



THE REPUBLIC OF UGANDA

Private Sector Foundation Uganda

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

CREDIT NUMBER: 3975 UG

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

REVIEW OF THE LAND ACQUISITION ACT CAP. 226

DRAFT FINAL ISSUES PAPER

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1.0 Background to the Review

1.1 Policy Context

1.1.1 The Project for Review of the Legal Framework for Lands Administration

The review of the Land Acquisition Act Cap. 226 is carried out under a Project for the *Review of the Legal Framework for Lands Administration* which is a sub-component of the Uganda Second Private Sector Competitiveness Project (PSCP II).

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 Component of the PSCP II.

1.1.2 The Consultant

Under the Land Component of the PSCP II, the Private Sector Foundation Uganda (PSFU) has procured the services of a Consultant (Kalenge, Bwanika, Kimuli & Company, Advocates, in association with several subconsultants with national and international expertise) to provide consultancy services for the Review of the Legal Framework for Lands Administration. This assignment, in summary, entails comprehensively reviewing land-based laws; recommending revisions and harmonization where appropriate; and drafting new laws in certain areas.

1.1.3 The Second Private Sector Competitiveness Project (PSCP II)

The objective of the PSCP II is: to support Uganda's efforts towards creating sustainable conditions conducive to enterprise development and growth; encourage investment; facilitate private sector development; increase micro, small and medium enterprises (MSMEs); increase competitiveness in the local and export markets; and increase employment opportunities in Uganda. These objectives are to be achieved through: (a) reducing the cost of doing business; and (b) improving the business environment and public-private dialogue.

From the viewpoint of land administration, the key constraints affecting the business environment, particularly the public-private sector interface, are the inadequate provision of services in the land sector, the inefficiency of the Land Registry, an outdated legal framework in certain areas, and institutional inefficiencies in the relevant areas.

The Land Component of the PSCP II builds upon the *Medium Term Competitiveness Strategy*¹. It also builds upon Uganda's other national goals, such as the Poverty Eradication Action Plan (PEAP), which aims to reduce the proportion of the population living in absolute poverty to below 10% by 2017. The Land Component seeks to improve the land registry, restore its integrity, and strengthen the underlying legal, regulatory and institutional structures by building on ongoing experiences and, in particular, by complementing activities funded by other development partners².

Among the sub-constituents of the Land Component of the PSCP II is a requirement for a reform of the *Land Acquisition Act, 1965 to harmonise with the Constitution, provide for prompt payment of adequate compensation, to recognise the rights of holders of certificates of customary ownership and occupancy to compensation*.

1.1.4 Terms of Reference

At the broad level, the Terms of Reference ('ToR') require the Consultant to conduct a comprehensive review of all land-based laws, and to draft new laws where necessary. The TOR indicate that a comprehensive review of land land-based laws is necessary in order (in amongst other things) to accelerate the implementation of the constitutional provisions for protection land and property rights.

The ToR require the Consultant to take into consideration a number of matters when reviewing land sector legislation to improve the environment for business competitiveness. They include the rapid evolution of land markets, and the needs of the financial sector and private sector developers.

The ToR also require the Consultant to endeavour to establish critical links between the Land Sector Strategic Plan 2001-2011 (LSSP) and the PSCP II, and to identify policy and legal loopholes in the regulatory environment for that are holding back growth in the land sector.

1.2 Compulsory Acquisition of Land in Land Administration

Most modern legal systems and constitutions recognize and promote private rights and ownership of land. Nevertheless, even in countries where private rights in land are well established, the State will retain the ultimate right of compulsory acquisition of land where the wider needs of the public are paramount. In societies which respect individual freedoms and rights, such as the inviolability of private property, such an exercise by government of its reserve powers would only be effected under the law and accompanied with proper systems of financial compensation.

There must therefore be (within modern legal systems) legally defined procedures for the compulsory acquisition and reallocation of rights in land and appeals mechanisms so that the public has confidence in the security of its titles. There must also be mechanisms whereby compensation can be provided to owners of land whose rights are adversely affected by any project, for instance

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1. Now replaced by the *Competitiveness and Investment Climate Strategy (CICS)*.
 2. For example, SIDA financed the preparation of a detailed plan to reform the Land Registry, while rehabilitation of land records was initiated under the USAID-financed Support of Private Enterprise Expansion and Development (SPEED) Project.

where there is re-allotment or land expropriation. These mechanisms must be consistent with the way that land is valued within the land administration system.

The need for review of the Law relating to compulsory acquisition of Land within a reform of Land Administration Laws has been highlighted by Bruce as follows:-

“the law on compulsory acquisition of land by the State (the power of eminent domain) requires new attention. While it is not often recognized, the poor suffer disproportionately when governments appropriate land without compensation for dubious public purposes. Their land is targeted because they are weak and lack influence and clear property rights. The law on compulsory acquisition has to some extent been a blind spot in land law reform. Legal reforms can provide landholders with long-term, robust property rights but leave in place a law on public acquisition of land that provides excessively broad grounds for taking land with inadequate compensation. There is a reluctance to acknowledge that in many countries the State itself—pursuing not just public purposes but the private purposes of the influential—is the primary threat to land tenure security. Reforms should narrow the grounds for takings to specified public purposes and should provide fair compensation that is related to market value. The eminent domain power is a necessary component of any system of private property but it must be carefully drawn.”³

The review of the Land Acquisition Act also comes at a time of a recent trend towards acquisition of use or ownership rights to large areas of land by large investors in third world countries for production of agricultural commodities, forest, or provision of environmental amenities that has recently attracted considerable interest. These large-scale acquisitions of farmland in Africa (Uganda included), Latin America, Central Asia and Southeast Asia have made headlines in a flurry of media reports across the world and involve hundreds of thousands of hectares, thereby intensifying the scramble for natural resources.⁴

1.2 Scope of this Draft Final Issues Paper

The *Land Acquisition Act*, cap 226, provides for the compulsory acquisition of land. Save for a few minor changes the Act has virtually remained the same since its enactment in 1965. The Act pre-dates the *Constitution* as well as the *Land Act*, cap 227. The Constitution is the supreme law of Uganda. Article 2(2) of the Constitution declares that if any other law is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail and that other law shall be void to the extent of inconsistency.

3. John W. Bruce, Renee Giovarelli and others, *"Land Law Reform: Achieving Development Policy Objectives"*, The World Bank, Legal Vice-Presidency, 2006.

