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Private Sector Foundation Uganda

**SECOND PRIVATE SECTOR COMPETITIVENESS PROJECT
(PSCP II)**

CREDIT NUMBER: 3975 UG

**Review of the Legal Framework
for Land Administration**

FINAL DRAFT ISSUES PAPER
PROPOSED GOVERNMENT LANDS ACT

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PROPOSED GOVERNMENT LANDS ACT

ISSUES PAPER

1. BACKGROUND TO THE CONSULTATION

1.0 Introduction

1.1 The Policy Context

1.1.1 Project for Review of the Legal Framework for Lands Administration

1.1.2 The Private Sector Competitiveness Project (PSCP II).

1.1.3 The LSSP and other Policies

1.1.4 Legislative Backdrop

1.1.4.1 Constitution of Uganda, 1995 and Land Act - Chapter 227

1.1.5 Need for a definition "*Government land*"

2.0 CONCEPTUAL BASIS FOR GOVERNMENT LAND MANAGEMENT

2.1 Conceptual issues in distinguishing Government Land from State or Public Land

2.1.1 Historical Beginnings of Government Land and Public Land in Uganda

2.1.2 Public Land, State Land and Government Land Generally

2.1.3 International Experience and Practice with Concepts of 'Government Land' or 'State Land' and 'Public Land'

2.1.4 Definition of 'Government Land' or 'State Land' and 'Public Land' may be peculiarly suited or specific to particular legislation

2.1.5 Categorization of 'Government Land' and Public Land, a matter of nomenclature

2.1.6 Public Property of the State and Private Property of the State

2.2 Classification in Government Land

2.3 Definition of Government and State

2.3.1 The State

2.3.2 The Government

2.4 Concepts of 'Government Land', 'State Land' and 'Public Land' in Uganda

2.5 Government Land and Public Land in the National Land Policy

3.0 THE POLICY GOALS FOR GOVERNMENT LAND AND THE ISSUES REQUIRING LEGISLATION THEREIN

- 3.1 Determination of the extent of Government land on the ground (inventory).
 - 3.1.1 Project for Developing an Inventory of Government Land
- 3.2 Determination of the Boundaries of Individual Holdings of Government Land, i.e., Adjudication and Demarcation, and Titling
- 3.3 Divestiture of Land that is no longer required for public use
- 3.4 Other Government Land Management Issues additional to the LSSP Policy Goals
 - 3.4.1 Government Land Classification and Reclassification

4.0 LEGAL FRAMEWORK FOR THE MANAGEMENT OF GOVERNMENT HELD LAND

4.1 Managerial Matters

- 4.1.1 The role of the Uganda Land Commission (ULC)
- 4.1.2 Acquisition of Land for Government
- 4.1.3 Co-ordination of Management of Government Land between Users and the Uganda Land Commission
 - 4.1.3.1 Examples of High-Level Bodies with a whole-of-government focus that coordinate Government Land Management.
- 4.1.4 Custodianship of Government Land
- 4.1.5 Definition and concept
- 4.1.6 Illustrations of International Practice in Custodianship of the *Public Estate*
- 4.1.7 Government Land Management Principles
- 4.1.8 Land of Former Public Bodies, Statutory Institutions & Parastatals
- 4.1.9 Diplomatic and other Government Property Abroad
 - 4.1.9.1 Uganda Property Holdings Limited (UPHL)
- 4.1.10 Procurement of Offices for Government

4.2 Procedures for Disposal of Government Land

- 4.2.1 Matters preliminary to Disposal of Government Land
 - 4.2.1.1 Inventory
 - 4.2.1.2 Land Classification
 - 4.2.1.3 Justification for Ownership of Land by the Government
 - 4.2.1.4 International Best Practice
 - 4.2.1.4.1 Canada.

- 4.2.1.4.2 South Africa
- 4.2.1.4.3 New Zealand
- 4.2.1.4.4 Australia
- 4.2.1.4.5 United Kingdom
- 4.2.1.4.6 Palestine Land Management Study.
- 4.2.1.4.6 Uganda

4.2.1.5 Other Country Context Issues for Uganda

- 4.2.1.5.1 Policy for Unsolicited infrastructure proposals
- 4.2.1.5.2 Lack of a PPI or PPP Law/Regulatory Framework
- 4.2.1.5.3 Uganda Poverty Reduction Support Credit 7

4.2.2 Government Land Disposal and Exchange

- 4.2.2.1 Transparency
- 4.2.2.2 Market Value
- 4.2.2.3 Internal Transfers of Government Land
- 4.2.2.4 Issues in disposal of Government Land at Local Government Level
- 4.2.2.5 Exchange of Government Land with Private Land
- 4.2.2.6 Sale Proceeds

4.2.3 Terms and conditions of grants of Government Land

4.2.4 Oversight and Accountability

4.2.5 Law Enforcement and Government Land Recovery

- 4.2.5.1 Rights of Occupants on Government Land
- 4.2.5.2 Recovery of Government Lands

4.3 Government Land in connection with other Land Sector Policies

- 4.3.1 LSSP Strategic Objectives
- 4.3.2 Systematic Demarcation
- 4.3.3 Land Information System

5.0 Summary of Recommendations

PROPOSED GOVERNMENT LANDS ACT

ISSUES PAPER

Executive Summary

The Government of Uganda has received funds (under Credit Number: 3975 UG) from the International Development Association (IDA), towards the cost of the Second Private Sector Competitiveness Project (PSCP II). It has applied part of the proceeds of this Credit to the Land Component of that Project.

The Land Component implements the rehabilitation and modernization of existing Land Registry records and operations, the development of a Land Information System (LIS) and expansion of cadastral information access to all districts, and strengthening the capacity of the land sector. The capacity building activities for the land sector include a comprehensive revision of the legal framework for land administration including the revision of existing laws and the enactment of new legislation, in this case the proposed Government Lands Act.

This Paper discusses issues that, in our view, require legislative attention for effective regulation of acquisition, disposal and management of Government Land in Uganda.

The Constitution of Uganda, 1995 and the Land Act, 1998 ushered in revolutionary changes in the ownership of land in Uganda. While previous thereto, all land in Uganda was public land centrally vested with the Uganda Land Commission, as a result of the land tenure law reform brought about by the Constitution and the Land Act, most land in Uganda is now privately owned in mailo, freehold, leasehold and customary tenure.

Notwithstanding these changes and those four official categories of land tenure, Government owns land which is comprised in and consists of the numerous immovable property assets used by government agencies to perform the functions of government. But Government land is now a limited category whose nature and legal incidents have to be determined by a process of elimination after an examination of the Constitution and the Land Act as amended. As such, although there is a new legal framework for land tenure and land management in Uganda, Government land is not defined. There is therefore a need to define *Government Land*.

The policy goals for Government land in Uganda are stated by the Land Sector Strategic Plan 2001 - 2011 (LSSP). According to this, the resolution of a number of management issues for Government land will resolve conflicts and permit improved management of this land, or its divestiture where and if the land is no longer required for public use. The LSSP also acknowledges that documentation of Government land has not been adequate in the past, leading to many conflicts, encroachment, and poor management of

Government's land resources. Further that, the rationale for maintaining some of these properties is no longer clear.

The problems and issues in government land management are not unique to Uganda. Globally, there are a broad range of policy issues in relation to Government land and the *public estate*. These include the concern that Government land assets should be effectively managed in the public's best interest with the global perception being that public assets are generally badly managed with undefined management arrangements and responsibilities, poor records and lack of appropriate land information; that the tenure rights of those who beneficially occupy public land should be secure; and that Government land should be properly allocated for land reform (including redistribution of some of it to the land poor); and that government land management can benefit national development programmes in comparison with the general perception that Government land assets are taken as "free", that land grabbing is common, and that there is pervasive lack of transparency, legitimacy and accountability in Government land acquisition and disposals.

Another key global issue with a local appearance is the phenomenon of unsolicited development or infrastructure proposals which frequently result in disposals of prime government land to investors without considerations of transparency, value-for-money or public benefit. Recent developments involving large-scale acquisitions of farmland in Africa and similar international land deals are left out as they concern State or Public Land.

According to the LSSP the demarcation, valuation and assessment of use of government properties should provide vital information for better land use planning and for improved management of Government's land holdings. Identifying Government property and its current users can also enhance the revenue prospects for the Land sector, and enable rents to be charged and collected.

The LSSP then plans to address the following issues with regard to the management of Government Land:

- Determination of the extent of Government land on the ground (inventory).
- Determination of the boundaries of individual holdings of Government land, i.e., adjudication and demarcation, and titling;
- Management of encroached Government land (disputes) and the resolution of the rights of occupants of Government land
- Resolution of conflicts between Government and Local Authorities who may lay claims on the land.
- co-ordination of management of Government land between user ministries/Departments/Institutions and Uganda Land Commission
- Divestiture of land that is no longer required for public use.

Over and above the policy goals set forth in the LSSP, the Consultant has annexed the following objectives, by borrowing a leaf from the best practice principles relating to management and disposal of public land. This is on the basis that Government Land, State Land and Public Land are all public goods and are part of the *public estate*. On that basis, the international best practice principles relating to management and disposal of public land are also applicable to GoU's 'Government Land'. The additional objectives include:-

- ▶ government land classification and reclassification;
- ▶ Custodianship of Government Land
- ▶ Instillation of Value for money principles for regulation of the Acquisition of Land for Government and in government land disposal and exchange;
- ▶ Proposal of some minimum principles for Management of Government Land
- ▶ Whole-of-government approach to the acquisition or disposal of government land
- ▶ Recovery of Government Lands

This Paper also takes cognizance of a project that was procured sometime back for carrying out an *Inventory of Government Land*, under the Land Component of the PSCP II.

The issues surrounding Government Land recently generated controversy when the Government, the Uganda Investment Authority and the Uganda Land Commission gave concessions of government land to Investors. Given the inherent sensitivity of the topic, this Paper (while our final contribution) does not purport to be the final word on Government Land management issues. Rather, we see it as a guideline for further discussion by stakeholders during consultations before final enactment of Government Lands legislation.

This Paper also takes into account comments made on our earlier Draft Issues Paper on Government Land by the Law Reform Working Group (LRWG).

This Paper has also benefited from the contributions of various international land administration and land policy experts and resource persons who contributed various pieces of Literature that we have reviewed. These include Prof. Willi Zimmerman a land policy expert and Guest Lecturer at the Technical University Munich; Dr. Alec McEwen, Emeritus Professor of Geomatics Engineering, University of Calgary and a Land Administration Consultant; Dr. Richard Grover of the School of Built Environment, Oxford Brookes University and UK Representative FIG Commission 7; Land Equity International a land administration, land policy and land tenure Consultancy Firm from Australia (particularly Tony Burns, Kate Dalrymple and Kylie Antony); Carla Gerritsen the Librarian ITC Library - International Institute for Geo-Information Science and Earth Observation, Enschede, Netherlands, and Bertha Wilson at the World Bank Archives.

1.0 Introduction

1.1 The Policy Context

1.1.1 Project for Review of the Legal Framework for Lands Administration

The *Review of the Legal Framework for Lands Administration* is a component of the Uganda Second Private Sector Competitiveness Project (PSCP II).¹

The Government of Uganda received funds (under Credit Number: 3975 UG) from the International Development Association (IDA), towards the cost of the PSCP II. It has applied part of the proceeds of this Credit to the Land Sub-Component of the PSCP II.

1.1.2 The Private Sector Competitiveness Project (PSCP II).

The overall objective of PSCP II is to create sustainable conditions for enterprise-creation and growth that respond to local and export markets. The PSCP II supports the Uganda Government program for eliminating the key restraints on Uganda's international competitiveness. Crucial steps include reducing the cost of doing business and encouraging investment, particularly, in the medium and small manufacturing enterprises sector, which, in turn, is expected to enable the private sector to be better positioned to respond to opportunities in specific categories of the market.

The main PSCP II project has three components. The pertinent one for this *Review of the Legal Framework for Lands Administration* is Component 3 which will help address critical issues in the business environment, including: (i) improvements in the land registry and survey training school; (ii) improvements to the business registration service; and (iii) support to the Uganda Law Reform Commission and revision of key legislation.

The Land Sub-component builds upon the **Medium Term Competitiveness Strategy**, (now replaced by the **Competitiveness and Investment Climate Strategy [CICS]**) as well as Uganda's other national goals, (such as the **Poverty Eradication Action Plan [PEAP]**)² which aim to reduce the proportion of the population living in absolute poverty to below 10% by the Year 2017. Under the Land Component of the PSCP II, the Private Sector Foundation Uganda (PSFU) has procured the services of the Consultant (*Kalenge, Bwanika, Kimuli & Company, Advocates*, in association with several Subconsultants with both national and international expertise) to provide consultancy services for the Review of the Legal Framework for Lands Administration.

1. <http://web.worldbank.org/external/projects/main?pagePK=64312881&piPK=64302848&theSitePK=40941&Projectid=P083809>

2. Government recently launched the National Development Plan (NDP) which will succeed to the PEAP. National Development Plan (2010/11 – 2014/15), p.67 & p.340. Accessible at: <http://www.finance.go.ug/>

This assignment, in summary, entails a comprehensive review of land-based laws; recommending revisions and harmonization where appropriate; and drafting new laws in certain areas. Among the new areas for which legislation has to be developed is **Government Land**.

The objectives of the PSCP II with regard to Government Land are stated in the Project Appraisal Document (PAD) in relation to '**Effective Use of Public Land**'. According to the PAD³:

“While large tracts of land in Uganda are still in the public domain, these are often appropriated (fenced off) by private individuals. This often deprives the poor (who may have relied on such lands for their sustenance) of an income source. Even where it is in line with prudent principles of land use, it also deprives the Government of a potential income source. Completing the inventory of Government land will provide a basis for deciding more systematically on how to bring such land to its best use (as well as to redress past appropriations). This will also be critical to ensure better governance and possibly improved collection of land taxes by Government at the local level.”

1.1.3 The LSSP and other Policies

The Ministry of Water, Lands, and Environment⁴ earlier developed the **Land Sector Strategic Plan (LSSP)**⁵, which the Government approved for implementation. The Plan is designed to provide the operational, institutional and financial framework for sector-wide reforms and land management.

The overall policy context for the LSSP is the Government of Uganda's domestic and international policy commitments, with their emphasis on poverty eradication, human, economic and social rights, democratisation and sustainable development. Development of the LSSP has been informed by these policy commitments and the LSSP will contribute to the achievement of this overall policy agenda.

Internationally, LSSP represents an important element of Uganda's contribution to the **United Nations Agenda 21**, which outlines key policies, strategies and commitments for achieving sustainable development that meets the needs of the poor and recognises the limits of development to meet global needs, and to the **Habitat Agenda**, which provides the goals and principles of adequate shelter for all and sustainable human settlement in an urbanizing world.

3. ***Project Appraisal Document on a Proposed Credit to the Government of Uganda for a Second Private Sector Competitiveness Project***, The World Bank, Private Sector Unit Africa Region, July 2, 2004, http://www.worldbank.org/afr/padi/UG_Private_Sector_PAD.pdf.

4. Now the Ministry of Lands, Housing and Urban Development.

5. ***Land Sector Strategic Plan 2001 to 2011, Utilising Uganda's Land Resources For Sustainable Development***, accessible at: <http://www.mlhud.go.ug/docs/>

Against that background, a number of key national policies and related statements accordingly informed the design of the LSSP. These included the Poverty Eradication Action Plan (PEAP)⁶, the Plan for Modernisation of Agriculture (PMA), the Decentralisation Policy, the National Environment Management Policy, the Liberalisation and the Medium Term Competitiveness Strategy, the National Policy for the Conservation and Management of Wetland Resources (1995), the Uganda Forestry Policy, the National Gender Policy, and Vision 2025. The PSCP II Project supports the achievement of major pillars in the PEAP⁷.

As such, like with many other aspects of this Project for Review of Land Administration Laws, the management and regulation of Government Land has strong linkages to several of these domestic and international policy commitments. Some of the principal domestic national policies proximate to the management of Government Land are the Poverty Eradication Action Plan and the Land Sector Strategic Plan (LSSP); and at the international level, the Millennium Development Goals. The linkages between government land management and the above policy environment has been described by one expert as follows:-

Good governance in the management of public land links back to the governance principles of legitimacy, accountability, fairness and participation. Reforming the management of public land must contribute to a basic set of development principles, namely reduction of severe poverty, achievement of the Millennium Development Goals, progress in good governance and transparent fiscal management of the public sector.⁸

These same principles (i.e., Governance, Poverty Reduction) underpin key pillars of the Poverty Eradication Action Plan (PEAP)⁹, which as seen above is one of the principal national policies that informed the design of the Land Sector Strategic Plan (LSSP). The principles underlying good governance in the management of public land are also associated with the objectives typically expressed in Poverty Reduction Strategy Papers (PRSPs) and which have become cross-cutting themes also affecting land namely: poverty alleviation, decentralization, governance and transparency, service delivery, protection of women and vulnerable members of society. Similar principles also underpin the Uganda Seventh Poverty Reduction Support Credit (PRSC7)¹⁰, the third and final operation in a programmatic development policy lending series to support Uganda's third Poverty Eradication Action Plan (PEAP).

6. To be replaced by the National Development Plan (NDP).

7. PAD, at P.7.

8. Willi Zimmermann, ***Effective and Transparent Management of Public Land - Experiences, Guiding Principles and Tools for Implementation***, International Federation of Surveyors (FIG), Article of the Month – December 2008

9. i.e., (1) Economic management, (2) Production, competitiveness and incomes (3) Security, conflict-resolution and disaster-management (4) Good governance and (5) Human development.

10. See, 'Credit and Program Summary' in ***Uganda Seventh Poverty Reduction Support Credit (PRSC7)***, p. I, accessible via: <http://go.worldbank.org/D6MZMXBLU0>. <http://go.worldbank.org/71ON5AK8W0>.

Later, we shall also see that, funds were earmarked and a project started for carrying out an *Inventory of Government Land* as one of the constituents of the Land Component of the PSCP II.

1.1.4 Legislative Backdrop

1.1.4.1 Constitution of Uganda, 1995 and Land Act - Chapter 227

The key legislative instrument informing this process of enactment of a law to regulate Government Land is the **Constitution of Uganda, 1995** and the Land Act, 1998¹¹.

According to Article 237(1) of the Constitution (relating to Land ownership), Land in Uganda belongs to the citizens of Uganda, and can be owned under customary, mailo, freehold or leasehold tenure. Notwithstanding that, Government may, subject to Article 26 of the Constitution, also acquire land in the public interest and under Section 49 (b) of the Land Act, may acquire land abroad.

Furthermore, Article 284 of the Constitution provides that all immovable property which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government shall vest in the Government, subject to the provisions of Chapter 15, *i.e.*, the Chapter of the Constitution on land.

Additionally, Articles 238 and 239 of the Constitution provide for the establishment and functions of the Uganda Land Commission. The Commission's role and restructuring are examined further ahead. However, most important at this juncture is to note that **Article 239 (Functions of the Uganda Land Commission)** provides that *the Uganda Land Commission shall hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of the Constitution.*

Furthermore, Section 95(9) of the Land Act (as amended) provides that, pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of the Act by or to the orders of the ULC, the land occupied or used by the Government or any other public body together with the reasonable cartilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of the Act."

Besides these provisions, there are no other explicit legislation stipulations relating to Government Land, apart from the indirect recognition in Articles 239 and 284 of the Constitution and Section 49 of the Land Act, Cap.227, that there is land vested in the Government of Uganda, in addition to land that may be acquired by the Government in the public interest in accordance with the provisions of the Constitution.

11. Chapter 227

1.1.5 Need for a definition “*Government land*”

Notwithstanding the lack of a clear legal framework, Government owns land, which is comprised in and consists of the numerous immovable property assets used by government agencies to perform the functions of government, and by the numerous government agencies. There is therefore a need to define *Government Land*.

Prof John Mugambwa set the scene for the definitional difficulties of government land as follows:-

“Previously, all land in Uganda was public land centrally vested with the Uganda Land Commission. As a result of the land tenure law reform brought about by the Constitution and the Land Act, most land in Uganda is now privately owned in mailo, freehold and customary tenure. Government land is limited to the land that was in government use at the time the Constitution came into effect on 22 September 1995. Land in government use would include land on which there are government offices, buildings, schools, hospitals, police and military quarters. If the government wants any other land it has to purchase the land from willing sellers or by compulsory acquisition in accordance with the Constitution. Since it was not a common practice to mark the land that was in government use, the demarcation of government land is likely to generate disputes with adjoining landowners and with district land boards.”¹²

A somewhat similar view was reached by the *Land Act Implementation Study* done in 1999. The study argued that:-

“Generally speaking, Government land has not been demarcated in the past, because prior to the 1995 Constitution, virtually all land in Uganda was public land and the Government could more or less just take what it wanted, moving people out of the way with little ceremony. There was no need therefore to demarcate the land used by Government. In broad terms, the 1995 Constitution converted public land into privately owned land and at the same time preserved Government ownership of its land. But in the absence of any clear boundaries to Government land, the mere statement that land owned by Government remained owned by Government did nothing to protect Government land from encroachment by private citizens or local authorities, either in ignorance or wilfully. The specific abolition of statutory leases to urban authorities by Article 285 of the Constitution did not help the position either.”

There are also other endeavours to delineate Government Land that appear in some official documents.

According to the Glossary in the LSSP,¹³ Government land is land owned or otherwise under the protection of Government. The LSSP also posits that Government land is now restricted to land that is occupied and used by Government for public purposes or reserved for future use by Government.

12. *Principles of Land Law in Uganda*, John T. Mugambwa, Fountain Publishers, 2002, at p.7.

13. See Glossary, page II (79).

The LSSP restates that the Constitution of Uganda 1995 and the Land Act 1998 introduced major land tenure reforms. Among these reforms, is the restriction of ownership of Government Land such that Government land now comprises only land that is occupied and used by Government for public purposes, including state and local government offices, police and prisons land, military installations, road reserves, land on which social infrastructure is located, and many others¹⁴. That land may belong to the national or to local governments.

The LSSP broadly categorizes Government land into three types:

- i). that which is surveyed and titled,
- ii). that which is gazetted but not titled; and
- iii). land that is neither gazetted nor titled.

Besides the LSSP, the only other comprehensive definition of Government Land is that put forward by the emerging National Land Policy, which suggests that:-

Government land shall be, land vested in or acquired by the government in accordance with the Constitution, or acquired by the government abroad. Government land includes all land lawfully held, occupied and/or used by government and its agencies, including parastatal bodies for the purposes of carrying out the core functions of government. Government shall include central and local governments.

Law Review Working Group (LRWG) Comments to this Part of the Issues Paper

There is need for an agreed definition on government land. The consultant has made quotations which are not satisfactory- Has mixed up Government and state land.

The Consultant agrees with the LRWG on the need to agree on a definition for Government Land. This Issues Paper is part of the consultative process on the making and contents of a proposed law on Government Land; and the interaction of the Consultant with the LRWG is one of the stages to reach agreement on the new Government Land law and the LRWG is one of the Stakeholders. The rest of the LRWG comment will be dealt with at the appropriate stage of this Paper.

RECOMMENDATION

There is a need for a comprehensive definition of Government Land, which brings out all the various categories of land that constitutes Government Land.

14. LSSP, Executive Summary, page v.

2.0 Conceptual Basis for Government Land Management

2.1 Conceptual issues in distinguishing Government Land from State or Public Land

Some conceptual difficulty arises in the process of distinguishing Government Land from State or Public Land in Uganda. Indeed, the LRWG commented on a previous version of this Issues Paper that Consultant is confusing Government and State Land.

The conceptual contextualization of Government land and definitional issues are not only important for the creation of an efficacious framework but also for laying a sound basis for Government Land management.

Due to the sometimes interchanging use of the terms, 'Government Land', 'State Land' or 'Public Land' (and their possible conceptual mix-up) in land policy and land administration treatises, and in some policy documents and legislation, it is rather challenging as to where to commence to chart the contextual path.

Experts caution that the public sector is organised in different ways in different countries and that it also performs a variety of different roles¹⁵. This leads to doubt as to whether there can be universal principles of management of real estate or whether differences in the functions of government and the ways in which government is organised undermine this.

Because Countries organise their systems of government in different ways, public bodies can also take many different forms and be responsible for carrying out different functions. Public ownership and occupancy of land is ingrained into the constitutional settlement of a country and its means of governance. A public body can be the state or a part of central government, or a body or agency controlled by the central government. It could also be a local, regional or federal authority, or a body or agency controlled by one of these or central government.

The concepts of Government Land and Public Land in Uganda pertaining in today were radically shaped (or reshaped) by the Constitutional revolution of 1995 but in our view certain formative elements also derive from this Country's colonial history.

We have therefore opted to start with the historical roots of the public land rights or public immoveable assets that are to be designated as Government Land.

15. **State and Public Land Management: Framework Paper** by Richard Grover & Peter Dent, a Paper presented to the Land Tenure Division of the Food and Agriculture Organization of the United Nations, DRAFT April 2008. Accessed by courtesy of Dr. Richard Grover.

2.1.1 Historical Beginnings of Government Land and Public Land in Uganda

The beginnings of government land have to be traced from the colonial period. The early stages of government land are largely contained in the formation of the category of land known as '*public land*' but which itself started as '*Crown Land*¹⁶'.

In Buganda, the Buganda Agreement 1900 designated as crown lands those lands which were described (in the Agreement) as wastelands and uncultivated land amounting to 9000Sq miles and some 1500 sq. miles of forests, to be vested in Her Majesty's Government, and to be controlled by the Uganda Administration. Outside Buganda, the Uganda Order in Council 1902, defined "Crown Lands" as "*all public lands which are subject to control of His Majesty by virtue of any treaty convention or agreement of His Majesty's Protectorate and all lands which have been acquired by His Majesty for the Public service or otherwise whatsoever*". The Order in Council was followed by the Crown Lands Ordinance of 1903, which provided for the manner in which Crown Land may be allocated by the Governor but this Ordinance did not substantially add to the definition of Crown Land. Subsequently, the Crown Lands (Declaration) Ordinance 1922¹⁷ converted all land in Uganda Protectorate (but outside Buganda) that had no documentary proof of ownership into Crown Land; i.e., all unalienated land was converted into Crown land. The Ordinance provided that all land and any rights therein in Uganda Protectorate shall be presumed to be the property of the Crown, unless they have been or are thereafter recognised by the Government by document to be the property of a person, or until the contrary thereof be proved. Persons claiming rights were given a window period within which to lodge their claims and this expired without any claims being filed. The effect of the Ordinance was that, all land in Uganda Protectorate (outside Buganda), which was not held under a title, was deemed to be crown land.

At Independence this former Crown Land was vested into a Land Commission together with Land Boards for each federal state and each district. The Land Commission and the Land Boards were established by Article 118 of the 1962 Constitution.

The Commission was in essence mandated to manage all *government* and public land in Uganda. It was to hold and manage any land vested in it by any law or acquired by the Government of Uganda with other powers and duties prescribed by Parliament as indicated in Article 118(7) in the 1962 Constitution. These constitutional provisions were supplemented by the Public Lands Act of 1962.

16. **Crown land** is a term used in some countries to refer to land owned by the state. In the Commonwealth or British colonies, State Land was known as "Crown Land". In Kenya most of what was formerly known as 'crown land' is now constituted as Government land. In Botswana what was previously Crown Land became State Land.

17. Laws of Uganda Protectorate, Vol. II, 1923, Cap 100, p 800. The Ordinance came into force on 22 March.

The difficulties in the categorization of public immoveable assets date from this Independence period. No distinction was made for government land and even the category of land that was occupied by Government for public purposes was also merged into the classification thenceforth known as public land. We noted above that at this juncture, what was formally Crown Land was largely renamed public land. The Public lands Act, Chapter 201 of the Laws of Uganda, Revised Edition 1964, contained a fairly broad definition of Public Land that was mainly along criteria of its vesting or transfer to an established body or public body under that Act. “Public land” and “public lands” were defined to mean any land vested in or transferred to an established body or public body under the Act. The established bodies included:-

- (a) for Uganda, the Land Commission abovementioned; and
- (b) for each Federal State and each District, a Land Board.

The public bodies were the Common Services Organization, the then Uganda Electricity Board, Makerere University, Kampala and District Water Board, and the Empire Cotton Growing Association.

The Public Lands Act of 1962 defined ‘crown land’ and ‘crown lands’ to mean -

“all lands in Uganda (not being lands of which any person other than Her Majesty or the Governor is registered under the provisions of the Registration of Titles Act as the proprietor of an estate or freehold or of which any person is so registered as the proprietor of an estate in respect of which a final mailo certificate has been given) which immediately prior to the commencement of this Act were –

- a) subject to the control or in possession of Her Majesty by virtue of any treaty, convention or agreement, or of Her Majesty’s protectorate; or
- b) subject to the control or in the possession of Her Majesty having been acquired for the public service or otherwise howsoever.”

Under Section 11 of the Public Lands Act 1962, all Crown Land which immediately prior to the enactment of that Act had not yet been granted to anybody as lease *and that which was occupied by Government for public purposes* was vested in the Land Commission in freehold.

It emerges again from the above Crown Lands Ordinance and the legal framework at Independence that public land was that land which was not registered to anybody else (i.e. unalienated land), plus land occupied by Government for public purposes. At this juncture, land occupied by Government for public purposes, which would ordinarily qualify to be categorized as government land, was also identified as public land.

The Public Lands Act of 1969 re-enacted a similar position. By Section 1, the Act declared that, all land previously vested in the [1962] Commission would continue to be so vested (in the Land Commission re-established by Article 108 of the Constitution of 1967) for the same estate or interest and to the same extent as they were previously vested. It defined “*public land*” and “*public lands*” to mean any land vested in the Land Commission (established by the Constitution of Uganda 1962) or a public body, or granted in freehold under the 1962 Public Lands Act and the Ordinances repealed by that Act of 1962.

The Constitution of Uganda 1967 also annexed and vested into the Commission every official estate held by corporation sole by virtue of the provisions of the Official Estates Act¹⁸ and any land which immediately before the commencement of the Constitution 1967 was vested in the land board of a kingdom or a district.

The next remarkable development in the categorization of public land arrived in the form of the Land Reform Decree 1995 but mainly to distort the concept of a public asset nature of public land. The effect of the Decree was to make *all land* in Uganda public land to be administered by the Uganda Land Commission¹⁹. This tended to further blur the nature of public land, and consequently of government land, for the reason that for the time being, public land ceased to be categorized as land which was not registered to anybody else (unalienated land) plus land occupied by Government for public purposes. Instead, all land in Uganda was now public land. The Land Reform Decree was repealed by section 99 of the Land Act No. 16 of 1998.²⁰

Unfortunately, the 1995 Constitution did not define or describe Public Land apart from a brief reference in Article 237 (5) of the Constitution, which provides that any lease, which was granted to a Uganda citizen out of public land, may be converted into freehold in accordance with a law, which shall be made by Parliament. As envisaged by Article 237 (5) of the Constitution, Section 1 (o) of the Land Act, Cap.227 describes a category referred to as “***former public land***” which means land previously administered under the Public Lands Act, 1969, prior to the coming into force of the Land Reform Decree, 1975.

Also, the 1995 Constitution did not define or describe government land. But as noted earlier, Article 284 provides for succession to Government property and vests such property in the Government. It provides that all immovable property which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government shall vest in the Government, subject to the provisions of Chapter 15, *i.e.*, the Chapter of the Constitution

18. The Official Estates Act (19th May 1919) Cap 203.

19. Land Reform Decree 1975, s 1(1).

20. The 2000 Edition of the Land Act omitted the repeals contained in the original text of S. 99 of Act 16 of 1998.

on Land. Article 239 also provides for the Uganda Land Commission (ULC) to hold and manage any land vested in or acquired by the Government. Additionally, Article 237 (2) (b) provides for the holding by Government of certain lands and natural resources for the common good of all citizens but this is nowhere near a definition or category of government land.

An Amendment to section 95 of the Land Act, that was ushered in by the Land (Amendment) Act No. 1 of 2004 [now Section 95(9) of the Land Act] also provides that:-

“Pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the Government or any other public body together with the reasonable cartilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of this Act.”

The provision, as can be seen, annexes land used or set aside for use by the Government, which, in addition to the land occupied or used by the Government is vested in the Uganda Land Commission, unquestionably in right of the Government or in the Government.

2.1.2 Public Land, State Land and Government Land Generally

In land policy and land administration literature, ‘**Public Land**’ is land, which is owned by the nation or state²¹. It is also described as the land in the custodianship of the State, municipality, or local authority, as opposed to private land.²² An even wider description has expressed it as any land owned by any level of Government (i.e., local, state and federal) and their departments, by any Government authority or institution, or any other type of public body or Agency;²³ indeed public land also includes land under ownership or control of parastatal bodies such as State enterprises and statutory bodies.²⁴

In civil law systems the concept of public land goes even deeper. Civil law systems recognize two categories of public land: the *public domain* of the state and the *private domain* of the state. The public domain of the state is devoted to public purposes, while

21. **Effective and Transparent Management of Public Land - Experiences, Guiding Principles and Tools for Implementation**, by Willi Zimmerman, accessible at: www.fig.net.

22. *World Bank Study on Governance in Land Administration* 19 April 2010

22. See for example, in South Africa, **White Paper - Land Development**, www.polity.org.za/

24. Robin Rajack, **Does the ownership and management of public land matter to land market outcomes?** The World Bank, Fourth Urban Research Symposium, 2007.

the latter can be used by the state to generate income, and may be leased out or sold.²⁵ We shall examine that distinction more closely below.

Akin or related to the field of public land is the question of its management. *Public Land Management* is the process by which public land resources are put to good effect.

Public land management focuses on establishing and sustaining an optimum balance of use, conservation and development of resources, in harmony with the values and needs of society²⁶. This stewardship responsibility requires public land managers to ensure that the quantity and quality of public land resources are maintained or enhanced. With increasing populations, demands for industrialization and development, and for environmental conservation, public land management practices and policies must address a wider range of competing demands. These include access to land for the land-poor and other pro-poor agendas, agricultural uses, industrial uses, commercial uses, recreation, and conservation of selected public land locations. Underlying these competing and sometimes irreconcilable demands is a requirement to balance development and conservation of the land with long-term sustainability.

In this context the term Public land management is used to mean or refer to *administration* of Public Land or management of public land. Some publications also refer to it as 'Public land administration'.

A number of principles are requisite for effective public land management and that are generic to the whole area of management of the *public estate*, and will therefore also feature prominently in the management of Government Land. These, so far as relates to Uganda's context, are:-

- Public land classification system (public land classification and reclassification);
- Public land inventory (registration of public land and inventory);
- Delegation of custodianship.
- Dealing in the public estate; (public land disposal and exchange; land concessions, leases and contracts);
- Creation of public land when private land is developed;
- Law enforcement and public land recovery (in cases of illicit allocation);

Furthermore a broad range of policy issues arise in relation to public land that are generic to the whole area of management of the *public estate*, and will therefore also feature prominently in the management of Government Land. For example, there is concern that: -

25. **Selected Land Tenure Definitions**, ARD, Inc., www.ardinc.com/

26. In this sense, it can also refer to as regards the use of the resources that are on, under or move across public lands (e.g., forests, rangeland, minerals, water, wildlife); and the other uses of public land (e.g., recreation, tourism, ecosystem and biodiversity preservation, protection of aesthetic values and wilderness).

- the public land asset should be effectively managed in the public's best interest;
- that the tenure rights of those who beneficially occupy public land should be secure; and
- that public land, if it is to be disposed of, should be disposed of such that public benefits are maximised.

It also follows from the above, that the concept of public land management will also be shaped by the applicable or corresponding classification and definition of public land in a particular jurisdiction.

State Land is generally defined as land owned by the State, in contrast to land owned by private persons, either legal or natural.²⁷ The *FAO Thesaurus* equates State Land to public lands and also refers to them as the *National domain*²⁸. It further informs that State land in some jurisdictions is a distinct class of land owned by the state.²⁹

State land has, as well, been described as immovable property in the custodianship of the Central/National Government³⁰. It is also indicated that:

- Some countries have a tenure called state land, but many do not;
- State land varies in quantum of rights³¹

Furthermore, the boundaries between what society considers ought to be State land and private land are not fixed but change from time to time in response to shifts in the political consensus as to the appropriate roles of the public and private sectors.³² It is possibly for this reason that the definition or concept of State land also differs from country to country.

We shall review international experiences in the definition of state land further ahead.

27. ***Land Tenure and Property Rights Volume 1: Framework***, July 2007, a Publication Prepared by ARD, Inc. for the United States Agency for International Development, USAID. Accessible at: www.ardinc.com

28. According to ***Black's Law Dictionary***, a *domain* is an estate in land. The national domain therefore refers to the national land estate. In the French and Civil Law systems, Domain refers to State property.

29. **Multilingual Thesaurus on Land Tenure**

30. World Bank Study on Governance in Land Administration

31. FIG/FAO International Seminar State and Public Land Management, 9-10 September 2008 Verona Some concluding themes Richard Grover

32. ***Report of the FIG/FAO International Seminar on State and Public Sector Land Management***, by Richard Grover, accessed at: <http://www.fig.net/>; ***Governance Institutions and Public Lands***, *ibid.*

The FAO Thesaurus defines the *state land regime* as the legislative framework that defines how state land can be allocated and managed. It amplifies that the legal regime governing state land will cover specific aspects of its management and mode of exploitation. This may also include defining the organisation responsible for managing the land, stating the general principles, and in some cases the detailed basis for its use.

Closely associated with *State Land* and the *state land regime* is the critical question of its management. *State Land Management* refers to those activities that result in sustainable development of state lands. Those activities require identification of state land, evaluation of its best use, dissemination of the lands for development, monitoring of activities/developments on state land, managing land tenure and prevention of illegal activities on that land. Functionally, state land management also covers the direct use of that land by State agencies, or the disposal of State land by the State to private holders of the land and also the supervision of those disposals by a State agency. In other countries or jurisdictions, State land management functions also include the acquisition of private land for public purposes.

