

PN-ABL-223

77033

**ASSESSMENT OF THE DIVESTITURE OF
THE CUSTODIAN BOARD PROPERTIES**

UGANDA

FILE COPY

**REPORT BY
Bene L. M'Peko**

**CENTER FOR PRIVATIZATION
2600 Pennsylvania Avenue NW - Washington DC 20006**

FILE COPY

Project No. 80

January 1989

**Prepared for the
BUREAU FOR PRIVATE ENTERPRISE
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

CENTER FOR PRIVATIZATION

The Center for Privatization was established in 1985 to provide expert advisory services to developing countries and their indigenous private sectors in planning and implementing programs to divest and privatize their state-owned or controlled enterprises and activities. The Center is fully funded under a major contract between Analysis Group, Inc. and the U.S. Agency for International Development. Participating subcontractor companies include:

Arthur Young & Co.
Equity Expansion International
Ferris & Company, Inc.
International Phoenix Corporation
Public Administration Service

The Center draws upon its consortium of six companies, and others when appropriate, to provide a wide range of qualified specialists in fields from agriculture, industry, financial and other services, transportation and utilities with experience in areas related to privatization, such as:

Corporate Restructuring
Employee Stock Ownership
Equity Placement
Financial Analysis and Valuation
Legal and Regulatory Studies
Macro/Micro Economic Analyses
Marketing and Market Research
Project Design and Evaluation
Strategic Planning
Taxation

Pennsylvania Avenue Nw, Suite 2500 ***** Washington, DC 20006
Phone (202) 872 9250 - Fax (202) 872-9256 - Telex 897124 (CENTR US)

This report was prepared by
Arthur Young & Company under
USAID Contract No. DPE-0008-C-00-5850-00
between the U.S. Agency for International Development
and Analysis Group, Inc.

Bene L. M'Poko is an international
banking and financial expert and a
senior consultant to the Center for
Privatization.

**ASSESSMENT OF THE DIVESTITURE OF
THE CUSTODIAN BOARD PROPERTIES
UGANDA**

**REPORT BY
Bene L. M'Poko**

**CENTER FOR PRIVATIZATION
2000 Pennsylvania Avenue NW - Washington DC 20006**

Project No. 80

January 1989

**Prepared for the
BUREAU FOR PRIVATE ENTERPRISE
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
SCOPE OF WORK	
EXECUTIVE SUMMARY	
I. BACKGROUND	1
II. DESCRIPTION AND ECONOMIC POTENTIAL OF CUSTODIAN BOARD PROPERTIES	2
A. Background	2
B. Significance of the Custodian Board Properties	2
C. Description of the Properties	3
1. Agricultural Properties	3
2. Industrial Properties	4
3. Commercial Properties	4
4. Residential Properties	5
D. Rationale for Focusing on Agricultural and Agro-industrial Properties	5
III. PRESENT ORGANIZATION AND FUNCTION OF THE CUSTODIAN BOARD	7
A. Organization of the Board	7
1. Composition	7
2. Duties and Responsibilities	7
B. Role, Tasks and Status of the Functional Committees	8
1. The Verification Committee	8
2. The Negotiation Committee	10
3. Assessment of Progress to Date	10
4. The Board of Valuers	11
C. Constraints to the Operations of the Custodian Board	12
1. Legal Problems	12
2. Logistical Problems	13

3.	Rental Values	13
D.	The Board's Administrative Functions	13
1.	Collection of Rent	14
2.	Administrative Constraints	14
IV.	RESTRUCTURING THE CUSTODIAN BOARD	16
A.	Introduction	16
B.	Need for Reorganization and Restructured Priorities	16
C.	Organizational Recommendations	17
D.	Custodian Board Executive Committee (CBEC)	17
E.	Functions of the Custodian Board Executive Committee	18
F.	Regional Divestiture Committees	19
G.	Role of the Executive Director	21
H.	Sectorial Departments	22
I.	Role of the Finance Department	23
J.	Support Services	23
K.	Internal Audit	24
V.	FINANCING THE PURCHASE OF THE CUSTODIAN BOARD PROPERTIES	25
A.	Selection of the Properties to be Divested	25
B.	Constraints to Property Sales Imposed by Economic Conditions	25
C.	Actions Required Before Divestiture Can Take Place	26
D.	Other Considerations and Issues	26
E.	Cash Sales	27
F.	Installment Sales	27
G.	Mortgage Loans	28
H.	Joint Ventures and Partnerships	29
I.	Eligibility Criteria for Purchase	29