4. *Large-scale acquisition of land rights for agricultural or natural resource-based use - Concept note*, World Bank; *Land grab or development opportunity? - Agricultural investment and international land deals in Africa*, FAO/International Fund for Agricultural Development (IFAD), May 2009; *Is Egypt land deal a blessing or curse for Uganda?* www.newvision.co.ug/D/9/183/686748; EGYPT-UGANDA: Land Lease. 2010; Africa Research Bulletin, www3.interscience.wiley.com/journal/123314550/abstract; *Egypt leases land in Uganda to ensure food security*, www.landcoalition.org/;

The Consultant's task is to determine whether the provisions of the Land Acquisition Act, cap 226, conform with the *Constitution* and the *Land Act*, 227, and to make recommendations for harmonising the provisions which do not conform.

The Consultant notes that this matter has already been canvassed in detail in a 2005 Consultants report: "*Harmonisation of Land Tenure Legislation: Issues/Concept Paper*". The Consultant understands that this report (the Report), was presented to the Government; but is not aware of the Government's reaction. For convenience, the Consultant will focus on the issues raised and the proposals in the Report relevant to the Consultant's terms of reference.

In this final draft, the Consultant takes into account the comment, which the Law Reform Working Group (LRWG) made as a result of a LRWG Retreat on 24 – 27 January 2010.

2.0 Introduction

2.1 Literature review

In preparing this issues paper the Consultant examined the provisions of the *Land Acquisition Act*, cap 226. The Consultant did not find any reported or unreported cases interpreting any of the provisions of the Act. Morris and Read, *Uganda the development of its Laws and Constitution* (1966), discuss some of the provisions of this Act in the context of the 1962 Constitution. Professor Read, “Aspects of the East African Experience” in J F Garner (ed) *Compensation for Compulsory Purchase: A Comparative Study* (1978), further discusses the Act as amended in 1970 and in the context of the 1967 Constitution. Their discussion is of limited assistance for present purposes as it predates both the *Land Act*, cap 227 and the *Constitution*. The Consultant reviewed the reports and the debates leading to the enactment of the *Land Act* and the *Constitution*, as well as other reports/materials since then, for possible guidance of the legislative intention in respect of compulsory acquisition of land. Apart from the *Harmonisation of Land Tenure Legislation: Issues/Concept Paper*, mentioned above, there is very little literature directly about the matter at hand. The Appendix to this paper lists some of the major literature the Consultant reviewed in preparing this Issues Paper.

2.2 The Constitution and the Protection of Private Property

The right to private property is amongst the fundamental rights of an individual under the Uganda Constitution. Article 26(1) of the Constitution declares that every person has a right to own property either individually or in association with others. However, the right to private property is subject to the State’s power to take private property compulsorily for public benefit. The power of eminent domain is an inherent sovereign power. Its exercise is justified because in certain circumstances public good outweighs individual rights.

Article 26(2) of the Constitution imposes restrictions on the exercise of the power of eminent domain. The Article prohibits compulsory deprivation of a person of their property or any interest in or right over property of any description except where the following conditions are satisfied:

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for—
 - (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property;
 - and
 - (ii) a right of access to a court of law by any person who has an interest or right over the property

Article 237(2)(a) states that, notwithstanding that land in Uganda belongs to the citizens of Uganda, subject to Article 26, the Government or a local government may acquire land “in the public interest” in accordance with the conditions prescribed by Parliament. Clearly, Article 26 is the critical provision when determining whether the power for compulsory acquisition of land is in accordance with the Constitution.

3.0 Review of the Existing Law

3.1 Land Acquisition Act, Cap 226

3.2.1 Nature of interest/claim to be compensated

The *Land Acquisition Act* provides for compensation of persons having an interest in land compulsorily acquired by the Government. Section 1(f) of the Act provides that in this Act the term “persons having an interest” in relation to any land includes, “all persons claiming an interest in compensation payable for or in respect of the land under this Act and all persons having an interest in an easement affecting the land”.

Before the enactment of the *Land Act, cap 227* and the 1995 *Constitution*, the law only recognised mailo, freehold, and leases as interests in land. Since then both the *Constitution* and the *Land Act* declare customary land tenure as interests in land. Under the *Land Act*, lawful and bona fide occupants’ rights are interests in land.

Issue: Does the term “interest” in the Land Acquisition Act, include customary title and other interests envisaged by the Constitution and the Land Act?

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper Report*, paragraph 3.1.5, states:

In view of the revival of customary interests in land and the creation of rights of occupancy in favour of lawful and bona fide occupants and spouses it is necessary to amend the Land Acquisition Act to take care of these new interests.

In particular, the report proposed that:

“Person having interest” in relation to any land in S 1 (f) of the Act be redefined to include claims of customary owners, lawful occupants, bona fide occupants and spouses in relation to family land.

The Consultant agrees that customary ownership of land and the rights of lawful and bona fide occupants constitute “interests” in land capable of compensation. Whether “spouse rights” over family land constitute interest in land that must be separately compensated in the event of

compulsory acquisition of the land is controversial. However, for purposes of defining the phrase “*person having an interest*” it is unnecessary to determine this issue. The Consultant is of the view that the phrase, “*all persons claiming an interest in compensation payable for or in respect of the land under this Act*” is broad enough to cover the so-called “new interests”, including claims by spouses over family land amongst several other possible claimants. In the Consultant’s view, strictly, it is not necessary to amend the definition as recommended by the Report. However, the Consultant has no objection to the proposal to include express reference to the “new rights” in the definition as a reassurance to the members of the public affected that the law protects their interests.

Recommendation: Amend the definition of s 1(f), as proposed.

Response to LRWG’s comments

The LRWG felt that there was no need to amend the definition of “persons having an interest” in S.1 (f) of *Land Acquisition Act*. The Consultant is happy with this recommendation. The broad definition also allows for the development of the law to embrace other rights (such as carbon rights) as interests in land to be compensated in the event of compulsory acquisition of land.

Amended Recommendation: retain section 1(f) of the Land Acquisition Act as it is.

3.2.2. Declaration that land is needed for public purpose

Section 3(3) of the *Land Acquisition Act* provides that:

“The Minister shall cause a copy of every declaration to be served on the registered proprietor of the land specified in the declaration or, as the case may be, on the controlling authority and, if the proprietor is not the occupier of the land, on the occupier.”