BOX NO. 1 : (Illustrative Outline of) Scope of State Land Management³³

State Land Management has some elements of real estate management but covers a much wider scope and describes the responsibilities cast on governmental agencies managing State land. It encompasses the procedures and institutional means whereby State land resources may be located, evaluated, conserved, distributed and managed so that they may be utilized on a sustainable basis and to the greatest national advantage. The acquisition of private lands for public purposes is also part of the responsibility cast on State land managers. State land management agencies carry out some or all of the following functions. Details of important activities under each are given below:

(a) Locate the land under management

- Identify state land clearly
- Ensure survey of land parcels and preparation of plans
- Identify reserves and other areas that cannot be alienated
- Identify alienated land and other encumbrances on state land

(b) Evaluate its capability/value

- Assess capabilities (potential) of land for specified uses
- Use land evaluation data (physical, social and economic data)
- Determine rent prices

(c) Conserve land for designated purposes

- Identify environmentally sensitive areas
- Identify forest, wildlife and other reserves
- Identify road, river and stream reservations
- Identify areas topographically unsuitable or subject to erosion, landslides etc.

(d) Distribute and allocate the land to identified and contracted users

33. Source, *State Land Management in Trinidad and Tobago*, a Summary based on the Land Use Policy and Administration Project (LUPAP) studies. *Pieces of Legislation relating to State Land Management and Land Administration*, http://www.terrainstitute.org/lupap/lupap_cd/landadministration.html.

- Select recipients
- Choose tenure forms
- Formalize rights and responsibilities
- Transfer land to other agencies as and when required

(e) Manage state land under charge

- Monitor adherence of users to term and conditions
- Contain squatting and informal uses
- Foreclose on those in violation of lease/agreements/ license conditions
- Collect rents and royalties at the appropriate time and impose penalties on Defaulters

(f) Acquire private land for public purposes³⁴

- Acquire land identified by Governmental agencies required for public purposes
- Ensure no public land is available in close proximity as alternative site/s
- Pay compensation to the owners with the least possible delay

As a wrap-up, at the general level, there is not much difference in the definition of State land and public land.

But, unlike the terms ‘*Public land*’ and ‘*State Land*’, no *general* definition of ‘**government land**’ is readily available. Instead, definitions of government land tend to be country-specific and sometimes statute-specific. The reference to and treatment of government land in most treatises tends to equate ‘government land’ with ‘state land’ and/or to use those terms interchangeably. According to one analysis that has reviewed the land laws of Eastern and Southern Africa, lands held directly by the state as landlord are generally construed as ‘government land’ or ‘state land’ – except for Uganda.³⁵

2.1.3 International Experience and Practice with Concepts of ‘Government Land’ or ‘State Land’ and ‘Public Land’

In some countries, the defining characteristics that make up ‘government land’ or ‘state land’ are similar³⁶. In Papua New Guinea, the term “State land” was previously used but is no longer used in the legislation. Instead, the term “Government land” is used to refer to land owned by the State.³⁷ Previously, the usages ‘State Land’, ‘Government Land’ and ‘land the property of the State’ appeared in several pieces of legislation dealing with

34. In Uganda Acquisition of Land by the Government is regulated by the Land Acquisition Act which is the subject of another Issues Paper in this Project for Reform of Land Administration Laws.

35. ***Land Tenure Reform and the Balance of Power in Eastern and Southern Africa***, by Liz Alden Wily, ODI, Natural Resource perspectives Number 58, June 2000, <http://www.odi.org.uk/resources/download/2082.pdf>

36. Several Pacific Island Nations and States have legislation with a concept and definition of Government Land. See: www.pacii.org

37. ***Land Reform Policies in Papua New Guinea: Successes and Failures of the Plantation Acquisition and Unused State Lands Redistribution Schemes*** [2003] MLJ 5; [2003-04] 29 MLJ 89 (1 January 2003)

land in Papua New Guinea, without guidance as to whether they mean the same thing or different things and some confusion was experienced during that epoch due to lack of uniform designation and nomenclature.³⁸

In Kenya, public land is statutorily referred to as government land. Kenya's colonial history and legacy of conquest brought about a dispossession of customary land, which was appropriated and made "crown land" and at independence re-named *government land*.³⁹

In Kenya, the Government Lands Act defines Government Land as "*Land for the time being vested in the Government by virtue of Sections 204 and 205 of the Constitution (as contained in Schedule 2 to the Kenya Independence Order in Council 1963) and Sections 21, 22, 25 and 26 of the Constitution of Kenya (Amendment) Act, 1964.*" Government land in Kenya comprises two sub-categories, unalienated land (*i.e.* that which has not been leased or allocated) and alienated land (*i.e.* that land which has been leased to a private individual or body corporate, or which has been reserved for the use of a government department or corporation or institution, or which has been set aside for another public purpose). In Kenya, therefore, public land is called Government land.

Another international experience in definition of Government Land is from Nepal. Nepalese government land is basically classified into two categories: government land owned by particular government entities like government building complexes *etc*, and government land owned by government in general like forests, unregistered/uncultivated land *etc*. By contrast, *public lands* in Nepal are not owned by any individual or institution and are denoted as public land in the land registers. The responsibility for the maintenance of inventory and protection of public land is the responsibility of the local unit *e.g.* the respective Village Development Committee (VDC) or the respective Municipality and the District Development Committee (DDC).⁴⁰ Public land as a whole in Nepal encompasses significant natural resources including water and forests and may amount to three quarters of the country land area.

According to the Land (Measurement and Inspection) Act 2019 (1963) of Nepal:-

"Government land" should be understood as land occupied by roads, pathways, railway and government buildings and office premises and this term also denotes land under the control of the Government of Nepal such as forests; bushes; rivers and water streams; areas created by river siltation; lakes; ponds and their banks; canals; water channels; *ailani*, barren or other land; cliffs; rocky slopes; trails; river/stream banks; and lands designated

38. **Land law and policy in Papua New Guinea** By J. T. Mugambwa, H. A. Amankwah

39. **Kenya Finally Starts the Process of Developing a National Land Policy**, Land Update, A Newsletter of the Kenya Land Alliance Volume 3 Number 2 April-June 2004

40. Babu Ram Acharya, **Government and Public Land Management in Nepal**, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008, accessed at: www.fig.net.

from time to time by the Government of Nepal as government land by publishing notification in the Nepal Gazette. "Public land" should be understood as areas that have been used publicly from time immemorial besides being used by individuals such as pathways, water sources (ditches, fountains), banks of water bodies, wells, ponds and their banks, passages for livestock, grazing lands, cremation grounds, cemeteries, places for public rest (buildings, inns), temples, places for religious worship, monuments, courtyards, platforms, drains, temples, resting places (under trees), places where markets and festivals are held, places for public entertainment and sports, and lands designated from time to time by the Government of Nepal as public land from by publishing notification in the Nepal Gazette.⁴¹

A recent DFID Study on Nepal further concluded that Public land is un-owned/un-own able or *de facto* Government land; Public land as a whole encompasses significant natural resources including water and forests and may amount to three quarters of the country land area; the public land estate in Nepal is held tightly by central government on grounds that the State is alone the rightful possessor and guardian of these assets and much of it is by definition Government Land.

In Samoa, "*Government land*" means public land, which is not for the time being set aside for any public purpose; and includes land, which has become the property of the Government as *bona vacantia*.⁴²

In Western Australia, public land belongs to the Crown (i.e. Crown Land) and encompasses land which is reserved, owned for public purposes, or vacant. It typically includes reserves for nature conservation, forestry, marine conservation, water conservation, mining and defence as well as vacant and other Crown Land. More pertinently, in Western Australia Crown Land (which is the public land) is also referred to as State land and as government land⁴³. The Land Administration Act 1997 codifies all processes relating to State land in Western Australia including reserving State land for a specific purpose and the sale or transfer of State land into the freehold.⁴⁴

In the samples of international practice that we have reviewed as above, State land is public land and is sometimes referred to or treated as government land.

41. ***Land Reform in Nepal*** by Liz Alden Wily, et. al, Findings of a Scoping Study on Land Reform for DFID Nepal, November 2008. Accessed at: - http://www.landcoalition.org/wp-content/uploads/nepal_law_book.pdf;

42. Lands, Surveys and Environment Act 1989 - Consolidated Acts of Samoa 2008.

43. ***State Land Administration: The Strategic and Operational Management of State land***, Government of Western Australia, Department of Regional Development and Lands, www.lands.rdl.wa.gov.au

44. ***Guide to the Act***, Government of Western Australia, Department of Regional Development and Lands <http://lands.rdl.wa.gov.au/stateland/15568.asp>.

2.1.4 Definition of ‘Government Land’ or ‘State Land’ and ‘Public Land’ may be peculiarly suited or specific to particular legislation

The term ‘Government Land’, ‘State land’ and for that matter ‘public land’ could even be defined in national legislation Acts to suit the ends and objects of each particular piece of legislation in the legal system.

According to the Report of a Land Project carried out in Trinidad & Tobago, ***“It is indeed ironic that the term “State land” is not defined in the State Lands Act Chapter 57:01 of the laws of Trinidad and Tobago. An examination however, the various other pieces of legislation reveals that there are varying definitions of the term as it appears in these Statutes in Trinidad and Tobago. The term “State land” is defined in these Acts to suit the ends and objects of each particular piece of legislation. Generally however, the term is intended to mean lands in Trinidad and Tobago, which are not privately owned or held, and over which the State, through the Commissioner of State Lands, exercises the bundle of rights conferred upon that office by the State Lands Act. They include lands held by the various State enterprises, ... and other entities which are either wholly in the main, funded by the State.”***⁴⁵

Box No. 2 : Definition of State Land in Trinidad and Tobago

The **Forests Act** defines State Land as

“State lands” includes-

- (a) The waste or vacant land of the State within Trinidad and Tobago
- (b) All lands vested in the State, whether by forfeiture, escheat, purchase or exchange, and not dedicated to the public;”

The **Conservation of Wild Life Act** defines state lands almost in a similar manner to the Forests Act-

“State Lands” includes-

- (a) the waste or vacant lands of the State within Trinidad and Tobago
- (b) all lands vested in the State whether by forfeiture, purchase or exchange and not dedicated to the public

The State Lands (Regularization of Tenure) Act of 1998 defines state land as

“State Land includes land held by the National Housing Authority, State Land vested in the Tobago House of Assembly and any other land transferred to the State from time to time by any State agency for the purposes of this Act”

In Trinidad and Tobago, apart from the fact that “State land” and for that matter public land is defined in various statutes to suit the ends and objects of each particular piece of legislation in the legal system, the idea behind their definition of state land is to bring all public land assets into the control of the Commissioner of lands as manager of government immoveable assets.

45. ***An Analysis of the Legal Framework for State Land Management in Trinidad and Tobago***, by Kelvin Ramkissoon.
[Emphasis added]

The LUPAP Project suggested the following unifying definition of ‘State Land’:-

“State land means lands to which the State is lawfully entitled or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto, and includes lands vested or under the control of any other authority charged with the function of developing State land or any local authority”⁴⁶

We already saw that in Papua New Guinea, the term “State land” was previously used but is no longer used in the legislation. Instead, the term “Government land” is used to refer to land owned by the State

2.1.5 Categorization of ‘Government Land’ and Public Land, a matter of nomenclature

A look, for example, at the Malawi National Land Policy will reveal that the nomenclature (i.e. as to ‘Government Land’ and ‘Public Land’) and constituent components (i.e., whether government buildings or rivers and forests) is a matter of classification or categorization.

According to the Malawi National Land Policy:-

“A. Distinction between Government Land and Public Land

1. **Government Land** will henceforth refer exclusively to land acquired and privately owned by the government to be used for dedicated purposes such as government buildings, schools, hospitals, public infrastructure or made available for private use by individuals and organizations.

2. The **Public Land** categorization will be reserved strictly for land managed by agencies of the government and in some cases by Traditional Authorities in trust for the people and openly used or accessible to the public at large. This will include land gazetted for National parks, Conservation, Historical, and Military sites, etc.”⁴⁷

... The *public land* designation applies also to all land vested in the Government as a result of uncertain ownership, abandonment and land that is unusable for one reason or another.

[Emphasis/underlining is added]

In Malawi, the rationale given for assuming or adopting the categorizations is because:-

“In the past, the absence of any distinction between Government Land and Public Land caused a lot of mistrust and confusion among citizens and land administrators. Because

46. **Concepts and Language to Assist Preparation of Legislation to establish the State Land Management Authority (SLMA)** by A. A. Wijetunga, LUPAP Project May 10, 2001.

47. **Malawi National Land Policy**, accessible at: <http://www.malawi.gov.mw/publications/landpol.htm>

the public land designation was used to effectively expropriate customary land without compensation, it remained at the root of most of Malawi's land problems. This new distinction makes the Government's acquisition plans more transparent. The distinction is also necessary for separating land held in trust by the Government from land acquired by the Government for which ownership is actually transferred to the Government."

First of all the Malawi experience again shows that within public immovable assets, there may not be a distinction between Government Land and Public Land. Secondly it shows that the distinction between Government Land and Public Land may be necessary so as to clarify the differentiation or boundary between land assets belonging to or acquired by Government for government purposes and those held by the Government in trust for its citizens under the public trust doctrine.

2.1.6 Public Property of the State and Private Property of the State

There is a distinction in dealing with state land or public land between countries with regimes of law derived from the Roman civil legal system and common law countries. In Roman civil legal system countries they make a distinction between *Public Property of the State* (Land with the core function of being exclusively used for public purpose) and Private Property of the State (Land being used for multiple function, including commercial use, disposition, concession, leasing).

According to the *Land Tenure Lexicon*⁴⁸, in State Property:-

The French Civil Code (Arts 537 et seq.) makes the distinction between property belonging to private individuals and property, which is the responsibility of the State. The latter is called *domaine*. The legal regime governing property that constitutes the state's *domaine* is known as the *domanialité*. Property belonging to the State may be classified into property in the public domain or property in the private domain.

The *domaine public* consists of property owned by public bodies and earmarked for public use, such as parks etc. The public domain is administered by a specific *domanialité*, which implies the inalienability of the property and its continuous public ownership, the inability to create real rights (e.g. usufruct, long lease or rights of way) and the impossibility of expropriation or seizure.

The *domaine privé* consists of property belonging to public legal entities, which can be alienated, burdened with real rights, or acquired by prescription to the benefit of private individuals...".

This distinction also exists in Cambodia, a country having primarily a civil law mixture of French-influenced codes, royal decrees, and acts of the legislature. State land is defined in law by Chapter 2 of the Land Law of 2001⁴⁹. The Land Law divides the State's

48. ***Land Tenure Lexicon. A Glossary of Terms from English and French Speaking West Africa***, International Institute for Environment and Development (IIED) 2000. <http://www.iied.org/pubs/pdfs/7411IIED.pdf>

domain into *State public land* and *State private land*. *State public land* is divided into a series of categories of land, which fulfil the public interest. Article 15 of the Land Law of 2001 establishes seven categories of state public land. Within these categories of *state public land*, a number of more specific sub-categories are described in other sectoral legislation, such as the Forestry Law⁵⁰, Fishery Law, Water Law, and the Law on Protected Areas. All state owned land that does not fit in these categories is *state private property*.

BOX NO.3 : CLASSIFICATION OF STATE LAND IN CAMBODIA⁵¹

State Land: The State owns all land in Cambodia that: (a) falls into certain categories enumerated in Article 58 of the Constitution such as mountains, coastline rivers, canals, streams, lakes, forests; (b) is escheat (i.e., forfeited or abandoned) or given to the State; and (c) has not been subject to proper private appropriation or is not being privately occupied in accordance with Chapter 4 of the Land Law (see **Possessory Rights** below). State Land is of two types: **State Public Land** and **State Private Land**.

State Public Land: State land that has public interest uses, such as:

- _ Any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores;
 - _ Any property that is specially developed for general use, such as quays of harbours, railways, railway stations and airports;
 - _ Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land;
 - _ Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals;
 - _ Any property that constitutes a natural reserve protected by the law;
 - _ Archaeological, cultural and historical patrimonies;
 - _ Immovable properties being royal properties that are not the private properties of the royal family. The reigning King manages royal immovable properties. (LL Art. 15)
- State Public Land cannot be sold or otherwise alienated, although it can be subject to an authorization to use for temporary purposes. (LL Art. 16)
- People cannot acquire ownership of State Public Land through prescription (adverse possession) or through the special acquisition provisions of Chapter 4 of the Land Law 9 – i.e., through the conversion of Possessory Rights into ownership (see **Possessory Rights**).

State Private Land: All State land that is not *State Public Land*. State Private Land may be subject to sale, exchange, distribution or transfer of rights. It may be leased out or the subject of a concession for economic or social purposes. (LL Art. 17 and Chap. 4).

49. From the United Nations Transitional Authority in Cambodia (UNTAC) period. The English Version of the Land Law, October 18, 2001, is accessible at: www.mlmupc.gov.kh.

50. *Legal Analysis of Forest and Land Laws in Cambodia*, Robert B. Oberndorf, J.D, USAID, 2006.

51. *Management Response to the Request for an Inspection Panel Review of the Cambodia Land Management and Administration Project*. The World Bank, IDA Credit No. 3605-KH September 2009, accessed at: http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/LMAP_Final_Corrected_1DEC09.pdf,

In Cambodia *public state land* is land held by the State in public trust, which carries a public interest use. State public land cannot be handed over to private interests for exploitation but shall be held by and managed directly by the state for public purposes, while private state land is all other state land, which can be placed in the hands of private interests for productive activities, either temporarily by economic concession or lease, or permanently, through alienation. State Public Land may be reclassified as State Private Property, but only if the property loses its public interest use. Moreover, according to Article 16 of the Land Law, such conversion or reclassification requires the passage of a Law (such as principal legislation) by Parliament – Subsidiary legislation by way of a regulation (a Sub-Decree or Prakas)⁵² would not be sufficient for this purpose.

2.2 Classification in Government Land

An approach, analogous to defining publicly vested lands, and one that is used in contemporary treatises on management of government or public immoveable assets, is that of *classification*. Land classification refers to the practice of defining land into a limited number of legal land classifications. For example, ‘Public land classification’ seeks:

- a) to determine which specific public use the public land may fill under the legal framework,
- b) determining which other classifications within, (say), the forest law, water law, law on cultural heritage sites, and others it may conform to; and
- c) to determine its status and to protect that status.

Land classification is a characteristic feature in the land administration systems in Asia. In most Asian countries, private rights are recognized only over non-forest land. Land classification is also a typical element of contemporary or recent land administration projects carried out by the well-established land consultancy firms and professionals and is getting an increasingly important role in studies on management of government or public immoveable assets.

In most Asian countries, classification of the land is an essential step in determining what can be done with the land. An example often given is Article XII, Section 3 of the

52. ***Legal Note: Identification/Demarcation/Classification of State Land and Permanent Forest Estate*** by John W. Bruce, Consultant, World Bank 12/05/08. Cambodia has the following categories legislation - **Law**: An act of Parliament, signed by the King. **Sub-Decree**: A regulation issued by the Government, signed by the Prime Minister, often providing details on the implementation of provisions within a Law. **Royal Decree**: A decision of the King, issued in accordance with a proposition from the Government. Used to promulgate laws, appoint high level officials and sometimes with more general effect. **Prakas**: A regulation issued by a minister; sub-ordinate to a sub-decree.

1987 Constitution of the Philippines⁵³ which provides that lands of the public domain⁵⁴ are to be classified into agricultural, forest or timber, mineral lands, and national parks. Alienable lands of the public domain are limited to agricultural lands.⁵⁵

Lands of the public domain in the Philippines that have the abovementioned official or legal classifications cannot be easily re-classified into something else. All lands of the public domain are owned by the State. Only lands classified as agricultural are alienable and disposable, or those that can be owned privately by Filipino citizens. It is the Philippines legislature (Congress) that sets the limits and boundaries of forestlands and national parks. It is also (and only) by an Act of Congress that such limits can be increased or diminished. The Philippines also has a Land Classification Map that shows the lands of the public domain that are forest, the percentage that is alienable and disposable, and the percentage that is unclassified. Lands that are alienable and disposable are further classified according to their use and purpose, such as:

- Agricultural;
- Residential, commercial, industrial or for similar productive purposes;
- Educational, charitable or other similar purposes; and
- Reservations for town site and for public or quasi-public purposes.⁵⁶

Public land classification is important to the Philippine land administration system because land is only alienable and disposable from the public realm for acquisition by private hands if it is classified as such.

In the Australian State of New South Wales, classification of public land assets is employed so as to restrict the alienation and use of the land. All public land assets must be classified by local governments as either “community” or “operational” land⁵⁷. A local government (council) cannot sell, exchange or dispose of *community land*. Conversely, “operational” land has no special restrictions other than those that may apply to any piece of land.

53. Accessible at: www.gov.ph/.

54. ‘Public Domain’ refers to public lands, or land held by the state, as contrasted with land in the private domain; *Multilingual Thesaurus on Land Tenure*, FAO 2003.

55. Tony Burns, *Land Administration Reform - Indicators of Success & Future Challenges*, Agriculture and Rural Development Discussion Paper No. 37, (World Bank), Washington D.C.; *Land Laws and Regulations Policy Study*, Philippines-Australia Land Administration and Management Project, Final Report Volume 1, July 2002, REPORT A2, Land Equity International/Department of Justice; http://phil-lamp.org/files/A2_Land_Law_Volume_1.pdf

56. *Land Laws and Regulations Policy Study*, Philippines-Australia Land Administration and Management Project, Final Report Volume 1, July 2002, REPORT A2, Land Equity International/Department of Justice; http://phil-lamp.org/files/A2_Land_Law_Volume_1.pdf

57. (SS.25 – 26), Local Government Act 30 of 1993 of New South Wales, accessible at www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182.

The procedure in New South Wales has been explained as follows:-

The management of Crown land involves completing an inventory of land parcels, assessment (including public exhibition) of the land's capabilities for various purposes and finally the identification of suitable land uses (including sale, lease, reservation, special purpose or future public use) after consulting applicable policies and public agencies ...

Meanwhile, land controlled or held by local government is classified as either 'operational land' which may be dealt with relatively freely, or 'community land' which is far more limited in terms of its management, development or disposal. Community land includes natural or culturally significant areas, sports grounds, parks, land subject to trust or covenant restrictions or land for general community use. Sale or disposal of community land requires its reclassification to operational land using a process that includes a public hearing, public submissions and the creation of a new local plan (LEP). Court decisions such as *Bathurst City Council v PWC Properties Pty Ltd* reinforce the importance of respecting the reclassification process.⁵⁸

It is also suggested that *public or state land classification and reclassification* should be part of the law that regulates *public or state land*. According to one of the leading authorities on management of public or government immovable assets, a regulatory framework (land law, law on public land, by-laws or regulations) is required for certain critical public property areas, which often show weak governance realities, such as *public or state land classification and reclassification*.⁵⁹

Further, according to the Report⁶⁰ of a recent international seminar on State and Public Sector Land Management, the regulatory framework requires a clear definition of public property and the classification or reclassification of property that ought to be public as being public lands. The Report further adds that once classification has been determined, state land can be registered and distributed as appropriate.

Experts further advise that it is important that a standard classification of public immovable property be adopted for public immovable assets so that there is a common understanding for the purposes of preparing an inventory and managing these assets. Classification of public immovable property should also form part of the records of state land inventories, registration and cadastre systems⁶¹ besides or in addition to including descriptions of assets such as the location of parcels and their boundaries, and associated rights.

58. ***Public Lands, Process and Public Policy - The Links between Government Asset Disposal and planning for Redeveloping Urban Areas – Is something missing?*** Helen Gilbert, University of Technology, http://www.griffith.edu.au/data/assets/pdf_file/0005/81257/city-governance-15-gilbert.pdf

59. Good governance in Public Land Management, by W. Zimmermann

60. FIG/FAO International Seminar State and Public Sector Land Management 9-10 September 2008 Verona, Italy Report by Richard Grover, available at www.fig.net.

61. ***Good Governance in Land Tenure and Administration***, FAO Land Tenure Studies #9. ***State Land Distribution for the Poor: State Land Identification, Mapping, Classification and Registration***, By Dr. Sareth Boramy, FIG/FAO International Seminar on "State and Public Land Management" Verona, Italy 9 to 10 September 2008

In neighbouring Kenya there have been calls from land sector professionals that recommend a review of the classification of public land. Kenyan Land Professionals want Kenyan land policy to redefine the categories of public land assets so as to distinguish between State Land and Government Land. The Institution of Surveyors of Kenya (ISK) recommends that the *government land* in Kenya be reclassified into **State** and **Public** land. According to that recommendation, the state land should thus cover all protected areas that are gazetted e.g. for government installations and property (military and civilian), national forests and reserves, parks, water catchment areas etc. The public land should cover all unalienated government land and land within local authorities, road reserves and public utility land.⁶²

In Cambodia, a country that has benefited from a contemporary land law reform project⁶³ that has incorporated some of the preeminent land law/land policy reform expertise, the Land Law creates three types of property classification, i.e., State Public Property, State Private Property and Private Property. Private Property is further classified based on the ownership rights involved. Earlier herein above, we observed that in Roman law countries, public land is divided into **public domain** and into **private domain** public land. Public domain land cannot be alienated. Private domain public land can be dealt with in similar ways to private property (e.g., leasing, sale). This distinction between public domain and private domain public land is also an act of classification of public land assets.

2.3 Definition of Government and State

In Uganda, the categorization of 'Government Land', 'State Land' or 'Public Land' is also complicated by the lack of a clear definition of 'Government' and 'State'.

2.3.1 The State

Neither the Constitution nor any other Legislation in Uganda defines the expression "State" or "the State" although the term is used frequently in the Constitution. So we have to resort to the legal dictionary for definition of the "State".

According to Black's Law Dictionary 'State' means the political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people – also termed political society. The State is a political association with a government⁶⁴.

62. ***GPS in Cadastres: A Case Study of Kenya***, George Oner Ogalo, FIG XXII International Congress Washington, D.C. USA, April 19-26 2002; ***Land Reforms in Kenya: An Institution of Surveyors of Kenya (ISK) Initiative*** by Humphrey K NJUGUNA and Martin M BAYA, Kenya. Both accessed at www.fig.net

63. The World Bank supported a Land Management and Administration Project (LMAP), approved in 2002.

64. ***A Definition of the State*** by Chandran Kukathas, Department of Government London School of Economics, accessed at: <http://philosophy.wisc.edu/hunt/A%20Definition%20of%20the%20State.htm>

However, in most legislation and literature dealing with land, 'the State' is synonymous with government. And what is described as 'State Land' is the same as government land.

2.3.2 The Government

The only description available of Government in the Constitution, the Interpretation Act, and the Local Governments Act, is that "*Government*" means the Government of Uganda⁶⁵. Legally there is no definition of what constitutes the Government of Uganda.

We therefore have to resort to the legal dictionary for definition of 'government'.

According to Black's Law Dictionary⁶⁶, Government is an organization through which a body of people exercise political authority; the machinery by which sovereign power is expressed. In this sense the term refers collectively to the political organs of a country regardless of their function or level and regardless of the subject matter they deal with.

Applying the Black's Law Dictionary definition to the various constituent organs and arms mentioned in the Constitution, the Government of Uganda, is the amalgam of the different organs, (Executive, Legislature and Judiciary), the Ministries, Departments, agencies and the Civil Service. It also includes the Local Governments that are constituted by Councils, and lower local governments under the Local Governments Act.

The Land that is held or utilized by or set aside for use of or controlled or occupied by any of the above organs, ministries, departments, agencies, Councils or lower local governments is, in our view, *government land* unless it is occupied under a tenancy of less than three years.

Article 284 (Succession to Property) of the 1995 Constitution also provides that all immovable property which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government shall vest in the Government, subject to the provisions of Chapter 15, i.e., the Chapter of the Constitution that deals with land.

2.4 Concepts of 'Government Land', 'State Land' and 'Public Land' in Uganda

In Uganda a few (albeit unrelated) studies have given interesting categorization and description to state land and public land.

According to one of these:-

65. Article 257 (I).

66. 7th Edition, West Group, 1999.

Land managed, as state property comprises delineated parcels of land that are gazetted and set aside for special purposes. The administration of these lands is entrusted to special agencies. In Uganda, state land includes national parks, national forest reserves, wildlife reserves, wildlife sanctuaries and community wildlife areas totalling up to 30,011 sq. km.⁶⁷

According to another, State Land is that which is either vested in the Uganda Land Commission or other state organs and State land includes game reserves, forests, and any other land used by ministries.⁶⁸

We also earlier observed that there are other endeavours to delineate Government Land that appear in some official documents.

We referred to the Glossary in the LSSP,⁶⁹ according to which Government land is land owned or otherwise under the protection of Government. We observed that that the LSSP also posits that Government land is now restricted to land that is occupied and used by Government for public purposes or reserved for future use by Government, *plus land held in trust for the people by Government*.⁷⁰ We shall revert to the content of the italicized text later.

The LSSP cites the Constitution of Uganda 1995 and the Land Act 1998 for having introduced major land tenure reforms including the restriction of ownership of Government Land. According to the LSSP, the outcome of these reforms and restrictions is such that Government land now comprises only land that is occupied and used by Government for public purposes, including state and local government offices, police and prisons land, military installations, road reserves, land on which social infrastructure is located, and many others⁷¹. That land may belong to the national or to local governments.

The LSSP also broadly categorizes Government land into land which is surveyed and titled; that which is gazetted but not titled; and land that is neither gazetted nor titled.⁷²

67. ***Critical Pastoral Issues and Policy Statements for the National Land Policy in Uganda*** by Margaret Rugadya et.al., Associates for Development, Land Research Series No: 5, March 2005, cf., http://www.landcoalition.org/pdf/08_RECONCILE_critical_pastoral_issues_policy_statements_uganda.pdf

68. ***Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them***, by Judy Adoko and Simon Levine, Land and Equity Movement in Uganda (LEMU) December 2004

69. See Glossary, page II (79).

70. ***Uganda: Making Sense of Govt and Public Land***, by Sarah Kulata Basangwa, *The Monitor*, 16 June 2004 <http://allafrica.com/stories/printable/200406160307.html>.

71. LSSP, Executive Summary, page v.

72. ***Uganda: Making Sense of Govt and Public Land***, by Sarah Kulata Basangwa, ibid.

2.5 Government Land and Public Land in the National Land Policy

Besides the LSSP, the only other comprehensive definition of Government Land is that put forward by the emerging National Land Policy

By the time the previous version of the Issues Paper on Government Land was written, the National Land Policy had not yet progressed to the current stage. According to the Honourable Minister of Lands, the National Land Policy formulation process is now near completion.⁷³

According to the leading expert on management of Government Land, State Land and Public Land, good governance in managing public land assets first of all means establishing a sound policy regarding how government should intervene in land matters⁷⁴. According to this expert:-

“the most critical element in guiding improvement in this area is the formulation of an explicit public land management policy in line with land policy and fiscal policy that sets out clear objectives related to economic growth, equity and social development, environmental sustainability and transparent fiscal policy.”

The same expert also advises that:-

“Some overarching strategies are important for setting a framework for legitimate and accountable public land management practices:

- ❑ Developing a public land policy to provide fundamental direction. ... this policy ... states land policy goals and a framework of principles for land management.
- ❑ Two key areas of that should be addressed in a public land policy are land classification and fiscal management. These are primary loopholes used to conduct dishonest activities.
- ❑ Legislation should complement a policy document detailing responsibilities and systems of management, including clear transfer and regularization processes. It must also state enforcement measures and ramifications.”

Since the National Land Policy is almost complete, has been subjected to countrywide consultations (culminating in several instances of public participation in the proposals for definition and categorization of government or public land assets, and the policy contains guiding principles and stipulations as to Government Land and Public Land management, the Consultant upholds its recommendations, in addition to the other observations made above.

73. Omara Atubo on the National Land Policy, accessible at: [http://www.sunrise.ug/?ic=Omara Atubo on](http://www.sunrise.ug/?ic=Omara+Atubo+on)

74. ***Good Governance in Public Land Management*** by W. Zimmermann, in *Land Reform, Land Settlement and Cooperatives 2007/2*, FAO, Natural Resources Management and Environment Department, available at: <http://www.fao.org/docrep/010/a1423t/a1423t00.htm>.

Box No. 4 GOVERNMENT LAND AND PUBLIC LAND IN THE NATIONAL LAND POLICY	
Policy Statements	
104.	<p>(a) As a matter of principle, a clear distinction is hereby drawn between public land and government land.</p> <p>(b) Government land shall be, land vested in or acquired by the government in accordance with the Constitution, or acquired by the government abroad. Government land includes all land lawfully held, occupied and/or used by government and its agencies, including parastatal bodies for the purposes of carrying out the core functions of government. Government shall include central and local governments.</p> <p>(c) Public land shall be, land reserved or held and used for a public purpose, which includes public open spaces and land on which public infrastructure is housed. It also includes land which is not owned by any person or authority (Article 241(1) (a) of the Constitution) and land with a reversionary interest held by the District Land Boards which was granted in leasehold by a former controlling authority (as per Section 59 of the Land Act).</p>

The LRWG has suggested that there is need for an agreed definition on government land. The Consultant agrees with this proposal. Agreement should entail marrying the findings of the Consultant with the recommendation of the National Land Policy. In the meantime, the Consultant has come up with the definition below.

RECOMMENDED THAT:

Government Land shall be the Land that is held or utilized by or set aside for use of or controlled or occupied by any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments, unless it is occupied under a tenancy of less than three years. Additionally, by Article 284 (Succession to Property) of the Constitution all land which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government now vests in the Government, subject to the provisions of Chapter 15, i.e., the Chapter of the Constitution that deals with land.

LRWG Comments on this part of the previous Issues Paper
<p>The LRWG commented as regards this part of the previous Issues Paper that “<i>The difference between Government and public land had not been clearly made out</i>”.</p> <p>The Consultant has gone to extensive lengths to explain the conceptual basis for Government Land, Public Land and State Land and has clearly made out the incidents of each concept and their inter-changeability.</p> <p>The LRWG also generally complained of the inclusion of State Land in the realm of Government Land. The above definition excludes natural resources and the Public Trust Doctrine is now clearly beyond excluded from the scope of this Paper.</p>

2.6 Classification or categorization of Government Land for Management Purposes

Once the question of the definition of Government Land or the mode of ascertaining Government Land is agreed, the next questions are whether there is need for further classification within that Government Land, e.g. as to alienable and inalienable Government Land, and as to the appropriate public sector asset management principles to apply to these assets.

Firstly, with regard to *classification*, it is clear that this action or step can address some of the main mischiefs in the realm of 'Government Land' or 'State Land' or 'Public Land' which include the treatment of these public assets as "free goods", whereas "good" land in terms of location, use and service delivery is in fact scarce and valuable; the government or state being stripped of its assets through "land-grabbing", i.e. the transfer of government or public land assets into private hands through questionable, if not illegal, means; political interference in management decisions affecting government land, in particular, disposals.

With regard to the appropriate public sector asset management principles to apply to these assets, again the clarification of the conceptual issues surrounding 'Government Land', 'State Land' and 'Public Land' sheds light on this matter. In an earlier version of this Issues Paper, the Consultant proposed to apply certain elements of good practice for public land management to the proposals for inclusion in the proposed legislation for Government Land management. But, the LRWG complained in its comments on the earlier edition of this Issues Paper that:-

The consultant has made quotations which are not satisfactory- Has mixed up Government and state land.

However, while State Land and Public Land may not be Government Land in *stricto sensu*, yet Government land and State Land are public assets. In our view, conceptually, at a general level, Government Land is similar or analogous to State Land and public land. Some differences may arise as to the constituent "*contents*" and as to the registered ownership or the user organ or arm of Government [and we endeavoured show how those differences may arise]. But ultimately Government Land is public property or public assets to which the public asset management principles of Land Administration apply. Government Land, State Land and public land are all public goods⁷⁵ and/or merit goods⁷⁶. They are part of the *public estate*.⁷⁷ On that basis, the

75. A *public good* is an asset, facility, resource or infrastructure provided for the benefit of the public. Goods are called public if one person's consumption of them does not preclude consumption by others. Public goods are non-excludable and non-rival in consumption. ***Land Management and the Delivery of Public Goods***, Peter Nowicki, Wageningen University and Research, ec.europa.eu/agriculture/events/cyprus2008/nowicki_en.pdf. For economists, public lands are "public goods", Mark Lubell, ***Governance Institutions and Public Lands***, University of California, Davis, accessed at: <http://www.des.ucdavis.edu/faculty/lubell/>.

international best practice principles relating to management and disposal of public land are also applicable to GoU's 'Government Land'.

One expert has explained it as follows:-

“Differences in the legal rights by which public bodies own or occupy land do not directly impact on the technical policies by which land can be managed efficiently. For example, Canada and the UK have common law systems whilst Swiss public laws derived from Roman law and yet similar policies to achieve efficient management of public lands are used in each.”⁷⁸

The Consultant has, in the above going section, endeavoured to elaborate at length on the conceptual basis for Government and public (immovable) asset categorization and definition with the object that the same shall guide the rest of the paper.

Government, State and public land tenure arrangements define rules for the distribution, use and protection of publicly vested lands. In some jurisdictions, the categorization of public immovable assets as 'Government Land' or 'State Land' or 'Public Land' may be a matter of classification. In others it may be a matter of nomenclature determining the categorization. In some countries, public bodies may use their land for any purpose that is not contrary to the law, whilst in others it may be used only for purposes expressly permitted by the law. But as noted above, the differences in the legal rights by which public bodies own or occupy land do not directly impact on the technical policies by which land can be managed efficiently. Similar policies can be employed to achieve efficient management of public immovable assets irrespective whether one particular set of assets consists of government ministry office buildings and is called government land while another consists of Roads, Road Reserves and public parks, and is named public land.