VI.	REHABILITATION REQUIREMENTS AND NEED FOR EXTERNAL SUPPORT	32
A.	Rehabilitation: A Post-Sale Owner Activity	32
B.	Rehabilitation Will Occur Over Time	32
C.	Need for External Support	32
D.	Role of the Banking System	33
E.	Need for Technical Assistance	33
F.	Main Issues to be Resolved	34
1.	Selection of the First Group of Enterprises to be Rehabilitated	34
2.	Technical Assistance	34
3.	Foreign Exchange Risk	35
4.	Standardized Lending Criteria	35
VII.	COMPENSATION OF FORMER OWNERS	36
A.	Background	36
B.	Partial Compensation	37
C.	Compensation Process	38
VIII.	PROPOSED TECHNICAL ASSISTANCE TO THE CUSTODIAN BOARD	40
A.	Organization and Management Specialist	40
B.	Property Sales Procedures Specialist	40
C.	Finance and Credit Expert	41
D.	Agricultural Specialist	42
E.	Industrial Engineer	43
IX.	SUMMARY AND RECOMMENDATIONS	44
A.	Summary	44
B.	Recommendations	44
	Annex A: The Land Tenure System in Uganda	50
	Annex E: List of Contacts	54

SCOPE OF WORK

The scope of work for this assignment included the following tasks:

- Study the functions and duties of the Custodian Board
- Recommend a new organizational structure for the Custodian Board
- Determine the importance of the Custodian Board properties and recommend a strategy for their divestiture
- Determine the level of technical assistance required to carry out the divestiture process
- Recommend the methods of financing the divestiture of the Custodian Board properties
- Explore the possibility of organizing a Ugandan country-specific seminar on privatization.

EXECUTIVE SUMMARY

The majority of the properties expropriated from the Ugandan Asians was entrusted to the Custodian Board. A small portion of these properties were directly held by the Government of Uganda.

Due to a variety of factors: political turmoil, shortage of foreign exchange, lack of clear title, lack of financing, and poor management, many of these properties have deteriorated in value. The main tasks facing the GOU are:

- Regularize the ownership of the properties by valuing and selling them to competent investors who will raise their level of output
- Determine ways to provide the necessary financing for their purchase, start-up and working capital needs
- Find a means to compensate the former owners.

To accomplish these tasks, the GOU needs to undertake the following steps:

- Revamp the current Custodian Board and reorganize it along the lines recommended in this report
- Appoint competent, honest executives and managers at both the national and the regional levels to implement the privatization of these properties
- Provide for an adequate level of technical assistance to help the reorganized Custodian Board implement the divestiture process.

In view of the magnitude of this task it is recommended that priority be given to the divestiture of the agricultural and agro-

industrial properties due to their high economic potential as well as their linkages with other sectors of the economy.

The Ugandan economy is undergoing a period of tight monetary policy in order to fight inflation and, as a direct consequence, many Ugandan banks are illiquid. They are therefore unable to provide the necessary financing for the purchase, rehabilitation and operation of these properties. External sources of financing are therefore the only viable alternative to provide the bulk of the required financing.

The compensation of the former owners continues to be an unresolved issue. There is no adequate source of funds available, either from the GOU or from the sale of the properties, to provide enough cash to fully compensate the previous owners. International agencies and bilateral donors typically do not finance this kind of operation. Therefore, other solutions have to be worked out to guarantee the compensation over time. Issuance of long-term bonds, debt/equity swaps and other options should be studied.

In the meantime a mortgage type loan program should be arranged to allow the new investors to acquire the properties and regularize the title deeds, so they can borrow the funds needed for start-up and working capital.

Technical assistance should be provided as soon as the GOU has decided to proceed with the restructuring of the Custodian Board, as recommended in this report.

I. BACKGROUND

On August 4, 1972, then President Idi Amin gave 90 days notice to all non-Ugandan Asians to leave the country. Although some Asians were exempted because they had acquired Uganda citizenship, the majority of them (estimated at 70,000) were compelled to leave the country, abandoning 10,000 businesses situated on about 7,000 sites. Shortly thereafter, the Amin government promulgated a series of decrees aimed at vesting either the ownership or the management of those properties with native Ugandans.

The various decrees were later consolidated into the Properties and Business Acquisition Decree No. 11 of 1975 by which the custody of the properties of the departed Asians was entrusted to the Ministry of Finance. The Departed Asians Property Custodian Board was established to administer the properties and was placed under the direct supervision of the Minister of Finance.