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report proposes (paragraph 3.1.5.b) that:

The declaration for compulsory acquisition made under S. 3(1) of the Act, should pursuant to S. 3 (3) also be personally served on lawful occupants, bona fide occupants and spouses, if land is family land, in addition to the registered proprietor, the Land Board of the District and a Communal Land Association if the association is the owner of the land. A notice to a person having an interest in the land under S. 5(6) of the Act should be similarly served.

Similarly, the *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report proposed (paragraph 3.1.5.c) that s 9(1) of the *Land Acquisition Act*, should be appropriately amended to include bona fide and lawful occupants, and spouses of family land.

The Consultant notes that s 3(3) of the *Land Acquisition Act* requires the declaration to be served on the registered proprietor or occupier (if the proprietor is not in occupation) or the controlling

authority. Section 9(1) also only refers to the registered proprietor or occupier. The reason for the omission of customary landowners is that at the time of the enactment of the Land Acquisition Act, customary ownership was not an interest in land.

Recommendation:

- (i) **We recommend that s 3(3) and s 5(6) should be amended to include (in addition to the registered proprietor, the relevant District Land Board, and Land Committee), customary landowner, bona fide and lawful occupants. For the reasons stated above, spouses may be included, if the land includes family land. It is not necessary to include “Communal Land Association” because “customary landowner” would include a “Communal Land Association”, if it owns the land under customary tenure. Persons with registered interests in the land should also be included in the provisions.**

- (ii) **The Consultant agrees that s 9(1) of the Act should be amended to include customary landowners, bona fide and lawful occupants of the land.**

Response to LRWG’s Comments

The LRWG recommended the amendment of s. 3(3) of the Act to include customary owners: “It should read that every declaration to be served on the registered proprietor, the customary owner and on occupiers of the land”. The Consultant agrees that the term “occupier of the land” would include, for example, spouses. However, it does not include bona fide or lawful occupant where he or she is not in actual occupation of the land, for example, where he or she has leased (or “lent”) the land to another person. (Note that the *Land Act* does not require a lawful or bona fide owner to be in occupation in order to retain their title to the land). Probably, in practice this scenario is unlikely. We note that s 3(3) states that if the proprietor is not the occupier, then the declaration should be served on the occupier. To avoid possible arguments, we suggest that the provision should state expressly that if the owner is not the occupier, the declaration should be served on the occupier.

Amended recommendation:

We recommend that s 3(3) and s 5(6), respectively, should be amended to include (in addition to the people listed) customary landowner, bona fide and lawful occupants, and if the owner is not the occupier of the land, the occupier. The declaration should also be served on persons with registered interests against the subject land. It is not necessary to include spouses.

3.2.3 Purpose of acquisition

Under Article 26(2)(a) of the Constitution, a person must not be deprived of property except where the taking of possession or acquisition is, “necessary for public use or in the interest of defence, public safety, public order, public morality, or public health”. In contrast, s 3 of the *Land Acquisition Act* provides that the Government may acquire compulsorily any land if needed for a “**public purpose**”. The question is whether the latter provision contravenes Article 26(2)(a), and therefore is void.

Issues:

- 1) *What constitutes “necessary for public use” or in the interest of “defence, public safety, public order, public morality or public health”?*
- 2) *Does the term “public use” mean the same thing as “public purpose”?*

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper Report* (paragraph 3.2) notes that there is no definition in the Constitution or any other legislation of public use and the other terms, “although defence, public safety, public morality, and public healthy are easy to perceive”. The Report proposes that for the avoidance of doubt the terms should be defined in the Land Acquisition Act “in a manner capable of specific and reasonable construction”. The Report proposes the following definition:

“Public use” means use of land by the government or local government or public body or authority for the benefit of the public and excludes exclusive use for a section of society which can be more conveniently provided for by the private sector and it shall be the duty of the government or local government in case of dispute to satisfy court that the case falls under the public use category.

The Consultant agrees with the Report that the meaning of the terms “public use” and “public purpose” can be controversial. The phrase “necessary for public use” entails two separate but inter dependant requirements: the acquisition must be “necessary” and the land must be “for public use”. Where the Government compulsorily acquires land, for example, for purposes of construction of a public road or a public hospital, in the absence of proof of ulterior motive, it could scarcely be argued that the acquisition is not “necessary” or is not for “public use”. A situation, which is more likely to cause legal controversy is where the Government seeks to acquire land not for its own or local government immediate use but for use by a private person. Let us illustrate the point with hypothetical examples.

- i) *Illustration 1* Suppose the Government seeks to acquire certain land compulsorily for a private person to construct a residential house.
- ii) *Illustration 2* Suppose, the Government seeks to acquire a large piece of land for an investor or investors to construct a factory or a private hospital that will directly employ 500 people and indirectly generate employment for hundreds more. Let us also assume that acquisition of the subject land is necessary⁵ for the particular project.

⁵ According to Black’s Law Dictionary the word “necessary” does not mean absolutely essential; but rather that which is reasonably requisite or conducive for achieving a specified purpose.

In *illustration 1*, clearly the land is not required for “public use”. The legal position is less clear with respect to *illustration 2*. The answer to this question would depend on whether the framers of the Constitution intended the Government to exercise the power to acquire land compulsorily only where the Government (including local government) literally required the land for its own use or it also includes situations where the land is required for private use beneficial to the public.

Does the term “public use” include private use of land that is beneficial to the public? In USA, where this issue has been discussed in several cases, some courts construe the term “public use” to include “public interest”. For example, in one case the Judge said:⁶

The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. [The Government] does not itself have to use property to legitimate the taking; it is only that taking’s purpose, and not its mechanics, that must pass under the public use clause.

Other USA cases adopt a narrow interpretation, which restrict the term “public use” to actual use by the government or government body.

It is, of course, up to the Ugandan Constitutional Court to decide whether to give the term “public use” a wide or narrow meaning. It is noteworthy that the wording of Article 26(2)(a) of the 1995 Constitution differs somewhat from the corresponding provision, Article 13(1)(a) of the 1967 Constitution. The latter relevantly provided that the Government could acquire any property compulsorily if it was necessary “in the interest of ... the development or utilization of any property in such a manner as to promote the public benefit”. Arguably, under the latter provision the Government could expropriate property from one person and hand it over to another for private use provided such use was for the public benefit.⁷ If this is correct, was the change in the wording in the current Constitution intended to narrow down the scope of the Government power to acquire land compulsorily?⁸ Usually, when the legislature changes the wording of a statutory provision the courts assume that it intended to give the provision a different meaning. In this case, the Constitutional Court may well decide that that was indeed the object of the Constituent Assembly. In that case, the provision is in the *Land Acquisition Act*, which empowers the Government to acquire land if required for “**public purpose**” would be *ultra vires* Article 26(2)(a) of the Constitution.