RECOMMENDED THAT:

Once the Definition of Government Land is settled, and the constituents of Government Land are known, this land should be further categorised into alienable and inalienable categories for good governance, further protection and management of this land and property resource.

76. **Land Governance Assessment Framework: Implementation Manual for Assessing Governance in the Land Sector** by Klaus Deininger and Tony Burns; **Issues of Efficiency in Public Real Estate Resources Management**, by Ryszard Zróbek and Alina Zróbek-Ró_anska; **Report of the FIG/FAO International Seminar on State and Public Sector Land Management**, by Richard Grover; **Governance Institutions and Public Lands**, *ibid*; **Public Land Management in the Interest of All: A Case Study of Nairobi City** by, Agatha Wanyonyi.

77. The **public estate** is the collection of all government-owned real property assets in the country. In the United Kingdom and Australia, there are analogous assets referred to as the *crown estate*.

78. **State and Public Land Management: Framework Paper** by Richard Grover & Peter Dent, presented to the Land Tenure Division of the Food and Agriculture Organization of the United Nations, DRAFT April 2008, accessed by courtesy of Richard Grover.

3.0 The Policy Goals for Government Land and the Issues requiring Legislation therein

The policy goals for Government land in Uganda are also stated by the LSSP. According to the LSSP, the main approach is that the resolution of a number of management issues for Government land will resolve conflicts and permit improved management of this land, or its divestiture where and if the land is no longer required for public use.

The starting premise is that documentation of Government land has not been adequate in the past, leading to many conflicts, encroachment, and poor management of Government's land resources⁷⁹. An additional consideration is that the rationale for maintaining some of these properties is no longer clear.⁸⁰

The LSSP then posits that the demarcation, valuation and assessment of use of government properties will also provide vital information for better land use planning and for improved management of Government's land holdings. It also expects that identifying Government property and its current users can enhance the revenue prospects for the Land sector, and enable rents to be charged and collected.

The LSSP then plans to address the following issues with regard to the management of Government Land:

- Determination of the extent of Government land on the ground ([inventory](#)).
- Determination of the boundaries of individual holdings of Government land, i.e., adjudication and demarcation, and titling;
- Management of encroached Government land (disputes) and the resolution of the rights of occupants of Government land
- Resolution of conflicts between Government and Local Authorities who may lay claims on the land. (Establishing an inventory of government land is important because it will make possible the resolution of disputes between government and

79. LSSP, Page v

80. *Divestiture of state land* (LGI 15): In cases where, for example due to historical reasons, the state owns more land than it should or can effectively manage, transfer or lease of such land can be an important tool to increase the supply of land or to use the generated revenue to provide public goods. In many contexts, divestiture of government land is one of the most egregious forms of 'land grabbing', bad governance, outright corruption (e.g. bribery of government officials to obtain public land at a fraction of market value) and squandering of public wealth. Avoiding these will require that such processes follow clear, transparent, and competitive process, that any payments to be received and the extent to which they are collected be publicized, and that the institutions involved be subject to regular and independent audits. *Using the Land Governance Assessment Framework (LGAF): Lessons and Next Steps*, K. Deininger, H. Selod, and T. Burns, <http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/SelodNewPaper.pdf>

the public, with local governments or with traditional rulers where both are claiming rights to the same parcel of land).⁸¹

- co-ordination of management of Government land between user ministries/Departments/Institutions and Uganda Land Commission
- Divestiture of land that is no longer required for public use.

The Consultant will thence forward deal with some of the policy goals for Government land in Uganda as stated by the LSSP, and the Issues requiring Legislation therein. Other LSSP policy goals including i). Co-ordination of management of Government Land between users and the Uganda Land Commission; ii). Management of encroached Government land (disputes) and the resolution of the rights of occupants of Government land will feature at a later stage.

3.1 Determination of the extent of Government land on the ground (inventory).

The LSSP does not elaborate on how inventorying Government Land will address or resolve the pertinent management issues relating to these assets. However, in the LSSP, questions regarding Government Land fall within STRATEGIC OBJECTIVE 2 which is “*To put land resources to sustainable productive use.*” In the strategies and priorities for the achievement of LSSP strategic objectives, identification of Government land and compilation of inventory are Phase One priorities.

At the general level, in the management of public immoveable assets, no accountability, transparency and effective management is possible without adequate knowledge about the qualities and quantities of those assets. Yet, a common problem occurring to governments worldwide is that they do not know where and how much public property they own and what rights are attached to it⁸². What’s more, Governments do not know where all of the existing information pertaining to Government Land is located in a complex institutional environment⁸³, and how complete, accurate, reliable and relevant the information is, for planning and decision-making.

81. **MOVING FROM ANALYSIS TO ACTION: Land in the Uganda Private Sector Competitiveness Project II**, by Rexford A. Ahene, The World Bank, STA Reports 11/1/2006. See also LSSP p.10.

82. This may explain the necessity for the catch-all provisions in Article 284 of the Uganda Constitution 1995 and S.95 (9) of the Land Act, [inserted by Section 39 of the Land (Amendment) Act No.1 of 2004, amending Section 95 of the Land Act by inserting a subsection (9)].

83. We earlier defined Government Land to include the Land that is held or utilized by or set aside for use of or controlled or occupied by any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments. So, Government Land is scattered amongst ministries, departments, agencies (i.e., including Statutory Authorities) Councils or lower local governments.

An inventory of government-owned land (and other land assets in the public estate) is needed to enable proper management of those land assets, as well as being a means to justify those holdings. Additionally, sound management of public land assets (including government land) requires transparency and public availability of information regarding that land and its management. The inventory facilitates that transparency by informing about the location, qualities and quantities of the government land assets.

The public estate inventory is an essential immovable asset management tool to achieve co-ordination between all parties with an interest in public land and can be an invaluable source of land information. The inventory of public estate land forms the basis for capturing all decisions and transactions on the relevant properties in the Government's land portfolio and, in ideal circumstances, it should contain all parcel data available, a legal description and or property reference thereto, the parcel sizes, and where possible the latest assessed value, and the capabilities of the land.

BOX No. 5 : ILLUSTRATION OF PUBLIC ESTATE INVENTORY LEGISLATIVE PROVISIONS	
Crown Lands Act 1989⁸⁴, New South Wales, Australia	
31. Inventory	<ul style="list-style-type: none"> (1) The inventory of Crown land shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land. (2) The inventory shall be maintained to reflect changes in the particulars contained in it. (3) Information contained in the inventory may be made available to members of the public.
32 Assessment of the capabilities of land	<ul style="list-style-type: none"> (1) The particulars relating to land as contained in the inventory shall be assessed by the Department to determine the land's capabilities, having regard to prescribed land evaluation criteria. (2) For the purposes of this section, assessment of the capabilities of land includes assessment of the land's use for community or public purposes, environmental protection, nature conservation, water conservation, forestry, recreation, tourism, grazing, agriculture, residential purposes, commerce, industry or mining.
33 Identification of uses	<ul style="list-style-type: none"> (1) In identifying suitable uses for land and, where practicable, the preferred use or uses, regard shall be had to: <ul style="list-style-type: none"> (a) the particulars relating to the land as contained in the inventory, (b) the assessment of the land's capabilities, (c) the principles of Crown land management and any current policies relating to the land approved by the Minister, and (d) the views of any government department, administrative office or public authority

84. New South Wales Consolidated Acts, www.austlii.edu.au/au/legis/nsw/consol_act/cla1989134/

which has expressed an interest in the land.

- (2) The Minister may from time to time cause an identified preferred use to be reviewed and either confirmed or varied having regard to any changes in the particulars contained in the inventory or the capabilities of or policies relating to the land.

According to various Documents, the additional necessity for Government land inventory in Uganda is because:-

Government land is under encroachment by individuals and adjoining communities simply because boundaries are not well defined. The inventory of government land is important in that it will make possible the resolution of disputes between government and the public where both are claiming rights to the same parcel of land. Investing in the inventorying of government land will ensure that clear and precise boundaries will be marked and therefore, encroachment on government land will be minimized. Government will also be saved from costs of litigation and dispute resolution.

Undertaking inventorying of government land is also expected to lead to the identification of land that is underutilized and which can be redistributed for more productive uses. This land may be given to the landless or to those progressive users who will yield high economic returns and thereby, foster economic growth.⁸⁵

Therefore, an accurate, comprehensive and up-to-date record (inventory) of public immovable assets (including for purposes of this Paper, Government Land) and the rights associated to those assets are fundamental to efficient management of those land assets. The inventory of public immovable assets is in addition to and should therefore complement the formal registration of those assets in the national land Register. Public land asset inventories contain all the information on public land assets for management purposes but do not replace the register.

On the whole, the creation or preparation of a public land assets inventory is one of the key steps in the mission of improving governance in the management of public land assets.

Current International practice and principles for the management of public immoveable assets recommend that: -

- a) All the public estate (including Government land) should be inventoried in a way that allows clear and unambiguous identification of boundaries;
- b) the Law and regulations (governing or regulating public immoveable assets) must refer to the public immoveable assets inventory;

85. Rexford Ahene, ***Moving from Analysis to Action - Land in the Uganda PSCP II:*** PSFU/ World Bank, PSCP II, Bidding Documents, ***Developing an Inventory of Government Land***, Date of Issue: 18th February 2008

- c) all the information in the public immoveable assets inventory should be accessible to the public but (if necessary) with the qualification that information for some types of public land assets (e.g., land used by the military and security services, etc) may not be made publicly available for justifiable reasons;
- d) Local authorities should also maintain a compatible inventory;
- e) Planning schemes coming into existence after the recording of public land assets in an official inventory must identify the public land parcels using the official classification system.

A vision⁸⁶ of an ideal public estate inventory has suggested that such inventory it should answer questions such as:-

- ⇒ How much land is owned by the Government?
- ⇒ Where is the land located?
- ⇒ What is the value of the land?
- ⇒ What land is used for conservation purposes?
- ⇒ How is the land managed?
- ⇒ Who are the land managers?
- ⇒ Are there surplus lands available for disposition?
- ⇒ What is the character of the land?

To that List of questions, one can add:-

- ◆ Who are the Custodians of the land?
- ◆ Are there any encroachments or occupants on the land?
- ◆ Are there any or encumbrances on the land?
- ◆ What improvements are appurtenant to the land?

By comparison, the Data Collection Form for assessment of Government Land for the project for inventory of Government Land seeks to elicit the following Data:-

1. Description of the Location of the Land Parcel, i.e., District, County, Parish and GPS UTM Readings;

86. See partly, ***A Comparison of Florida Public Lands Inventories***, <http://publicfiles.dep.state.fl.us/SEC/CabinetAffairs/Inventory/FL%20Public%20Lands%20Inventories%20White%20Paper.pdf>. One needs to compare this with the Data Collection Form for Assessment of Government Land and Expected Workload for Inventory of Government Land. See infra.

2. Land Tenure, Survey & Registration Status. This requires a statement or clarification of:-
 - a) the type of tenure of the land parcel (i.e., whether Mailo, Customary, Freehold, Leasehold);
 - b) whether the land is surveyed and the land size if surveyed;
 - c) an approximation of it is un-surveyed; and the Registration particulars if the Land is registered.
3. The Land use/designated user, any encroachment on the land and its nature if at all;
4. An estimation of the land's value (where deemed necessary)
5. Major features on the land (Water points, schools, hospitals, hills, wetlands, government offices, telecommunication masts, power substations, natural ponds, government farms, forest, etc.)
6. Access from/proximity to the main Trading Center (including a standard surveyors sketch)
7. A statement of the Survey Control Points nearest to the land
8. available survey and mapping information (such as cadastral prints, topographical maps, etc,)

3.1.1 Project for Developing an Inventory of Government Land

The Consultant has taken note that the Government of Uganda through the Private Sector Foundation, Uganda, contracted a consultant to develop an Inventory of Government Land⁸⁷.

The required Project outputs include(d), in amongst other things;-

- i). Details of each Government Land Parcel;
- ii. Certificates of Titles for all Government Land Parcels in all the districts.

87. Private Sector Foundation Uganda/ World Bank, Private Sector Competitiveness Project, Bidding Documents, **Developing an Inventory of Government Land**, Date of Issue: 18th February 2008

- iii) Comprehensive Inventory of Government Land, district-by-district, containing all government land parcels, indicating their location, land tenure, Survey and Registration details, land use details and encroachment details and any other information/data that adds value to the Government Land Inventory, that the inventorying Firm deems fit.

Compared to the Florida example above, and basing on the data sought to be elicited via the Data Collection Form for assessment of Government Land for the project for inventory of Government Land the scope and outputs of the Project were very well conceived.

The unresolved questions may remain in regard to the quality of the Inventory made before classification of all the land in the public estate. The Project's *Description of the Services* essentially adopts the definition and scope of government land that is set out in the Land Sector Strategic Plan. Commendably, the Project's Description of the Services includes inventorying the Government Land that is in the hands of Local Governments.

Subsequently, after the Government Lands legislation has been passed it shall be necessary to complete the classification and reclassification of all land in the Uganda Public Estate and to re-arrange the Inventory accordingly.

South African Law⁸⁸ provides for the keeping of a Register of public land and there has been a clamor for such a register in neighbouring Kenya by the Kenya Land Alliance. Registers of public land are also kept by some Councils in Tasmania, Australia. The draft Kenya National Land Policy also proposes that the National Land Commission shall establish of the office of Keeper / Recorder of Public Lands who will prepare and maintain a register of public lands and related statistics.

In the United Kingdom, the Homes and Communities Agency (HCA) maintains a ***Register of Surplus Public Sector Land*** on behalf of Communities and Local Government and Her Majesty's Treasury and in collaboration with other government departments, their sponsored bodies and other public sector organisations such as National Health Service Trusts. The Register provides a single reference point for all participating public sector organisations on the available national supply of surplus land and helps to ensure that wider government objectives, including housing needs and regional economic and housing strategies, are factored into land disposal decisions.

A register of Government Land or of the public estate is another option for the stakeholders to contemplate.

RECOMMENDED:-

88. Kenya Land Alliance - Public Land Policy Briefing, ***Public Land Tenure and Management of Public Land in Kenya***, Kenya Land Alliance Hakijamii Trust, <http://www.scribd.com/doc/3107643/Kenya-Land-Alliance-Public-land-policy-briefing>

- i). *All the public estate (including Government land) should be inventoried in a way that allows clear and unambiguous identification of boundaries;*
- ii). *the Law and regulations (governing or regulating public immoveable assets) must refer to the public immoveable assets inventory;*
- iii). *the inventory of the public estate (including Government land) shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land. Without limitation, such information may include the location, land Tenure, survey and Registration details, land use details, designated user and Encroachment details*
- iv). *the inventory shall be maintained to reflect changes in the particulars contained in it;*
- v). *Local governments and State agencies (such as Statutory Authorities, Government Companies, Public Enterprises, e.t.c.) should also maintain a compatible inventory;*
- vi). *all the information in the public immoveable assets inventory should be accessible to the public but with the qualification that information for some types of public land assets (e.g., land used by the military and security services, etc) may not be made available for justifiable reasons;*
- vii). *Planning schemes coming into existence after the recording of public land in an official inventory must identify the public land parcels using the official classification system.*

LRWG Comments on this part of the Previous Issues Paper

The LRWG commented that there is no need to legislate for inventorying but we note that public estate land management Experts advise otherwise. In current practice principles relating to management and disposal of lands of the public estate, it is advised that the Law and regulations (governing or regulating public immoveable assets) must refer to the Inventory.⁸⁹ The illustration in **BOX No. 4** of public estate inventory legislative provisions in the **Crown Lands Act 1989, New South Wales, Australia**, also supports this position.

89. cf. *Public and Municipal Land Management*, Land Equity International, July 2007 at **P. 66**,; *Effective and Transparent Management of Public Land Experiences*, by Willi ZIMMERMANN; *Draft Conceptual Framework Study on Governance in Land Administration* by Land Equity International (LEI), May 2008, at p.124

3.2 Determination of the Boundaries of Individual Holdings of Government Land, i.e., Adjudication and Demarcation, and Titling

There is a lot of land which is owned and controlled by Government which is not surveyed and titled. It can actually be said that this situation is recognized by the Amendment to section 95 of the Land Act, which was effected by the Land (Amendment) Act No. 1 of 2004 [now Section 95(9) of the Land Act] and which provides that:-

“Pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the Government or any other public body together with the reasonable cartilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of this Act.”

Under Section 53 (*Powers of the commission*) of the Land Act, the Uganda Land Commission may cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents. Under Section 49 (Functions of the commission) in the same Act, the functions of the ULC shall include to hold any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution, where applicable, to hold and manage any land acquired by the Government abroad, and to procure certificates of title for any land vested in or acquired by the Government. According to the LSSP and the LIS preliminary studies, the Surveys Division within the Lands and Surveys Department shall remain responsible for cadastral surveys of Government land, geodetic and hydrographic surveys.⁹⁰

According to the PSFU ***Project for Developing an Inventory of Government Land***, the objective of the Inventory is not only to establish how much land the government actually owns and the location in which it is found, but also to have it fully surveyed, registered, its market value determined, current land use activities indicated and proper land records made. Such records and information (survey, titling, land use and valuation) should be immediately captured into the proposed Land Information System and maintained, (as required for the rest of other land parcels), by the proposed Land Information System Act.

In the previous version of this Issues Paper on Government Land, the Consultant recommended that:-

- a) *All Government land not duly surveyed and registered be surveyed and registered in freehold in the names of the Land Commission, unless it is a lease from a private land owner.*
- b) *Where the relevant legislation vests the land in a particular authority, e.g. National Forest Authority (or any such authority), the land may be registered in its name as there may be some good policy reasons to separate land vested in the Commission*

90. LSSP, p.430; Baseline Evaluation Report, p.25; LIS Preliminary Design and Architecture-Final Report, p.68

from other trust land and Article 237(2)(b) seems to envisage this. However, the other provisions of the proposed Government Land Act (such as disposal, valuation e.t.c.) shall continue to apply to such land.

- c) The Land Commission should once every year report to Parliament the progress of surveying and titling Government land and the disposal or acquisition of Government land.*
- d) The records and information (survey, titling, land use and valuation) derived from the PROJECT FOR DEVELOPING AN INVENTORY OF GOVERNMENT LAND should be immediately captured into the proposed Land Information System and updated regularly, (as required for the rest of other land parcels), by the proposed Land Information System Act.*
- e) The Uganda Land Commission shall be equally charged with the statutory duties of maintaining, sharing and updating land information, spatial data and Government land Records, as is imposed on other public authorities or custodian agencies by the proposed Land Information System Act.*

The Law Review Working Group examined the above recommendations and commented that:-

- ▶ *a) and b) should be brought to a logical conclusion.*
- ▶ *c) Is a programme which does not have to be reported on- It is to come to an end.⁹¹*
- ▶ *d) Stating the obvious[We insist to retain this –*
- ▶ *e) Has to be rephrased.*

The latest draft of the National Land Policy⁹² proposes (with respect to Government Land) that:-

“Government will through legislative and other measures:

- (i) adjudicate, survey, register or title these lands in the names of Uganda Land Commission or local governments;”

On further consideration we have decided to discard recommendation b) and d) but maintain the rest. Accordingly:-

- a) *All Government land not duly surveyed and registered be surveyed and registered in freehold in the names of the Land Commission, unless it is a***

91. These are continuing activities for so long as there will be future acquisition of land by government and there should therefore be continuing obligations relating to survey, registration, e.t.c.

92. National Land Policy Draft 4 of 18th September 2009 version, Ministry of Lands, Housing & Urban Development.

lease from a private land owner. [These are continuing activities for so long as there will be future acquisition of land by government and there should therefore be continuing obligations relating to survey, registration, e.t.c. We also note that the PROJECT FOR DEVELOPING AN INVENTORY OF GOVERNMENT LAND has apparently stalled and the need to survey and title government land is not yet brought to a logical conclusion.]

- b) The Land Commission should once every year report to Parliament the progress of surveying and titling Government land and the disposal or acquisition of Government land.***
 - c) The Uganda Land Commission shall be equally charged with the statutory duties of maintaining, sharing and updating land information, spatial data and Government land Records, as is imposed on other public authorities or custodian agencies by the proposed Land Information System Act.***
-

3.3 Divestiture of Land that is no longer required for public use

Another of the issues that the LSSP sets out to address with regard to the management of Government Land is divestiture of land that is no longer required for public use. The LSSP appropriately or befittingly states that the Government Land for divestiture is land that is no longer required for public use.

Disposal of lands of the public estate (in this case Government Land) is one very contentious issue in most countries and the tendency in many countries is to be extremely cautious. Caution is advised by reference to mistakes that have been made in countries that have already developed; countries which, during the times when their economy was based on agricultural production, disposed of the maximum amount of land for short-term financial return. Countries where future urban development is imperiled as to planning networks of infrastructure for connectivity and efficient provision and obtaining land for community or public facilities such as sites for schools, arterial roads, hospitals and public housing is no longer possible.

Moreover, alienation or disposal of Government land, (like with all disposal of public land assets), is essentially a one-way process. When it is alienated, it is gone. Short-term financial gains to the Government may in many instances be overshadowed by ongoing costs, including the opportunity costs of missed superior solutions. Moreover, the high costs and political difficulties surrounding compulsory acquisition of private land confine future planning to a less than optimal standard.

Alongside these precautionary considerations is the consensus that Government land ownership is [or should be] justified by cost-effective provision of public goods (or prevention of externalities) at the appropriate level of government. State ownership and occupancy of land is expected to further public objectives. These can be to facilitate the production of public goods and services that require the state to own and/or occupy land for operational purposes so as to provide those goods or services cost effectively⁹³.

As an apparent balance between the precaution against the 'fire sale' of government land assets and the limited public good provisions justifying Government ownership of land, public estate management practice recommends the efficient use of the government land portfolio so as to match the public purposes for which it is intended. Beyond that, what is surplus land is re-allocated within the other public agencies, and land that is surplus to government-wide requirements is disposed of. In sum therefore, the government land that is divested is that land that is surplus to government-wide requirements.

Public estate lands asset management policies from Australia, to Canada, from South Africa to United Kingdom all follow the same underlying principles. In the South African *Government Immovable Asset Management Act* (GIAMA)⁹⁴, "surplus" in relation to an immovable asset, means that the immovable asset no longer supports the service delivery objectives of a user⁹⁵. For that reason, according to the principles of immovable asset management in this Act, an immovable asset must be used efficiently and becomes surplus to a user if it does not support its service delivery objectives at an efficient level and if it cannot be upgraded to that level⁹⁶.

In the Canada Federal Policy on Management of Real Property,⁹⁷ *Surplus Real Estate* occurs where an agency has ceased to utilize the property according to the property's approved service delivery purpose. The equivalents in the United Kingdom are the *Guide for the Disposal of Surplus Property*⁹⁸ and the Information Note on *Disposal of Surplus Land and Property within the Public Sector*⁹⁹.

93. The state may also be required to hold land as a custodian for a group or for society as a whole.

94. No. 19 of 2007. Accessible at the South African Government Information site, www.polity.org.za/

95. Under the GIAMA Act, "user" means a national or provincial department that uses or intends to use an immovable asset in support of its service delivery objectives and includes a custodian in relation to an immovable asset that it occupies or intends to occupy.

96. (Section 5), Act No. 19 of 2007.

97. <http://www.tbs-sct.gc.ca/>; Also, ***Directive on the Sale or Transfer of Surplus Real Property***, accessible at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?evttoo=X&id=12043§ion=text>

98. Office of Government Commerce, November 2005.
http://www.ogc.gov.uk/documents/Guide_for_disposal_of_surplus_property_PDF.pdf

In the relevant New Zealand standard¹⁰⁰, the public estate land asset(s) for sale comprise of surplus Crown owned land, owned by government/agencies, that has received a clearance from all statutory, contractual and Cabinet obligations.

The operative policy framework for the State of Western Australia requires agencies to assess assets against strategic requirements and identify assets that are under-performing or surplus to operating requirements¹⁰¹. The *Strategic Asset Management Framework* policy stipulates that assets should only be held where they contribute to the delivery of services undertaken by an agency to achieve the outcomes expected by Government, and where they are financially viable to retain. Where assets do not meet this requirement, they are to be identified as surplus and then disposed off.

This policy applies to all general government agencies, public financial corporations, and public non-financial corporations, with a few exceptions. It covers real property Crown land vested in the agency and real property held in freehold by the agency in addition to other assets.

Based on the above recount, the overwhelming trend in international best practice is for divestiture of only **surplus** land assets and only when the land designated so is surplus to *government-wide* service delivery requirements. We therefore recommend that the Government Lands Act shall clearly stipulate that

RECOMMENDED:-

- a) The Government Lands Act shall contain or include a criteria for ascertainment of surplus government land.***
 - b) Only that government land that is surplus to the service delivery objectives of a user agency, department, ministry or custodian and is also surplus to government-wide service delivery requirements may be disposed of.***
-

99. **Information Note 2/2003**, Office of Government Commerce, April 2003, accessible: www.ogc.gov.uk. The UK also maintains a Register of Surplus Public Sector Land. The Register provides a single reference point for all participating public sector organizations on the available national supply of surplus land and helps to ensure that wider government objectives, including housing needs and regional economic and housing strategies, are factored into land disposal decisions.

100. Marketing of Property for Sale, Office of Chief Crown Property Officer, Accredited Supplier Standard 8, Land Information New Zealand (LINZ).

101. **Asset Disposal Policy**, Department of Treasury and Finance, Government of Western Australia, August 2005, accessible at: www.dtf.wa.gov.au/cms/uploadedFiles/05_samf_adp_082005.pdf

3.4 Other Government Land Management Issues additional to LSSP Policy Goals

To the policy goals set forth in the LSSP, we propose to annex the following objectives, by borrowing a leaf from the best practice principles relating to management and disposal of land assets of the public estate. The additional objectives include:-

- classification and reclassification Government Land;
- Government Land Management Principles;

3.4.1 Government Land Classification and Reclassification

In the field of public land laws, classification has been defined as designation of public lands as being valuable, or suitable, for specific purposes, uses, or resources.¹⁰² Land classification refers to the practice of defining land into a limited number of legal land classifications. ‘*Classification*’ of government land here refers to the process when this land is first classified. ‘*Reclassification*’ refers to the process of changing the initial classification.

We observed earlier that it is important that a standard classification of public immoveable property (whether government land, state land or public land) be adopted for public immoveable assets so that there is a common understanding for the purposes of preparing an inventory and for managing these assets. We also noted that classification of public immoveable property should also form part of the records of *public estate* land inventories, registration and cadastre systems.¹⁰³

Additionally, we also suggested that land classification and reclassification should be part of the law that regulates *public estate* land assets. Thus, borrowing a page from the best practice principles relating to management of public immoveable property, we suggest that the classification and reclassification public immoveable assets should also encompass government land. The purpose of the land classification and reclassification shall be:

- a) to determine the specific public use that government land may fill under the legal framework,
- b) determining which other sub-classifications¹⁰⁴ it may conform to; and
- c) to determine its status and to enhance the protection of that land.

102. Information about **Public Land Terms**, Bureau of Land Management (USA).
<http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/docs.Par.9071.File.dat/wynf-0011.pdf>

103. This is besides or in addition to including/incorporating descriptions of assets such as the location of parcels and their boundaries, and associated rights. ***Good Governance in Land Tenure and Administration***, FAO Land Tenure Studies #9. ***State Land Distribution for the Poor: State Land Identification , Mapping, Classification and Registration***, by S Boramy, FIG/FAO Seminar on “*State and Public Land Management*” Verona, September 2008

104. City Square (The Historical Monuments Act, Chapter 46).

Classification or re-classification of public land assets will solve crucial issues in so far as it will identify land that *can* and the rest that *cannot* be alienated. In the Australian State of New South Wales the legislative objectives with regard to public estate land classification have been explained as follows: -

“The purpose of classification is to clearly identify land that should be kept available for use by the general public (community), and land that is required for other (operational) purposes. The major consequence of classification is that it determines the way in which local governments can deal in land. ”

Similarly, the proposed Government Lands law can provide for classification of Government Land into such categories in such a way that certain crucial items of Government Land cannot be easily alienated. The Explanatory Notes to the NSW Local Governments Act No. 1993 are emphatic that:-

“The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

Community land must not be sold (except in the limited circumstances referred to in section 45 (4)). Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice of the proposed lease or licence is given and, in the event that an objection is made to the proposed lease or licence, the Minister’s consent is obtained. No such restrictions apply to operational land. Classification or reclassification of land does not affect any estate or interest a council has in the land.”

One analogy that can enhance the appreciation of the value of classification for Government land management is that of ***Dedicated Land***. In South Australia, *Dedicated Land* is land owned by the Crown that has been reserved for a specific purpose. In most cases dedicated land is placed under the care, control and management of another person or body. This may include local councils, other government agencies and organizations such as Utility agencies.¹⁰⁵ Dedicated land must only be used for the purpose of the dedication. This means that any development or future uses of the land must be consistent with the dedicated purpose. Planning schemes coming into existence after the recording of government land in an official inventory must identify the government land parcels using the official classification system.

Maintenance of the Government Land Inventory will in that case be based on the official land classification system.

105. Sections 18 - 22 of the Crown Land Management Act 2009 deal with the dedication of Crown land.

Box No.	CLASSIFICATION AND ALIENATION OF GOVERNMENT LAND IN SAMOA
LANDS, SURVEYS AND ENVIRONMENT ACT 1989	
<p style="text-align: center;">PART IV CLASSIFICATION AND ALIENATION OF GOVERNMENT LAND</p>	
28.	<p>Classification of Government land - (1) All Government land available for disposal under this Act may be classified by the Board into:</p> <ul style="list-style-type: none"> (a) Farm land, being land suitable or adaptable for any type of farming; (b) Urban land, being land suitable or adaptable for residential purposes, and being in or in the vicinity of any town or village; and (c) Commercial or industrial land, being land suitable or adaptable for use for any commercial or industrial purpose. <p>(2) The Board may also classify under the last preceding subsection any Government land which is held on lease at the commencement of this Act.</p> <p>(3) The Board may from time to time reclassify any land which has been classified under this section.</p> <p>(4) Any classification of land made under this section shall be consistent with any approved plan under the Planning and Urban Management Act 2004.</p>

We therefore **RECOMMEND** that: -

-
- a) *Government Land in Uganda be classified into a limited number of legal categories. The classification shall clearly identify the government land that should be kept available for use by the Government for governmental or public purposes, and land that is not required those purposes.*
 - b) *Planning schemes that come into existence after the recording of government land in an official inventory must identify the government land parcels using the official classification system.*
 - c) *Maintenance of the Government Land Inventory will be based on the official land classification system.*

4.0 LEGAL FRAMEWORK FOR THE MANAGEMENT OF GOVERNMENT HELD LAND

4.1 Managerial Matters

4.1.1 The role of the Uganda Land Commission (ULC)

At the core of all these policy goals and reforms is the role of the Uganda Land Commission (ULC). We have already seen above that amongst the key legislative provisions on Land in the Constitution of Uganda 1995, is that the Uganda Land Commission is to manage Government land. Sections 47(1), 48(1) (5) and 49(1) (5) and 50 (a) of the Land Act repeat verbatim the parts of articles 238 and 239 of the Constitution which deal with the Uganda Land Commission.

It is planned in the LSSP that the ULC will be restructured in line with the Ministry of Public Service process, and will become more independent (i.e., semi-autonomous¹⁰⁶) from the Ministry¹⁰⁷. The Uganda Land Commission has a key role to play in respect of central government land, but will liaise with user departments of the Ministry over surveying, valuation and titling of land. Some of this activity will also correspond with the implementation of the programme of systematic demarcation. In addition, the Commission will perform its management functions over government land so as to become a common resource of information, advice and support pertaining to government's land holdings¹⁰⁸.

Under Section 41 (2) of the Land Act, Cap.227, the Uganda land Commission is charged with the management of the Land Fund. The Land Fund shall be derived from money appropriated by Parliament, loans obtained by government, grants from donors and funds from other sources approved by the minister responsible for lands in consultation with the minister responsible for finance. The purposes for which the Land Fund was to be used were to give loans to tenants to enable them to acquire registrable interests; to enable government to purchase or acquire registered land to enable tenants by occupancy to acquire registrable interests pursuant to the Constitution; to resettle persons made homeless by government action, natural disaster or any other cause; and, to assist other persons to acquire titles.

The role of the Uganda Land Commission is also underlined because of recent disposals of public land held by the Commission in trust for certain institutions and therefore the need to discuss and resolve whether the trust concept needs to be re-defined.

106. LSSP p.48

107. i.e., Ministry of Lands, Housing & Urban Development.

108. LSSP Viii

4.1.2 Acquisition of Land for Government

There are three principle ways of acquiring land for Government. One of those ways is *Compulsory Acquisition* also referred to as *expropriation* or *compulsory purchase*.

Compulsory acquisition is the power of government to acquire private rights in land (generally) without the willing consent of its owner or occupant in order to benefit society. In Uganda compulsory acquisition is governed by Articles 26 and 237 of the Constitution of Uganda, and the Land Acquisition Act, cap 226. The Government or Local Government can acquire land by compulsory acquisition under article 26 and 239 of the constitution. Such acquisition is governed by the Land Acquisition Act also under review.

The second and perhaps less typical is *Land Readjustment*. Generally, Land readjustment is an approach by which land parcels in a particular area are re-distributed to the respective former landowners and or occupiers after adjustment or consolidation of all parcels of land according to the project layout and land use plan. The purpose of land readjustment is to ensure that land holdings are economically viable. Land readjustment is an example of a mostly non-compulsory approach and is used as an alternative to public land acquisition.¹⁰⁹

The third is the market-acquisition method or Land acquisition by agreement. This is where the government or public authorities such as a municipality acquire land through private agreement with the landowners to achieve their development objectives. In Land acquisition by agreement Land will be acquired through normal market transactions. This is the mode of acquisition that we are concerned with here.

Outside of the above compulsory acquisition legal processes, the Government and statutory Corporations (which include the Land Commission and the District Land Boards) can acquire land through contractual means. This can be by way of obtaining tenancies, leases and purchase of mailo, freehold or customary land. Other than the general law of contract and financial regulations governing use of funds by public authorities, there is no specific law regulating the contracts to acquire land by Government, Local Government and Statutory Corporations. Such contracts and purchases should (at least as a minimum) be subject to the procedures and requirements of the *Public Procurement and Disposal of Public Assets Act No. 1 of 2003*.

That Act requires public procurements through various bidding methods (Ss. 80-83) and other less competitive means (Ss. 84-88). There is no direct Ugandan authority requiring Government to follow this Act when purchasing land.

109. *Reforming Urban Land Policies and Institutions in Developing Countries* by Catherine Farvacque and Patrick McAuslan, The World Bank, Urban Management Program, 1992 at 73, 79-80; *Hanoi Declaration Land Acquisition in Emerging Economies*, by Kauko Viitanen et. al., FIG Publication No. 51, accessible at: <http://www.fig.net/pub/figpub/pub51/figpub51.htm>; *Municipal Land Management in Asia A Comparative Study*, United Nations New York, 1995; Land Sector Strategic Plan (LSSP), MLWE/MLHUD.

The practice has been one of private negotiations with the vendors. However, if re-emphasis is required then dedicated provisions can be enacted in the proposed Government land Act, which mirror those of the Public Procurement and Disposal of Public Assets Act No. 1 of 2003. The PPDA Laws would also need some adaptation in order to embrace the whole-of-government perspective or government-wide approach to acquisition of land for Government.

The acquisition of land by the Government as broadly defined to include Statutory Corporations and Companies is as pointed out above is for most purposes not regulated by any law. Much discretion is left to public officers to freely negotiate the terms with the vendor of the land in processes that are not transparent enough to ensure value for money.

The Canada Federal *Policy on Management of Real Property*¹¹⁰ defines acquisition as a transaction that adds real property to a department's inventory by purchase, lease, licence, exchange, gift, easement, expropriation, transfer of administration from another department or agent Crown corporation or a transfer of administration and control from the provincial Crown. In South Africa, the law defines 'acquisition' in like terms - "acquire", in relation to an immovable asset for the national government, means acquisition through purchase, lease, acceptance of a gift, expropriation, exchange or transfer of custodianship between custodians in national government¹¹¹.

In the Canadian *Guide to the Management of Real Property*¹¹², the acquisition decision must be preceded by some preliminary due diligence or examination. According to the Canadian policies, the fundamental policy principle underlying any acquisition of real property by the government is that the property to be acquired is needed to support the delivery of government programs. Acquisitions must be supported by market analysis. As a first step, departments should determine whether or not there is any available government property (transfer of administration from another department) that would meet the requirement. Somewhat alike, under the principles of immovable asset management in the South African Statute¹¹³, the acquiring department must, in relation to an acquisition, first consider whether an immovable asset currently used by the state is adequate to meet a change in its service delivery objectives.

The South African regime requires a strategic planning process within an organization, so as to link service delivery strategies with immovable assets and to identify the gap between existing immovable assets and those required to meet service delivery requirements. Acquisition planning is required where the strategic planning process

110. www.tbs-sct.gc.ca

111. Government Immovable Asset Management Act, No. 19 of 2007 (GIAMA)

112. Treasury Board of Canada Secretariat, www.tbs-sct.gc.ca.

113. GIAMA, S.5.

indicates that the organization needs additional immovable assets or major improvements or upgrades to the existing immovable asset portfolio to support its service delivery requirements. In South Africa too, acquisition of government land must be justified or rationalized.

In the Canadian policy, if the public sector is procuring real property requirements, open and fair solicitation processes must be used to ensure that the public is given a reasonable opportunity to respond to any opportunity to sell or lease property to the government. The Canadian guides describe this process as a solicitation of offers giving the public fair and equitable opportunity to acquire real property from or to dispose of real property to the government.

