRAL AFRICA (1956)  
 REPORT OF THE EAST AFRICAN ROYAL COMMISSION (1953-1955) H.M.S.O., London, 1955.  
 SUPPLEMENT to *Journal of African Administration*, Oct. 1956, H.M.S.O., London.  
 TANZANIAN SOCIETY (1971) *Dar es Salaam, City, Port and Region*, Tanzania Notes and Records, No. 70, Dar es Salaam.  
 UNITED NATIONS (1956) *East African Planning Conference Report*, Government Printer, Entebbe.  
 UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA (1962) Workshop on Urbanization in Africa.  
 UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA CONFERENCE OF AFRICAN PLANNERS, Addis Ababa, 1967.  
 UNITED NATIONS HOUSING IN AFRICA, Sept. 1965. Public Sales No. 66 11 K.4.  
 UNITED NATIONS WORLD HEALTH TECHNICAL REGIONAL SEMINAR, GENEVA (1965) No. 297.

#### 5. GOVERNMENT AND PUBLIC AUTHORITIES PUBLICATIONS

*African* No. 869. Colonial Office, H.M.S.O., London, 1907.  
 Dar es Salaam Master Plan.  
 Despatch from the Governor of Uganda in Reply to the East African Royal Commission Report, 1953-55.  
*Draft Master Plan for Kampala, 1969, 1972*, Government Printer, Entebbe.  
*East African Statistical Department Reports 1958-1972*.  
 Expanded Nordic Economic Co-operation, Stockholm, 1969.  
*Jinja Detailed Scheme No. 1, 1957*, Government Printer, Entebbe.  
*Jinja Outline Scheme 1954, 1960*, Government Printer, Entebbe.  
 Kampala, Capital of Uganda, Department of Information, *Handbook*, 1962.  
 Kampala Development Plan, Ministry of Town and Regional Planning, Kampala, 1972.

- Kampala, *The Official Handbook*, Kampala, 1970.
- Kenya Five-year Development Plans.
- Labour Department Returns, 1956-1970*, Government Printer, Entebbe.
- Land Policy of the Protectorate Government of Uganda, *Uganda Gazette*, vol. XLVI, No. 30, 1950.
- Laws of Uganda, 1951.
- Republic of Kenya, *African Socialism and Its Application to Planning in Kenya*, Government Printer, Nairobi.
- Tanzania Five-year Development Plans.
- The Transfer of Exchange of Land in Uganda Department of Lands and Surveys* (photolithograph), Entebbe, 1956.
- Uganda Budget, 1972*, Ministry of Finance, Kampala.
- Uganda Censuses, 1959, 1969*, Statistics Branch, Ministry of Economic Affairs and Planning, Entebbe, 1971.
- Uganda Government Development Plan, 1966-1971*, Government Printer, Entebbe.
- Uganda Government Development Plan, 1971-1976*, Government Printer, Entebbe.
- Uganda Laws, revised edition, 1964*, Government Printer, Entebbe.
- Uganda Military Proclamation, Jan. 1971*, Government Printer, Entebbe.
- Uganda Proclamation, 31 of 1914*, Colonial Office, London.