However, the legal situation remains conjectural. To compound the problem, Article 237(2) of the *Constitution, 1995*, provides that subject to Article 26, the Government and local government may

⁶ Per O’Connor J in *Hawaii Housing Authority v Midkiff*, 467 US (1984), cited in Gerald Gunther, *Constitutional Law* (1985) at 486.

⁷ In *B.P. Bhat & Anor v Habib V. Rajan* (1958) E.A 536, Law J held that the term “public purpose” includes, “an aim or objective in which the general interest of the community as opposed to the particular interest of individuals is directly and virtually concerned.”

⁸ Neither the Uganda Constitutional Commission Report (the “Odoki Report”) nor any other official document prior to the promulgation of the 1995 Constitution, sighted by the Consultant, contain information that might be of assistance in this regard.

acquire land in the “**public interest**” (emphasis added). Whereas s 42 of the *Land Act* empowers the Government and local government to acquire land in accordance with Articles 26(2) *and* Article 237(2) of the Constitution (the Consultant’s emphasis).

Issue: Whether there should be a definition of the term “public use” in the Land Acquisition Act.

Corresponding legislation in some jurisdictions contains the definition of the term “public use/purpose” or deems certain purposes as “public use/purpose”. Ideally, the definition of these terms or their deemed meaning should be incorporated in the Constitution rather than the *Land Acquisition Act*. The reason is if the definition of the terms is included in the *Land Acquisition Act* or other statute the definition may still be open to legal challenge on ground of inconsistency with the meaning intended under the Constitution. Therefore, it may not resolve the issue whether certain purposes constitute “public use” within meaning of the Constitution. For example, suppose the *Land Acquisition Act* defines or deems the term “public use” to include any purpose that is likely to bring substantial economic public benefit. The meaning of the term might be clearer, but, undoubtedly, it will remain uncertain whether that is what the Constituent Assembly intended.

The definition of “public use” proposed by the Report, seeks to limit the term “public use” only to use by the Government or government body but excluding where the purpose is for the “*exclusive use for a section of society which can be more conveniently provided for by the private sector*”. This definition confines the Government’s powers to acquire land compulsorily within very narrow limits, which may or may not be what the Constituent Assembly intended.

The proposal to exclude from the definition of public use, “exclusive use for a section of society” is vague and likely to cause unnecessary legal controversy. For example, suppose the Government seeks to acquire compulsorily certain land near Makerere University, for constructing a hostel for government-sponsored students studying at the University. Is the purpose of acquisition for the “exclusive use of a section of society” namely, elite students? Moreover, is the acquisition void because already the private sector “conveniently” provides hostels for student residence?

From a legal viewpoint, the definition proposed by the Report, because it is narrow, is unlikely to contravene the meaning the Constituent Assembly intended. Hence, in that regard it is a safe definition. The drawback is that the definition leaves open the outer limits of the term “public use”. Did the Constituent Assembly intend to confer upon the Government wider powers? The proposed definition if adopted will confine the Government’s powers within narrow limits at a time when the country is undergoing rapid socio-economic development. Generations ago, Ugandans, like people in many other countries, relied on the Government for the provision of most essential services. Increasingly, the private sector is taking over from the Government in providing these services and employment. Examples of such services include telecommunication (mobile phone, television and radio), institutions of higher education and private hospitals. There is no doubt that this trend will continue. Time might come – if it has not done so – where land required for use by a private service provider might be regarded as “public use” because of the expected benefit to the public. The omission of a statutory definition of the term “public use” may allow the meaning of “public use” to develop in tandem with the country’s socio-economic development.

Recommendations:

- i) The Consultant recommends that prior to the amendment or re-enactment of the *Land Acquisition Act*, the Attorney-General should petition the Constitutional Court, Article 137 of the Constitution, to interpret the term “public use” and the other terms in Article 26(2)(b) of the Constitution. The issue in particular is whether the term includes acquisition of land required for private use that is likely to bring substantial social and/or economic benefit to the public.
- ii) It is not necessary to include in the *Land Acquisition Act* the definition of the term “public use” as the Report suggested. However, if the Government decided to include a definition it should be done after the test case to determine the scope of the terms under the Constitution.
- iii) If it is determined that the term “public use” and “public purpose” have a different meaning, the term “public purpose”, wherever it appears in the *Land Acquisition Act*, must be replaced by “public use” in conformity with the Constitution. In any case, it should be replaced for consistency.
- iv) Ideally, the meaning of “public use” and the other terms should be clarified by amendment of Article 26(2)(a) of the Constitution. However, this is outside the Consultant’s terms of reference.

Response to LRWG’s comments

The LRWG agrees that for consistency the term “public purpose” in the Land Acquisition Act should be replaced by the term “public use”. The LRWG comments further that the term “public use” connotes use by the entire community and not by private individuals. They suggest the term “public use” should be defined in the *Land Acquisition Act* to mean, “Use of land by the Government or Local Government or authority for the benefit of the public and it shall be the duty of the government or local government in case of dispute to satisfy court that the case falls under public use category.” The Consultant agrees that the “public use” possibly has the narrow meaning suggested by LRWG, although as stated above it is not definitive. Because the meaning of the term is not definitive, for the reasons stated in the recommendation above, the Consultant does not support incorporation of the suggested definition of “public use” in the *Land Acquisition Act* until after the test case. The LRWG seems to agree with the Consultant’s recommendation of a test case.