In our previous version of the Issues Paper on the proposed Government Land law, we proposed as follows:-

- i. *All purchases of land by Government and Local Government, the Land Commission, District Land Board, Statutory Corporation or Government controlled Companies be by open domestic bidding in accordance with the principles and procedures set out in the Public Procurement and Disposal of Public Assets Act, No. 1 of 2003.*
- ii. *Any exceptions to the procedure of open domestic bidding including a choice of any other procurement method should be approved by the Public Procurement and Disposal of Public Assets Authority and should be published in the press and such decision should be subject to judicial review upon application by any citizen of Uganda.*

We further suggested that:-

However, if re-emphasis is required then dedicated provisions can be enacted in the proposed Government land Act, which mirror those of the Public Procurement and Disposal of Public Assets Act No. 1 of 2003.

During Stakeholder consultations, we shall engage with the Public Procurement and Disposal of Public Assets Authority (PPDA) simultaneously with the beneficiaries as to the adequacy or suitability of the PPDA Laws for acquisition of land for government. We are also aware that for Local Governments, there are the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations*¹¹⁴. These are very comprehensive regulations.

The LRWG commented with regard to the proposals in the previous version of this Issues Paper that:-

The consultant should have made proposals as to how the progress of acquisition and disposal should be made out of the context there may not be need to publish intention to acquire all the time.

114. Statutory Instrument No. 39 of 2006

During Stakeholder consultations, we shall engage with the beneficiary departments (Ministry of Lands, Housing and Urban Development, and Uganda Land Commission) as to whether there is need to prescribe minimum ceilings below which a public procurement process may not be required. We doubt that with the increasing scarcity of prime land in Uganda and the sky-rocketing prices, the prescription of minimum ceilings is necessary let alone advisable.

We therefore restate our recommendation that the PPDA Laws shall govern the process for acquisition of (non-specific) land for government – except if the stakeholders decide that the proposed Government lands law should contain dedicated provisions on acquisition of land for Government. We are also of the considered view that the PPDA Laws are mandatory legal and statutory requirements which are cannot be departed from without cogent reason.

In the Canadian policies, in addition to statutory requirements for the Minister of Justice's involvement in transactions under the Federal Real Property and Federal Immovables Act and Regulations, and other applicable legislation or regulations, departments must secure legal advice on acquiring real property at an appropriate stage of the transaction. Acquiring departments are also required to consult the Department of Justice Canada when disputes arise with respect to any real property transaction. In Uganda, the Procurement law requires that any procurement whose value exceeds Fifty Million Shillings must obtain the approval by certain agencies, particularly, the Attorney General.¹¹⁵ Without that clearance or approval, the transaction is null and void.¹¹⁶

The Commission too (or its Officers) should be bound by an overall fiduciary duty to ensure that when a land parcel is acquired, best value for money must be realized, such that the Commission (or its Officers) would be acting unlawfully if it or they did not have clear and supportable reasons for purchases above market value.

In line with the recommendations on transparency, the acquisition and purchase should be published in a public notice in a newspaper of general circulation. This will create general awareness of the procurement or acquisition and enhance public scrutiny. We noted earlier, with regard to transparency in disposal of government land, that publicizing transactions involving Government land provides public scrutiny to the process and limits the potential for bad governance and land speculation.

Questions of valuation will of course arise regarding the market value of the real property as of a specified date that evaluates the real property rights, interests or benefits involved according to accepted appraisal practices. The valuation or appraisal

115. Reg. 225 (2) of The Public Procurement and Disposal of Public Assets Regulations 2003 SI 70; Article 119 of the Constitution and **Guidelines issued by the Attorney General on Negotiations and Executions of Government Contracts**, 1999.

116. **Nsimbe Holdings Ltd v. Attorney General & Inspector General of Government**, Constitutional Petition No.2/2006

may, depending on the nature of the interest to be acquired cover the determination of rent or other amounts payable under a lease or the value for an outright purchase.

Valuations have always been carried, albeit under no specific legal framework. In Uganda, legislative provisions on market-based land valuation are missing from the land-sector legislation. Even the office of Chief Government Valuer that was established in the public office in Uganda in the colonial days, is not set up by any specific statute yet it is responsible for carrying out valuations required by various laws in Uganda. There is mention of functions to be carried out by the Chief Government Valuer here and there in various Laws (e.g. the Land Act, Local Government Rating Act and Income Tax Act) but there is no specific constitution of that Office or legal framework regulating the activities and functions of the Chief Government Valuer. It is befitting that the function of valuation of land to be acquired by Government as its land be formally set out in the Government Lands Act.¹¹⁷

As an illustration, of the gap in the law, the CMI Kitante Courts land was apparently offered to a Developer at Shs.3,000,000.00.00. The Chief Government Valuer later put the value of this Site at Shs.21Billion. From the Press Reports, it appeared that the appraisal by the Chief Government Valuer was made after the land had been offered to the Developer and after the Developer had actually made a part-payment.¹¹⁸ The Government Lands Act must therefore be clear and precisely articulate the sequential order of transactions that lead to the acquisition or disposal of Government Land.

However, while the law can be able to prescribe conditions on which it will procure the land if the procurement is merely a sporadic (or non-specific) purchase of land, this may not be the case where the acquisition of land is part of the market-assisted land reforms under the Land Fund. If the market acquisition of land is sporadic, very often there will be more than one prospective vendor/land owner who can respond to a procurement or tender notice and therefore there is a possibility for competitiveness in the offers; Government as offeree also benefits from several alternative offers. This is not the case where the Government seeks to acquire specific chunks of lands such as for the purpose of market-assisted land reform using the Land Fund.

117. There will be a lingering question as to which Valuer will carry out the market value appraisal in purchases of land for market-assisted land reform. The Chief Government Valuer is an employee of Government and it is Government acquiring the Land. This may raise issues of impartiality or conflict of interest. The fair market value price which could be obtained upon a sale of property between a willing buyer and a willing seller dealing at arm's length in an open market cannot properly be ascertained by the Buyer's valuer. Ideally the appraisal and valuation should be carried out by an Independent Valuer but be based on the terms of reference developed by the Chief Government Valuer.

118. **Lands body must act judiciously**, The New Vision, Sunday, 13th April, 2008, <http://www.newvision.co.ug/D/8/14/621962>; **Tycoon Sudhir claims CMI land**, Thursday, The New Vision, 10th April, 2008, by Fortunate Ahimbisibwe & Peter Kauju, <http://www.newvision.co.ug/D/8/12/621640>; **Defence Insists on Sudhir Must Pay Sh21 for CMI Land**, by Fortunate Ahimbisibwe <http://www.newvision.co.ug/PA/8/13/645559>

RECOMMENDATIONS:-

- a) We therefore restate our recommendation that the PPDA Laws shall govern the process for acquisition of (non-specific) land for government – except if the stakeholders decide that the proposed Government lands law should contain dedicated provisions on acquisition of land for Government.*
- b) The market value of the property shall be ascertained before an acquisition.*
- c) Appraisal and valuation for purposes of ascertaining the market value shall be by an independent valuer but based on terms of reference developed by the Chief Government Valuer. The Government Lands Act shall clearly and precisely articulate the sequential order of transactions that lead to the acquisition or disposal of Government Land.*
- d) The ULC (and or its Officers) should be bound by an overall fiduciary duty to ensure that when a land parcel is acquired, best value for money must be realized, such that the Commission (or its Officers) would be acting unlawfully if it or they did not have clear and supportable reasons for purchases above market value.*

LRWG Comments on Acquisition of Land for Government

The Law Review Working Group commented on the previous version of this Issues Paper that:-

The consultants should have only dealt with management and disposal of Government land but not acquisition.

We disagree with this position.

In the field of public immovable assets management, **Acquisition** refers to a transaction that adds real property to a department's inventory by purchase, lease, licence, exchange, gift, easement, expropriation, transfer of administration from another department or government agency or a transfer of administration and control from a local government. [(Canada Federal) Policy on Management of Real Property] How then can the Government Lands Law regulate the Inventory and disposal without regulating acquisitions (inwards) into the Inventory?

The management of real property is a systematic, structured process covering real property activities on a whole-of-life basis. It includes activities related to planning, acquisition, use and disposal for which both custodian and user departments are responsible. **Government land management like other aspects of management of public estate lands involves** a set of management processes to ensure that the value of an immovable asset is optimized throughout its life-cycle and encompasses strategic

planning, acquisition, operations and maintenance management, and disposal.

For these reasons, we are unable to exclude ‘*acquisition*’ of land for Government from the proposed Government Lands Act. One can also see that acquisition involves significant issues of transparency, value-for-money and governance. These aspects need to be included into the legal and regulatory framework for management of Government land.

4.1.3 Co-ordination of Management of Government Land between Users and the Uganda Land Commission

Co-ordination of management of Government land between user ministries/ Departments/ Institutions and Uganda Land Commission is one of the issues that the LSSP sets out to address with regard to the management of Government Land¹¹⁹. Co-ordination and clarifying institutional roles and relationships becomes very important where administration of the public estate is complicated by the fragmentation of management responsibilities for government land across different ministries and agencies. We earlier defined Government Land to include the Land that is held or utilized by or set aside for use of or controlled or occupied by any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments. So, Government Land in Uganda is scattered in a complex institutional environment amongst ministries, departments, agencies (i.e., including Statutory Authorities) Councils or lower local governments. There is therefore a strong need for clarifying institutional roles and relationships.

Co-ordination and teamwork between government departments and others responsible for land and resource management is key to managing government lands. Coordination of decision-making authority across agencies is a key attribute of an integrated public land law such as the proposed Government Lands statute. This attribute is important because decisions taken by sectoral land and property resource managers will frequently affect aspects of management of the public service for which other agencies are responsible. For example, the sale or re-allocation of the Shimoni Demonstration School site to an investor through the Ministry of Finance or Uganda Investment Authority can have significant implications for the Ministry of Education and Sports, as well as, for the Education Department of Kampala District Council.

119. LSSP, p.29.

Interagency consultation and coordination is therefore indispensable in order to avoid or mitigate potential resource conflicts, address cumulative impacts and (in the case of *public estate* lands that contain natural resources) prevent the degradation of ecosystems. During this period of increasing land scarcity, it should be the private developers that look for new land sites to develop; it is illogical for government agencies like Mulago Hospital to look for land for expansion while government land in the proximity of the Hospital is allocated to private developers. A study in Trinidad & Tobago found that many of the constraints to appropriate use of Government land are traceable to an absence of cross-linkages and coordination between various agencies of Government¹²⁰.

The legislation governing the use of the *public estate* (including government land) should support interagency coordination. The specific responsibilities of the principal custodian of government land (ULC) as well as those of the second-tier custodians and users of this land need to be defined in mandatory statutory language alongside the legal requirement that they play an integrative role in the management of government land.

We observe elsewhere in this Issues Paper that in other well-developed jurisdictions, government land management has embraced a *whole-of-government* or government-wide perspective or framework. Some refer to this phenomenon as horizontal cooperation or even horizontal government, or coordination and coherence across government departments or programs.

The key stages where coordination is crucial are in acquisition and disposal of government land. With a government-wide approach to government land management, one agency will not dispose of a well located government land site to the private sector when another government agency is looking for that kind of site, and there are logistical reasons why government agencies should stay in proximity or requiring a government agency to be located in that area. What is surplus land for the requirements of one agency may be very essential, lacking, and necessary for another government agency.

Another target of the statutory coordination and integrative mechanisms of the government land law should be the elimination of discretion in the first-line custodian of government lands. Therefore (after the enactment of the proposed Government Lands Act) the powers granted to the Commission in Section 53 (c) of the Land Act should only be exercisable after the coordination and whole-of-government requirements have been exhausted.

Lack of interagency coordination in management of the public estate has been attributed to weak government land governance. According to Willi Zimmerman:¹²¹

120. ***Policy for Management of State Lands***, Land Use Policy & Administration Project (LUPAP), Sept. 2000; Land Policies for Growth & Poverty Reduction, The World Bank, 2003, at p.72.

“There are common factors involved in poor public land management. There is typically ambiguity in authoritative roles and responsibilities, a lack of accountability or methodology in the systems of allocation, appropriation, disposal or use of public land, and a lack of information on state assets. ... There are a number of elements that can be applied to a strategy for developing good governance in this area. These elements are applicable to any country situation or stage of development. While the ... strategies have good intentions, reform is difficult as key stakeholders in the equation often have vested interest in keeping the status quo. Therefore, these suggestions are best applied in parallel within a whole-of-government “good governance” strategy.

Some overarching strategies are ...

- Institutional mandates of public land institutions should be clear, comprehensive, and non-overlapping”

Therefore, in addition to the current statutory remit of the ULC that is contained in Article 239 of the Constitution and sections 49 and 53 of the Land Act, the Commission should be enjoined to:-

- coordinate the implementation and monitoring of government land policy by other government agencies that have use, custody or responsibilities for government lands;
- ensure that all other government agencies manage government lands according to prescribed Government policy;
- ensure adequate co-ordination and integration of requirements (i.e., acquisition-wise) and disposal decisions of the different government institutions

Co-ordination (or interagency coordination) includes implementing and ensuring the whole-of-government approach in acquisition and disposal of government land. The public land inventory shall be an essential (in fact indispensable) management tool to achieve co-ordination between all parties with an interest in government land and to ensure transparency in the land administration processes for government land. Acquisition requirements of land for Ministries, agencies or organs of government (as defined herein before) shall first be channeled to the Commission for the Commission to ascertain from the existing Inventory of government land or surplus position of agencies before new procurements of government land are made.

Coordination also requires that responsibility for managing government land by second-tier custodians is clearly and unambiguously assigned.

Therefore we **RECOMMEND** that:-

121. *Effective and Transparent Management of Public Land Experiences, Guiding Principles and Tools for Implementation*, www.fig.net.

- a) *The Commission as first-line custodian of all government land and charged with the management of all government land will conduct regular meetings to achieve inter-agency coordination among all Ministries, agencies or organs of government that have custody, use or responsibilities for government land or for government land management.*
 - b) *The Commission shall particularly ensure adequate co-ordination and integration of requirements (for acquisition) and disposal decisions of the different government institutions;*
 - c) *all Ministries, agencies or organs of government that have custody, use or responsibilities for government land shall offer surplus land to the Commission in the first instance;*
 - d) *No disposal of government land of any government agency, department, ministry or organ shall be carried out by the custodian or user or by the Commission without the prior consent of the user or custodian department and without the consent of the Parliamentary sectoral committee within which that government department or ministry falls. A government agency, department, ministry or organ shall certify that a parcel of government land is surplus to its requirements by issuing a certificate in the behalf. The form and content of such certificate can be prescribed by the Minister responsible for lands via subsidiary legislation.*
 - e) *Where government land is certified as being surplus to the requirements of a custodian or user agency the Commission shall first offer the surplus government land to other government agencies, departments, ministries or organs in the first instance. It is only when there is no need for acquisition of that surplus government land parcel (by any or all the other government agencies, departments, ministries or organs) that the Commission may offer the surplus government land for sale on the open market according to the procedures for disposal of surplus government land.*
 - f) *the Commission shall also: -*
 - *coordinate the implementation and monitoring of government land policy by other government agencies that have use, custody or responsibilities for government lands;*
 - *ensure that all other government agencies manage government lands according to prescribed government land management policy;*
-

4.1.3.1 Examples of High-Level Bodies with a whole-of-government focus that coordinate government land management.

There are some novel US and Australian forms of land and public estate management which recognize the need for a central coordination committee to develop and disseminate best practice in government property asset management (including government land acquisition and disposal) and that can inform a model of excellence. The USA Model is the *Federal Real Property Council (FRPC)* and the Australian models include the New South Wales (NSW) Government Asset Management Committee (GAMC).¹²², the *Property Asset Clearing House (PACH)* of the State of Western Australia, and the *Government Land Monitor (GLM)* of the State of Victoria.

The FRPC was established by an Executive Order. That Order also established the position of a Senior Real Property Officer (SRPO) at all major landholding agencies and sets out the requirement that a named individual at strategic level in all major agencies should be held responsible for property asset management.

The US model directs the Senior Real Property Officers to develop and implement agency asset management plans, creates an interagency Federal Real Property Council (FRPC) and authorizes the development of a single and descriptive database of federal real properties. The FRPC serves as a centre of best practice and assists the efforts of Senior Real Property Officers.

In the USA protocol, every agency must determine what it owns, what it needs and what it costs to manage its real properties. It must develop and implement property asset management plans and performance measures. Surplus properties are to be sold.

These protocols are coupled with a requirement for establishing and maintaining a government-wide real property inventory database and reporting performance measures.

Government Asset Management Committee (NSW)

The New South Wales (NSW) Government Asset Management Committee (GAMC)¹²³ was established in 1998 to bring together NSW Government agencies and asset experts to ensure a "whole of government" approach to asset management and office accommodation planning.

The GAMC was established to ensure the effective management of investment in assets and office accommodation. The Committee is chaired by the Director-General of the NSW Premier's Department and members include the Chief Executive Officers of the NSW Treasury, Department of Commerce, Attorney General's Department, Roads and

122. RICS Public Sector Asset Management Guidelines - A Guide to Best Practice.

123. <http://www.gamc.nsw.gov.au/>

Traffic Authority, Department of Infrastructure, Planning and Natural Resources and Forests NSW.

A State Property Authority was also established by the NSW Government under the *State Property Authority Act 2006* as a corporation with functions relating to the acquisition, management and disposal of Government owned property. The Authority is the NSW Government's real estate services provider and is responsible for acquiring and managing Government's generic and, by agreement, other property assets.

The GAMC is a high level committee providing a strategic focus for asset management, accommodation issues and procurement reform. The GAMC ensures the strategic assessment of whole-of-government interests in surplus property disposals.

Under the *NSW Government Property Principles*, all proposed property acquisitions must be referred to the Government Asset Management Committee to consider the proposed acquisition strategy and determine the appropriate agency to complete the transaction. Normal public accounting requirements for acquisitions continue to apply. All proposed property disposals will continue to be referred to the Government Asset Management Committee for approval.¹²⁴

State Land Services Western Australia: Property Asset Clearing House

Property Asset Clearing House (PACH) is the operational mechanism which supports the disposal of State owned land assets under the Strategic Asset Management Framework and the Asset Disposal Policy. The Property Asset Clearing House (PACH) is responsible for identifying and investigating surplus Government property assets for disposal through a web based whole of Government Clearing House.¹²⁵

The implementation phase to dispose of real property has four main steps:

- referral to the Clearing House;
- whole-of-government assessment;
- disposal of the asset; and
- disbursement of net proceeds of sale.

The Clearing House provides whole-of-government coordination for the disposal of real property. The Clearing House establishes a central listing of all properties that are proposed for disposal. The listing facility is a web-based application listing for all properties proposed for disposal. The central listing is accessible by all general government agencies and public financial or non-financial corporations.

124. http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2008/m2008-06_state_property_authority_and_government_property_principles

125. <http://clearinghouse.dpi.wa.gov.au/>

PACH is accessible by all general Government agencies and public financial or non-financial corporations. In order to procure that consistency and coordination of asset disposal occurs across government, Public corporations are required to submit all surplus real property through the Clearing House, so as to ensure that a whole-of-government approach is taken in surplus real property disposal.

The Clearing House provides guidance and advice on disposal processes for agencies, as well as coordinating interagency property sales to ensure that the best whole-of-government outcome is achieved in surplus property disposal.

To ensure that there is appropriate whole-of-government oversight of the activities of the Clearing House, it is overseen by the Property Asset Clearing House Steering Committee, which comprises senior representatives from a number of government agencies.

Essentially the acquisition part of the whole-of-government assessment works as follows. Agencies that have a need to acquire a property on the proposed asset disposal list, may lodge an expression of interest to acquire that property. The expression of interest must clearly indicate key information, such as the agency's requirement for the property, funding availability and linkages to strategic objectives and core business.

The Clearing House assesses expressions of interest received from agencies. This includes situations where an expression of interest is received for a property from more than one agency.

All expressions of interest are assessed against the principle of achieving the maximum benefit to the Government through disposal, including social, financial, economic and strategic factors.

Following the Clearing House process, disposal of real property would be undertaken through one of four options.

- ⇒ Sale to another government agency
- ⇒ Sale to the open market, with sale process managed by LandCorp, the Western Australian Government's land and property developer. For real property not disposed to another government agency through the Clearing House process, the Clearing House will request LandCorp to manage the disposal process on behalf of the agency;
- ⇒ Sale to the open market through a partnership arrangement with LandCorp. For real property not disposed to another government agency through the Clearing House, an agency may enter into a partnership arrangement with LandCorp to develop the site to realise a higher return
- ⇒ Agency manages the sale to the open market

The Government Land Monitor (GLM): State of Victoria

The Victorian Government Land Monitor (GLM), is an arm within the Department of Infrastructure. It administers the ***Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land***, which is the policy document that all Victorian Government agencies and authorities must follow in conducting property transactions. This document requires acquiring agencies to obtain the prior approval of the GLM to undertake transactions where the consideration or compensation is equal to or exceeds \$250,000.00 Australian Dollars. The role of the GLM is described in the above policy as follows:

“The primary role of the GLM is to provide government with an assurance of accountability and integrity in land transactions. It must ensure that transactions are legal, are in the public interest and provide best results for government. To achieve this outcome, agencies are required to obtain GLM approval to conduct transactions.”

GLM responsibilities include:

- administration, review and maintenance of the Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land;
- promotion of best practice in land transactions;
- ensuring that land is sold either by public process or by a process approved by the GLM;
- provision of authoritative advice about the purchase and sale of land;
- provision of advice on land-related matters to the Minister;
- promotion of, and participation in, improvements to legislation affecting land transactions or compensation;
- provision of assistance in mediation and litigation;
- maintaining a public register of crown land sold by private treaty;
- establishment and maintenance of a sales bulletin.

Due to the sensitive and controversial history of Government land disposals in Uganda, serious consideration can be given to the establishment of a high-level oversight and coordination body along the lines of the three samples reviewed above.

RECOMMENDED:-

Due to the sensitive and recent controversial history of Government land disposals in Uganda, it is advisable to establish a high-level oversight and coordination body along the lines of the three samples reviewed above.

This body can be constituted by senior Civil Servants.

4.1.4 Custodianship of Government Land

4.1.4.1 Definition and concept

According to Black's Law Dictionary, a custodian is a person or institution that has charge or custody of property or other valuables. In the field of management of government property (the *public estate*), a custodian has been defined as: -

- ▶ a department whose minister has administration of real property for the purposes of that department's programs¹²⁶; and/ or as
- ▶ a person or body under whose care, control and management dedicated land has been placed.¹²⁷

Custodial departments are those that have administration of real property to deliver their departments' or ministry's programmes. They are responsible for developing, executing and following strategic plans that relate their land holdings to departmental program delivery.

Currently, Custodianship of Government Land within custodian or user ministries is a not-so direct matter requiring the unraveling of provisions of the Constitution relating to accountability, the Public Finance and Accountability Act No.6 of 2003, Treasury Accounting Instructions 2003 made under that Act and the Public Finance Act Cap. 193.

In the South African government land framework, a "*Custodian*" means an organ of state or part thereof which is designated by the relevant executive organ of state in any sphere of government to perform custodial functions. In that legal framework, "***Custodial functions***" mean functions carried out by an executive organ of state¹²⁸ on behalf of the relevant government (i.e., national or provincial), including powers to procure, manage and dispose.¹²⁹ Accordingly, under the South Africa Government Immovable Asset Management Act, a custodian acts as the caretaker in relation to an immovable asset of which it is the custodian and may in the case of a national department, acquire and manage an immovable asset and may, subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), or any other Act regulating the disposal of state land, dispose of that immovable asset.

126. Canada, ***Policy on Management of Real Property***, and ***Directive on the Sale or Transfer of Surplus Real Property*** Tools & Resources <http://www.tbs-sct.gc.ca/> .

127. Crown Land Management Act 2009, South Australia.

128. Basically their Ministers of Public Works and of Land Affairs are the principal custodians of government immovable assets.

129. ***Government-Wide Immovable Asset Management Policy***; Parliamentary Monitoring Group, South Africa, <http://www.pmg.org.za/docs/2005/050614immovableasset.htm>

Generally, there are several levels or layers of custodianship. At the apex is the custodianship by the State. The State may (and in Uganda does) hold land as a custodian for a group or for society as a whole. The State may also act as custodian of common property resources on behalf of society to protect environmentally or culturally sensitive sites and to exercise collective ownership responsibilities over those resources that anyone can make use of such as lakes, rivers and the sea. We shall revert to this type of custodianship under the Public Trust Doctrine.

More often, the State will by statute delegate the responsibility of management of the *public estate* to an agency. This delegation then creates the second tier or level of custodianship. Experts confirm that there is no universal model for institutional and organizational arrangements for the management of public estate land. Options include an oversight body at a high level in government supervising the other government departments and agencies, specialized government agencies, decentralized management, e.t.c.¹³⁰ In some Countries this tier in charge of delegated responsibility of management of the *public estate* is a lands commission¹³¹, in others a statutory authority, a Board, a state/statutory corporation¹³², over even the office of the Commissioner of Lands¹³³. In some countries the management of *public estate* lands is devolved to local government. Others have a mixture of both i.e., mixed custodian models. In Singapore, for example, the Singapore Land Authority (SLA) is the custodian of Government land and the land management agent for the State. As the custodian of Government land the SLA is responsible for the management of all state land and buildings, land acquisitions, leases and sales. It is the national land registration and land boundary survey authority responsible for surveys, developing and marketing land information, and maintaining the national land information database.

In Uganda the Constitution established a Land Commission that is charged with the responsibility of holding and managing land on behalf of Government.

Custodianship involves identification of responsibilities for Government land. Experts therefore advise¹³⁴ that a sound basis for management of the *public estate* will best be achieved when the agency that is responsible for managing each parcel of public estate land has been clearly identified¹³⁵. There may be competing claims between different

130. Report of the FIG_FAO International Seminar on State and Public Sector Land Management.

131. E.g., Uganda, Ghana. It is also suggested in the proposed reforms for Kenya - Draft National Land Policy, National Land Policy Secretariat, Ministry of Lands Kenya, Nairobi.

132. Australian federal territories of New South Wales, Victoria, Australian Capital Territory, e.t.c.

133. State Lands Act Chapter 57:01, Trinidad & Tobago, accessible at: - <http://rgd.legalaffairs.gov.tt/Laws2/Chs. 56-60/57.01/57.01.htm>.

134. ***Good Governance in Land Tenure and Administration***, FAO's Land Tenure Studies No.9., (FAO) 2007, available at: http://www.fao.org/sd/LTdirect/ltstudies_en.htm

ministries or branches that need to be resolved. This leads to the second tier of custodianship of Government land – one that is constituted by the individual ministries and agencies that are in actual custody of government. While the first agency that is the delegatee from the State will have overall oversight obligations for the whole of the *public estate*¹³⁶, (i.e., in this case the whole of the Government Land), it may not be possible for that agency to effectively oversee and manage each individual parcel. The practice is therefore for the law to create obligations on the part of the ministry, department or other state agency that is in actual custody of the land parcel.

A custodian at this tier acts as the caretaker in relation to the parcel(s) of government land its charge. The practice in other countries is for the law to create or stipulate specific management obligations upon the custodian of that land. It entails responsibility for care and management of the land - administrative responsibility for land. In some countries, the custodial function may also include obligations with regard to the acquisition and disposal of the government land in that custodian's charge. It may also include responsibility for safeguarding the land from encroachment. Since Custodianship is not synonymous with ownership, there will be a prohibition of alienating the land or permitting it to be alienated; both actions and omissions will be proscribed. Custodianship thus provides a means of achieving accountability for Government Land.

Experts caution that transparency, legitimacy and accountability of management of the public estate is made more complex where management responsibilities are fragmented across different ministries and agencies. We earlier defined Government Land to include the Land that is held or utilized by or *set aside* for use of or controlled or occupied by any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments, unless it is occupied under a tenancy of less than three years. So, Government Land in Uganda is scattered in a complex institutional environment amongst ministries, departments, agencies (i.e., including Statutory Authorities) Councils or lower local governments. There is therefore a need for clarifying institutional roles and relationships.

One of the issues that the LSSP¹³⁷ sought to address with regard to the management of Government Land is the co-ordination of management of Government land between user ministries/Departments/Institutions and Uganda Land Commission. The LSSP states that the Uganda Land Commission has a key role to play in the process of

135. See next section on Co-ordination of Management of Government Land between Users and the Uganda Land Commission.

136. In Uganda this may somewhat vary as the ULC is not in charge of say of natural resources lands such as National Parks and Game Reserves.

137. LSSP, p.30

resolving issues with regard to the management of Government Land – with particular respect to what the LSSP refers to as central government land - but will liaise with user ministries over surveying, valuation and titling of land. In this section we deal with custodianship and use or occupation of government land. We shall revisit ‘*coordination*’ within the next section.

To an extent, the public estate inventory (when completed) will facilitate the provision of a record of the location, user and occupier of government land. However: -

- there is need to clarify the responsibilities of each user or occupier of government land.
- For government land that is in the hands other departments, agencies and authorities *outside* the statutory ambit of the ULC, there is need to regulate the use, management and disposal of this land; we shall demonstrate below that in some countries custodial functions include responsibilities pertaining to disposal of the land asset.
- As pointed out in the National Land Policy, even for the government land that lies *within* the statutory ambit of the ULC, there are no clear regulations and guidelines in the Constitution or in the laws of Uganda to control the management and use of this land.
- There is also a certain cloud of ambiguity over responsibility and custodianship. Where is the dividing line between the custodial functions of ULC or even a Local Government over land that it holds as a mere Custodian and the land that it can alienate? The ULC has custodianship and is registered as proprietor of government and public land (under direct use of government entities), and Custodianship of government and public land (which is *NOT* under direct use of government entities).

An example is the recent controversy surrounding the sale of land that was previously part of Butabika Hospital. The New Vision reported that:-

“The Uganda Land Commission (ULC) has defended the sale of the land that formerly belonged to Butabika Hospital to developers. The ULC denied any irregular or dubious dealings while allocating the land, saying the body was not influenced by applicants.

Addressing journalists in Kampala yesterday, the ULC chairman, Mayanja Nkangi, said the Constitution allows the commission to sell or lease the land they hold.¹³⁸

Under Section 53 (*Powers of the commission*) of the Land Act 1998 (Cap. 227):-

138. ***ULC defends Butabika land sell***, The New Vision, Wednesday, 6th December, 2006, by Cyprian Musoke. Article available on-line at: <http://www.newvision.co.ug/D/8/13/536353>.

“For the purpose of performing its functions under the Constitution and this Act, the commission may—

...

(c) sell, lease or otherwise deal with the land held by it;”

The ULC therefore was empowered and is still empowered to sell or dispose of Government Land and, as a matter of fact, there are no rules to what the Commission may sell and how it may sell.

Working Draft Four of the National Land Policy¹³⁹ appropriately observes that:-

“Government has been disposing of government land and public land to investors and individuals as if they are one and the same without regard to the public interest and the principles of transparency and accountability. Government presently deals with government land and public land as if the two estates are held for the beneficial interest of government as an institution.”

The National Land Policy also came up with ‘*Strategies*’ for the remedying of this gap. The Policy proposes that:-

“Strategies

105. Through an Act of *Parliament*, Government shall:

(i) ...

(ii) *define the manner* in which government or local government will hold and manage such land taking into account the principles of public trusteeship, transparency and accountability;

(iii) *define the terms and conditions* under which such land may be acquired, used or otherwise disposed by the government and local governments;

This Issues Paper is a precursor to that Law.

4.1.4.2 Illustrations of International Practice in Custodianship of the *Public Estate*

Although Palestine is a nascent State, its *Public and Municipal Land Management Study*¹⁴⁰ is very highly regarded. Firstly, because the Study was carried out by a pre-

139. Para. 3.6 at p.26. ©Ministry of Lands, Housing and Urban Development, September 2009. See also ***The National Land Policy Issues and Recommendations Report From Stakeholders’ Consultations***, Ministry of Lands, Housing and Urban Development, Kampala-Uganda 14th September, 2009, at p.64.

140. ***Public and Municipal Land Management Study***; Palestinian National Authority Land Administration Project, Ministry of Planning/ Land Equity International, Final Report, July 2007. <http://www.mop->

eminent international development consulting organization specializing in land administration, land policy and land tenure. Secondly, because the Study captures and incorporates all contemporary and or recent knowledge in the area of management of the *public estate*; (including government land and public or state land management).

According the Study, the functions of the Custodian of the Public Estate (the Public Land Management Agency [PLMA]) include:-

- Maintenance of the Public Land Inventory based on the official land classification system.
- Assign land from the public estate to line agencies (and to Local Government by negotiation) to enable them to carry out their core functions.
- Resume land from State line agencies (and from Local Government by negotiation) that is surplus to needs for inclusion in the public estate.
- Undertake dealings in land on behalf of State line agencies including acquisitions, long-term leases and disposals
- Custodian of the public estate – public land not required for a public use.
- Develop and apply protocols within the land laws in the areas of land acquisition, land management and land disposal. Protocols will also be developed for the processes of classifying land, compiling the public land¹⁴¹ inventory and for reclassifying land – including from Public Reserve to Public Estate land.
- Provide advice on Public Private Partnership arrangements and an independent evaluation service for Government.

The functions of the Palestinian Public Land Management Agency are quite similar to those of the Singapore Land Authority (SLA)¹⁴². The SLA is the custodian of Singapore Government land, and under the Singapore Land Authority Act¹⁴³, the functions and duties of the Authority include acting as agent of the Government responsible for the administration and management of all Government's lands and buildings, managing the sale of the government's land and properties, licensing and leasing of state properties,

gov.ps/web_files/projects_file/Public%20Land%20Report_FINAL%202%208%2007.pdf. The Project was funded by the World Bank.

141. The nomenclature used in the Study is '*Public Land*' but it clear from the content that the bulk of it is '*government land*'. The interchange of these descriptions (i.e., 'government land', 'Public Land' and 'State Land' was also exhaustively explained in the introduction.

142. <http://www.sla.gov.sg>. The SLA also offers land surveys, registration of land transactions and land information services.

143. Singapore Land Authority Act (No. 17 of 2001).

and acquisition of land for public use by both compulsory and market acquisition processes, and preventing encroachments on the public estate.

In Canada (at the Federal level), a custodian is a department (i.e., ministry) whose minister has administration of real property for the purposes of that department. Under the Federal Real Property and Federal Immovables Act¹⁴⁴, administration of real property is assigned to individual ministers for the use of their departments, which are viewed as custodians.

Canadian custodian departments are responsible for real property activities on a whole-of-life basis covering the activities related to planning, acquisition, use and disposal of real property. The Federal Directive on the Sale or Transfer of Surplus Real Property, spells out the obligations of custodians to dispose of surplus real property by sale or transfer. The Directive requires that Custodians shall conclude the sale or transfer of properties within three years of formal notification of the property being surplus to program requirements. The consideration received for the property must be justified in relation to market value, determined in accordance with the *Canada Treasury Board Appraisal and Estimates Standard for Real Property*.

As a prelude to the sale, Custodians shall categorize surplus properties as either routine or strategic. As noted earlier, 'routine' property is that which is easily sold and 'strategic' property is that with a potential to add value. Custodians are also required to provide interested parties with sufficient information, in certain minimum areas, to enable those parties to make an informed decision within the timeframes prescribed. Custodians are also required to simultaneously provide Canadian government departments and agencies an opportunity to acquire the property for a public purpose, before the property is offered for sale on the open market.

To be able to share in the net proceeds from the sale or transfer of surplus real property custodians must have an approved investment plan and reinvest the proceeds in real property, consistent with their approved investment plan.

We noted above that under South African law, "*Custodial functions*" include powers to procure, manage and dispose of land.¹⁴⁵ A custodian acts as the caretaker in relation to an immovable asset (and this by definition includes land) of which it is the custodian and may in the case of a national department, acquire and manage an immovable asset. Subject to the laws regulating the disposal of state land, a custodian can dispose of land or an immovable asset.

144. 1991, with revisions to 2010, accessible at: - <http://laws-lois.justice.gc.ca>.

145. ***Government-Wide Immoveable Asset Management Policy***; Parliamentary Monitoring Group, South Africa, <http://www.pmg.org.za/docs/2005/050614immoveableasset.htm>

In relation to a disposal, the custodian must consider whether the immovable asset concerned can be used by another government or provincial department. The custodian must also consider whether the immovable asset may be used in relation to overarching South Africa government programmes such as land reform, black economic empowerment, alleviation of poverty, job creation and the redistribution of wealth.

The modes of alienation by which a custodian may dispose of a surplus immovable asset include the allocation of that immovable asset to another user, or the sale, lease, exchange or donation of that immovable asset or the surrender of a lease.

