

UCC

Telegram.....

MINISTRY OF LAND,  
HOUSING AND URBAN  
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Any correspondence on

This subject please quote  
no.....

1st August, 1991



The Commissioner/Secretary,  
Uganda Constitutional Commission,  
Ministry of Constitutional Affairs,  
Presidents Office,  
P. O. Box 7206,  
KAMPALA

A REQUEST FOR A MEMORANDUM ON *NEW CONSTITUTION* IN THE MAKING ON  
ASPECTS OF LAND.

I refer to your letter Ref. UCC/ADH/24 of the 18th June 1991 on the above  
subject.

I have the pleasure to submit herewith a memorandum from my Ministry  
regarding aspects of Land in Uganda.

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Paul Bakashabaruhanga  
PERMANENT SECRETARY •

MEMORANDUM TO UGANDA CONSTITUTIONAL COMMISSION BY THE STAFF OF  
THE MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT .

1. PUBLIC LAND

Ownership

(i) We propose that all land in Uganda, including former Mailo land should be Public Land and be held and administered by a Commission to be provided for in the New Constitution. This means that the state will be the ultimate owner of all land in Uganda. This is necessitated by the fact that Land is the most crucial and fixed National Asset that all generations of Ugandans will look to as a basis of survival and sovereignty. It should be the state to continually over-see how this vital asset is disposed of for the benefit of individuals and the general public. This will also be in keeping with our traditional values whereby Kings, Chiefs and clan leaders were the ultimate owners of land but holding in trust and the benefit of their people.

(ii) We propose that the entire property in and control of all minerals and mineral ores under or upon any lands or waters in any freehold land should be vested in the government of Uganda ..

(iii) It is proposed that all rights in the water of any spring, river, stream, water-course, pond, whether alienated or unalienated should be reserved to the Government and no such water shall be abstracted, dammed, diverted, polluted or otherwise interfered with, directly or indirectly except in pursuance of permission in writing granted as may be prescribed by Parliament. This proposal is based on the fact that water is such a vital need not only to man but to animal life. Its ultimate control like that of land to which it is related should of necessity be vested in the government if all who need it are to have access to it for their survival under conditions to be prescribed by law.

(iv) For the better management of Public Land under freehold tenure we propose that Parliament be empowered to enact laws relating to the management control, planning, alienation and transfer of estates and interests in land provided that such laws shall not fetter the ultimate authority of the Commission to control and manage Public Land.

2. Tenure System

(i) We propose that as far as possible there should be a uniform system of Tenure throughout Uganda; such a uniform system is cheap to administer and can more readily be understood by the great majority of the nationals and foreigners who may be interested in the land Tenure System of Uganda.

A uniform system of Tenure can also contribute to a more even development strategy throughout the country as it becomes easier to pursue a uniform national developmental plan if all regions have a similar system of land tenure. This will also assist in redressing historical imbalances that may have been based on the existence of multiple tenure systems. It will also be in keeping with the world wide trend of having one tenure system in a country.

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(ii) We propose that all alienations of Public Land by the Commission to individuals, corporate bodies and urban Authorities be made in Freehold. Estates in Freehold would facilitate an easier change *aver* from Mailo Tenure System which for all intends and purposes conferred a similar estate. It will also satisfy the aspirations of the millions of the peasantry to have security of tenure *aver* lands where their forefathers cultivated, lived, died and were buried. In any case, these customary tenants view their estates as permanent and as good as Freehold estates, the very reason why they often resist encroachers even if they have been given Certificates of Title.

(iii) However, it should be possible for the Commission to grant estates less than Freehold especially where one proposes to carry on short term development on the land. Such estates should be in the nature of Leaseholds.

(iv) The effect of our proposals above is to abolish Mailo land tenure and introduce a uniform system based on Freehold Tenure throughout the country.

### 3. ADMINISTRATIVE SET-UP AND FUNCTIONS OF UGANDA LAND COMMISSION AND DISTRICT LAND COMMITTEES

(1) In view of the fact that the Commission, if the above proposals are adopted, will assume responsibility over all public land in Uganda, there is need for its membership to be increased from the present Maximum of five members to a Minimum of seven members. It should also be provided for in the New Constitution that the Commission should be obliged, in the performance of its duties, to rotate from District to District. This will take services nearer to the people without necessarily decentralizing its set-up.

(2) In order to facilitate easier access of the great majority of the people to District Land Committees and to reduce on transport and other expenses we propose that the Committees should be set-up at a Sub-county level as Sub-county Land Committees.

### PROTECTION FROM DEPRIVATION OF PROPERTY

We propose that Article 13 as it appears in the 1967 Constitution should be wholly incorporated in the New Constitution. The essence of our proposal is to repeal the Constitution (First Amendment) Act of 1970 which did away with the need to pay "adequate" and "prompt" compensation upon compulsory acquisition of property by the state. The payment of "prompt" and "adequate" compensation is the only equitable remedy where an individual's property is compulsorily acquired by the state against his will. This measure of compensation will militate against an individual being exposed to unnecessary hardship and ensure that he is more or less brought into his former position after compensation. The requirement for

prompt and adequate compensation will also restrain the state from acquiring private property in instances where there is no overwhelming public interest for it to do so.

5. LAND HOLDING BY NON-CITIZENS, TAXING LAND FOR NON-USE AND TAXING LAND PER-SE

(1) With regard to non-citizens, foreign Companies and Multinational Corporations adequate safe-guards have been made in the existing law to wit: section 2 of the land Transfer Act, Cap. 202, section 19(I) (d) of the Public lands Act 13 of 1969; and sections 10 and 11 of the Investment Code Statute, Statute No.1 of 1991. Parliament can if the need arises, improve on the. above provisions.

(2) Taxation for non-use of land or for ownership of land so as to put land to economic use is in the present circumstances, where most of the land is not registered would be premature. The issue should await the time when most of the land has been surveyed and registered making ,it easy to ascertain ownership and location. The issue may then be addressed by an Act of Parliament.

6. LIMITS TO SIZES OF LAND WHICH MAY BE ACQUIRED

It is our view that there should be no limit to the size of land an individual or organization may acquire provided such individual is capable and actually does put the land to economic use and obtains Consents as may be prescribed by the law; for example a Controlling Authority cannot under section 19(I) (f) of the Public Lands Act, 1969 make a grant of more than five hundred acres (500) of Public Land in leasehold to anyone person, either by a single grant or a series of grants without the consent of the Minister.