The LRWG comments that, “Land for investment is a very contentious issue and we recommend that the process involves the approval of parliament and the due planning process.” The Consultant agrees that this is contentious as is any issue relating to land in Uganda. That does not necessarily mean that the Government must not raise the matter if in the end it is in the national interest. However, the Consultant notes that the *Report of the Commission of Inquiry (Constitutional Review) Findings and Recommendations, 2003*, rejected the Government’s proposal (paragraph 10.8) to amend Article 26 of the Constitution to enable the Government to acquire property compulsorily for purposes of private investment. The Commission felt that it was unnecessary to make provision for such powers. In addition, most

participants in *Workshop Proceedings on Harmonisation of Land Tenure Legislation – The Land Acquisition Act cap 226, 2005*, expressed similar views. Therefore, the reality is the Government, even if it wanted is most unlikely to propose the amendment of the *Land Acquisition Act* let alone the Constitution to enable it to acquire land compulsorily, if necessary, for purpose of private investment. This is particularly so soon after the recent very contentious amendment to the Land Act. In the Consultant’s view, it is more reason why the Government should seek judicial determination of the extent of its powers of compulsory acquisition of land under the current legislation.

Amended Recommendations:

The Consultant maintains their recommendations.

3.2.4 Power to enter on and examine land

Section 2 of the *Land Acquisition Act* gives the Minister power to authorize any person to enter upon land for purposes of obtaining information for ascertaining whether the land is suitable for a public purpose. The Minister may authorize the person to survey, dig or bore into the subsoil and remove samples and do any other necessary thing for ascertaining the land’s suitability for that purpose. The Act makes provision for payment of compensation to any person who suffers damage as a result. The entry is temporary for the specified purpose.

Issue: Does s 2 of the Land Acquisition Act contravene Article 27 of the Constitution?

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report, paragraph 3.3, asserts that:

“Entry of persons (sic) land for purposes of survey, digging or boring into the soil and removing samples constitutes a violation of the proprietors’ privacy and property contrary to article 27...”

Article 27(1) provides:

- (1) No person shall be subject to:
 - a) unlawful search of the person, home or other property of that person; or
 - b) unlawful entry by others of the premises of that person;
- (2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.

The authors of the Report reason:

“Such invasion to property rights is even actionable as trespass in the ordinary civil law. After the promulgation of the 1995 Constitution (Art 237), the state in Uganda has no residual interest or allodial title to land in Uganda as is the case in England, for example, where all land is owned by the crown and the citizens hold it as tenants either directly or indirectly from the crown...”

With respect, in the Consultant’s view, the authors’ statement is based on false legal reasoning. The common law concept of allodial title: that the English Crown had the ultimate title and that no subject could claim title to land unless it was granted to them by the Crown, was a legal fiction. Jurists at the time of colonization thought it was necessary to transport the doctrine to the colonies to give legal effect to Crown grants of land in British colonies. The concept had nothing to do – in England or the colonies – with government power to acquire property compulsorily or to enter private land in certain circumstances. The authority of the Government to enter private land is given by legislation. Article 79(1) of the Constitution gives Parliament the power, subject to the Constitution, to make laws on any matter for the governance of the country.

Article 27(1) of the Constitution prohibits “unlawful” search of a person or “unlawful” entry of a person’s premises. The Article enshrines, as the Report rightly says, a fundamental human right against unlawful entry of people’s premises. Entry that is authorized by law is not unlawful. Section 2(1) of the *Land Acquisition Act*, is just one of several legislation that gives a statutory right of entry to private premises in specified circumstances without the consent of the owner. In the Consultant’s view, the section does not contravene Article 27(1). Accordingly, the Consultant disagrees with the proposal in the Report that the Minister must seek the consent of the landowner prior to entering the land under s 2(1) of the *Land Acquisition Act*. No doubt in practice in the interest of good governance the Minister should seek the landowners’ consent prior to entering the land; but it is not required by the Constitution.

Recommendation:

Section 2(1) of the *Land Acquisition Act* does not contravene the Constitution; hence, it does not require any amendment in this regard.

LRWG’s comments: Agrees

3.2.5 Compensation before entering to survey or remove samples

Section 2(2) of the *Land Acquisition Act*, provides that the Government must pay compensation to any person who suffers damages as a result of the exercise of the power conferred by s 2(1) of the Act, such as damage caused by surveyors or scientist authorised to remove soil samples.

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* (paragraph 3.3.3.b) proposes that in addition to the requirement of consent, compensation must be paid to the landowner “before entry on the land for purposes of survey and removing of soil or samples is done in order to conform to article 26(2)(b) of the Constitution.”

Article 26(2)(b) of the Constitution prohibits compulsory taking or acquisition of property for public use, unless the taking of possession or acquisition is made under a law which, inter alia, makes provision for:

- (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property

Issues:

- (i) *Whether s 2(2) of the Land Acquisition Act contravenes Article 26(2)(b) to the extent that it does not require payment to be made before removing soil or other samples?*
- (ii) *Does the removal of samples from the land for examining whether the land is suitable for acquisition constitute deprivation of property within meaning of Article 26?*

The statutory licence the Minister is authorized to give under s 2 of the *Land Acquisition Act*, is for temporary occupation of land (which may include surveying, and digging into the soil) for purposes of collecting information as to whether the land is suitable for public use. In the Consultant's view, the licence does not constitute "taking of possession or acquisition of the property" because the landowner remains in possession of the land. Therefore, Article 26(2)(b) does not apply to the section.

Recommendation: Section 2(2) of the *Land Acquisition Act* does not need amendment.

LRWG Comments: agree.

As to the second issue, namely whether the removal of samples for examination constitutes deprivation of property, according to the *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report (paragraph 3.3.2 -3), s 2 of the *Land Acquisition Act* contravenes Article 26(2)(b) because it gives the Minister power to authorize a person to remove samples from the land. The authors argue that the samples are the property of the landowner; therefore, the Government must not remove them without prior payment.

Arguably, samples removed from the land are the "property" of the owner of the land. It is rather fanciful that prior to removing, for example, a handful of soil for laboratory examination the Government must negotiate and pay the landowner compensation for the soil removed, with a right to appeal to court in the event of disagreement. The purpose of the exercise at this stage is just to determine whether the subject land is suitable for acquisition for public use. The legal question, however, is whether the landowner taking the samples constitutes deprivation of the landowner's property. In the Consultant's view, the landowner is not deprived of their property in the sample because the act does not constitute "taking of possession or acquisition of property", within meaning of the Constitution. To come within the constitutional provision, the taking or acquisition must entail intention to become owner of the property. The authority the Minister under s 2 is for

the limited purpose of examining the samples to determine whether the land is suitable for acquisition; legally, ownership of the samples remains with the landowner. Theoretically, the samples should be returned to the landowner after the purpose is accomplished. If the Government refused or neglected to return the sample, where the landowner demanded its return then the landowner could seek damages for conversion or like action in tort. In the Consultant's view, it is not a constitutional issue.