RECOMMENDATIONS:-

- a) Custodians shall be defined as those organs and arms of the Government of Uganda under whose care, control and management Government land has been placed.***
- b) There shall be two tiers of custodianship. The first tier shall be custodianship by the Uganda Land Commission. This shall be described as the custodianship of all Government land – except where the Law or the Commission delegates the custodianship of a particular parcel or parcels of Government Land to second tier custodians.***
- c) Second Tier Custodians shall include any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments.***
- d) Custodians shall generally be charged with the administration of Government land to deliver their departments’ or ministry’s programmes. They are responsible for developing, executing and following strategic plans that relate their Government land holdings to departmental program delivery.***
- e) Custodianship shall also include responsibility for safeguarding the Government land from encroachment. Custodianship shall not amount to ownership. As such alienating the land or permitting it to be alienated qua owner is prohibited; but a Custodian may dispose of or participate in the disposal of the Government land in its custody, subject to the provisions of the Act regulating disposal.***
- f) The proposed Government Lands Act shall amend Section 53 (Powers of the commission) of the Land Act 1998 such that thenceforth the Uganda Land Commission may not dispose of Government Land save in the manner and process prescribed in the Government Lands Act including horizontal cooperation and whole-of-government perspective to disposal.***

4.1.5 Government Land Management Principles

The consultant perused several international experiences with Government land or management of the *public estate* and there are certain tools and approaches utilized in other jurisdictions that can assist or facilitate government land management in Uganda. In South Africa the operational tool or approach is the "*Immovable Asset Management Plan*". This refers to or means a custodian immovable asset management plan or a user immovable asset management plan. The equivalent in Canada is the real property management framework described to be:

In its most basic form, the real property management framework is the departmental master plan for managing real property in an integrated fashion with other departmental resources to meet operational needs, i.e. it is a corporate activity.¹⁴⁶

Further that:-

An appropriate real property management framework ... supports timely, informed real property management decisions and the strategic outcome of programs. The framework must include clear accountability and decision-making structures, including authorities and responsibilities that are consistent with organizational needs and capacity; policies, practices and processes that comply with federal legislation, regulations and government policies; and systems that provide relevant program, financial, and real property performance information.¹⁴⁷

The legal and regulatory framework in Western Australia also puts in place a *Strategic Asset Management Framework policy*. This stipulates that assets should only be held where they contribute to the delivery of services undertaken by an agency to achieve the outcomes expected by Government, and where they are financially viable to retain. Where assets do not meet this requirement, they are to be identified as surplus and disposed of. This will result in financial and resource savings for the agency, which may then be used to deliver services and programs to the community, on behalf of Government.¹⁴⁸

In order to have a minimum benchmark for accountable Government Land management by custodians and users, we have proposed that the Government Lands Act require the preparation and *annual Custodian/User government land management plans*. Accountability and oversight prescriptions have been proposed for the Uganda Land Commission and these are elaborated elsewhere in this Paper.

146. ***Guide to the Management of Real Property***, Treasury Board of Canada Secretariat, www.tbs-sct.gc.ca/

147. ***Policy on Management of Real Property***, Treasury Board of Canada Secretariat, <http://www.tbs-sct.gc.ca/>

148. ***Asset Disposal Policy***, Department of Treasury and Finance, Government of Western Australia, August 2005, http://www.dtf.wa.gov.au/cms/uploadedFiles/05_samf_adp_082005.pdf

Following is an illustration from the State Lands Policy of Trinidad & Tobago of the kind of plans we propose: -

“12. Strategies for Policy Implementation - Policy on Management of State Lands

12.1. Each Government agency charged with the responsibility of managing state lands will prepare management plans for the state lands that are under their charge. These management plans will indicate management priorities and operational principles for managing land resources including protected areas entrusted to them. Such plans should state the management objectives, rights and responsibilities of the manager(s), management principles and prescriptions, and permitted uses/activities.

12.2. A regulatory system will be established by each agency to ensure that actual land use of state-owned land is in accordance with the approved zoning system, environmental guidelines and terms and conditions of lease. Each agency will develop an effective enforcement program to discover violations, apprehend violators, and impose penalties.”¹⁴⁹

Custodians of Government Land shall compile annual Custodian government land management plans, covering all the government land within their custody. Such Plans will contain the plans by which the Custodian or User agency shall carry out, perform, observe or fulfill its statutory obligations vis-à-vis the Government Land in its possession or use including such duties as the fencing or protection of the Government Land from encroachment, and building estate management in case of developed government land that contains buildings.

These annual Custodian government land management plans shall be integrated into the departmental budget allocation process and vice versa. Copies of the annual Custodian government land management plans shall be filed with the Uganda Land Commission annually at the same time as each custodian submits its ministry or departmental budget with the responsible arms of Government. When preparing a Custodian government land management plans, the Custodian or its accounting officer must comply with the objects of the Government Lands Act and adhere to these Government Land Management principles.

The annual Custodian government land management plans should also be supported by both an acquisition and disposal planning framework. Acquisition and Disposal decisions should be well planned and informed by analysis of performance indicators and present or anticipated future program requirements that are linked to the service delivery objectives and requirements of the Government agency or organ.

149. **Policy for Management of State Lands** by A. A. Wijetunga, Land Use Policy and Administration Project (LUPAP), September 7, 2000.

Acquisition planning shall be required where the budgetary process of a Government organ or agency indicates that the organisation needs additional Government Land to the existing immovable asset portfolio to support its service delivery requirements. Operation- and maintenance planning are required to define how that organisation will ensure that existing immovable assets are maintained and operated. Acquisition Planning will assist the custodian in deciding on an acquisition strategy such as purchase or lease, once the whole-of-government assessment has not come up with an existing parcel of Government Land in the public estate that another government organ needs to dispose of. Acquisition Planning will also identify other aspects of the procurement strategy such as timing, advertisements, legal due diligence e.t.c.

Disposal planning shall be required where the institutional appraisal planning process of a Government organ or agency identifies Government Land that is no longer required to support the organisation's service delivery requirements. Disposal Planning will assist the custodian in deciding on a disposal strategy such as sale or lease or development of an asset via a public-private partnership, once the whole-of-government assessment has not come up with another government organ that needs to acquire the parcel of Government Land to be disposed of.

The Plans should be accompanied by the following Government Land Management Principles which are self-explanatory.

- ▶ Government Land should exist to support the service delivery objectives of the various constituent organs and arms that constitute the Government of Uganda.
- ▶ **Government Land assets with strategic importance to Government should not be disposed of.**
- ▶ Government Land Management must comply with existing legislation such as Planning Laws, environmental legislation
- ▶ **Government Land Management decisions should meet the needs of the present without compromising the needs of future generations.**
- ▶ Government Land Management must be aimed at reducing the overall cost of service delivery through the optimal allocation of resources.
- ▶ Before deciding to acquire new Government Land parcels, organs of state must consider the optimal use of existing Government Land parcels.
- ▶ Government Land decision-making will be transparent, consultative, consistent and equitable. There must be integrity and honesty in all aspects of managing Government land and at all times the principal objective of managing Government land is to advance the public interest.

- ▶ There must be open access for all to information and the decision making processes in Government land management.
- ▶ All agencies and persons engaged in Government land management must act in accordance with these principles and must be accountable for their actions.

RECOMMENDED THAT:-

- a) *In order to have a minimum benchmark for accountable Government Land management by custodians and users, the Government Lands Act shall require the preparation and annual Custodian/User government land management plans. Custodians of Government Land shall compile annual Custodian government land management plans, covering all the government land within their custody.*
- b) *Acquisition and disposal of government land for or by a custodian shall be incorporated into the annual Custodian/User government land management plans.*
- c) *Additionally, in the management, custodianship and or use of government land, Custodians and Users shall comply with the following Government Land Management Principles:-*
 - i). *Government Land should exist to support the service delivery objectives of the various constituent organs and arms that constitute the Government of Uganda.*
 - ii). *Government Land assets with strategic importance to Government should not be disposed of.*
 - iii). *Government Land Management must comply with existing legislation such as Planning Laws, environmental legislation;*
 - iv). *Government Land Management decisions should meet the needs of the present without compromising the needs of future generations.*
 - v). *Government Land Management must be aimed at reducing the overall cost of service delivery through the optimal allocation of resources.*
 - vi). *Before deciding to acquire new Government Land parcels, organs of state must consider the optimal use of existing Government Land parcels.*
 - vii). *Government Land decision-making will be transparent, consultative, consistent and equitable. There must be integrity and honesty in all*

aspects of managing Government land and at all times the principal objective of managing Government land is to advance the public interest.

viii). There must be open access for all to information and the decision making processes in Government land management.

ix). All agencies and persons engaged in Government land management must act in accordance with these principles and must be accountable for their actions.

4.1.6 Land of Public Bodies, Statutory Institutions & Parastatals

The Law Review Working Group (LRWG) in their comments was of the view that “Land of former public bodies/ statutory institutions/ parastatals was not adequately covered” by the previous edition of this Issues Paper. The LRWG asked the question: How are those lands to be managed under the proposed Government Lands Act?

The provisions of the proposed Government Lands Act will apply to former public bodies, statutory institutions and parastatals alike. The key nexus is the definition of Government Land. Since by definition Government Land includes land in the possession, use or custody of former public bodies, statutory institutions and parastatals, these Institutions shall be subject to and governed by the proposed Government Lands Act in their possession, use or custody of Government Land.

Care will taken at the Bill drafting stage to ensure that the legislation establishing, governing or otherwise regulating those agencies is not use to override or evade the proposed Government Lands Act. Additionally, a list of all former public bodies, statutory institutions and parastatals that have possession, use or custody of Government Land and to which the proposed Government Lands Act will apply can be set out in schedule to the Act.

A look at the practice in other countries shows that this is the settled practice or direction., Section 39 of the South Africa Restitution of Land Rights Act directs that that a register of public land should be established, that requires *parastatals* and local authorities to publicize information on their land assets and uses. Furthermore according to the White Paper on Land Policy¹⁵⁰:-

150. Paragraphs 5.9 – 5.10, at p.103, http://www.dla.gov.za/legislation_policies/white_papers.htm. We have already explained the interchange in the use of the terms ‘public land’ and ‘State land’ and how these terms relate to Government land. *‘Land and Agrarian reform in South Africa: 1994-2006’*, Ministry for Agriculture and Land Affairs, South Africa.

“There are many parastatals in South Africa, each governed by their own founding statute and with differing mandates and responsibilities to government. All of these bodies hold land. In some cases their land holdings are extensive and spread throughout the country in both urban and rural areas. ... In many cases, parastatals themselves may not be aware of the full extent of their land holdings.

It is proposed that the state land inventory be broadened to become an inventory of public land, and that parastatals will enter details of their land-holdings into it.

The incorporation of parastatal land into the public land register, as discussed above, will facilitate public access to a key area of information regarding public land. It will make it easier to identify parastatal land that is not intended for core business purposes and that may be able to be accessed for a range of development purposes, including for land reform purposes.”

The Government Land owned, held, used or possessed by these agencies shall be entered into the Government land Inventory and these agencies shall have to comply with the prescriptions as to acquisition and disposal of government land. The definition of an acquisition and a disposition of Government land shall also include an acquisition or a disposition by these agencies.

In the Canadian Federal Directive on the Sale or Transfer of Surplus Real Property, the disposal procedure requires a Ministry or agency with surplus land to offer the land for a public use first, by giving Federal departments, regional/municipal governments and corporations sufficient time to respond¹⁵¹. Likewise, in the Property Asset Clearing House (PACH) procedure of the State of Western Australia, Public corporations are required to submit all surplus real property through the Clearing House, so as to ensure that a whole-of-government approach is taken in surplus real property disposal; this is in order to maintain consistency and coordination of asset disposal across government.¹⁵²

Certain companies such as the National Housing and Construction Company Limited (NH&CC) whose core business is the purchase of land and the sale developed houses may have to be exempted from the above requirements or the application of these requirements may have to be modified in respect of NH&CC. We also propose that at the consultation stage we shall engage with certain specific stakeholders such as the Privatization Unit, to see whether certain State-owned enterprises (SOEs) may need a certain degree of freedom of action, flexibility or leeway with the Government land assets that they hold. Those that need extra flexibility can then be appended to a

151. Clause 6. Directive requirements, ***Directive on the Sale or Transfer of Surplus Real Property Tools & Resources***, Treasury Board of Canada Secretariat, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?evttoo=X&id=12043§ion=text>.

152. <http://clearinghouse.dpi.wa.gov.au/>

Schedule to the Act and the pertinent flexibility parameters and transparency guidelines defined.

RECOMMENDED:-

- a) The provisions of the proposed Government Lands Act will apply to former public bodies, statutory institutions and parastatals alike. The key nexus is the definition of Government Land. Since by definition Government Land includes land in the possession, use or custody of former public bodies, statutory institutions and parastatals, these Institutions shall be subject to and governed by the proposed Government Lands Act in their acquisition, possession, use or custody of Government Land.***
- b) The Government Land owned, held, used or possessed by these agencies shall be entered into the Government land Inventory and these agencies shall have to comply with the prescriptions as to acquisition and disposal of government land. The definition of an acquisition and a disposition of Government land shall also include an acquisition or a disposition by these agencies.***
- c) Former Public Bodies, Statutory Institutions & Parastatals shall also be bound by and shall benefit from the provisions of the proposed Government Land Act that prescribe a whole-of-government or government-wide approach to acquisition of land, declaring land as surplus and disposal of government land.***
- d) At the consultation stage the Consultant shall engage with certain specific stakeholders such as the Privatization Unit, to see whether certain State-owned enterprises (SOEs) may need a certain degree of freedom of action, flexibility or leeway with the Government land assets that they hold. Those that need extra flexibility can then be appended to a Schedule to the Act and the pertinent flexibility parameters and transparency guidelines defined.***

4.1.7 Diplomatic and other Government Property Abroad

Under Section 49 (b) of the Land Act, the Government may acquire land abroad. As such, amongst the function of the Uganda Land commission (under Section 49 Land Act) is the role of holding and managing any land acquired by the Government abroad. The commission is enabled by the Act to delegate the management of such land to Uganda's missions abroad.

4.1.7.1 Uganda Property Holdings Limited (UPHL)

Uganda Property Holdings Limited (UPHL) is a Government of Uganda company set up to manage Government properties in Uganda, Kenya and United Kingdom¹⁵³. Properties comprise of warehouses, office blocks and residential houses. During the privatization process in mid 1990s, it was felt strategic real estate properties abroad belonging to parastatals should not be sold.

Uganda Property Holdings Ltd was established in 1998 pursuant to a Cabinet decision to own and manage all real estate properties abroad belonging to the Uganda government including mission properties.

UPHL then took over the management of properties formerly belonging to parastatals such as the former Coffee Marketing Board, Transocean Uganda Limited and the Lint Marketing Board.

Diplomatic Property is apparently managed together with the Uganda Ministry of Foreign Affairs. With respect to the Diplomatic Property in the United Kingdom, there has previously been some controversy regarding non-transparent disposal of the High Commissioner's residence¹⁵⁴. The final outcome of this controversy is not known. There has also been a reported internal quarrel within the Uganda Ministry of Foreign Affairs over a plan to sale Uganda's embassy buildings in the US capital Washington DC, which the Ugandan Press attributed to rent-seeking behaviour of public officials.¹⁵⁵

The provisions of the proposed Government Lands Act will apply to Diplomatic and other Property abroad alike. Once again, the key nexus is the definition of Government Land. The definition of Government Land shall encompass this property. The provisions of the proposed Act, as relates to acquisition, whole-of-government coordination, and disposal shall also apply to Government Land and property abroad.

153. <http://www.uphl.co.ug/>

154. See, ***Permanent Secretary Authorized London Property Sale***, by Felix Osike, New Vision, 25 October 2001, accessible at: <http://allafrica.com/stories/200110250089.html> .

155. ***Fight over US mission***, by Angelo Izama, <http://www.monitor.co.ug/News/National/-/688334/878870/-/view/printVersion/-/d3pwg1z/-/index.html>.

Since by definition Government Land includes Government Land and property abroad, the institutions (whether diplomatic missions abroad or UPHL) shall be subject to and governed by the proposed Government Lands Act in their possession, use or custody of Government Land. Government Land and property abroad shall also be included into the Government Land Inventory.

The proposed Government Lands Act will cater for the details of the delegation of the custodial and management functions of the Uganda Land Commission (under Section 49 Land Act) over Government Land and property abroad; as well as the details of the duties, responsibilities and liabilities of the second-tier custodian or the user of the Government Land and property abroad.

The oversight and disposal consent of the Parliamentary sectoral committee that is in charge of the user or custodian or under which the Government Land and property abroad falls will also help to enhance transparency and accountability.

RECOMMENDED:

- a) *The provisions of the proposed Government Lands Act will apply to Diplomatic and other Property abroad alike. Once again, the key nexus is the definition of Government Land. The definition of Government Land shall encompass this property.*
- b) *The provisions of the proposed Act, as relates to acquisition, coordination, and disposal shall also apply to Government Land and property abroad.*
- c) *Since by definition Government Land includes Government Land and property abroad, the institutions (whether diplomatic missions abroad or UPHL) shall be subject to and governed by the proposed Government Lands Act in their possession, use or custody of Government Land. Government Land and property abroad shall also be included into the Government Land Inventory.*
- d) *The proposed Government Lands Act will cater for the details of the delegation of the custodial and management functions of the Uganda Land Commission (under Section 49 Land Act) over Government Land and property abroad; as well as the details of the duties, responsibilities and liabilities of the second-tier custodian or the user of the Government Land and property abroad.*
- e) *The oversight and disposal consent of the Parliamentary sectoral committee that is in charge of the user or custodian or under which the Government Land and property abroad falls will also help to enhance transparency and accountability.*

5.8 Procurement of Offices for Government

If the ULC is to manage land that is occupied and used by Government for public purposes, including state and local government offices, and the property of government institutions, then it is clearly desirable that it also manages the procurement of additional built property facilities that are required by Government for public purposes.

In a recent review of Land Law Reform in Uganda, a commentator, who was also involved in the drafting of the Land Act 1998, stated that¹⁵⁶:

The Uganda Land Commission's principal function is to be the government's estate agent and property manager, and to that end, it may undertake the full range of transactions and activities in relation to land.

It should also be recalled that the LSSP proposes the following re-organization of the ULC¹⁵⁷:-

The Uganda Land Commission will be restructured in line with the Ministry of Public Service process, and will become more independent from MWLE. The ULC will perform its management functions over government land in order to become a common resource of information, advice and support pertaining to government's land holdings.

At present the procurement of offices for rent by government from private landlords is an adhoc affair which is not clearly regulated. So far as the Consultant can ascertain, the only administrative value-for-money intervention is that of the Chief Government Valuer for fixing the rental (rate per square meter) and perusing or drafting the tenancy agreement.

In other jurisdictions like Singapore, the Land and Property Authority is responsible for the procurement of offices for Government or for renting out of surplus State property. In Uganda, the equivalent of the Singapore Land Authority¹⁵⁸ would have been a Land and Property Statutory Authority but for reasons of sustainability, policy direction has not decided to converge land administration functions in a statutory Authority. Moreover, given that the Constitution and the Land Act (essentially) already assign the role of government's estate agent to the Uganda land Commission, the ULC can continue to perform that role under a dedicated legal and regulatory framework.

156. ***A Narrative on Land Law Reform in Uganda***, Patrick McAuslan, Lincoln Institute of Land Policy Conference Paper, © 2003.

157. See Executive Summary to the LSSP at p. viii.

158. Set up by the Singapore Land Authority Act (No. 17 of 2001)

According to the LSSP, notwithstanding the restructuring of the Uganda Land Commission, the functions of survey, valuation and registration of Government land shall remain as follows¹⁵⁹:-

- 1) ***Surveys of Government land*** shall be carried out by or within the Surveys Division of the Lands and Surveys department, and which is responsible for cadastral surveys of Government land, geodetic and hydrographic surveys; and
- 2) ***Valuation of Government land*** shall continue to be carried out by Valuation Division of the MLHUD which is responsible for advising Government regarding the valuation of lands purchased, sold or rented by Government, for rating valuations in local governments and urban towns, and for the valuation of property to be registered for payment of stamp duty. These functions will also be critical with respect to the purchase, redistribution and readjustment of land.
- 3) ***Registration of Government land*** shall continue to be carried out by the Land Registration Department which is and shall be responsible for the issue of land titles, the registration of transactions on Government land and is also responsible for conveyancing of land on behalf of the Government.

We have already defined Government Land to include land and property rented to Government for a term of three years or more. It follows that where Government is to acquire on lease property for a term of three years or more, that procurement is caught by the acquisition provisions of the proposed Government Lands Act.

We have therefore maintained our recommendations as per previous version of this Issues Paper.

RECOMMENDATION

We recommend that:-

- a) ***The restructuring of the Uganda Land Commission should equip the Commission with the human resource capacity for carrying out, under the general administration structure of the Commission, a function of being the Government's estate agent and property manager, and to that end, it may undertake the full range of transactions and activities in relation to Government's land and immoveable assets.***
- b) ***The proposed Government lands Act shall also cater for the procurement or acquisition of offices or other property facilities to be leased or rented by or from Government institutions and shall provide for the incorporation of such accountability and transparency procedures as apply to other Government Land***

159. LSSP pp 47-48

acquisitions and disposals such as ensuring value-for-money, efficiency and other canons of good public procurement.

- c) *However, the functions of survey, valuation and registration of Government land shall remain respectively with the Surveys Division of the Lands and Surveys Department, Valuation of Government land shall continue to be carried out by Valuation Division of the MLHUD and Registration of Government land shall continue to be carried out by the Land Registration Department which is responsible for conveyancing of land on behalf of the Government.*

LRWG Comments on this part of the Previous Issues Paper
<p>The LRWG commented that on this part of the Previous Issues Paper that:</p> <p style="padding-left: 40px;"><i>Renting of property should be handled separately from the holding of land. Building of offices is the responsibility of President's Office.</i></p> <p>We have looked at Government Land or asset policies and legislation elsewhere and we cannot find any cogent reason for excluding leases of property (for a term of three years and above) from Government Land Management.</p> <p>We did not appreciate the significance of the statement that “Building of offices is the responsibility of President's Office.”</p>

4.2 Procedures for disposal of Government land

4.2.1 Matters preliminary to Disposal of Government Land

Before Government Land is sold, certain matters of prudence have to be observed and certain overarching principles must be considered. The public estate portfolio should not be run down to the detriment of future generations.

The following observations of one expert set the tone:-

“The national importance of state land is increasing. It is a finite resource and governments require an accurate and complete inventory of state land to ensure that it is managed as a public asset. Increasingly, governments around the world are approaching state land as an asset which has to be managed appropriately. For many agencies, the pressure on the public purse is driving approaches to generate a financial return from these assets to defray the costs of management, in whole or part. In generating a return on state land assets, it is important that governments do not adopt short-term revenue-generating approaches that are synonymous with a “fire sale”. Once the state land is alienated and sold to private land interests, the asset is lost. Pressures to generate revenue may lead to state land of high social, environmental or heritage value being sold and lost. Thus priority must be given to good policy development for land concession management to ensure that all development is sustainable, responsible, accountable and transparent.”¹⁶⁰

The process of disposal of government land should be a culmination or climax of various public asset management activities. These include the construction of an inventory of ‘government land’, classification or re-classification of *public estate* land assets (in this particular case, Government land) , justification or rationalization of continued ownership of the Land parcel by the Government, and a whole-of-government perspective evaluation and horizontal cooperation to ascertain the interest of other government departments. The processes and procedures are necessary in order to determine whether the land to be disposed is *surplus* to the requirements of firstly the user or custodian Ministry/agency or government body, and thereafter the rest of the government.

It is also suggested (see below) that after the whole-of-government or government-wide evaluation, priority for acquiring government land assets should first be offered local governments or Municipality, non-governmental organizations, and Government supported economic development projects.

We recap some of these pre-disposal steps briefly here below.

160. **World Bank Policy on Land Governance in Support of the Millennium Development Goals**, by Klaus DEININGER and Keith Clifford BELL, XXIV FIG International Congress 2010 Facing the Challenges – Building the Capacity Sydney, Australia, 11-16 April 2010, http://www.fig.net/pub/fig2010/papers/inv01/inv01_deininger_bell_4660.pdf

4.2.1.1 Inventory¹⁶¹

We noted above that the inventory of the public estate should answer (in amongst other things) questions such as:-

- How much land is owned by the Government?
- Where is the land located?
- What is the character of the land?
- land use details and Encroachment details

As explained below, an inventory of government-owned land and public land assets is also a means of justify the continued government ownership of those holdings.

4.2.1.2 Land Classification

We propose that as the next preliminary step, all public land assets shall be classified or re-classified.

We have already examined Land Classification. We described Land classification as the practice of defining land into a limited number of legal land classifications. We observed that it is important that a standard classification of public immoveable property (be it government land, state land or public land) be adopted for public estate assets so that there is a common understanding for the purposes of preparing an inventory and managing these assets.

We also reviewed international practice of making a distinction in dealing public immoveable property by, for example, differentiating between *Public Property of the State* (Land with the core function of being exclusively used for public purpose) and Private Property of the State (Land being used for multiple functions, including commercial use, disposition, concession, leasing). According to this distinction *Government public land* cannot be handed over to private interests for exploitation but must be held by and managed directly by the Government for public purposes, while *Government private land* can be disposed of or placed in the hands of private interests for productive activities, either temporarily by economic concession or lease, or permanently, though alienation.

We also reviewed a comparable classification of public land assets in the Australian State of New South Wales, whereby public land assets must be classified by local governments as either “community” or “operational” land¹⁶². Thereafter, the local governments cannot sell, exchange or dispose of *community land*. On the other hand,

161. An inventory of ‘government land’ has already been commenced under this PAC II Project.

162. (SS.25 – 26), Local Government Act 30 of 1993 of New South Wales, accessible at www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182.

“operational” land has no special restrictions other than the transparency and planning requirements that may apply to the disposal or use of any piece of public land asset.

Classification or re-classification of public land assets will solve crucial issues in so far as it identifies land that *can* and the rest that *cannot* be sold.

4.2.1.3 Justification for Ownership of Land by the Government

Before proceeding to the disposal of Government Land, authorities need to answer the question of why the Government (as already defined) needs to own land. Why do Government bodies need land and do they need to own any land they need to use? There is a threshold question of how much land should remain in the management of the state, since it is generally accepted that the state is not a very effective land manager.

There are various reasons for the ownership of land by the Government. Although that is a domain of policy and one that we cannot exhaustively review here, nevertheless some of those reasons are operational. To be precise, Land is needed in order to make the provision of public services possible. Public bodies cannot supply educational services without land on which to construct schools, they cannot provide healthcare without land for hospitals or maintain national defence without having areas of land in which soldiers can undertake military training exercises or have their Barracks. The ownership, control or occupation of land for operational reasons is because there are public goods and services that need to be provided collectively. These are goods that are best produced collectively.

Government Land (like State Land, public land and all public immovable assets forming a part of the public estate) is a *public good*. Land ownership by Government is therefore justified by the provision of public goods at the appropriate level of government.¹⁶³

Government asset disposal principles from places as diverse as South Africa and Palestine caution that:

“Each piece of state land should be examined in relation to a hierarchy of needs and uses before any disposal decisions are taken. Consistent with this is a position that the sale of state and public land on the open market should be considered only if the land is unsuitable for state-assisted development.”¹⁶⁴

The Palestine Public and Municipal Land Management Study likewise proposes that:-

Disposition of Public Land from the Public Estate

163. The state may also hold land as a trustee or custodian for a group or for society as a whole. It is conceded in those cases that the State is still the best option for holding such trust powers See infra in relation to the Public Trust Doctrine.

164. Government of South Africa, *White Paper Land Development*, Public Land Management & Land Administration

Transfer of land from the public estate shall in the first instance be to one of

1. Government agency.
2. Municipality.
3. Not for profit entity.
4. Government supported economic development project.

The PLMA shall be responsible for detailed investigations as to the outcome that maximizes public benefits and which has the best policy fit.

In the event that land is not required by any of these agencies and there is no prospect of it being required in the future land may be declared 'surplus to needs' and sold. This will occur only in limited circumstances."¹⁶⁵

It is therefore essential that before any disposal of Government land takes place, there is a rationalization of Government land holding, as well as a whole-of-government perspective evaluation.

One of the consequences of the change in the character of the public estate in Uganda is that public land assets (whether government land or public land) can no longer be allocated just-like-that. Previously, when all Land was 'public land' (under the Land Reform Decree or even before) the land allocation function was not strictly regulated. Now that the public estate has dwindled, the little remnant lands of the public estate have to be viewed carefully before being disposed off.

4.2.1.4 International Best Practice

The consultant has carried out an examination of the asset disposal processes and procedures in various jurisdictions, including some of those (like Canada) that are regarded as the preeminent. Following is an examination of some of those policies and processes:-

4.2.1.4.1 Canada.

Disposal of lands from the public estate in Canada is governed by the Federal Real Property and Federal Immovables Act¹⁶⁶ and a number of policies which include the ***Directive on the Sale or Transfer of Surplus Real Property*** and the ***Guide to the Management of Real Property***. The latter two (Directive and Guide) are issued by the Treasury Board of Canada Secretariat.¹⁶⁷

165. ***Public and Municipal Land Management FINAL***, Land Equity International, July 2007, P. 6

166. S.C. 1991, c. 50. Accessible at: <http://laws-lois.justice.gc.ca>

167. www.tbs-sct.gc.ca

Under the above Act, administration of real property is assigned to individual ministers for the use of their departments; these user departments are designated as *custodians*.

The Directive seeks to address the issues arising from the sensitivity or value associated with properties of the public estate, the numerous diverse stakeholder interests and the importance of horizontal cooperation. These issues are addressed by ensuring that sales or transfers of surplus real property provide for, (in amongst other things) a *whole of government perspective*; efficiency, equity and transparency in transactions; best value to the Canadian taxpayer; and consideration of the interests of communities and other levels of government.

The disposal process is preceded by certain *public estate* management actions. The disposal process starts with the Guide. Under the Guide, Departments should take a proactive planning approach, (rather than a transaction-by-transaction approach) to disposal. Departments should develop processes to identify *surplus* real property and, as part of broader investment planning strategies, future surplus real property. Disposal decisions should be well planned and informed by analysis of performance indicators and present or anticipated future program requirements.

As soon as a department recognizes that a property is no longer required in support of its program or operational needs, it identifies the property as *surplus*. The department must then follow the prescribed disposal process. The first stage of the disposal process is identifying the type of disposal.

The Directive provides for surplus sites to be classified as '*routine*' (easily sold) or '*strategic*' (potential to add value). Surplus "***routine***" real properties are generally properties or a portfolio of properties with lesser value that can be sold easily without any substantial investment. These properties are normally sold "*as is*" on the open market by the custodian, its agent (Public Works and Government Services Canada), or a private-sector firm. "*As is*" transactions imply that there is limited potential for increasing the value of the property prior to sale or transfer and that there are no strategic interests in the property.

Surplus "***strategic***" real properties are properties or portfolios of properties with potential for significantly enhanced value, those that are highly sensitive, or a combination of these factors. Because of the complexity associated with these properties, they may require innovative efforts and a comprehensive management approach to move them into the market. The government's disposal corporation, disposes of these selected surplus properties through a managed process.¹⁶⁸

168. <http://www.tbs-sct.gc.ca/rpm-gbi/doc/gmrp-ggbi/gmrp-ggbi-eng.pdf>;

Before a property is offered for sale on the open market, Custodians¹⁶⁹ must determine interest in the property by federal departments, agent Crown corporations, provincial and municipal governments as well as giving them sufficient time to respond. Prices can be negotiated according to guidelines dealing with the issue of sub-market price. The Canada Treasury Board policies are also specific that a custody transfer (i.e., transfers of administration of real property that support an adjustment to or transfer of program accountability) are effected at nominal value.

Strategic surplus sites are required to have a business case prepared for their value to be enhanced. Custodians who wish to share in the proceeds of sale must submit an investment plan to show how the funds will be re-invested in public assets.

The benchmark for sales is '*market value*', for which guidelines are provided. Sale is by public auction or tender.

4.2.1.4.2 South Africa

In South Africa just as in Canada, disposal of government land assets is preceded by certain *public estate* management actions. These are set out in a recent legislative development governing the process and procedures relating to the disposal of the public estate in South Africa - the *Government Immovable Asset Management Act, No. 19 of 2007 ('GIAMA')*. This Act compliments the South Africa *State Land Disposal Act 48 of 1961*.

The GIAMA Law and the underlying *Government-Wide Immovable Asset Management Policy*¹⁷⁰ define the following concepts and matters that are crucial to understanding the context of the legislation. Under the Act, an '*Immovable asset*' means or refers to any immovable asset acquired or owned by government; it includes land and any immovable improvement on that land, and which has enduring value and consists of assets of residential, non-residential or infrastructure nature. The application of the definition means that the types of assets construed to be immovable assets for the purposes of that framework comprise of:-

169. In the field of management of government property (the public estate), a custodian has been defined as a department whose minister has administration of real property for the purposes of that department , and or as a person or body under whose care, control and management dedicated land has been placed.

170. <http://www.pmg.org.za/docs/2005/050614immovableasset.htm>

- Land including but not limited to developed, undeveloped, vacant, cultivated, non-useable or inaccessible land;
- Buildings including but not limited to office accommodation, prison buildings, police stations, courts, schools, hospitals, and houses;
- Rights in land including servitudes, "right to use", leases;
- Infrastructure including but not limited to roads, harbours, railway lines, airports, e.t.c.
- Conservation, cultural and heritage assets including but not limited to monuments, historical sites, heritage sites, conservation areas e.t.c.

The GIAMA Law also defines "**surplus**" in relation to an immovable asset, to mean that the immovable asset no longer supports the service delivery objectives of a user.

A '*user*' means or refers to a national or provincial department that uses or intends to use an immovable asset in support of its service delivery objectives and includes a custodian in relation to an immovable asset that it occupies or intends to occupy. A '*custodian*' is defined to mean a national or provincial department.

Section 5 of the GIAMA Law stipulates the following (amongst many other) principles of immovable asset management:

- ☐ An immovable asset must be used efficiently and becomes surplus to a user if it does not support its service delivery objectives at an efficient level and if it cannot be upgraded to that level;
- ☐ when an immovable asset is acquired or disposed of best value for money must be realized;
- ☐ in relation to a disposal, the custodian must consider whether the immovable asset concerned can be used—
 - (i) by another user or jointly by different users;
 - (ii) in relation to social development initiatives of government; and
 - (iii) in relation to government's socio-economic objectives, including land reform, black economic empowerment, alleviation of poverty, job creation and the redistribution of wealth.

Under Section 13 of the Act, a custodian may dispose of a surplus immovable asset by the allocation of that immovable asset to another user. A custodian may also dispose of a surplus immovable asset by the sale, lease, exchange or donation of that immovable asset or the surrender of a lease.

In similarity to the Canadian Directive on the Sale or Transfer of Surplus Real Property, custodians in South Africa are required to give consideration to the possibility of interest from another government department before selling the land on the open market.

4.2.1.4.3 New Zealand

The process in New Zealand is largely similar with variations in emphases say, with regard to approvals or steps; New Zealand has a rigorous regime of statutory and administrative requirements that must first be satisfied. However, once land assets are acquired for Government for the purpose that they are needed, the land and buildings are held by the asset owning Department and used for that purpose for however long they are needed. If the asset becomes surplus it is then able to be used by another Department for another public work. If not it can then be sold on the open market.¹⁷¹

4.2.1.4.4 Australia

In South Australia, there is a prohibition (under the Crown Land Management Act 2009¹⁷²) on disposal of Crown land unless the land is being disposed of to a Crown agency; or the land has been declared surplus. For the purposes of the Act, land will be taken to have been declared surplus if the Minister has, by written instrument, declared that the land is no longer required for any government purpose. The Minister also has power to dispose of surplus lands of a Crown agency. If land owned by a Crown agency has been declared surplus, the Minister may dispose of that land by transfer of the fee simple. The Minister may execute any assurance, contract, deed or instrument that may be necessary to effect a transfer of the land.

In the other Australian State of New South Wales, procedures for assessment of public values, the identification of appropriate uses, management and disposal are already required under legislation for both Crown land and local government land under the *Crown Lands Act 1989* and the *Local Government Act, 1993*. Processes for the appropriate disposal of public assets for a public process involve the identification and assessment of significance as a first step and the full exploration of future use options, with the retention in public hands of land with important public values. The management of Crown land involves completing an inventory of land parcels, assessment (including public exhibition) of the land's

171. Trevor Knowles, ***State and Public Sector Land Management in New Zealand: An Outline of the Background and Administration Processes***, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008, www.fig.net/; Land Information New Zealand (LINZ), ***Marketing of Property for Sale***, Office of the Chief Crown Property Officer, 1 November, 2000.

172. www.legislation.sa.gov.au/.

capabilities for various purposes and finally the identification of suitable land uses (including sale, lease, reservation, special purpose or future public use) after consulting applicable policies and public agencies’

As noted earlier, land controlled or held by local government is classified as either ‘operational land’ which may be dealt with relatively freely, or ‘community land’ which is far more restricted in terms of its management, development or disposal. Community land includes natural or culturally significant areas, sports grounds, parks, land subject to trust or covenant restrictions or land for general community use. Sale or disposal of community land requires prior reclassification to operational land using a process that includes a public hearing, public submissions and the creation of a new local plan (LEP).

Sale or disposal of community land requires its prior reclassification to operational land using a process that includes an extensive process of advertising, public hearings, public submissions and the creation of a new local plan (LEP). Public scrutiny is a key element of the re-classification process. Land may not be re-classified and no dealings will be permitted in the land without the plan of management (i.e., the LEP). Leases and any other form of interest in the land must be authorized by the LEP. There are famous Court decisions such as *Bathurst City Council v PWC Properties Pty Ltd*¹⁷³ that reinforce the importance of respecting the reclassification process.

4.2.1.4.5 United Kingdom

In the United Kingdom, the policy is as follows:-

“Holdings of freehold and leasehold land and buildings, plant and machinery, office equipment and furniture (fixed assets) and consumable stores should be kept under constant review. Once surplus assets have been identified, they should be sold as quickly as possible subject to value for money considerations. Departments should obtain the best possible price for surplus assets. Assets should therefore normally be sold on the open market by public auction or tender.”¹⁷⁴

However, that principle has qualification which advises that:

“Assets transferred to another department or non-departmental public body (NDPB) should generally be charged for at their current market value as defined by the RICS¹⁷⁵ Appraisal and Valuation Manual”

173. [1998] HCA 59, 30 September 1998

174. ***Disposal of Surplus Land and Property within the Public Sector. Information Note.*** 2/2003. April 2003. Accessed at: www.ogc.gov.uk/documents/InformationNote022003.pdf.