Recommendation: It is not necessary to incorporate a provision in the *Land Acquisition Act*, requiring payment of compensation before removing soil samples for examination.

3.2.6 Right of access to court

Articles 42 and 50 of the Constitution guarantee a right of access to the courts. Article 42 provides:

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

Article 50 reads:

- (1) Any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.
- (2) Any person or organization may bring an action against the violation of another person's or group's human rights.
- (3) Any person aggrieved by any decision of the Court may appeal to the appropriate Court.
- (4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.

Issue: Whether the Land Acquisition Act gives any person deprived of their land a right of judicial access as required by the Constitution.

The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report, paragraph 3.4, notes that under various provisions of the *Land Acquisition Act* (sections 2(3), 8(3), 9(2), 11(3) and 12(2)), the Attorney General is required to refer disputes over compensation claims to the courts. However, none of the sections gives an aggrieved person a direct right of access to the courts. For this reason, according to the Report, these provisions contravene Article 50, which guarantees a right of access to court to any person in case of infringement of his or her human rights. The Report recommends changes in relation to the right of access to court by aggrieved persons.

The Consultant agrees that it seems only the Attorney General could refer disputes over compensation to court. However, in the Consultant's view aggrieved persons are not denied a right

of access to the courts because, it seems, the Attorney General has no discretion to decide whether to refer a dispute to court. Whether this is enough to satisfy the requirements of Article 26(2)(b)(ii) of the Constitution, which provide a right of access to court to any person who has an interest or right in the subject property, may be controversial. It would be best to put the matter beyond dispute by appropriate amendment.

Recommendation:

The *Land Acquisition Act* must include an express provision giving aggrieved interested parties a direct right of access to court or tribunal. The procedures for resolving disputes should be reviewed, as proposed in the Report.

LRWG Comments - None

3.2.7 Award of compensation

Article 26(2)(b)(i) of the Constitution prohibits compulsory taking of possession or acquisition of property except under a law which, inter alia, makes provision for “prompt payment of fair and adequate compensation” prior to the taking or acquisition of the property.

Issue: Whether provisions of the Land Acquisition Act for the payment of compensation contravene the Constitution

Section 6 of the *Land Acquisition Act*, deals with the assessor’s powers to determine and award compensation to persons deprived of their land under the provisions of the Act. The section contravenes Article 26(2)(b)(i) because it does not make provision for “*prompt payment of fair and adequate compensation*”. Nor is there any other provision in the Act to that effect.

Recommendation: Insert a provision in the *Land Acquisition Act* to the effect that there must be “prompt payment of fair and adequate compensation” as prescribed by the Constitution.

3.2.8 Taking possession prior to payment

Article 26(2)(b)(i) of the Constitution provides that the taking or acquisition must be made under a law which makes provision for, inter alia, “prompt payment of fair and adequate compensation, *prior* to the taking of possession or acquisition of the property” (emphasis added).

Section 7(1) of the *Land Acquisition Act*, provides that if the Minister certifies that it is in public interest, the assessment officer may take possession of the land acquired as soon as he or she makes an award for compensation; or at any time after publication of the declaration that the land is required for a public purpose.

Issue: Whether power of the assessment officer to take possession before payment of compensation contravenes Article 26(2)(b)(i) of the Constitution.

The Consultant is of the view that s 7(1) of the *Land Acquisition Act*, irrespective of its underlying merits, contravenes Article 26(2)(b)(i) and (ii) because it authorizes the taking of possession before payment of compensation and does not provide for prompt payment of fair and adequate compensation.

Recommendation: Delete s 7(1) of the *Land Acquisition Act* or amend accordingly by deleting reference to the power to take possession prior to payment of compensation.

3.2.9 Temporary occupation of waste and arable land for public purpose

Section 10(1) of the *Land Acquisition Act* provides that:

Whenever the Minister is satisfied that the temporary occupation and use of any waste or arable land is required by the Government for a public purpose, he or she may appoint a public officer or other person to procure the occupation and use of the land for such term, not exceeding three years from the commencement of the occupation, as the Minister thinks fit.

Issue: Whether temporary occupation and use of “waste or arable” land required by the Government for public purpose constitutes deprivation of property”

According to the *Harmonisation of Land Tenure Legislation: Issues/Concept Paper Report*, paragraph 3.8, this provision violates Article 26 of the Constitution because it allows the Minister to give authority to a person to occupy and use “waste or arable” land without complying with the provisions for compulsory acquisition of land. The Report proposes that the same procedure must be complied with whether the land is acquired for temporary purposes or permanently.

The Consultant agrees with the authors of the Report that whether the land is “waste” or “arable” it is the property of the landowner. However, for the reasons already stated (para 3.2.5), the Consultant does not agree that “temporary occupation” of land by the Government constitutes “taking possession or acquisition” of the land within the meaning of Article 26 of the Constitution. Article 26 only prohibits the permanent taking of private land. Apart from the *Land Acquisition Act*, there are several other laws that allow temporary occupation of land for various public purposes.⁹ In the Consultant’s view, a law that allows temporary occupation of private land does not contravene Article 26 of the Constitution.

Recommendation: .It is not necessary to amend s 10(1) of the *Land Acquisition Act*.

⁹ See, for example, s 72 of the Land Act, cap 227.

LRWG Comments

The LRWG comments that the Government must pay compensation for temporary occupation of land. The Consultant does not oppose the payment of compensation per se. In the Consultant's view, the issue is not whether the Government must pay compensation in such a situation, but whether payment of compensation is required by the Constitution. The Consultant maintains the view that the Constitution does not require that the *Land Acquisition Act* must make provision for payment of compensation where the occupation of the land is temporary. The recommendation remains.

3.3 Town and Country Planning Act, Cap 246

3.3.1 *Compulsory acquisition of land for physical planning purposes*

Section 16(1) of the *Town and Country Planning Act*, cap 246, makes provision for compulsory acquisition of land necessary for physical planning. Section 16(2) of the Act declares that land acquired under this subsection (1) “shall be deemed to have been acquired for a public purpose.” As we have seen, Article 26 of the Constitution relevantly states that land can only be acquired if necessary for “public use”. The term “*public use*” arguably is narrower than “*public purpose*” (para 3.2.3).¹⁰

Issue: Is compulsory acquisition of land for physical planning inconsistent with the Constitution?