The intention of the qualification is to provide an exception to the general principle that surplus assets should be sold on the open market by public auction or tender. This exception enables a department to transfer land or buildings to another Government department or NDPB without offering them on the open market in order that the assets can continue to be used to deliver public services.

4.2.1.4.6 Palestine Land Management Study

The final extract from International best practice sums up appropriately:-

“There are perhaps two principles for the administration of State Land that can be inferred from this experience. The first is that careful attention should be given to whether land is needed for ‘core business’ before disposal. The core business of government is to produce public benefits; hence any proposed land disposal should be checked with all public entities to see if there is an alternative public use of the land. This should include municipalities as they are in exactly the same business as government ministries and agencies – producing public benefits.”¹⁷⁶

4.2.1.4.7 Uganda

In Uganda, the disposal of government land has hitherto not been preplanned. Disposal decisions are made to suit the immediate requirements of investors for prime land and the relocation of the user government department is planned afterwards.

RECOMMENDED:-

- a) The process of disposal of government land shall include recurrent procedural steps such as a whole-of-government perspective evaluation and horizontal cooperation to ascertain the interest of other government departments in the land proposed to be disposed of. The processes and procedures shall be implemented in order to determine whether the land to be disposed is surplus to the requirements of firstly the user or custodian Ministry/agency or government body, and thereafter the rest of the government.***
- b) After the whole-of-government or government-wide evaluation, priority for acquiring government land assets should first be offered local governments or Municipalities, non-governmental organizations, and Government supported economic development projects.***
- c) It is only after the land proposed to be disposed of is surplus to all those requirements that it shall be put for sale on the open market.***

175. Royal Institute of Chartered Surveyors

176. Public and Municipal Land Management, LEI, July 07, P. 48

4.2.1.5 Other Country Context Issues for Uganda

4.2.1.5.1 Policy for Unsolicited infrastructure proposals

Unsolicited infrastructure proposals are not requested by a government and usually originate within the private sector. These proposals typically come from companies with ties to a particular industry—such as developers, suppliers, and financiers—that spend their own money to develop basic project specifications, then directly approach governments to get the required official approvals.

A major issue is that many unsolicited projects are associated with a lack of competition and transparency. Much of the controversy stems from governments granting exclusive development rights to private proponents without a transparent tendering process. In Uganda the practice has been to give these unsolicited investors prime Government land, sometimes in disregard of Planning and environmental laws and at other times in displacement of national institutions of facilities hitherto occupying or using the Land.

Unsolicited proposals for infrastructure projects from private investors can introduce innovative ideas—but also carry risks, such as opportunities for corruption. As a result of being sole-sourced, the unsolicited proposals lend themselves more easily to corruption. Some countries disallow unsolicited proposals. Others manage them in ways that introduce competition and transparency.¹⁷⁷

In Uganda the problem arising from unsolicited development or infrastructure vis-a-vis government land has been stated by the Uganda Land Alliance as follows:-

Box No.10: Uganda: Continuing controversy as the government continues to grant public land to private investors¹⁷⁸

In many developing countries, governments are encouraging commercial, industrial, and agricultural investment. In many countries, government investment authorities woo potential investors who are ready to make significant capital investments by offering favourable terms, such as expedited regulatory procedures, tax-breaks, or long-term, low-cost leases or *grants of government-held land*.

Government authorities argue that such investment makes more productive use of land and helps improve the productivity of the national economy, thereby contributing to development. Civil-society organisations argue that such transactions often favour those who are politically well-connected, that the resulting financial benefits to public finances are not commensurate with the costs to the public, and that government may ignore laws

177. *Unsolicited infrastructure proposals: How Some Countries Introduce Competition and Transparency An International Experience Review* by John T. Hodges Georgina Dellacha

178. Uganda Land Alliance, www.landcoalition.org/pdf/06_news_ula.pdf.

and regulations in terms it offers investors for developing such properties.

In Uganda, the government, working through the Uganda Investment Authority and Uganda Land Commission, has repeatedly excised government land or granted leases to investors, sometimes with limited public review or comment of such transactions.

The government argues it is making government more efficient and effective, releasing land that is no longer useful or productive, reducing public costs to maintain such properties while increasing economic productivity by transferring lands to those able to invest and develop it. However, in recent years the government has leased or granted to investors prime high-value real estate in central Kampala or sites of significant public interest. In some cases, legislators in Parliament have intervened to compel the government to reveal the terms of such agreements and the people involved.

Some of the recently controversial unsolicited development and infrastructure proposals include Tororo Inland Port (although this did not entail a give-away of government land), Entebbe International Airport¹⁷⁹ and Mabira Forest¹⁸⁰. The latter provoked riots and there was some loss of life; the Forest would probably fall under Natural Resources and the Public Trust Doctrine, and not under Government Land.

4.2.1.5.2 Lack of a PPI or PPP Law/Regulatory Framework

Unguided disposal of government land to investors through unsolicited infrastructure or project development proposals is also enabled by the lack of a formal legal and regulatory Framework for Public-Private Partnership (PPP) in Uganda.

In mid-2007, Government advertised a procurement for Consultancy services for Development of a Comprehensive Policy, legal and Institutional Framework for Public-Private Partnership (PPP) Programme in Uganda but it seems that there are no tangible outcomes so far. A PPP Law/Regulatory Framework would reduce the unguided doling of government land.

4.2.1.5.3 Uganda Poverty Reduction Support Credit 7

Land giveaways have also been mentioned in the *Uganda Poverty Reduction Support Credit 7* as risks and possible policy reversal.

179. ***New Vision Online: Govt defends Entebbe Airport deal***, Thursday, 23rd July, 2009, www.newvision.co.ug/D/8/13/688906; ***Lease of Entebbe Airport: Good or bad deal?*** The Independent, Tuesday, 11 August 2009 19:06 By Mubatsi Asinja Habati, <http://www.independent.co.ug/index.php/news/news-analysis/79-news-analysis/1453-lease-of-entebbe-airport-good-or-bad-deal>

180. ***Uganda Government Finally Scraps Mabira Rainforest Giveaway***, http://www.landcoalition.org/pdf/07_press_mabira%20forest.pdf.

According to the Program Document for a Proposed Credit to the Republic Of Uganda for a Seventh Poverty Reduction Support Credit (PRSC7)¹⁸¹:-

“Risks can be broadly classified into two categories:

Risks that reflect the broader Uganda context

(i) **Policies in support of private sector development.** There are concerns about possible policy reversal (commitment to the environment) and state interventions in productive sectors (land and tax giveaways). The Bank is engaged in proactive policy dialogue at all levels to prevent policy reversals and continues to support strengthening of institutions and procedures. Reforms in the land subsector are a critical factor for improving agricultural productivity.

There is however a risk that public controversy and sensitivity continue delaying reforms.

Infrastructure development and private participation in infrastructure (PPI) is a massive area to which we cannot do justice in a limited Issues Paper on Government Land. Our interest in this area is limited to the Government Land component. Where unsolicited development or infrastructure proposals are to benefit from government land such land shall not be granted to the developer or investor free of charge. If Government Land is to be provided to the Project at concessional rates then there must be provisions for future recovery of the market value of the land. For example, under the **Andhra Pradesh Infrastructure Development Enabling Act, No. 36 of 2001**¹⁸², if the State Government will offer asset based support to a Project which asset based support includes government owned land:

“Government owned land would be provided at concessional lease charges for Projects where ownership would revert to the Government, within a maximum period of 33 years from the date of grant of land.”

In the case of Uganda, (in the absence of a PPI or PPP Law), for Government land provided to Investors or Developers at concessional prices or charges, the proposed Government lands Act can provide for the inclusion of Claw back¹⁸³ or Overage Clauses.

The value of claw back provisions can be demonstrated by the following extract:-

In the case of a sale of land at the Royal Brompton Hospital, London the National Audit Office found that, if a ‘clawback’ clause had been included in the sale, the NHS would have received an extra £6.5 million (NAO 1999).¹⁸⁴

181. World Bank Report No. 43229-UG. Accessible at: - www-wds.worldbank.org/

182. Accessible at: <http://www.ppp.ap.gov.in/Documents/IDEact.pdf>

183. **Clawback** is typically where a seller is entitled to an additional payment by reference to the original sale price or value. **Overage** is the right to share in genuine future profit. Clawback and Overage are terms used interchangeably with Clawback most commonly used by local and central government. See: Jessel, C. (2000) “Overage – Approaches and Pitfalls”. *Briefings in Real Estate Finance*. VOL. 1(1) pp. 28 –36

Alternatively, the concession or lease agreement can provide for future conversion of the unpaid portion of the market value of the Government Land into equity. If any questions of Government's privatization or private sector-led development are to arise here then that equity can be offloaded onto via the Stock Exchange or purchased by the Developer/Investor so long as the public estate recovers value for money for its prime assets.

Other provisions relating to Government Land would also ensue.

RECOMMENDED:-

- a) Where unsolicited development or infrastructure proposals are to benefit from provision of government land, such land shall not be granted to the developer or investor free of charge.***
 - b) If Government Land is to be provided to the Project at concessional rates then there must be provisions for future recovery of the market value of the land.***
 - c) For Government land provided to Investors or Developers at concessional prices or charges, the proposed Government lands Act can provide for the inclusion of Clawback or Overage Clauses. Alternatively, the concession or lease agreement can provide for future conversion of the unpaid portion of the market value of the Government Land into equity.***
 - d) Clawback or Overage rights can be secured by a charge on the title to the property.***
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184. The **Disposal of Public Sector Sites by 'Development Competition'**, by Peter Fisher et. al, School of the Built Environment, Northumbria University,

4.2.2 Government Land Disposal and Exchange

Disposal of government land refers to any transaction that alienates government land by sale, lease, exchange, gift, easement, or any other means. Disposal of government land also includes transfer of administration and control of government land from one governmental entity to another or from the central government to local government and vice versa.

The principal issues in relation to the disposal of government land are: -

- a) the transparency of the disposal process; and
- b) the obtainment or achievement of the market value for the land disposed of.

Transfer of government land (and any publicly-owned immoveable assets) to private users has to follow transparent, competitive processes and to generate resources.

4.2.2.1 Transparency

Experts observe that the alienation of Government land can be an important tool for increasing the supply of land or for cashing-in on the value of land to increase public resources. However in the absence of transparent procedures for the divestiture of Government land, the transactions for alienation of Government land can be the source of corruption (e.g. bribery of government officials to obtain public land at a fraction of market value), squandering of public wealth, etc. As such, publicizing transactions involving Government land provides public scrutiny to the process and limits the potential for bad governance and land speculation.

Box No. Pitfalls of Lack of Transparency in Government Land Disposal¹⁸⁵

A major development issue is political corruption and the looting of state assets. This takes place at the highest level in government and should be distinguished from bureaucratic corruption in which lowly officials extract payments for undertaking services the state should provide free for its citizens. Political corruption takes the form of land grabbing and soliciting bribes for concessions, contracts, privatisation, legal judgments, helpful regulations, and favourable tax assessments. The extracted resources are used for the preservation of power and its extension. It is characterised by favouritism and patronage politics, which includes politically-motivated disposals of state property assets. State land concessions can be given to private companies in return for political funds and the perpetrators can prevent the government agencies that should provide checks and balances from operating so that they thereby gain judicial impunity.

185. Source, Report of the FIG/FAO International Seminar on '*State and Public Sector Land Management*', by Dr. Richard Grover, Verona, Italy, September 9-10, 2008, www.fig.net/commission7/verona_fao_2008/fao_summary_grover.pdf

Transparency refers to the accessibility of the processes involved in decision making in addition to the outcome and to information itself. In its narrow sense, transparency refers to the description that is attached to an object through which one can see. A transparent process is one that is consistent, predictable and impartial and the outcomes from the processes are predictable and in accordance with published policies or laws, rules and regulations. The pertinent policies, rules, regulations and laws are available and easy accessible. There is legal redress and enforcement of law by an impartial judiciary in the event of inconsistency.

Applied to government land disposal, it implies that the process should be open and that that there should be good communication between all interested parties, including, in particular, the public at large. According to Prof. Kironde, *“The role of the State is to manage land in the public interest. Its own performance as land owner and regulator is critical to governance. It is important, therefore, that those institutions responsible for land governance (including those with responsibility over land owned by the State) operate in a transparent, accountable and efficient manner.”*¹⁸⁶

Good land governance requires transparent and accountable management of public land assets for the public interest, including processes by which government land or public land assets are released or disposed of by the State. There should be fair, just and effective policies, procedures and regulations for the disposal of public assets, concessions, and land exchanges and these and the transactions that result should be transparent with public disclosure.

According to the pertinent Land Governance Indicator (LGI) from the World Bank’s *Land Governance Assessment Framework Manual*¹⁸⁷, it is important that transfer of rights over State-owned land be transparent and monitored (LGI 15).

Box No. Land Governance Indicators for Transparent Disposal of Government Land	
LGI-15. Transparent process and economic benefit: Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited.	
i).	Most public land disposed of in the past 3 years is through sale or lease through public auction or open tender process.
ii).	A majority of the total agreed payments are collected from private parties on the lease of public lands.
iii).	All types of public land are generally divested at market prices in a transparent process irrespective of the investor’s status (e.g. domestic or foreign).

186. *Improving Land Sector Governance in Africa: The Case of Tanzania*, by J.M. Lusugga Kironde, Ardhi University, Dar es Salaam, Tanzania. Paper prepared for the “Workshop on “Land Governance in support of the MDGs: Responding to New Challenges” Washington DC March 9-10 2009.

187. World Bank Study on Governance in Land Administration, World Bank & Land Equity International, April 2010

This indicator measures the extent to which the transfer of public land is carried out in a transparent manner, ensuring that the government collects the full value of its disposed asset.

Dimensions to be measured:

Dimension (i) checks that the mechanisms for the divestment of public land (sale or lease) ensure that land is disposed of at market price and those potential buyers are not excluded from the transaction. These requirements are met when public transactions occur through public auctions or open tenders:

(i) The percentage area of state property that is divested (either by sale or lease) through an open and transparent mechanism is high.

In practice, it is also important to verify that agreed payments reflect market prices and are effectively collected by the government, and public land is sold or leased in a transparent process at market values. These considerations are measured by dimensions (ii) and (iii):

In our opinion, in Uganda, there is the need to curb high levels of administrative discretion, which, coupled with a lack of clear rules and regulations, are conducive to the persistence or facilitation of phenomena such as the corrupt allocation and management of government land or other public land assets, and land allocation more generally.

The abject lack of transparency is best exhibited by the ‘allocations’ of 144 Acres of former Hospital Land to over 158 individuals and a few firms. According to a local Ugandan Daily, Butabika Hospital land was parceled out to elite individuals. No criteria was given as to how the Uganda Land Commission came to decide on the 158 individuals and the few investors who benefited from the Land Allocation.¹⁸⁸

One of the key tenets of transparency is *publicity*. Publicizing transactions involving government-owned land provides public scrutiny and limits the potential for bad governance and land speculation. Public scrutiny of actions and use helps to keep the system fair and equitable.

According to Land Equity International: -

Transparency in activities and decision making creates greater accountability for performance. This in turn creates incentives for people in positions of trust to perform better. It also creates disincentives to become involved in corruption at all levels; from favouritism and abuse of discretion at one end of the scale to fraud and bribery at the other. The incidence of corruption in a society is inversely related to the quality of governance and the welfare of citizens.¹⁸⁹

According to another Land Governance Indicator (LGI) from the Land Governance Assessment Framework Manual, (LGI-12) information on Public land ownership must

188. ***Butabika Hospital land sold***, The New Vision, Wednesday, 22nd November, 2006, <http://www.newvision.co.ug/D/8/13/533669>; ***ULC defends Butabika land sell***, by Cyprian Musoke, The New Vision, Wednesday, 6th December, 2006, <http://www.newvision.co.ug/D/8/13/536353>

189. Public and Municiple Land Management_FINAL July 07.doc, P. 33

be publicly accessible. After Public land assets including government land are inventoried (i.e., when the majority of public land is clearly identified on the ground or on maps), all the information in the public land inventory must be accessible to the public and key information for land concessions is recorded and publicly accessible.

The relevant land information on public land assets (including government land) should not only be accessible for the elites. Transparency is best served when the public at large has statutory rights to access the information at any time and without restrictions regarding the object of interest. Land information being open for public inspection, provides effective opportunities to monitor illegal land sales and land grabbing. The general public interest is deemed more important than the individual privacy rights of right-holders. Considerations of personal privacy protection may prevent actions that would otherwise expose illegal interests in land.

According to the South African White Paper on Land Policy, South Africa, the transparency and legitimacy of the process of allocation or disposal of government land must depend significantly on the extent to which information is widely disseminated to all interested parties, including the basis on which decisions are to be made.

Government land, like all public land assets should be sold for not less than the market value of the land. Alienation or disposal of Government land, like with all public land assets, is essentially a one-way process. When it is alienated, it is gone. Short-term financial gains to the Government may in many instances be overshadowed by ongoing costs, including the opportunity costs of missed superior solutions.

Criteria need to be put in place for sale, lease or exchange Government land and for transfer of Government land from central government to local authorities; these criteria must be properly and adequately regulated and must guarantee a transparent approval process. The terms and process of disposal should be fair to all potential bidders as well as being in the interests of society as a whole.

According to Land Equity International:-

Protocols for the disposition of public land shall ensure an openly contestable process (e.g. auction, public tender, etc.) with the upset price being market value. Market value will be assessed by an independent and competent valuer who is accountable under the law.

Experts also caution that decisions on the disposal of Government land have to be based on a clear development orientation for the future use of the land in the framework of urban or rural development, investment or poverty reduction stratagems; the disposal of Government land must, as well, be consistent with land use plans. According to these:-

For state land sold to private investors it is assumed that these lands would be developed based on the investment interest of the purchaser and consistent with the local master plan and its development restrictions.

This is necessary to prevent land speculation. Government land should only be transferred to destined use in a timely manner.

An oversight government body must have the authority to request more detailed information if needed from any department or institution in order to guarantee a right-based disposal process. **In the previous edition of this Issues Paper, we had suggested oversight by Parliament.**

There should be fair, just and effective regulations for the disposal of public assets, concessions, and land exchanges and these and the transactions that result should be transparent with public disclosure.

RECOMMENDED THAT:-

- a) All Government land shall be disposed of through sale or lease through public auction or open tender process.***
- b) All Government land shall be disposed of at market prices in a transparent process irrespective of the acquiring investor's status (e.g. domestic or foreign).***
- c) The provisions for the disposition of public land shall ensure an openly contestable process (e.g. auction, public tender, etc.) with the upset price being market value.***
- d) Market value will be assessed by the Chief Government Valuer or by an independent and competent valuer who is accountable under the law according to the principles or guidelines in the next section titled, Market Value'.***
- e) For that purpose, Open Market' is defined as a solicitation of offers giving the public fair and equitable opportunity to acquire real property from or to dispose of real property to the government***
- f) The terms and process of disposal shall be fair to all potential bidders as well as being in the public interest.***
- g) The total agreed payments for Government land be disposed of shall be collected from private parties on the sale or lease of the Government land. The Records of the disposal of Government land (whether by way of concession, sale or lease or other mode of disposal) shall be open to audit***
- h) Where Government land disposals are intended to or for non-government sector acquisition, these shall first be advertised the Press so as to give an opportunity to all aspiring bidders to acquire Government Land and the public***

at large shall have statutory rights to access the information on government land sales, leases or concessions at any time and without restrictions regarding the object of interest.

- i) *For government land leased or sold to private investors' provision shall be incorporated to ensure that these lands are developed based on the investment interest of the purchaser and consistent with the local development plans and its development restrictions. This is necessary to curb speculation.*
-

Planning Issues vis-à-vis Disposal of Government Land

In the previous version of this Issues Paper, we proposed that:-

All land in a planning area that is to be disposed of by whatever means should first be surveyed and planned in accordance with the respective laws.

In a comment on this proposal, the LRWG stated as follows:-

Not applicable re-planning for redevelopment should be after disposal.

Scholars who have written about this area advise that the Planning component actually enhances the value of Government Land (and other public estate land assets such as Public Land, e.t.c.). According to one:-

The returns to government agencies from selling public land increase if rezoning and redevelopment for medium to high density development occurs. This neatly fulfills two current aims of government – urban consolidation and securing short-term windfall funds.¹⁹⁰

The ***Public and Municipal Land Management Study*** also observed that:-

The value of the public land portfolio is enhanced by ensuring that the allocation of land is closely matched to the public purposes for which it is intended. Custodians of land must constantly review the achievement of the purposes for which the land is designated.¹⁹¹

The same Study goes on to say that:-

190. ***Public Lands, Process and Public Policy - The Links between Government Asset Disposal and planning for Redeveloping Urban Areas – Is something missing?*** Helen Gilbert, University of Technology, http://www.griffith.edu.au/_data/assets/pdf_file/0005/81257/city-governance-15-gilbert.pdf

191. Land Equity International, Final Report, July 2007. Accessible at: - http://www.mop-gov.ps/web_files/projects_file/Public%20Land%20Report_FINAL%202%208%2007.pdf

“4.14 Lessons to be Learned

There are perhaps two principles for the administration of State Land that can be inferred from this experience.

Moreover, there needs to be a check against land-use planning instruments. Land-use planning is another core business of government and public land assets can be an important consideration in achieving the objectives of plans. The plans may be municipal zoning plans but they may also be more strategic forward-looking plans.”

The ***Draft Conceptual Framework: Study on Governance in Land Administration*** also carries similar advice vis-a-vis disposal of lands from the public estate. It says:-

Disposal decisions have to be based on a clear development orientation for the future use of the land in the framework of urban or rural development, investment or poverty reduction strategy as well as consistent with land use plans.¹⁹²

Finally, we note from a Samoa Statute regulating disposal of Government Land that provides as follows:-

29. Board may alienate land - The Board may alienate Government land under this Act either after calling for applications therefor or without competition in accordance with the provisions of this Act.

PROVIDED THAT when disposing of any Government land under this Act, the Board shall ensure that regard is had to the provisions of any relevant plan approved under the Planning and Urban Management Act 2004 applying to the land, and that such requirements are reflected in the terms of the sale or lease of the land.

We therefore maintain our recommendation that *Government land be disposed off should first be surveyed and planned in accordance with the respective laws.*

192. ***Draft Conceptual Framework: Study on Governance in Land Administration***, by Land Equity International, 26 May 2008. Courtesy of Land Equity International.

4.2.2.2 Market Value

In the context of disposal of government land, Market Value has been described as the price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.¹⁹³

In most policies for disposal of public estate lands, an independent evaluation should be carried out by one or more independent asset valuers prior to the sale in order to establish the market value on the basis of generally accepted market indicators and valuation standards. Market value will be assessed by an independent and competent valuer who is accountable under the law. The market value thus established is the minimum purchase price that can be agreed.

In international best practice, the benchmark for any sale of property of the *public estate* (government land included), should be '*market value*'. As such any lower price must be justified in terms of demonstrable and measured net benefits to society and the public. So far as we can see, the principle of disposal at market value is universally applied and shall be observed unless there is an overriding public interest benefit. The demonstrable and measured net benefits or overriding public interest benefits that can justify a departure from the general principle can be economic development, social development or environmental benefits. Moreover, given that the land in question is a public asset, the public has a right to be fully informed of all aspects of any transactions and the reasons for the departure from the fundamental principle that public benefits shall be maximized on the disposal of these public assets.

Additionally, a disposal at less than the market value shall need to be cleared by a separate oversight body.

As an illustration, in England, Local authorities are given powers under the Local Government Act 1972 (Section 123) to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies). A local authority may, however, dispose of land at a consideration that is less than the best that may reasonably be obtained, for reasons of economic, social and / or environmental well being of the area. But in that case, the Consent of the Secretary of State to the disposal is required.

Similar oversight provisions and a consent regime would need to be instituted if an overriding public interest exception is to be permitted.

193. (Canada Federal) Policy on Management of Real Property

4.2.2.3 Internal Transfers of Government Land

We looked at the experiences in international practice with regard to the valuation of government land on disposals or transfers between government departments in Canada, the United Kingdom and Western Australia.

Both in Canada and in the United Kingdom, transfers between departments are at market value, to be certified by a qualified valuer. In the UK, internal transfers do not need to be tested in the open market. The open market valuation certificate will be sufficient to satisfy requirement of achieving best value in the disposal. The acquiring department will be expected to pay at the point of acquisition.

In Canada, the official approach or view is that Real property has value. As such, when conducting transactions, departments have to determine the likely value of the interests, rights, and benefits in the property by means of an appraisal or estimate as set out in the applicable Canada Federal Government **Appraisals and Estimates Standard for Real Property**. The exception to this rule relates to what are termed custody transfers. Under Canada Federal Government Real Estate Policies, a Custody Transfer is described as a transfer of administration of real property that supports an adjustment to or transfer of program accountability. Therefore, custody transfers are conducted at a nominal sum because all associated resources, including assets, are transferred from one department to another due to a government reorganization or realignment of program responsibilities.

In Western Australia, in the case of a Sale to another government agency, the property is offered to the requesting (or acquiring) agency at full market value. That full market value is based on a Valuer General's Office valuation, and subject to negotiation between the selling and purchasing agencies.

RECOMMENDED THAT:-

- a) A disposal of government land shall be at market value.***
- b) Market Value is the price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.***
- c) An independent evaluation shall be carried out by one or more independent asset valuers prior to the sale in order to establish the market value on the basis of generally accepted market indicators and valuation standards. Market value will be assessed by an independent and competent valuer who is accountable under the law. The market value thus established is the minimum purchase price that can be agreed.***

- d) *the principle of disposal at market value shall be strictly observed unless there is an overriding public interest benefit or demonstrable and measured net public benefits that can justify a departure from the general principle. Overriding public interest benefit or demonstrable and measured net public benefits can be economic development, social development or environmental benefits.*
 - e) *A disposal of government land at a consideration that is less than market value shall be subject to the oversight of the Parliament Committee in charge of the custodian or user of the government land to be disposed of and shall be subject to the prior consent of the minister.*
 - f) *Disposals and transfers of government land between government agencies and departments shall be at market value, to be certified by a qualified valuer. The acquiring agency or department will be expected to pay at the point of acquisition.*
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4.2.2.4 Issues in disposal of Government Land at Local Government Level

According to the definition above, disposal of government land also includes transfer of administration and control of government land from one governmental entity to another or from the central government to local government and vice versa.

It is argued that there can be no real local autonomy (at local government level) without a sound economic base and that significant own resources are required for fiscal decentralization. Lands of the public estate can be an important source of local government. In a similar vein the Project Appraisal Document for the PAC states that:-

“Completing the inventory of Government land will provide a basis for deciding more systematically on how to bring such land to its best use (as well as to redress past appropriations). This will also be critical to ensure better governance and possibly improved collection of land taxes by Government at the local level.”¹⁹⁴

There are thus significant socio-economic expectations to derive from Government Land at the local government level.

194. **Project Appraisal Document on a Proposed Credit to the Government of Uganda for a Second Private Sector Competitiveness Project**, The World Bank, Private Sector Unit Africa Region, July 2, 2004, http://www.worldbank.org/afr/padi/UG_Private_Sector_PAD.pdf.

Experts advise¹⁹⁵ that at the local-government level, special attention must be given to the sometimes non-transparent and non-accountable behavior of local leaders. Examples given include corrupt practices of land disposal and land conversion (less than market value and favoritism); the shift of public ownership to municipal enterprises (where surplus public land and the revenues could disappear in a nontransparent system); and manipulating zoning combined with land conversion for private gain.

In particular reference to Uganda, the National Land Policy has identified that District Land Boards operate as if they are owners of the public land assets which they hold whereas, in fact, they hold it in trust on behalf of the citizens of Uganda.

As remedial strategies the National Land Policy suggests that through an *Act of Parliament*, Government shall *define the manner* in which local government will hold and manage such land taking into account the principles of public trusteeship, transparency and accountability; and *define the terms and conditions* under which such land may be acquired, used or otherwise disposed by the government and local governments.

There is in force, at present, the **Local Governments (Public Procurement and Disposal of Public Assets) Regulations**,¹⁹⁶ 2006. This Subsidiary Legislation contains most of the principal benchmarks required for transparent acquisition and disposition of Government Land by local governments. It is indeed a paradox as to why this Subsidiary Legislation has not been implemented and applied even to the most controversial disposals of local government public estate such as Kisekka Market.¹⁹⁷

Admittedly, some aspects like whole-of-government or government-wide approaches to acquisition and disposition of Government Land by local governments are not sufficiently emphasized or rooted in this Statutory Instrument. Also somewhat lacking from the S.I. are rules about market value valuations; reliance is mainly on a board of survey for valuations and it is not a surprise that valuable local government assets have been sold to staff at ridiculous prices – such as Shs.100,000/= for a Four-Wheel Drive Vehicle.¹⁹⁸

The Consultant proposes that during stakeholder consultations, the Consultant shall deliberate with various stakeholders such as the Auditor general, the Public

195. Good Governance in Public Land Management, W. Zimmermann

196. Statutory Instrument No. 39 of 2006.

197. **Police shoots rioters at Kisekka Market**, Tuesday, 12th February, 2008, by Chris Kiwawulo, The New Vision Online : <http://www.newvision.co.ug/PA/8/13/611236>

198. **KCC clash over vehicles**, by Mary Karugaba, The New Vision Online, Sunday, 4th July, 2010, <http://www.newvision.co.ug/PA/8/13/724816>.

Procurement and Disposal of Public Assets Authority, local governments and Parliamentary Committees on Local Government in order to come to a conclusion whether to adopt this Subsidiary Legislation with modifications or to come up with dedicated provisions in the proposed Government Lands Act.

RECOMMENDED THAT: -

- a) The process for disposal government land by local government shall mirror that prescribed for the first and second tier custodians of government land.***
 - b) During stakeholder consultations, the Consultant shall deliberate with various stakeholders such as the Auditor general, the Public Procurement and Disposal of Public Assets Authority, local governments and Parliamentary Committees on Local Government in order to come to a conclusion whether to adopt this Subsidiary Legislation with modifications or to come up with dedicated provisions in the proposed Government Lands Act.***
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4.2.2.5 Exchange of Government Land with Private Land

It is also necessary to deal briefly with *exchange* of government land. Land exchange, also referred to as land-for-land exchange or land swap, is one of the methods of disposal of government land. It can be employed in the disposal of other public immovable assets too. Generally, **Land exchange** means the transfer of lands between two parties where part or all of the consideration is the acquisition of the other's land. Exchanges have two components (an acquisition and a disposition). In a land exchange the disposal and acquisition are combined in the same transaction or series of transactions. Ideally, Lands to be exchanged are swapped on an equal-value basis and the exchange must be in the public interest.

An exchange of *government land* is a land or property transaction where a non-government party exchanges its land for land owned by the government or where a government exchanges a part of its land holding for hitherto privately owned land. This exchange is a tool used by government agencies to acquire land. Ideally, the lands to be exchanged must be of equal monetary value (or monetary adjustments must be made to establish equality of exchange), determined to serve the public interest and preferably located within the same area. But sometimes the property and/or intrinsic value of the private parcels may not be equal to or may be greater than the government lands being considered for exchange.

A land exchange may occur or be required for various reasons. For example, exchanges are used when the government needs to obtain lands that contain important resource

values (e.g., a lakeshore, a wildlife habitat).¹⁹⁹ Land exchanges may also be required for (in amongst other purposes):

- ⇒ facilitating development or expansion of a development or conservation purposes;
- ⇒ facilitating zoning and land-use regulation;
- ⇒ Land readjustment; The LSSP describes land readjustment as involving “*the formulation of partnerships for consolidation or land swapping for the good of a range of stakeholders – occupants, owners, Government and service providers.*” (LSSP, p. 32.);
- ⇒ upon the construction or alteration of road.

One of the principal mischiefs to look out for is that illegal land exchanges usually leave special interest groups favored in land and other natural resource concessions. The regulatory framework for government land management should therefore include carefully drawn provisions for Land exchange (land swap) regulation.

Under Section 53 of the Land Act (***Powers of the commission***), the Uganda Land Commission may, for the purpose of performing its functions under the Constitution and the Land Act, acquire land rights, easements or interests in land by way of *exchange*. Regulation of the disposition of government land by exchange is the subject of purpose-specific Land Legislation of various countries e.g., Indonesia: Decree No. 292/Kpts-II/1995 relative to Forest Area Swapping; Fiji, State Lands (Amendment) Act 1997; Guam Administrative Rules and Regulations; Northern Mariana Islands (USA), Public Purpose Land Exchange Authorization Act of 1937. In other Countries, the provisions relating to exchange of government land are contained in the substantive land law, e.g., Section 36 (*Exchange of Government and other land*), in the Lands, Surveys and Environment Act 1989 of Samoa 2008; section 12A of the Land Act 1958 Victoria, Australia. USA provides for competitive land exchanges that involve competitive bidding for Federal lands being considered for disposal.²⁰⁰

BOX NO. Lands, Surveys and Environment Act 1989, Consolidated Acts of Samoa 2008²⁰¹

36. Exchange of Government and other land - (1) The Minister may, in any case where he deems it expedient in the public interest to do so, grant in fee-simple any area of Government land in exchange for the fee-simple of any other land, and on any such exchange the Board may pay or receive any sum by way of equality of exchange.

199. **Public and Municiple Land Management**, Land Equity International, July 07, P. 45

200. US Bureau of Land Management (BLM) <http://www.blm.gov/>, Federal Land Exchange Facilitation Act (FLEFA) of 1988 and Section 206 of the Federal Land Policy and Management Act (FLPMA).

201. Accessible via: www.paclii.org

(2) Any sum payable by the Government under the last preceding subsection shall be paid out of money to be appropriated by the Legislative Assembly for the purpose.

(3) All land acquired by the Government by way of exchange under this section shall become Government land subject to the provisions of this Act.

A few exchanges of Government Land have been mooted in the recent past. These included Mbuya Army Barracks, Nsambya Police Barracks and the CMI Headquarters at Kitante. A good government land exchange provision would possibly also cover the disposal of Shimoni Demonstration School.

We therefore RECOMMEND that:-

- a) On a land exchange, the provisions relating to acquisition and disposal of government land, particularly as relates to transparency should be complied with.*
 - b) The Uganda land Commission or any custodian or user or other Government agency or organ that is involved in an exchange of government land shall procure or ensure to the maximum extent achievable that, the lands to be exchanged must be of equal monetary value (or else that monetary adjustments are made to establish equality of exchange.), determined to serve the public interest and preferably located within the same area.*
 - c) The provisions relating to valuation of government land for purposes of ascertaining market value shall be applicable to and shall be complied with on an exchange of Exchange of government immovable property with private land.*
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4.2.2.6 Sale Proceeds

Experts argue in favour of a policy of re-investing the proceeds of disposal of land from the public estate; that the proceeds should be reinvested in the public estate portfolio. They observe that, as a general principle, the aggregate value of the public estate portfolio should be enhanced over time and not depleted by indiscriminate sales. They accordingly put forward the principle that the value of the public estate asset portfolio should not be run down to the detriment of future generations and the proceeds of land dispositions are to be re-invested into improvement of the public estate or into acquisition of lands to add to the public estate so as to fulfill new requirements. For this reason most countries adopt the principle of reinvesting sales proceeds back into the public estate, either by investing in improving the land, or by acquiring new public land assets.

The idea of re-investing sale proceeds into the public estate portfolio or more specifically giving the disposing department a share of the sale or disposal proceeds is a very appealing prospect in Uganda. Frequently, public departments that are also underfunded due to budgetary constraints are stripped of their prime and valuable land assets and those assets are sold or given to Investors. An example is the former Uganda Television site at Nakasero Hill, Butabika Hospital Land and, to an extent, Uganda Prisons Land at Luzira. To be best of our information, these prime land sites are then leased by the Uganda Investment Authority to investors. Arrangements may be made in some cases, to procure alternative sites to the losing department. But most certainly, the alternative site is not of the same value and in the case of Uganda Television and Butabika Hospital no alternative sites seem to have been substituted. In the case of Mulago Hospital, although the incumbent loser of the Kitante Courts is the CMI, yet the Doctor's Village as the original user is an invaluable facility and its replacement in the Hospital vicinity is probably impossible given the current land Prices in the area. Some Ministries are apparently stripped of their assets altogether without any alternative land being procured in substitution and without any financial benefit to the Ministry. An example is the recent queried sale of Plot No. 133 Sixth Street, Industrial Area to a private investor²⁰².

Moreover, the Premium and Lease payments do not go back to the losing agency, department or ministry. Yet despite all the commendable efforts of Government in funding public services, the truth is that these losing agencies, departments or ministries do actually need the revenue. The partial deployment of the sales proceeds in obtaining alternative sites outside the CBD can also facilitate the decongestion of the City as well as encouraging the development of suburban or outlying areas.

202. ***Otafiire and Kabwegyere named in Sale of Govt Stores***, by Yasiin Mugerwa, *The Monitor*, Monday August 23, 2010, <http://www.monitor.co.ug/News/National/-/688334/975856/-/view/printVersion/-/ba3e8a/-/index.html>

Admittedly some of these institutions are ‘not juridical persons’ and are therefore incapable of owning land. The lack of autonomy means that their revenue also goes to either the Invest Authority of the Consolidated Fund. However, in international practices that we have seen, the revenue from Government Land sales can be returned to the agency, ministry or department that has lost the land via the sale, even where the revenue was first paid into the Consolidated Fund; via arrangements akin to those used in Uganda for Central Government support to Local Government budgets.