The 1962 and 1967 Constitutions expressly provided for compulsory acquisition of land for purposes of physical planning. For example, Article 13(1)(a) of the 1967 Constitution, relevantly provided that the Government could acquire any property compulsorily if it was necessary “in the interest of ... town and country planning”. There is no corresponding provision in the 1995 Constitution. The *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report, at paragraph 4, suggests that this means that the Government has no power to acquire land compulsorily necessary for planning purposes.

There is nothing in the documents leading to the enactment of the Constitution to indicate whether the omission of “land required for physical planning” from Article 26 was deliberate or inadvertent. As earlier seen (para 3.2.3), usually when the legislature changes the wording of a legislative provision the assumption is it intended to give the provision a different meaning. In the Consultant’s view, in some cases acquisitions of land for physical planning purpose may be classified as necessary for “public use” or in the interest of “of defence, public safety, public order, public morality or public health”. However, legal controversy is likely to remain.

Recommendation:

- i) **The Government should seek a judicial interpretation of Article 26(2), as earlier recommended, to determine whether the power to acquire land compulsorily “necessary for public use or in the interest of defence, public safety, public order, public morality or public health”’ includes compulsory acquisition of land for planning purposes.**
- ii) **The Consultant agrees with the *Harmonisation of Land Tenure Legislation: Issues/Concept Paper* Report’s proposal that to avoid controversy the best option would be to amend the Constitution to provide expressly for compulsory acquisition of land required for physical planning. The Consultant understands that the amendment of the Constitution is outside the terms of reference.**

¹⁰ See also “*Issues of Compulsory Acquisition and compensation in the Constitution and Town and Country Planning Act*”, para 3.1.4, *Physical Planning Issues Paper*.

LRWG comments

The LRWG recommended that the *Town and Country Planning Act* should expressly provide “for acquisition of land for public order, public morality or public health purposes instead of amending the constitution”. The Consultant agrees that such provision would be consistent with Article 26(2) of the Constitution and arguably, as suggested above, would cover some if not most planning purposes. However, there would still be legal controversy, for example, where the Government compulsorily acquires land in a slum area because it is necessary for “public health”, the Government can immediately hand over such land to developers/investors. The Consultant maintains the recommendation of a test case to determine authoritatively the scope of Article 26(2) of the Constitution. Of course, the proposal to amend the Constitution will generate a lot of controversy. After the test case, the Government will be in a good position to determine whether it is necessary to amend the Constitution.

3.4 Compulsory Acquisition of Land under the Land Act

Section 42 gives the Government or local government power to acquire land compulsorily in accordance with Articles 26 and 237(2) of the Constitution. This section 42 simply repeats what the Constitution states. It is necessary to determine whether the *Land Act* contains provisions, which satisfy the requirements of Article 26(2) of the Constitution.

Issue: Whether the Land Act satisfies the conditions stipulated in Article 26 for compulsory acquisition of land.

3.4.1 Land Acquired utilizing the Land Fund

Section 41 of the *Land Act*, establishes the “Land Fund”. Section 41(4) provides that the fund shall be utilized:

- (a) *to give loans to tenants by occupancy to enable them to acquire registrable interests pursuant to article 237(9)(b) of the Constitution;*
- (b) *by the Government to purchase or acquire registered land to enable tenants by occupancy to acquire registrable interests pursuant to the Constitution;*
- (c) *to resettle persons who have been rendered landless by Government action, natural disaster or any other cause;*
- (d) *to assist other persons to acquire titles.*

Section 41(6) provides that:

Notwithstanding any provisions to the contrary in the Land Acquisition Act—

- (a) *any compulsory acquisition of land for purposes of implementing subsection (4)(b) shall be at a fair market valuation assessed on a willing seller willing buyer basis;*

- (b) *no person from whom land is to be acquired under this section shall be required to vacate that land until he or she has received the compensation awarded to, or agreed to, by him or her;*
- (c) *the commission shall pay compensation for any losses caused by severance or injurious affection;*
- (d) *the commission shall pay all reasonable costs of disturbance to the person from whom land is to be acquired; and*
- (e) *in the case of land occupied under customary tenure, in addition to compensation assessed under this section, there shall be paid as a disturbance allowance a sum not exceeding 15 percent of the sum awarded to the person from whom land is to be acquired where that person was using the land as his or her home.*

3.4.1.1 Acquisition to enable tenants by occupancy acquire registrable interests

The foregoing provisions imply that the Government may compulsorily acquire registered land “to enable tenants by occupancy acquire registrable interests” (s 41(4)(b)). Section 41(6) seems to satisfy the Constitutional requirements for fair and prompt payment of compensation prior to taking possession. Sections 76, 77 and 87 of the *Land Act* provide for judicial access for aggrieved interested persons, which also satisfy the Constitutional requirements in that regard.

The only question is whether acquisition of land to “*enable tenants by occupancy acquire registrable interests*” satisfies the requirement that the acquisition must be necessary for “public use” or is in the interest of “defence, public safety, public order, public morality or public health (Article 26(2)(a)). As discussed above (para 3.2.3), the answer will depend on how wide the Constitutional Court chooses to interpret the term “public use” and the other terms. In the Consultant’s view, this issue is unsettled and is likely to generate legal controversy.

3.4.1.2 Acquisition to resettle landless persons

The power to acquire land compulsorily under s 41(4)(c), “*to resettle persons who have been rendered landless by Government action, natural disaster or any other cause*”, probably comply with “public use” or in the interest of “public safety, public order or public health”, as the case may be. The other requirements of Article 26 discussed in the preceding paragraph, are also satisfied except the provision for payment of “fair and adequate compensation”. Section 41(6)(a), which provides that compensation for land acquired by compulsory process “*shall be at a fair market valuation assessed on a willing seller willing buyer basis*”, states that this provision only applies where the land is acquired for purposes of s 41(4)(b). In the Consultant’s view, in the absence of any other provision in the *Land Act*, which prescribes for payment of “*fair and adequate compensation*”, the Government cannot acquire land compulsorily for the purposes stipulated in s 41(4)(c). It is not enough that under the Act aggrieved persons have a right of access to the courts, which might result in them receiving fair and adequate compensation for their land. The Constitution requires that there must be a provision in the legislation for payment of fair and adequate compensation.