Under Canadian Government Land disposal procedures, custodians who wish to share in the proceeds of sale must submit an investment plan to show how the funds will be re-invested in public assets. The Canadian Treasury Board has authorized the sharing of 100 per cent of net proceeds from the sale or transfer of surplus real property. The Canada Federal Directive on the Sale or Transfer of Surplus Real Property provides that:-

- “6.10 To share in the net proceeds from the sale or transfer of surplus real property custodians must:
- have an approved **investment plan**;
 - reinvest the proceeds in real property, consistent with their approved investment plan; and
 - satisfy the reporting requirements of the Treasury Board...”²⁰³

In Western Australia, the Asset Disposal Policy also contains a protocol for Disbursement of Net Proceeds of Sale. Following settlement of the price for the sale or disposal of the land, revenue is initially returned to the Consolidated Fund. Funds are then disbursed according to certain asset disposal incentives scheme arrangements. The policy provides that:

“3.1 Base Case for Retention of Sale Proceeds

As a standard base policy position, where an agency is disposing of surplus assets with a value of less than \$2 million, 50% of the net sale proceeds (total sale proceeds minus sale costs) can be retained to contribute towards an agency’s unfunded capital works program requests (such as financing asset acquisition, replacement and improvement), or to reduce debt over the forward estimates period. This base case is subject to the normal budgetary rules and approval processes (for example the annual, midyear and capital investment processes). The net proceeds of sale under the base case do not necessarily have to be redirected towards purchasing replacement assets of the same asset class, to deliver the same service, but should be directed towards funding an approved capital works project.

...

Proceeds would not be available to fund non-capital works requirements, such as ongoing operating costs (e.g. salaries, wages, and utilities).

203. Directive on the Sale or Transfer of Surplus Real Property, Treasury Board of Canada, <http://www.tbs-sct.gc.ca/>

3.2 Retention of Sale Proceeds Above the Base Case

Where an agency considers that more than 50% of the net proceeds of sale should be retained, or where the asset to be disposed has a value higher than \$2 million, the distribution of net sale proceeds must be specified in a disbursement agreement between the agency and the Department of Treasury and Finance.

This Department may support a request from the agency to retain more than 50% of the net proceeds of sale, in the following circumstances:

- Where an agency is replacing an asset with a like asset (i.e. within the same asset class) to deliver the same services, then the Department of Treasury and Finance may support disbursement of 100% of the net proceeds of sale to the agency.

RECOMMENDED:-

- a) The proposed Government lands law shall EMBRACE the principle of reinvesting sales proceeds back into the public estate, either by investing in improving the land, or by acquiring new public land assets***
 - b) The Law shall also provide for the sale proceeds (Price, Premium or Lease payments) that are not reinvested to be channeled back to the losing agency, department or ministry if that agency, department or ministry has have an approved investment plan and will reinvest the proceeds in real property, consistent with their approved investment plan.***
-

4.2.3 Terms and conditions of grants of Government Land

Under the repealed public Land Act, Cap.201 (1964, Revision) and the Public Lands Act, 1969, there were standard terms and conditions of every grant of public land. These were well thought out and covered the whole country. They made land administration easier and did not leave too much discretion to public officials.

These terms also required controlled vices like speculative acquisition of Government land and step-in-rights for failed incomplete projects whose presence, say in City centres may cause insecurity or other nuisances. Additionally, quite often on unsolicited infrastructure or development projects, the developer promises heaven in order to lure the Government into ceding a grant of prime Government land. However, subsequent to the grant, the Developer ends up with a Project unbefitting of the initial promises made to Government.

In one or more cases, a Developer who acquired prime Government Land for a CHOGM Hotel may have ended up building a Shopping Mall.

We recommend that in case of disposal by way of conditional freeholds and leases the proposed law should set certain standard terms covering amongst other matters;

- a) The duration of initial terms of leases in case of a development or redevelopment lease.***
- b) The conditions for extension of the initial term of leases***
- c) The periods or intervals for rental revision and the formula for such revision***
- d) The grounds for and the process of forfeiture of leases.***
- e) Courts powers to grant relief against forfeiture incase of those breaches capable of correction or atonement by monetary damages including terms of such relief but curbing the speculative extensions of lease.***
- f) Options to renew a lease in case the development covenant was compiled with***
- g) The regulation of Rights of assignment or transfer of leases so as to curb land speculation and pseudo-investors***
- h) Regulation of surrenders of leases and restrictions on variation of lease that would compromise the public interest.***

- i) Disposal of developments on land in case a lease is not renewed***
- j) A regime of development security or performance/delivery criteria backed by security***
- k) Step-in rights in case of failed projects and Long-stop dates where the lease will be terminated for non-performance***
- l) Mechanisms to convert promises in Business or Project Proposals into binding and enforceable obligations in case of developer or investor changeability.***

LWRG Comments on this part of the Previous version of this Issues Paper

<p>The Law Review Working Group commented on this part of the previous Issues Paper that the recommendations under this heading were :</p>
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<p style="padding-left: 40px;"><i>To be catered for under Land Regulations.</i></p>

<p>We propose that the content be considered by stakeholders and after a decision will be made as to where to appropriately locate these provisions.</p>
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4.2.4 Oversight and Accountability - Reporting and Transparency Requirements

In the previous edition of this issues Paper, the Consultant proposed that the Commission should be required to comply with the other general public sector performance and transparency requirements, for other public organizations in Uganda such as conferred via:

- i) the scrutiny of Parliament and its independent accountability committees; and
- ii) the scrutiny of Government and its compliance and reporting requirements by independent offices such as the Auditor General, the Inspector General of Government, e.t.c.

Like other public organizations the Commission should be required to cause to at the end of each Government financial year, a public certificate signed by its chairperson and secretary acknowledging their responsibility for the proper and due regard for the safeguarding of Government land and their compliance with those statutory duties and responsibilities.

The Consultant proposed that the original of that Certificate shall be delivered to the Chairperson of the Parliament independent accountability committee in charge of lands or Government assets and a copy of the certificate shall be delivered to the Minister responsible for Lands. The Commission shall cause a copy to be published in a national newspaper together with a summary of the Government land transactions that have taken place in that year.

The Consultant therefore **RECOMMENDED that**

Like other public organizations the Commission should be required to issue, within three months after the end of each Government financial year, a public certificate signed by its Chairperson and Secretary acknowledging their responsibility for the proper and due regard for the safeguarding of Government land and their compliance with those statutory duties and responsibilities. The original of that Certificate shall be delivered to the Chairperson of the Parliament independent accountability committee in charge of lands or Government assets and a copy of the certificate shall be delivered to the Minister responsible for lands. The Commission shall cause a copy to be published in a national newspaper together with a summary of the Government land transactions that have taken place in that year.

The Law Review Working Group in its comments on this part of the earlier version of the Issues Paper stated that:-

On other reporting and transparency requirements are all in place under Government procedures. The consultant does not have to remind us of what is already in place.

The measures that the Consultant proposed are intended to improve land governance particularly in the area of government land management. Land governance has been defined as the political and administrative authority addressing the allocation and management of land at all levels²⁰⁴. Good land governance is characterized by and made operational made operational through (in amongst other things) participation, transparency, accountability, rule of law, effectiveness and equity.

One of the leading experts on Government, Public and State Land Management has cautioned that²⁰⁵:-

“ACCOUNTABILITY AND TRANSPARENCY

...

There is the need to curb high levels of administrative discretion, which, coupled with a lack of clear rules and regulations, are conducive to the persistence or facilitation of phenomena such as land capture, the corrupt allocation and management of public land, and land allocation more generally. Most of the causes and conditions contributing to weak governance and corruption in these areas are best and most sustainably addressed by comprehensive institutional reform and capacity building and concern performance evaluation, regular auditing and reporting, service orientation, budgeting and access to information, and the nomination of an inter-institutional oversight board. Especially in countries with political corruption, the design and implementation of good governance and anticorruption strategies is a politically sensitive issue, with powerful interests standing to lose out in the process and with results manifesting themselves in the medium to long term, rather than in the short term.”

To effectively prevent or deter corruption and fraud on an ongoing basis, an appropriate oversight function must be in place. Oversight can be performed within the Uganda Land Commission and in the Ministry. The Minister will also maintain a general oversight of all land agencies under the Minister’s control. Beyond that oversight arrangements for public agencies are also extended by law to include the Inspectors-General of Government, anti-corruption and audit agencies, and legislative bodies.

In most countries, parliament has the constitutional mandate to both oversee government and to hold government to account; often, audit institutions, ombudsmen and anti-corruption agencies report to parliament, as a means of ensuring both their independence from government and reinforcing parliament’s position at the apex of

204. GLTN Glossary of Terms

205. **Effective and Transparent Management of Public Land Experiences, Guiding Principles and Tools for Implementation**, by Willi ZIMMERMANN, Germany, FIG Article of the Month December 2008, accessible at: www.fig.net; **Public and Municipal Land Management Study**, Land Equity International, Australia, July 2007.

accountability institutions. At the same time, parliaments can also play a key role in promoting accountability, through public hearings, and parliamentary commissions²⁰⁶.

From the extensive Literature review that we have conducted, Canada emerges as the one of the best jurisdictions in terms of institutional arrangements for accountability and transparency in the management of the public estate²⁰⁷. In addition to oversight of real property administration and management by the Government of Canada, through ministers of the Treasury Board supported by the Treasury Board of Canada Secretariat, parliamentary oversight is provided by agents of Parliament and by parliamentarians through the committee system of the House of Commons. Committees of Parliament have roles that include oversight but extend as well to a review of the adequacy of government laws, programs, and policies.²⁰⁸

In their oversight role, the main objectives of the Parliamentary Committees are to enhance the accountability and improve the public performance reporting of executive branches and agencies.

By proposing these reporting obligations and the appurtenant checks and balances, the Consultant is not re-inventing the wheel. Instead the Consultant seeks to cement comprehensive institutional reform and capacity building. The kind of reports and responsibility points that the Consultant is proposing for government land governance already exist in respect of privatization of public enterprises in Uganda. Privatization is one of the avenues of disposal of government land and the public estate.

Without comprehensive legislative oversight and reporting responsibilities, there may not be enough checks and balances on executive action in disposal and management of the public estate thus putting the future of public land assets in uncertainty.

In reaching the decision to proffer this solution, the Consultant has had regard to the advice of experts who advise that:-

As an entry point for assessing and discussing the current state of the art of public land governance in any country, one could best check the Governance Research Indicator

206. **The Role of Parliaments in Curbing Corruption**, by Rick Stapenhurst , Niall Johnston , Riccardo Pelizzo, World Bank Publications, September 2006

207. **Effective and Transparent Management of Public Land Experiences, Guiding Principles and Tools for Implementation**, by Willi ZIMMERMANN; **Public and Municipal Land Management Study**, Land Equity International, Australia, July 2007; FAO, Land Reform - Land Settlement and Cooperatives, 2009 – 1; **Report of the FIG FAO International Seminar State and Public Sector Land Management**, 9-10 September 2008 Verona, Italy, Report by Dr. Richard Grover, accessible at: www.fig.net; **State and Public Land Management: Framework Paper** by Dr. Richard Grover & Peter Dent, Presented to the Land Tenure Division of the Food and Agriculture Organization of the United Nations, DRAFT April 2008, courtesy of Dr. Richard Grover.

208. Guide to the Management of Real Property, Treasury Board of Canada Secretariat, <http://www.tbs-sct.gc.ca/rpm-gbi/doc/gmrp-ggbi/gmrp-ggbi-02-eng.aspx>

Country Snapshot (GRICS) rule of law dimension (WBI, 2005). The rule of law dimension reflects the power relations in a country and is directly related to the quality of managing public assets. This is particularly important where political corruption occurs, where institutional and enforcement capacity is likely to be weak, and where, consequently, the timing, sequencing and design of reform are crucial to ensuring the feasibility and sustainability of the reform process.

The Country Data Report for Uganda on the issues of: -

- i) Accountability;
- ii) Rule of Law; and
- iii) Control of Corruption

is accessible at <http://info.worldbank.org/governance/wgi/pdf/c225.pdf> and the picture depicted thereat is not at all rosy.

The Seventh Poverty Reduction Support Credit (PRSC7) April 7, 2008 has also highlighted public sector governance weaknesses and weak accountability particularly as pertains to land disposals. The Newspaper Reports and Hansards (on Butabika Land, CMI Kitante Court Premises, sale of Ministry of Local Government Premises at Plot No. 133 Sixth Street, Industrial Area to a private investor²⁰⁹, e.t.c.) are available for everyone to see. In many cases, the Commission does not have credible answers on why it took certain decisions.

According to one of the Land Governance Indicators (LGI's) from the recently published *World Bank Land Governance Assessment Framework Manual*,²¹⁰ (LGI-12) information on Public land ownership must be publicly accessible. After Public land assets including government land are inventoried (i.e., when the majority of public estate land assets is clearly identified on the ground or on maps), all the information in the public land estate inventory must be accessible to the public and key information for land concessions is recorded and publicly accessible.

The relevant land information on public land assets (including government land) should not only be accessible for the elites. Transparency is best served when the public at large has statutory rights to access the information at any time and without restrictions regarding the object of interest. Land information being open for public inspection, provides effective opportunities to monitor illegal land sales and land grabbing. The

209. ***The Monitor***, Monday August 23, 2010, by Yasiin Mugerwa, <http://www.monitor.co.ug/News/National/-/688334/975856/-/view/printVersion/-/ba3e8a/-/index.html>

210. ***World Bank Study on Governance in Land Administration***, (Land Governance Assessment Framework: Implementation Manual for Assessing Governance in the Land Sector), Version 21 December 2009 by Klaus Deininger (World Bank) and Tony Burns (Land Equity International Pty Ltd). Accessible: <http://www.landequity.com.au/documents/LGAFImplementationManual210110-Final.pdf>

general public interest is deemed more important than the individual privacy rights of right-holders. Considerations of personal privacy protection may prevent actions that would otherwise expose illegal interests in land.

The Reporting and Transparency Requirements and the Oversight and Accountability provisions are simply intended to ensure that past mistakes or malfeasance is not repeated.

We therefore maintain our recommendation that:-

Like other public organizations the Commission should be required to issue, within three months after the end of each Government financial year, a public certificate signed by its Chairperson and Secretary acknowledging their responsibility for the proper and due regard for the safeguarding of Government land and their compliance with those statutory duties and responsibilities. The original of that Certificate shall be delivered to the Chairperson of the Parliament independent accountability committee in charge of lands or Government assets and a copy of the certificate shall be delivered to the Minister responsible for lands. The Commission shall cause a copy to be published in a national newspaper together with a summary of the Government land transactions that have taken place in that year.

4.2.5 Law Enforcement and Government Land Recovery

4.2.5.1 The rights of occupants on *Government* land

According to the LSSP, one of the requirements for Legal Reform in the area of Government held land is to provide for a legal framework for the rights of occupants on that land. We also noted some of the challenging issues raised in the Baseline Evaluation Report, in particular that:-

Are occupants of Government land (which category of?) treated as 'encroachers', or 'squatters' or bona fide occupants in parallel to those on privately owned land under SS. 29 and 31 of the Land Act? Don't disputes about Government land require special mechanisms, different from the ordinary procedures and institutions of land dispute management? Should there be a 'Government Land Act' to address all the above matters? What directions should policy take in the above respect?²¹¹

In Land administration the term “squatting” is often used to describe the illegal occupation of land. A squatter is a person who takes unauthorised possession of unoccupied property - a person who possesses land without authority of the owner. Frequently it is the landless people who are forced to squat on land as they have nowhere else to go. Often such squatters will occupy Government Land or State land more so where it has not yet been surveyed or demarcated or is not in use or occupation. They may also encroach upon certain natural resources such as Forests and Game Parks and public land facilities such as Road Reserves.

The LSSP does not use the term “squatter”. It uses the description “occupant”. This should point towards consistency in Government policy. As such, as a starting point, we believe that Government should not contradict its own policies. It should not prescribe a separate set of rules for occupants of Government land, while applying different criteria to occupants of land belonging to private landowners. The criteria and mechanisms that allow such “occupants” to obtain recognized property rights on Government land should generally mirror those for tenancy by occupation under the Land Act. The difficulty in both cases is that the State will seek to regulate the unknown – when it has no systematic information of what is on the ground. Preferably, therefore, any implementation measures should be taken after the completion of the audit or inventory of Government land and the systematic demarcation and adjudication, because these are the only census of who occupies what where since when and how.

According to our research there are two trends in this area of encroachment on government land.

211. *LIS Baseline Evaluation Report*, Ministry of Land, Housing and Urban Development/Geo-Information Communication Ltd, Kampala, Uganda –Final 2007.

One inclination is to outlaw encroachment and in some cases to have encroachers or squatters either subjected to court processes for eviction or punished by criminal sanctions.²¹² Ghana, for example, has on its statute books a law (the *Public Lands (Protection) Decree, 1974 (N.R.C.D. 240)*)²¹³ that makes it an offense to convey or occupy public land without reasonable cause. In Cambodia, the 2001 Land Law declares all unauthorized occupation of the public estate (i.e., public properties of the State and public legal entities) null and void and adds that such occupations “cannot be made legal in any form whatsoever.”

However, even where those laws exist, they are in reality punctured by informal occupation of government lands or the public estate. For example, in nearby Kenya, the law does not recognize the type of tenure called squatting and it is regarded as trespassing. In land registers, such lands are treated as vacant. However, it is also documented that more than 50% of the urban population in Kenya have lived in informal settlements for decades²¹⁴. The Kenya problem of squatters is so widespread even in forests where there are constant incursions by not only the poor and landless but also the rich and powerful for farming or expropriating high valued timber and other forest products.

The other tendency is to view Government land as a livelihood resource for the poor. On this basis, against the arguments for reinforcing the protection of Government land is the view that too often government agencies fail to recognize community-based land and resource rights on this land²¹⁵. Related arguments point out that some of the land occupied by the rural poor is part of the public estate or Government land²¹⁶. The World Bank’s Project Appraisal Document (PAD) for the PSCP II Project also acknowledges that illicit appropriation or disposal of Government land often deprives the poor (who may have relied on such lands for their sustenance) of an income source.²¹⁷

212. State Lands Encroachments Act, Cap. 315, Singapore; State Lands Encroachments Act, Chapter 288, Sri Lanka.

213. Accessible via: - <http://faolex.fao.org/docs/pdf/gha85962.pdf>

214. Chege Waiganjo and Paul E. N. Ngugi: ‘*The Effects of Existing Land Tenure Systems on Land Use in Kenya Today*’ TS6.2 FIG/UN Habitat International Conference on Spatial Information for Sustainable Development, Nairobi, Kenya, 2–5 October 2001.

215. *Effective and Transparent Management of Public Land - Experiences, Guiding Principles and Tools for Implementation*, by Willi ZIMMERMANN, Germany; *Draft Conceptual Framework Study on Governance in Land Administration* by Land Equity International 26 May 2008

216. *Pro-Poor Land Tenure Reform And Democratic Governance* by Ruth Meinzen-Dick, Monica Di Gregorio and Stephan Dohrn; Jennifer C. Franco, *A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective*, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9-10, 2008.

217. At p.22.

The World Bank's 2003 *Policy Research Report* and some Papers by Bank staff²¹⁸ favour the "regularization" of occupancy by 'squatters' of the *public estate* (including Government land) whereby the State gives them legal rights and regularizes their possession²¹⁹. The World Bank also has an Operational Policy (OP) on Involuntary Resettlement that has land law content, spelling out rights that must be honored in the context of Bank projects that result in involuntary resettlement²²⁰. According to this OP:-

A government, under a Bank-supported land administration project, must either (i) allow squatters to remain as squatters on the land it owns; preferably, (ii) provide them with secure rights to that land; or, if it evicts them, (iii) resettle them and compensate them.²²¹

While the Bank's OP is not applicable in this case, still it points towards the direction to be taken.

We also find the preamble to the Constitution of Uganda and the **National Objectives and Directive Principles of State Policy** therein to be relevant in guiding the resolution of this aspect. Directive XI (iii) on the role of the state in development states:

In furtherance of social justice, the State may regulate the acquisition, ownership, use and development of land and other property, in accordance with the Constitution.

We view this Directive in line with one of the objectives for Government Land management, *i.e.*, divestiture of Government Land that is no longer required for public use. This is consistent with the internationally recognized practice that Government Land can also be utilised for redistributing land rights - such as by giving it to landless people²²². We view this as furtherance of social justice.

218. Keith Clifford Bell, **Good Governance in Land Administration**, FIG Working Week Hong Kong, China SAR, May 13-17, 2007

219. **Land Policies for Growth and Poverty Reduction**, by Klaus Deininger, The World Bank, 2003 at pp. xlii and p.75.

220. **Land Law Reform: Achieving Development Policy Objectives** by John W. Bruce, Renee Giovarelli and others, The World Bank, Legal Vice-Presidency, 2006.

221. **OP 4.12, Involuntary Resettlement (April 2004)**. Although this OP is mentioned in the Project Appraisal Document (PAD) for the PSCP II Project (p.18), it will not be triggered since this is not a land Administration or land titling Project but merely a review of Land Administration Laws. The policy covers direct economic and social impacts that both result from Bank-assisted investment projects, and are caused by (a) the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) lost of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

222. **Land Administration Guidelines**, (above), P.22. See also, Moving from Analysis to Action - Land in the Uganda PSCP II, at p.5.

According to one expert:-

This issue must be addressed on two levels. The first is how to avoid future occupations. Far more attention needs to be paid by the donor community to the efficient management of state land assets in developing countries; it is a neglected need, and the neglect has serious consequences in terms of squandering a public resource. The second issue is how to deal with already-occupied land. Any legal jurisdiction must develop a consistent policy and agenda on regularization of informal holdings. It is too important an issue to be dealt with on an ad hoc basis but is also too political of an issue for rules that deny government any flexibility.²²³

In the international experiences that we accessed, in Indonesia ‘*extralegal*’ occupants of State land may in certain cases be given the opportunity to apply for formal recognition of land rights²²⁴. Namibia does not recognize occupancy rights in urban areas and the State retains the right to evict those living informally on State land in urban areas²²⁵. In Trinidad & Tobago Section 6(1) of the State Lands Act states that the Commissioner of State lands shall have the management of all lands of the State, and shall be charged with the prevention of squatting and encroachment of State lands. The Commissioner is also empowered with the responsibility of “*preventing spoil and injury to the woods and forests on such lands*”.²²⁶

In Trinidad and Tobago, the State instituted a programme in 1998 to regularize occupation on State agricultural lands, under a revised leasehold system. The State also instituted a programme to regularize occupation of State and State enterprise lands by residential squatters. The 1998 State Lands (Regularization of Tenure) Act was passed in 1998 to implement these measures. The Act protects squatters on State lands from ejectment, and facilitates the acquisition of leasehold titles by squatters and tenants in designated areas and provides for land settlement areas.

It established a Certificate of Comfort that can be used to confer security of tenure to squatters as the first step in a process designed to give them full legal title. A Land Settlement Agency created by the State Lands (Regularization of Tenure) Act was responsible for converting Certificates of Comfort into Statutory leases. The Act applies to residential squatters in actual occupation of State lands before 1st January 1998. The effect of the State Land Regularization of Tenure Act is that it allows the status of squatters to be regularized.

223. **Land and Business Formalization for Legal Empowerment of the Poor: Strategic Overview Paper**, John Bruce et. al., USAID/ARD Inc, AT P. 41. http://pdf.usaid.gov/pdf_docs/PNADI080.pdf

224. **Land Administration: Indicators of Success, Future Challenges**, Land Equity International Pty Ltd, October 2006, at. P.36.

225. Ibid, at p. P.37.

226. Chapter 57:01 of the laws of Trinidad and Tobago. **Comparative Study of Land Administration Systems - Trinidad & Tobago Case Study**, by Thackwray Driver, Ministry of Agriculture, Land and Marine Resources, Trinidad & Tobago.

Another such experience is from Ghana. In a paper that formed part of the World Bank Project Preparation Report for the Ghana Land Administration Project 2002²²⁷, the Author states in respect of the Ghana Land Title Registration Law, 1986 (PNDCL 152), that Squatter rights are not recognized under the law and no particular provisions have been made for their registration. That law lists the interests, which may be registered but none of them allows for the registration of squatter rights. He, however, acknowledges that there are legislative routes through which informal rights can be registered and that squatters may exploit to register land if they could prove possession by long occupation.

On the other hand, where Government land was already alienated, demarcated or gazetted, no form of “occupancy” should generally be tenable; in that case where Government can prove the landlessness of the occupants, then it shall have to resettle them using the Land Fund as envisaged by the LSSP²²⁸.

Inventory and Adjudication

The main difficulty perceivable with regularization or re-settlement is that the Government to an extent seeks to regulate the unknown; except (and preferably) where implementation measures are only taken after the completion of the audit or inventory of Government land and / or systematic demarcation because these are the only census of who occupies what where and how.

It has been authoritatively stated that the wisdom of adjudication prior to disposal of State land cannot be disputed and that deep-seated dissatisfaction has resulted on many occasions from failure to take this precaution. Accordingly that:-

Adjudication in some form is, with very few exceptions, an essential prerequisite of dispositions of State land. It is, for instance, necessary because governments are often not in a position to know with certainty what land, deemed to be State land, can safely be granted to individuals. The vesting statutes tend to use 'blanket' terms in referring to land to be vested in the State, such as 'waste lands', 'unoccupied lands', ... It often transpires that within the lands so vested in the State there were at the time persons in possession of holdings under a long-established system of absolute ownership or accepted custom, whose rights would be likely to be upheld by the courts. The only way to determine what State land is available for disposition is to ascertain and register (or record the rights of these persons in possession and the extent of their holdings²²⁹

227. ***Comparative Study of Land Administration Systems - Case Study – Ghana*** by Seth Opuni Asiamah; available via the Internet and also reviewed in ***Land Administration: Indicators of Success, Future Challenges***, Land Equity International Pty Ltd, October 2006, at. P.36.

228. See LSSP pages 2 and 32.

229. ***Land Adjudication***, by J.C.D. Lawrance, 1985. The ToR for the Inventory of Government Land attempt to cater for this.

Several Systematic Demarcation projects have already been piloted²³⁰ by Government and Systematic Adjudication and Demarcation is proposed under the proposed LIS Law – assuming the proposal will be accepted, enacted and implemented.

Care must be taken such that a new class of 'landless' people is not immediately created, in readiness for benefit from the Government land re-distribution or to take advantage of the alternative land acquired for the landless via the Land Fund. The attempt to create a solution may easily result into a problem of extra-legal occupation of government land by creating a speculative type of squatter. Regularization of illegal occupation sometimes carries with it risks of encouraging more illegal practices²³¹. Indeed, amongst the causes of squatting and encroachment listed in the Trinidad and Tobago State Land Policy is the “*Encouragement given by periodic regularization*”.²³² It is not surprising therefore that the Trinidad and Tobago State Land Policy states that:-

“The State Lands (Regularization of Tenure) Act No. 25 of 1998 will be amended to eliminate existing policy conflicts, discourage squatting on state lands, make known that the Government does not subscribe to squatting as a means of land acquisition.”

...

The perception on the part of the public appears to be that the Government wishes to legitimize encroachment on state lands. This erratic perception needs to be changed without delay. Government will therefore, make clear the policy pertaining to encroachment, so that there is no ambiguity and publicize such policy. Although clearly a difficult political and operational issue, state will not encourage either openly or indirectly, encroachment of lands. Uncontrolled settlements can lead to inappropriate land use and resource degradation.”²³³

Then there is also the problem of speculation. On signs of progress of a recent project for redevelopment of a Housing Estate in Nakawa Division, Kampala, the composition of the “sitting tenants” was quickly and dramatically transformed, as soon as it became clear that the tenants on the existing Housing Estate would be compensated or offered priority rights to buy housing units on the completion of the proposed development.

230. Under STRATEGIC OBJECTIVE 4 of the LSSP; See also LIS Baseline Evaluation Report at p.39-41; Moving From Analysis to Action: Land in the Uganda Private Sector Competitiveness Project II, by Rexford Ahene; Piloting of Systematic Adjudication, Demarcation and Registration for Delivery of Land Administration Services in Uganda, by Richard OPUT, Paper and Presentation delivered at, the FIG Commission 7/UN-HABITAT Expert Group Meeting on Secure Land Tenure: 'New Legal Frameworks and Tools', UN-Gigiri, Nairobi, Kenya, November 2004.

231. Creation of Land Records Prior to Formal Registration in Lesotho, Qhobela Cyprian SELEBALO, Chief Surveyor, Department of Lands, Surveys and Physical Planning, Lesotho quoting Durand-Lasserve, A, 1996, Regularization and Integration of Irregular Settlements: Lessons from experience, Working paper No.6, UNDP/UNCHS (Habitat)/World Bank.

232. Policy for Management of State Lands by A. A. Wijetunga, Land Use Policy and Administration Project (LUPAP), September 7, 2000.

233. Ibid, at p.12.

This shows how ‘specialized’ speculation can take over and derail the original objectives of a land project.

It is therefore advisable that the implementation of the decisions concerning the rights of occupants on Uganda Government Land be preceded by the audit/inventory program and the demarcation, surveying and valuation of such lands; such that any resettlement or eviction of or the re-distribution of some Government land to such occupants will be based upon the results of the detailed inventorying.

According to the Data Collection Form for assessment of Government Land for the Project for Developing an Inventory of Government Land, the Inventorying Contractor is supposed to collect with regard to each parcel of Government land, the Land use/designated user, any encroachment on the land and its nature if at all. This is the kind of information that can assist in determination of the extent and nature of encroachment of Government land.

The other important point is the timing at which any re-settlement of occupants or re-distribution of Government land is undertaken; a cut-off date. We saw in respect of Trinidad & Tobago that the State Lands (Regularization of Tenure) Act of 1998 only provides for regularization of pre-1998 State land residential squatters,

There is difficulty in coming to a reasonable cut-off date for the recognizable occupants of Government land. In the case of tenants by occupation under the Land Act, the cut-off date was possibly designed by Analogy with Adverse Possession under the Limitation Act.

John Bruce *et al* suggest in a publication produced for the United States Agency for International Development (USAID) that: -

“There are legal mechanisms that can help meet these needs if incorporated into national law. These models include **prescription** (a legal right to recognition of ownership based on long and open occupation of land without permission of the owner) and pre-emption (giving a long-standing occupier first option to purchase the land occupied from the owner). The most fundamental need however is that for governments to accept that what cannot be changed should be formalized. Keeping squatters in legal limbo serves no legitimate purpose and does a good deal of harm.”²³⁴

Prescription is the acquisition or extinction of rights by lapse of time. It (prescription) is the way in which property rights may be legally acquired through possession for a period of time that is continued, peaceable, and without lawful interruption for the legally stipulated period. Under English law, a squatter may acquire title to the property

234. **Land and Business Formalization for Legal Empowerment of the Poor: Strategic Overview Paper**, by John W. Bruce, et al of ARD Inc. for USAID, at p. 41

by adverse possession and the operation of Limitation Acts.²³⁵ Many property regimes provide for the acquisition of land rights through continuous use and/or settlement of an area of land. The period of time which needs to have passed is usually set at several years, in order to give ample opportunity for any competing claims to be raised and settled before definitive rights are acquired in this way.²³⁶

Adverse possession is the occupation of land inconsistent with the rights of the true owner and without his/her permission. After such an unlawful - but undisturbed - occupation for a period normally set down in legislation (*i.e.*, in Uganda the Limitation Act), the legal owner loses his right to recover possession.

Situations may arise where a person who is not the registered or rightful owner of land occupies land without the permission of the rightful owner. Such kind of occupation of land may be deliberate, for instance by a squatter who is intentionally trespassing on the land, or it may be inadvertent, for example by a neighbouring landowner who unintentionally occupies the property. The rightful owner who is wrongfully dispossessed of the land has a right in law to bring legal action against the occupier to recover the land. However, in certain circumstances, the statute of limitation operates, after a period of time, to deny the rightful owner the opportunity to bring such an action. When this happens, the occupier is able to continue in occupation undisturbed except by anyone who can prove a better legal right to possession of the land. This is the essence of the doctrine of adverse possession.

Generally, under Section 5 of the Limitation Act, an action to recover land may not be brought more than twelve years after the date when the cause of action accrued. The cause of action accrues when a proprietor, who was, by right, in possession of land, is dispossessed or discontinues possession. However, the cause of action is deemed not to accrue unless there is a person in adverse possession of the land, in whose favour the period of limitation can run.

Under Act, the effect of the expiry of the limitation period for most other claims is merely to bar the right of action or remedy through litigation. For example, an aggrieved party who would normally have sued on a contract cannot recover on or enforce that contract after the expiry of the limitation period prescribed by the Act for bringing an action to enforce contracts. But in the case of Limitation of actions to recover land the effect of the expiry of the limitation period is to extinguish the registered owner's title to

235. ***Multilingual Thesaurus on Land Tenure***, FAO 2003.

236. ***Land Tenure Lexicon, A glossary of terms from English and French speaking West Africa*** Compiled by Rebeca Leonard and Judy Longbottom, International Institute for Environment and Development, March , www.iied.org
Prof. John Mugambwa who makes a fine distinction between Prescription and adverse possession states that unlike adverse possession, the doctrine of prescription is confined to acquisition of interests in land that do not carry a right to exclusive possession. Prof. Mugambwa is of the view that a person cannot acquire a fee simple estate by prescription. ***Principles of Land Law in Uganda***, by John T. Mugambwa, Fountain Publishers, 2002 at. P.66-67.

the land. The occupier (person in adverse possession of the land) may then be entitled to apply to become the registered owner of the land.

Several foreign and local commentators, who have reviewed the land tenure reforms ushered in by the Uganda Land Act 1998, have opined that the twelve-year (12) period in Section 29 of the Land Act draws on (i.e. emanates from) the Limitation Act 1959. The cut-off date after which encroachment on Government Land is illegal can be fixed at 12 years.

On the other hand, however, under the Laws of several jurisdictions, Government Land is not to be acquired by Adverse Possession or Prescription. For example, the Kenya Limitations of Actions (Chapter 22) provides that: -

“41.This Act does not ... enable a person to acquire any title to, or any easement over ... Government land or land otherwise enjoyed by the Government;...”

In Mauritius too, the *State Lands Act* provides in Section 35 that “*State land is imprescriptible*” and in Singapore, the *State Lands Encroachments Act* provides that No State land shall be acquired by possession or unlawful occupation and the provisions of the Limitation Act shall not apply to any action brought by the Government for the recovery of State land. In Australia, the right of the Crown to land cannot be affected by adverse possession in the states of Queensland, Western Australia and Victoria.²³⁷

Although the two positions, (i.e. the one supported by Land Policy experts - of using Prescription to regularize squatters on Government land, vis-à-vis the one in the above numerous pieces of legislation are antithetical), in our view there must be a logical cut-off point; moreover one with incidents that are known or well-established in law. We would therefore favour a 12-year relation-back of continuous possession as one of the determinants for recognition of occupation of Government land that will entitle the occupant to re-settlement.

We also expect, even though this is not supported by any empirical evidence) that with the redefinition of Government Land to exclude public land and natural resources like Forests and Game Parks the scope of encroached Government land may also reduce.

Beyond the occupants who can qualify under the cut-off date, any other occupation or possession of Government Land shall be expressly proscribed and any such faulty occupations shall be removed via the process of the law including eviction. The Proposed Government Lands Act shall therefore include provisions proscribing certain categories of occupation or possession of Government Land and sanctioning those proscribed occupations by fines, eviction and or imprisonment.

237. **Adverse Possession**, Report by the British Institute of International and Comparative Law for Her Majesty's Court Service September 2006, http://www.biicl.org/files/2350_advposs_sep_ftnsv3.pdf

The ULC should be charged with the principal responsibility of prevention of squatting and encroachment of Government Land with an adjustment apportioning some responsibility to the lower tier custodian or the user of the Government land.

Finally, there is the issue of **enforcement**. The LSSP lists as one of the Policy Goals to be addressed with regard to the management of Government Land the resolution of conflicts between Government and Local Authorities who may lay claims on the land. The LAIS Report also asked questions such as:-

“What should be the powers, rights and duties of the Government over Government land? Is there a need, for instance for some special ‘fast track’ procedure in the courts to clear unauthorised occupants off Government land or on the contrary, should the Government be under a special obligation to such persons to regularise their occupation?”²³⁸

The LIS Baseline Evaluation Report, apparently taking cue from the LAIS Legal appraisal also asked:-

Don't disputes about Government land require special mechanisms, different from the ordinary procedures and institutions of land dispute management?²³⁹

A leading author on public estate management has also observed that:-

“... a process of regularization is recommended based on a participatory approach with transparent rules. Legal instruments vary from country to country. They include statutes, decrees (presidential, ministerial, federal, state or provincial, and municipal), ordinances and by-laws of local governments, regulations and government contracts. These various legal instruments define who has enforcement powers, and under which legal instruments. They also establish the legal basis for sanctions or charges as well as the penalty provisions, all of which are central to the enforcement system. However, which ones are involved in any given case are usually determined in a rather ad hoc way at best and in a self-interested way at worst. There are several important issues in the design and operation of a successful compliance and enforcement system. Enforcement involves a number of components (legislative groups, legal instruments, enforcement agencies and courts) that act independently, or are autonomously administered, yet must function together to be effective (for example Public Land Encroachment Committee Thailand, PLEC). There is also a relatively broad range of enforcement responsibilities involved in the administration and management of public lands and land resource utilization

238. Land Act Implementation Study Annex 6 LEGAL APPRAISAL Final Report by Patrick McAuslan and Rose Mwebaza, Government of Uganda 6 September 1999 (unpublished).

239. LIS Baseline Evaluation Report, Ministry of Land, Housing and Urban Development/Geo-Information Communication Ltd, Kampala, Uganda –Final 2007.

contracts. Compliance and the effectiveness of enforcement depend critically on the conditions and clarity of the legislation, on the strength and clarity of the commandments written into these laws, and on all four components working together.”

The drive for a special enforcement mechanism is therefore widespread.