Recommendation:

- i) **The Government may file a test case, as recommended elsewhere to determine the scope of Article 26, in particular the meaning of “public use” and whether, in this context, it would include the purposes discussed above.**
- ii) **Amend the Land Act to ensure compliance with the requirements of the Constitution.**

LRWG comments

The LRWG comments that, “S[ection] 41 of the Land Fund scope is very narrow and the method of assessment of compensation is different. The money under the Land Fund is put in the context where compulsory acquisition does not apply”. This comment is not very clear. The Consultant maintains the view that s 41 implies power in the Government to acquire land compulsorily for purposes stipulated in the section and to use the Land Fund for payment of compensation.

3.5 Execution of Public Works – s 73, Land Act

Section 73, of the *Land Act* provides for compulsory acquisition of land or materials from the land, for the purpose of execution of public works.

Issue: Whether s 73 of the Land Act satisfies the conditions stipulated in Article 26(2) for compulsory acquisition of land.

Section 73 provides:

- (1) *Where it is necessary to execute public works on any land, an authorised undertaker shall enter into mutual agreement with the occupier or owner of the land in accordance with this Act; and where no agreement is reached, the Minister may, compulsorily acquire land in accordance with section 42.*
- (2) *Where under subsection (1), an authorised undertaker executes public works upon or takes stone, murrum or similar material from the land, the authorised undertaker shall have over the land such rights of access and other rights as may be reasonably necessary for the execution, construction and maintenance of the works or, as the case may be, the taking of the material; and the land shall be deemed to be subject to those rights whether or not they have been registered under the Registration of Titles Act.*
- (3) *An authorised undertaker executing public works on land under this section shall promptly pay compensation to any person having an interest in the land for any damage caused to crops or buildings and for the land and materials taken or used for the works.*

- (4) *Any dispute as to compensation payable under subsection (3) shall be referred to a land tribunal.*

Where the land the Government seeks to acquire is necessary for the purpose of “execution of public works”, the purpose of acquisition would undoubtedly satisfy the “public use” requirements. However, in the Consultant’s view, s 73 contravenes the other conditions of Article 26(2) of the Constitution. The section does not state (and there is no other provision in the *Land Act* that provides) that compensation must be paid “*prior to the taking of possession or acquisition*” of the materials from the land.¹¹ In addition, s 73(3) says that payment of compensation must be prompt, but omits that it must be “*fair and adequate*”.

Recommendation: Amend s 73 of the *Land Act*, as appropriate to comply with the constitutional requirements.

3.6 Compulsory Acquisition of land under the Land Act, for other purposes

It follows from the above discussion that, although s 42 of the *Land Act* gives power to the Government and local governments to acquire land compulsorily, in accordance with Article 26 and 237(2) of the Constitution, the provisions of the Act do not satisfy the Constitutional requirements. Accordingly, in the opinion of the Consultant any purported compulsory acquisition of land under the *Land Act*, if challenged in Court, the Court is likely to find that the acquisition void on this ground.

Recommendation:

- i) **Amend the *Land Act* to comply with the Constitution.**
- ii) **It may be advisable to remove from the *Land Act* provisions for compulsory acquisition of land. Instead, incorporate the power for compulsory acquisition of land (or property) in a single legislation, namely, the Land (“Property”) Acquisition Act.**

The Consultant understands that the review of the Land Act is outside the terms of reference.

¹¹ Section 41(6)(b), which would satisfy this requirement does not apply to this provision.

Appendix 1

Literature review

The following are the main materials surveyed in our literature review.

Books

- Morris and Read, *Uganda the Development of its Law and Constitution* (1966), Stevens
- Mugambwa John T, *Principles of Land Law in Uganda* (2002), Fountain Publishers, Kampala
- Allen, *The Right to Property in Commonwealth Constitutions*, 2000, Cambridge
- Frieke (ed), *Compulsory Acquisition of Land in Australia* (1982), LBC
- J F Garner (ed) *Compensation for Compulsory Purchase: A Comparative Study* (1978), United Kingdom National Committee of Comparative Law, London
- FAO, *Compulsory acquisition of land and compensation*, FAO Land Tenure Studies #10, also available in electronic form at: <http://www.fao.org/nr/lt/en.htm>
- John W. Bruce, Renee Giovarelli and others, "*Land Law Reform: Achieving Development Policy Objectives*", The World Bank, Legal Vice-Presidency, 2006.

Articles

- Read, "Aspects of the East African Experience" in J F Garner (ed) *Compensation for Compulsory Purchase: A Comparative Study* (1978), p 127 – 143
- J T Mugambwa, "Article 26(2) of the Constitution of Uganda and the Protection of Private Property From Compulsory Acquisition" (1998) 4 East African Journal of Law and Human Rights 70 - 89
- J T Mugambwa, "Examining Land Law and Tenure Issues Arising Under the New Uganda Constitution" in D Pal Ahluwalia and Paul Nursey-Bray (ed), *The Post-Colonial Condition - Contemporary Politics in Africa* (New York, Nova Science Publishers Inc, 1997), pp 67 – 80

Reports/Government publications

- The National Land Policy for Uganda, Draft No. 3, January, 2007

- The Draft National Land Use Policy, Ministry of Water, Lands and Environment, Uganda Government, June 2004
- Workshop Proceedings on Harmonisation of Land Tenure Legislation – The Land Acquisition Act cap 226, Ministry of Water, Lands and Environment, February 2005
- Harmonisation of Land Tenure Legislation - Final Report, Ministry of Water, Lands and Environment, June, 2005
- Report of the Commission of Inquiry (Constitutional Review) Findings and Recommendations, Government of Uganda, 2003
- Report of the Land Act Implementation Study, Government of Uganda, 6 September 1999
- Land Act Implementation Study: Annex 6 LEGAL APPRAISAL, 6 September 1999, by Patrick McAuslan and Rose Mwebaza
- The Report of the Uganda Constitutional Commission – Analysis and Recommendation (Odoki Report), Government of Uganda, 1993
- Gurjit Singh, Land Laws, Land Policies and Planning in Malaysia 1994, UMP – Asia Occasional paper No.8

Cases

- *Shah v Attorney General* (1970) EA 523
- *B.P. Bhat & Anor v Habib V. Rajan* (1958) E.A 536
- *Hawaii Housing Authority v Midkiff*, 467 US (1984),