However, in our view, and basing on the fact that Public Land and State Land are outside the ambit of the proposed Government land Act, we do not consider it necessary to have a specialized enforcement mechanism for clear unauthorized occupants off Government land. Once the Inventory and Classification are done and the level of encroachment is also ascertained, enforcement measures can be pursued in the Magistrate’s courts. Instituting a specialized enforcement mechanism may give rise to questions of sustainability such as those that frustrated the land Tribunal dispute resolution procedures.

RECOMMENDATION

- a) Government should not contradict its own policies by prescribing a separate set of rules for occupants of Government land, while applying different criteria to occupants of land belonging to private landowners.***
- b) The criteria and mechanisms that allow such “occupants” to obtain recognized property rights on Government land should mirror those for tenancy by occupation under the Land Act.***
- c) Where Government land was already alienated, demarcated or gazetted, no form of “occupancy” should generally be tenable; in that case where Government can prove the landlessness of the occupants, then it should to resettle them using the Land Fund as envisaged by the Land Act and the LSSP.***
- d) The implementation of the decisions concerning the rights of occupants on Uganda Government Land should be preceded by the detailed inventorying, demarcation, surveying and valuation of Government land to avoid creating a new class of ‘landless’ encroachers of Government land.***
- e) We favour and propose a 12-year **relation-back** of continuous possession as one of the determinants for recognition of occupation of Government land that will entitle the occupant to re-settlement. That 12-year period should also be used to determine the cut-off date.***
- f) Beyond the occupants who can qualify under the cut-off date, any other occupation or possession of Government Land shall be expressly proscribed and any such faulty occupations shall be removed via the process of the law***

including eviction. The Proposed Government Lands Act shall therefore include provisions proscribing certain categories of occupation or possession of Government Land and sanctioning those proscribed occupations by fines, eviction and or imprisonment.

- g) The ULC should be charged with the principal responsibility of prevention of squatting and encroachment of Government Land with an adjustment apportioning some responsibility to the lower tier custodian or the user of the Government land.*
 - h) No Specialized enforcement mechanism is required for clearing unauthorised occupants off Government land. Once the Inventory and Classification are done and the level of encroachment is also ascertained, enforcement measures can be pursued in the Magistrate's courts.*
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Law Review Working Group Comments on the earlier Version of this Issues Paper
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The LRWG commented on the earlier Version of this Issues Paper that: -
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<div style="background-color: #e0e0e0; padding: 5px;"><i>"There are no occupants on Government land as noted by the consultants on page 48 of the Issues Paper. There are squatters on Government land."</i></div>
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We however note that the earlier Version of this Issues Paper was misquoted in this regard. Our position therein and now is that Government cannot exercise double standards by referring to the unauthorized or unlawful presence on privately owned land as 'occupation' and on government land as 'squatting'.

4.2.5.2 Recovery of Government Lands

This section deals with the recovery of government land that has been illegally or illicitly alienated. In this section we also revisit encroachment.

As an introductory, experts in principles of management of the public estate advise that the regulatory framework for the public estate should include law enforcement and public land recovery (in cases of illicit allocation). Recovery of illegally alienated property of the public estate is seen as one of the critical public property areas, which often show weak governance.²⁴⁰

Government has itself conceded that documentation and management of Government land has not been adequate in the past, leading to many conflicts, encroachment, and poor management of Government's land resources²⁴¹.

An earlier Public Consultation Document on the National Land Policy²⁴² stated that '*in instances where corruption has "nibbled away" or depleted government land and public land through self-appropriation, land policy should provide for re-possession, especially if such land is out of former public land*'. This view is affirmed in the **National Land Policy Issues and Recommendations Report** of 18th September 2009 and in Draft 4 of the National Land Policy²⁴³ both of which recommend that:-

"105. Through an Act of Parliament, Government shall ... enable the State to re-possess public land or government land, "nibbled away" or given away in an illegal or irregular manner."

In Kenya, under Part XI of the Government Lands Act, if any person is in occupation of unalienated Government land without right, title or licence, the Commissioner of Lands may bring a suit in any court of competent jurisdiction to recover possession of that land²⁴⁴. The unlawful occupation of Government land includes that by any person whose right, title or licence has expired or been forfeited or cancelled²⁴⁵. The new Constitution

240. **Effective and Transparent Management of Public Land - Experiences, Guiding Principles and Tools for Implementation** by Willi Zimmermann

241. LSSP, Page v

242. **Drafting the National Land Policy**

243. Versions of 18th September 2009 version

244. The provisions of the Government Lands Act of Kenya may not be the most ideal to emulate, as this Kenyan Statute is more of a public lands law. But the Act illustrates the principle that illegally occupied lands of the public estate (government land inclusive) can be recovered. See *ibid*, p. on the illustration of the conceptual issues surrounding government, State and public land in various jurisdictions.

245. Section 130, Recovery of Government lands in unlawful occupation

of Kenya has a provision to the effect that private ownership of Public lands which have been unlawfully obtained will be cancelled (Article 68 (c) (v)).

Initially, there was hesitation and trepidation in Kenya as to whether revocation of titles to illegally allocated Government land was possible and the Ndungu Report²⁴⁶ Commissioners had instead proposed special a Land Titles Tribunal charged with reviewing each and every case of suspected illegal or irregular allocation of land, reasoning as follows:-²⁴⁷

We made specific recommendations regarding each category of grabbed public land. However, we appreciated that there would be practical and legal difficulties in the recovery exercise where, for example, the land concerned had changed hands, or had been developed or charged to banks and other financiers. Most illegal titles would not only require to be revoked by a competent authority, but it was also important to operate within the confines of the Rule of law. The present law requires that revocation or validation of an illegal title can only be done by the High Court. Given the very large number of titles involved and the slow, expensive, complicated and bureaucratic processes of the conventional Courts, the Commission felt there was need to put in place a simple, cheap and accessible forum to deal with these problems. We therefore recommend that the law be amended to establish a Land Titles Tribunal, with a simplified system of processing cases, such that it was possible to dispose of a case in a matter of one or two days. We drafted the suggested amendments to the current laws and incorporated them in the report.

Nevertheless, Government of Kenya has in recent times cancelled numerous titles on grounds these were illegally alienated. Many such revocation notices (such as the one below) can be seen in the electronic edition of the Kenya Gazette²⁴⁸.

These revocations do not even seem to have the backing of Court Orders.

BOX NO. Illustration: Revocation of land Titles on Government Land in Kenya VOL. CXII-NO. 53 Dated 21st MAY, 2010
GAZETTE NOTICE NO. 5562 THE CONSTITUTION OF KENYA THE GOVERNMENT LANDS ACT (Cap. 280) THE TRUST LAND ACT (Cap. 288)

246. *Commission of Inquiry into the Illegal and Irregular Allocation of Public Land*, ("The Ndungu Report"). Extracts accessed from the Oxfam Land Rights Website: <http://www.oxfam.org.uk/resources/learning/landrights/>. *Tackling Land Related Corruption in Kenya*, by Paul N. Ndungu, http://siteresources.worldbank.org/RPDLPROGRAM/Resources/459596-1161903702549/S2_Ndungu.pdf.
247. *Commission of Inquiry into the Illegal and Irregular Allocation of Public Land*, ("The Ndungu Report")
248. Accessible via: http://www.kenyalaw.org/KenyaGazette/view_gazette.php?title=3264; *Unjust Enrichment -The Making of Land Grabbing Millionaires, The Plunder of Kenya's State Corporations and Protected Lands* Vol.2, Kenya National Commission on Human Rights Kenya Land Alliance.

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

MOMBASA

Mombasa Block /XXVI/MI/1011 and 1013

Mombasa Block /XXVI/MI/1012

Mombasa Block /SiS/MI/299

Malindi Portion 10595

GEOFFREY BIRUNDU,
Senior Registrar of Titles, Mombasa

Source, Kenya Gazette - Selected Notices from the Kenya Gazette

Another useful illustration is from Cambodia. We showed earlier that Cambodian law creates two types of State Land – Public and Private State Land. State Public Land cannot be sold, transferred, or leased out for long term leases or social or economic concessions. But Private State Land can be sold, transferred, leased and be subject to concessions.

Prior to 31st August 2001 people in Cambodia could legally possess State Private Land (not declared Public Land) and could gain full ownership after five years of legal possession. The law currently imposes severe penalties for illegal possession of State Land.

BOX NO. Land Law of the Kingdom of Cambodia²⁴⁹

1.1.1.1.1 Article 18

The following are null and void and cannot be made legal in any form whatsoever:

- any entering into possession of public properties of the State and public legal entities and any transformation of possession of private properties of the State into ownership rights that was not made pursuant to the legal formalities and procedures that had been stipulated prior to that time, irrespective of the date of the creation of possession or transformation;
 - any transformation of a land concession, into a right of ownership, regardless of whether the transformation existed before this law came into effect, except concessions that are in response to social purposes;
 - any land concession which fails to comply with the provisions of Chapter 5;
- any entering into possession of properties in the private property of the State, through any means, that occurs after this law comes into effect.

249. http://www2.ohchr.org/english/bodies/cescr/docs/ngos/ICSO_Annex1_Cambodia_CESCR42.doc.

1.1.1.1.2 Article 19

Persons whose title or factual circumstances fall within the scope of article 18 of this law shall not have the right to claim compensation or reimbursement for expenses paid for the maintenance or management of immovable property that was illegally acquired.

Any illegal and intentional or fraudulent acquisition of public properties of the State or of public legal entities shall be penalized pursuant to article 259 of this law.

The penalties shall be doubled where any acquisition of land from the public properties causes damage or delay to works undertaken in the general interest, in particular any acquisition of roadway reserves.

In all cases, if an offender does not vacate his illegal acquisition within the time limit set by the competent authority, the authority shall begin proceedings to evict the offender from the land.

The Proposed Government Lands Act should likewise contain a provision for recovery and repossession of Government Land that is illegally or illicitly alienated. Protection already existed for Government land in Uganda via Article 284 of the Constitution which provides that all immovable property which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government shall vest in the Government, subject to the provisions of Chapter 15, i.e., the Chapter of the Constitution on land. Additionally, an Amendment to section 95 of the Land Act, which was effected by the Land (Amendment) Act No. 1 of 2004 [now Section 95(9) of the Land Act] also provides that:-

“Pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the Government or any other public body together with the reasonable cartilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of this Act.”

Since Government land was already protected, any illegal or irregular alienation thereof should be reversed. To avoid unnecessary litigation and costs, the proposed provision shall be expressed to override any contrary provisions of or in the Registration of Titles Act. The provision can build upon or compliment the special powers of the Registrar in Section 91 of the Land Act.

RECOMMENDED THAT:-

- a) ***The Proposed Government Lands Act should likewise contain a provision for recovery and repossession of Government Land that is illegally or illicitly alienated.***

- b) To avoid or reduce unnecessary litigation and costs, the proposed provisions for recovery of Government Land shall be expressed to override any contrary provisions of or in the Registration of Titles Act or any other contrary land-sector law.***
 - c) The provisions for recovery of Government Land can build upon or compliment the special powers of the Registrar in Section 91 of the Land Act.***
-

4.3 Government Land in connection with other Land Sector Policies

4.3.1 LSSP Strategic Objectives

The Land Sector Strategic Plan is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It is based on a vision for the sector, a mission and **strategic objectives** for achieving the mission.

Strategic Objective No. 2 of the LSSP is ***“To put land resources to sustainable productive use.”*** The Plan quotes available data as suggesting that only 1/3 of Uganda’s cultivable land is utilized at present, which means that there is enormous need to expand the productive asset base, and to increase the productivity of land already under cultivation; as a step forward in increasing incomes and eradicating poverty. Amongst the three principal strategies planned for achieving this objective is the identification and assessment of use and suitability of government land.

Within each strategic objective in the LSSP, there are priorities which are phased over the ten year lifespan of the LSSP *i.e.*, the medium and longer term priorities for action for the Plan, based on the available and estimated or projected resources. Such prioritization and phasing is also characteristic of other major components of the Plan such as the design and preparation of a **Land Information System (LIS)**, as well as the successive implementation of that LIS and the dissemination of land information to users. In respect of Government Land, the priorities are as follows:-

- a). in *Phase One* - the identification of Government land and compilation of an inventory of such land; and
- b). In *Phase Two* - the development of criteria for assessment of suitability of use of Government land.

4.3.2 Systematic Demarcation

One of the main strategies of the LSSP is to undertake Systematic Adjudication and Demarcation (SD) of land rights.

In order, to ensure the maximum contribution of the land sector to poverty reduction, good governance, and other government policy goals, the LSSP plans to develop and implement a comprehensive approach to defining land rights and

providing land services, by way of systematic demarcation of all land rights within selected administrative areas.

Systematic demarcation is expected to provide comprehensive information on the spatial location of every plot in an administrative area and during the process, Government land will also be identified, and disputes over such land settled, and thereby, information will be added incrementally to the inventory of Government land. Recently the Private Sector Foundation Uganda (PSFU) also advertised the procurement of Consulting Services for the development of a Comprehensive Inventory of Government Land for each district.²⁵⁰

4.3.3 Land Information System

The inventory of Government land will contribute in populating the Land Information System with spatial and parcel data relating to government land and thereby expand the catchment of the LIS.²⁵¹ The Land Information System is the subject of a separate Issues Paper under this Project.

According to the LSSP, the Uganda Land Commission will be restructured and strengthened under the Plan, and will undertake programmes to compile an inventory of Government land, demarcate and survey Government land, and develop a framework for divestiture of land where appropriate. The ULC will become a common resource of information, advice and support pertaining to Government's land holdings.

250. LSSP p.36 and p.48.

251. **Review of the status of Land Information Systems – Uganda - Status Report** – SIVEST/Ministry of Water, Lands & Environment (now MLHUD), UGANDA, at Page 11.

Recommendations for Legislative Provisions Regulating Government Land

	PAGE	SUBJECT	RECOMMENDATION
1.	13	1.1.5 Need for a definition "Government land"	<i>There is a need for a comprehensive definition of Government Land, which brings out all the various categories of land that constitutes Government Land.</i>
2	14-36	Definition "Government land"	<i>Government Land shall be the Land that is held or utilized by or set aside for use of or controlled or occupied by any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments, unless it is occupied under a tenancy of less than three years. Additionally, by Article 284 (Succession to Property) of the Constitution all land which immediately before the coming into force of the Constitution was vested in any authority or person for the purposes of or in right of the Government or in Government now vests in the Government, subject to the provisions of Chapter 15, i.e., the Chapter of the Constitution that deals with land.</i>
3	38	2.6 Classification or categorization of Government Land for Management Purposes	<i>Once the Definition of Government Land is settled, and the constituents of Government Land are known, this land should be further categorised into <u>alienable</u> and <u>inalienable</u> categories for good governance, further protection and management of this land and property resource</i>
4	46	Policy Goals for Government Land: 3.1 Determination of the extent of Government land on the ground (inventory).	<p>i). <i>All the public estate (including Government land) should be inventoried in a way that allows clear and unambiguous identification of boundaries;</i></p> <p>ii). <i>the Law and regulations (governing or regulating public immoveable assets) must refer to the public immoveable assets inventory;</i></p> <p>iii). <i>the inventory of the public estate (including Government land) shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land. Without limitation, such information may include the location, land Tenure, survey and Registration details,</i></p>

			<p><i>land use details, designated user and Encroachment details</i></p> <p><i>iv). the inventory shall be maintained to reflect changes in the particulars contained in it;</i></p> <p><i>v). Local governments and State agencies (such as Statutory Authorities, Government Companies, Public Enterprises, e.t.c.) should also maintain a compatible inventory;</i></p> <p><i>vi). all the information in the public immoveable assets inventory should be accessible to the public but with the qualification that information for some types of public land assets (e.g., land used by the military and security services, etc) may not be made available for justifiable reasons;</i></p> <p><i>vii). Planning schemes coming into existence after the recording of public land in an official inventory must identify the public land parcels using the official classification system.</i></p>
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5	48-49	3.2Determination of the Boundaries of Individual Holdings of Government Land, i.e., Adjudication and Demarcation, and Titling	<p>a) <i>All Government land not duly surveyed and registered be surveyed and registered in freehold in the names of the Land Commission, unless it is a lease from a private land owner.</i> [These are continuing activities for so long as there will be future acquisition of land by government and there should therefore be continuing obligations relating to survey, registration, e.t.c. The Consultant also notes that the PROJECT FOR DEVELOPING AN INVENTORY OF GOVERNMENT LAND has apparently stalled and the need to survey and title government land is not yet brought to a logical conclusion.]</p> <p>b) <i>The Land Commission should once every year report to Parliament the progress of surveying and titling Government land and the disposal or acquisition of Government land.</i></p> <p>c) <i>The Uganda Land Commission shall be equally charged with the statutory duties of maintaining, sharing and updating land information, spatial data and Government land Records, as is imposed on other public authorities or custodian agencies by the proposed Land Information System Act.</i></p>
6	51	3.3 Divestiture of Land that is no longer required for public use	<p>a) <i>The Government Lands Act shall contain or include a criteria for ascertainment of surplus government land.</i></p> <p>b) <i>Only that government land that is surplus to the service delivery objectives of a user agency, department, ministry or custodian and is also surplus to government-wide service delivery requirements may be disposed of.</i></p>
7	54	3.4.1 Government Land Classification and Reclassification	<p>a) <i>Government Land in Uganda be classified into a limited number of legal categories. The classification shall clearly identify the government land that should be kept available for use by the Government for governmental or public purposes, and land that is not required those purposes.</i></p> <p>b) <i>Planning schemes that come into existence after the recording of government land in an official inventory must identify the government land parcels using the official classification system.</i></p> <p>c) <i>Maintenance of the Government Land Inventory will be based on the official land classification system.</i></p>

LEGAL FRAMEWORK FOR THE MANAGEMENT OF GOVERNMENT HELD LAND			
8	61	4.1.2 Acquisition of Land for Government	<p><i>a) PPDA Laws shall govern the process for acquisition of (non-specific) land for government – except if the stakeholders decide that the proposed Government lands law should contain dedicated provisions on acquisition of land for Government.</i></p> <p><i>b) The market value of the property shall be ascertained before an acquisition.</i></p> <p><i>c) Appraisal and valuation for purposes of ascertaining the market value shall be by an independent valuer but based on terms of reference developed by the Chief Government Valuer. The Government Lands Act shall clearly and precisely articulate the sequential order of transactions that lead to the acquisition or disposal of Government Land.</i></p> <p><i>d) The ULC (and or its Officers) should be bound by an overall fiduciary duty to ensure that when a land parcel is acquired, best value for money must be realized, such that the Commission (or its Officers) would be acting unlawfully if it or they did not have clear and supportable reasons for purchases above market value.</i></p> <p><i>e) Acquisition of Land for Government must be included in the proposed Government Lands Act</i></p>
9	64-65	4.1.3 Co-ordination of Management of Government Land between Users and the Uganda Land Commission	<p><i>a) The Commission as first-line custodian of all government land and charged with the management of all government land will conduct regular meetings to achieve inter-agency coordination among all Ministries, agencies or organs of government that have custody, use or responsibilities for government land or for government land management.</i></p> <p><i>b) The Commission shall particularly ensure adequate co-ordination and integration of requirements (for acquisition) and disposal decisions of the different government institutions;</i></p> <p><i>c) all Ministries, agencies or organs of government that have custody, use or responsibilities for government land shall offer surplus land to the Commission in the first instance;</i></p> <p><i>d) No disposal of government land of any government agency, department, ministry or organ shall be</i></p>

			<p><i>carried out by the custodian or user or by the Commission without the prior consent of the user or custodian department and without the consent of the Parliamentary sectoral committee within which that government department or ministry falls. A government agency, department, ministry or organ shall certify that a parcel of government land is surplus to its requirements by issuing a certificate in the behalf. The form and content of such certificate can be prescribed by the Minister responsible for lands via subsidiary legislation.</i></p> <p><i>e) Where government land is certified as being surplus to the requirements of a custodian or user agency the Commission shall first offer the surplus government land to other government agencies, departments, ministries or organs in the first instance. It is only when there is no need for acquisition of that surplus government land parcel (by any or all the other government agencies, departments, ministries or organs) that the Commission may offer the surplus government land for sale on the open market according to the procedures for disposal of surplus government land.</i></p> <p><i>f) the Commission shall also: -</i></p> <p><i>i) coordinate the implementation and monitoring of government land policy by other government agencies that have use, custody or responsibilities for government lands;</i></p> <p><i>ii).ensure that all other government agencies manage government lands according to prescribed government land management policy;</i></p> <p><i>Due to the sensitive and recent controversial history of Government land disposals in Uganda, it is advisable to establish a high-level oversight and coordination body along the lines of the three samples reviewed above.</i></p> <p><i>This body can be constituted by senior Civil Servants.</i></p>
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10	73	4.1.4 Custodianship of Government Land	<p><i>a) Custodians shall be defined as those organs and arms of the Government of Uganda under whose care, control and management Government land has been placed.</i></p> <p><i>b) There shall be two tiers of custodianship. The first tier shall be custodianship by the Uganda Land Commission. This shall be described as the custodianship of all Government land – except where the Law or the Commission delegates the custodianship of a particular parcel or parcels of Government Land to second tier custodians.</i></p> <p><i>c) Second Tier Custodians shall include any of the various constituent organs and arms of the Government of Uganda that are mentioned in the Constitution, including ministries, departments, agencies, Councils or lower local governments.</i></p> <p><i>d) Custodians shall generally be charged with the administration of Government land to deliver their departments’ or ministry’s programmes. They are responsible for developing, executing and following strategic plans that relate their Government land holdings to departmental program delivery.</i></p> <p><i>e) Custodianship shall also include responsibility for safeguarding the Government land from encroachment. Custodianship shall not amount to ownership. As such alienating the land or permitting it to be alienated qua owner is prohibited; but a Custodian may dispose of or participate in the disposal of the Government land in its custody, subject to the provisions of the Act regulating disposal.</i></p> <p><i>f) The proposed Government Lands Act shall amend Section 53 (Powers of the commission) of the Land Act 1998 such that thenceforth the Uganda Land Commission may not dispose of Government Land save in the manner and process prescribed in the Government Lands Act including horizontal cooperation and whole-of-government perspective to disposal.</i></p>
	77-78	4.1.5 Government Land Management Principles	<p><i>d) In order to have a minimum benchmark for accountable Government Land management by custodians and users, the Government Lands Act shall require the preparation and annual Custodian/User government land management plans. Custodians of Government Land shall compile annual Custodian government land</i></p>

			<p><i>management plans, covering all the government land within their custody.</i></p> <p><i>e) Acquisition and disposal of government land for or by a custodian shall be incorporated into the annual Custodian/User government land management plans.</i></p> <p><i>f) Additionally, in the management, custodianship and or use of government land, Custodians and Users shall comply with the following Government Land Management Principles:-</i></p> <ul style="list-style-type: none"> <i>i). Government Land should exist to support the service delivery objectives of the various constituent organs and arms that constitute the Government of Uganda.</i> <i>ii). Government Land assets with strategic importance to Government should not be disposed of.</i> <i>iii). Government Land Management must comply with existing legislation such as Planning Laws, environmental legislation;</i> <i>iv). Government Land Management decisions should meet the needs of the present without compromising the needs of future generations.</i> <i>v). Government Land Management must be aimed at reducing the overall cost of service delivery through the optimal allocation of resources.</i> <i>vi). Before deciding to acquire new Government Land parcels, organs of state must consider the optimal use of existing Government Land parcels.</i> <i>vii). Government Land decision-making will be transparent, consultative, consistent and equitable. There must be integrity and honesty in all aspects of managing Government land and at all times the principal objective of managing Government land is to advance the public interest.</i> <i>viii). There must be open access for all to information and the decision making processes in Government land management.</i>
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			<p><i>ix). All agencies and persons engaged in Government land management must act in accordance with these principles and must be accountable for their actions.</i></p>
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80		4.1.6 Land of Public Bodies, Statutory Institutions & Parastatals	<p><i>a) The provisions of the proposed Government Lands Act will apply to former public bodies, statutory institutions and parastatals alike. The key nexus is the definition of Government Land. Since by definition Government Land includes land in the possession, use or custody of former public bodies, statutory institutions and parastatals, these Institutions shall be subject to and governed by the proposed Government Lands Act in their acquisition, possession, use or custody of Government Land.</i></p> <p><i>b) The Government Land owned, held, used or possessed by these agencies shall be entered into the Government land Inventory and these agencies shall have to comply with the prescriptions as to acquisition and disposal of government land. The definition of an acquisition and a disposition of Government land shall also include an acquisition or a disposition by these agencies.</i></p> <p><i>c) Former Public Bodies, Statutory Institutions & Parastatals shall also be bound by and shall benefit from the provisions of the proposed Government Land Act that prescribe a whole-of-government or government-wide approach to acquisition of land, declaring land as surplus and disposal of government land.</i></p> <p><i>d) At the consultation stage the Consultant shall engage with certain specific stakeholders such as the Privatization Unit, to see whether certain State-owned enterprises (SOEs) may need a certain degree of freedom of action, flexibility or leeway with the Government land assets that they hold. Those that need extra flexibility can then be appended to a Schedule to the Act and the pertinent flexibility parameters and transparency guidelines defined.</i></p>
82		4.1.7 Diplomatic and other Government Property Abroad	<p><i>a) The provisions of the proposed Government Lands Act will apply to Diplomatic and other Property abroad alike. Once again, the key nexus is the definition of Government Land. The definition of Government Land shall encompass this property.</i></p> <p><i>b) The provisions of the proposed Act, as relates to acquisition, coordination, and disposal shall also apply to Government Land and property abroad.</i></p> <p><i>c) Since by definition Government Land includes</i></p>

			<p><i>Government Land and property abroad, the institutions (whether diplomatic missions abroad or UPHL) shall be subject to and governed by the proposed Government Lands Act in their possession, use or custody of Government Land. Government Land and property abroad shall also be included into the Government Land Inventory.</i></p> <p><i>d) The proposed Government Lands Act will cater for the details of the delegation of the custodial and management functions of the Uganda Land Commission (under Section 49 Land Act) over Government Land and property abroad; as well as the details of the duties, responsibilities and liabilities of the second-tier custodian or the user of the Government Land and property abroad.</i></p> <p><i>e) The oversight and disposal consent of the Parliamentary sectoral committee that is in charge of the user or custodian, or under which the Government Land and property abroad falls, will also help to enhance transparency and accountability.</i></p>
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84-85	5.8 Procurement of Offices for Government		<p><i>a) The restructuring of the Uganda Land Commission should equip the Commission with the human resource capacity for carrying out a function of being the Government's estate agent and property manager, and to that end, it may undertake the full range of transactions and activities in relation to Government's land and immoveable assets.</i></p> <p><i>b) The proposed Government lands Act shall also cater for the procurement or acquisition of offices or other property facilities to be leased or rented by or from Government institutions and shall provide for the incorporation of such accountability and transparency procedures as apply to other Government Land acquisitions and disposals such as ensuring value-for-money, efficiency and other canons of good public procurement.</i></p> <p><i>c) However, the functions of survey, valuation and registration of Government land shall remain respectively with the Surveys Division of the Lands and Surveys Department, Valuation of Government land shall continue to be carried out by Valuation Division of the MLHUD and Registration of Government land shall continue to be carried out by the Land Registration Department which is responsible for conveyancing of land on behalf of the Government.</i></p>
95	4.2 Procedures for disposal of Government land	4.2.1 Matters preliminary to Disposal of Government Land	<p><i>a) The process of disposal of government land shall include recurrent procedural steps such as a whole-of-government perspective evaluation and horizontal cooperation to ascertain the interest of other government departments in the land proposed to be disposed of. The processes and procedures shall be implemented in order to determine whether the land to be disposed is surplus to the requirements of firstly the user or custodian Ministry/agency or government body, and thereafter the rest of the government.</i></p> <p><i>b) After the whole-of-government or government-wide evaluation, priority for acquiring government land assets should first be offered local governments or Municipalities, non-governmental organizations, and Government supported economic development projects.</i></p> <p><i>c) It is only after the land proposed to be disposed of is surplus to all those requirements that it shall be put for sale on the open market.</i></p>

99	4.2.1.5 Other Country Context Issues for Uganda	<p><i>a) Where unsolicited development or infrastructure proposals are to benefit from provision of government land, such land shall not be granted to the developer or investor free of charge.</i></p> <p><i>b) If Government Land is to be provided to the Project at concessional rates then there must be provisions for future recovery of the market value of the land.</i></p> <p><i>c) For Government land provided to Investors or Developers at concessional prices or charges, the proposed Government lands Act can provide for the inclusion of Clawback or Overage Clauses. Alternatively, the concession or lease agreement can provide for future conversion of the unpaid portion of the market value of the Government Land into equity.</i></p> <p><i>d) Clawback or Overage rights can be secured by a charge on the title to the property.</i></p>
104-105	4.2.2 Government Land Disposal and Exchange	<p><i>a) All Government land shall be disposed of through sale or lease through public auction or open tender process.</i></p> <p><i>b) All Government land shall be disposed of at market prices in a transparent process irrespective of the acquiring investor's status (e.g. domestic or foreign).</i></p> <p><i>c) The provisions for the disposition of public land shall ensure an openly contestable process (e.g. auction, public tender, etc.) with the upset price being market value.</i></p> <p><i>d) Market value will be assessed by the Chief Government Valuer or by an independent and competent valuer who is accountable under the law according to the principles or guidelines in the next section titled, Market Value'.</i></p> <p><i>e) For that purpose, Open Market' is defined as a solicitation of offers giving the public fair and equitable opportunity to acquire real property from or to dispose of real property to the government</i></p> <p><i>f) The terms and process of disposal shall be fair to all potential bidders as well as being in the public interest.</i></p> <p><i>g) The total agreed payments for Government land be disposed of shall be collected from private parties on the sale or lease of the Government land. The</i></p>

			<p><i>Records of the disposal of Government land (whether by way of concession, sale or lease or other mode of disposal) shall be open to audit</i></p> <p><i>h) Where Government land disposals are intended to or for non-government sector acquisition, these shall first be advertised the Press so as to give an opportunity to all aspiring bidders to acquire Government Land and the public at large shall have statutory rights to access the information on government land sales, leases or concessions at any time and without restrictions regarding the object of interest.</i></p> <p><i>i) For government land leased or sold to private investors' provision shall be incorporated to ensure that these lands are developed based on the investment interest of the purchaser and consistent with the local development plans and its development restrictions. This is necessary to curb speculation.</i></p> <p><i>The Consultant maintains its recommendation that Government land be disposed off should first be surveyed and planned in accordance with the respective laws.</i></p>
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108 - 109	<p>4.2.2 Government Land Disposal and Exchange:</p> <p>4.2.2.2 Market Value</p>	<p><i>a) A disposal of government land shall be at market value.</i></p> <p><i>b) Market Value is the price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.</i></p> <p><i>c) An independent evaluation shall be carried out by one or more independent asset valuers prior to the sale in order to establish the market value on the basis of generally accepted market indicators and valuation standards. Market value will be assessed by an independent and competent valuer who is accountable under the law. The market value thus established is the minimum purchase price that can be agreed.</i></p> <p><i>d) the principle of disposal at market value shall be strictly observed unless there is an overriding public interest benefit or demonstrable and measured net public benefits that can justify a departure from the general principle. Overriding public interest benefit or demonstrable and measured net public benefits can be economic development, social development or environmental benefits.</i></p> <p><i>e) A disposal of government land at a consideration that is less than market value shall be subject to the oversight of the Parliament Committee in charge of the custodian or user of the government land to be disposed of and shall be subject to the prior consent of the minister.</i></p> <p><i>f) Disposals and transfers of government land between government agencies and departments shall be at market value, to be certified by a qualified valuer. The acquiring agency or department will be expected to pay at the point of acquisition.</i></p>
111	<p>4.2.2.4 Issues in disposal of Government Land at Local Government Level</p>	<p><i>a) The process for disposal government land by local government shall mirror that prescribed for the first and second tier custodians of government land.</i></p> <p><i>b) During stakeholder consultations, the Consultant shall deliberate with various stakeholders such as</i></p>

			<p><i>the Auditor general, the Public Procurement and Disposal of Public Assets Authority, local governments and Parliamentary Committees on Local Government in order to come to a conclusion whether to adopt this Subsidiary Legislation with modifications or to come up with dedicated provisions in the proposed Government Lands Act.</i></p>
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113	4.2.2.5 Exchange of Government Land with Private Land	<p><i>a) On a land exchange, the provisions relating to acquisition and disposal of government land, particularly as relates to transparency should be complied with.</i></p> <p><i>b) The Uganda land Commission or any custodian or user or other Government agency or organ that is involved in an exchange of government land shall procure or ensure to the maximum extent achievable that, the lands to be exchanged must be of equal monetary value (or else that monetary adjustments are made to establish equality of exchange), determined to serve the public interest and preferably located within the same area.</i></p> <p><i>c) The provisions relating to valuation of government land for purposes of ascertaining market value shall be applicable to and shall be complied with on an exchange of Exchange of government immovable property with private land.</i></p>
116	4.2.2.6 Sale Proceeds	<p><i>a) The proposed Government lands law shall EMBRACE the principle of reinvesting sales proceeds back into the public estate, either by investing in improving the land, or by acquiring new public land assets</i></p> <p><i>b) The Law shall also provide for the sale proceeds (Price, Premium or Lease payments) that are not reinvested to be channeled back to the losing agency, department or ministry if that agency, department or ministry has have an approved investment plan and will reinvest the proceeds in real property, consistent with their approved investment plan.</i></p>
117 - 118	4.2.3 Terms and conditions of grants of Government Land	<p><i>In case of disposal by way of conditional freeholds and leases the proposed law should set certain standard terms covering amongst other matters;</i></p> <p><i>a) The duration of initial terms of leases in case of a development or redevelopment lease.</i></p> <p><i>b) The conditions for extension of the initial term of leases</i></p> <p><i>c) The periods or intervals for rental revision and the formula for such revision</i></p> <p><i>d) The grounds for and the process of forfeiture of</i></p>

			<p><i>leases.</i></p> <p><i>e) Courts powers to grant relief against forfeiture incase of those breaches capable of correction or atonement by monetary damages including terms of such relief but curbing the speculative extensions of lease.</i></p> <p><i>f) Options to renew a lease in case the development covenant was compiled with</i></p> <p><i>g) The regulation of Rights of assignment or transfer of leases so as to curb land speculation and pseudo-investors</i></p> <p><i>h) Regulation of surrenders of leases and restrictions on variation of lease that would compromise the public interest.</i></p> <p><i>i) Disposal of developments on land in case a lease is not renewed</i></p> <p><i>j) A regime of development security or performance/delivery criteria backed by security</i></p> <p><i>k) Step-in rights in case of failed projects and Long-stop dates where the lease will be terminated for non-performance</i></p> <p><i>l) Mechanisms to convert promises in Business or Project Proposals into binding and enforceable obligations in case of developer or investor changeability.</i></p>
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123	4.2.4 Oversight and Accountability - Reporting and Transparency Requirements	<i>Like other public organizations the Commission should be required to issue, within three months after the end of each Government financial year, a public certificate signed by its Chairperson and Secretary acknowledging their responsibility for the proper and due regard for the safeguarding of Government land and their compliance with those statutory duties and responsibilities. The original of that Certificate shall be delivered to the Chairperson of the Parliament independent accountability committee in charge of lands or Government assets and a copy of the certificate shall be delivered to the Minister responsible for lands. The Commission shall cause a copy to be published in a national newspaper together with a summary of the Government land transactions that have taken place in that year.</i>
134-135	4.2.5 Law Enforcement and Government Land Recovery 4.2.5.1 The rights of occupants on Government land	<p><i>a) Government should not contradict its own policies by prescribing a separate set of rules for occupants of Government land, while applying different criteria to occupants of land belonging to private landowners.</i></p> <p><i>b) The criteria and mechanisms that allow such "occupants" to obtain recognized property rights on Government land should mirror those for tenancy by occupation under the Land Act.</i></p> <p><i>c) Where Government land was already alienated, demarcated or gazetted, no form of "occupancy" should generally be tenable; in that case where Government can prove the landlessness of the occupants, then it should to resettle them using the Land Fund as envisaged by the Land Act and the LSSP.</i></p> <p><i>d) The implementation of the decisions concerning the rights of occupants on Uganda Government Land should be preceded by the detailed inventorying, demarcation, surveying and valuation of Government land to avoid creating a new class of 'landless' encroachers of Government land.</i></p> <p><i>e) We favour and propose a 12-year relation-back of continuous possession as one of the determinants for recognition of occupation of Government land that will entitle the occupant to re-settlement. That 12-year period should also be used to determine the cut-off date.</i></p> <p><i>f) Beyond the occupants who can qualify under the</i></p>

			<p><i>cut-off date, any other occupation or possession of Government Land shall be expressly proscribed and any such faulty occupations shall be removed via the process of the law including eviction. The Proposed Government Lands Act shall therefore include provisions proscribing certain categories of occupation or possession of Government Land and sanctioning those proscribed occupations by fines, eviction and or imprisonment.</i></p> <p><i>g) The ULC should be charged with the principal responsibility of prevention of squatting and encroachment of Government Land with an adjustment apportioning some responsibility to the lower tier custodian or the user of the Government land.</i></p> <p><i>h) No Specialized enforcement mechanism is required for clearing unauthorised occupants off Government land. Once the Inventory and Classification are done and the level of encroachment is also ascertained, enforcement measures can be pursued in the Magistrate's courts.</i></p>
	140	4.2.5.2 Recovery of Government Lands	<p><i>a) The Proposed Government Lands Act should likewise contain a provision for recovery and repossession of Government Land that is illegally or illicitly alienated.</i></p> <p><i>b) To avoid or reduce unnecessary litigation and costs, the proposed provisions for recovery of Government Land shall be expressed to override any contrary provisions of or in the Registration of Titles Act or any other contrary land-sector law.</i></p> <p><i>c) The provisions for recovery of Government Land can build upon or compliment the special powers of the Registrar in Section 91 of the Land Act.</i></p>

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