After the expulsion of the Asians, a Valuation Committee was established to determine the compensation to be paid to the former owners. The valuation was based on the value of the following assets: buildings, plant and equipment, stocks, matured securities, social security funds, blocked funds, and insurance policies held by companies incorporated in Uganda. The value of the land was not included as Asians leased the land either from the government or from Mailo landlords (private Ugandan landholders). Also deducted from the valuation were counterclaims of the government, such as outstanding water and electricity bills, and income tax claims, against the Asians.

Compensation has been paid to only a fraction of the former owners. The process is stalled due to problems associated with the valuation exercise, and the inability of the GOU to pay former owners, who are now resident abroad, in hard currency. A separate, but related, program of divestiture is stalled because of the unresolved policy and procedural issues that are the subject of this report.

II. DESCRIPTION AND ECONOMIC POTENTIAL OF CUSTODIAN BOARD PROPERTIES

A. Background

By 1970 Uganda was one of the most developed and prosperous economies in sub-Saharan Africa. Aside from the vast smallholder agricultural sector, the private sector was dominated by Asians who controlled about 80 percent of the larger-scale, commercial production, processing, manufacturing and trading firms in the economy.

After their expulsion in 1972, most of the Asian properties were turned over to Ugandan nationals, many of whom did not have the experience and expertise to competently operate the businesses. Since that time, most of the Board's properties have deteriorated due to insufficient funds to properly maintain and operate them, poor management, and the economic and political turmoil that Uganda experienced from 1972 to 1986.

B. Significance of the Custodian Board Properties

When one considers the role that the Asian properties played in the economy in the 1960s and early 1970s, it is clear they represented a significant proportion of the commercial wealth of the economy. The vital role of the Asian ownership of industrial and commercial properties also extended to commercial agricultural farms and estates. These ventures were on prime land in terms of productivity and commercial location and, as such, accounted for the majority of the capital stock in the private sector at that time.

Despite the deterioration that has taken place since the expulsion of the Asians, considerable resources remain embodied in these properties. It is estimated that 75% of the Board's properties could be privatized, and their combined estimated market value would be in the neighborhood of US\$750 million, based on the

present day market value of existing assets.

The categories and estimated number of properties under the control of the Custodian Board are the following:

Agricultural and Agro-industrial	444
Industrial	500
Commercial (shops, office space and residences integral to commercial shops)	5,000
Residential	<u>200</u>
Total	6,144

C. Description of the Custodian Board Properties

1. Agricultural Properties

The agricultural and agro-industrial properties the following types and numbers of businesses:

Coffee estates	48
Tea estates	98
Sugar and jaggeries	69
Various farms	37
Sawmills	55
Maize and flour mills	95
Ginneries and oil mills	13
Oil mills and soap factories	19
Others	<u>10</u>
Total	444

With the exception of the 52 maize mills and the 19 oil mills and soap factories that were vested with the Produce Marketing Board and the Lint Marketing Board, respectively, all of the above firms and estates were transferred to individuals. It is obvious that, for the most part, the transfer of these properties was politically motivated without regard to the experience and skills required to properly manage them. It is estimated that about 40% of the agricultural estates have been completely abandoned. The remainder are operating, but far below capacity.

2. Industrial Properties

Approximately 500 industrial properties (most of which are small scale industries) are scattered around the country, with the main concentration in Kampala and Jinja. Some industries were handed over to GOU entities, such as the Uganda Development Corporation, and the exact number of the Custodian Board Industrial properties actually under the direct control of the GOU is not known.

The classification of these industries into their respective sub-sectors was not possible due to poor records. A major inventory effort is required to identify and classify the industrial properties and a determination is required as to those to be divested, retained as joint ventures or liquidated.

3. Commercial Properties

The commercial properties include shops, service companies, and office space as well as associated residential units. The Asians typically lived over their shops or in parts of their office buildings. For the purpose of the sale of these properties, they should probably be classified and disposed of with the other residential properties.

4. Residential Properties

The residential properties are occupied by GOU officials (who pay no rent), individual tenants (who pay very low rent), private entities and international organizations.

Since the majority of the properties are occupied by individuals who pay little or no rent, the revenue collected by the Custodian Board is insufficient to cover necessary basic repairs and maintenance. Consequently, most of the properties are deteriorating rapidly.

It is therefore recommended that the rent policy be reviewed and rental rates be gradually and systematically increased towards their market values. Also, the GOU needs to determine which residential properties it plans to maintain, and it should purchase them in the near future. This would be a good signal to the public that Custodian Board properties will either be rented at market value or sold to the GOU.

D. Rationale for Focusing on Agricultural and Agro-industrial Properties

It is recommended that the Custodian Property Board initially focus on the divestiture of the agricultural and agro-industrial properties. The rationale for this focus include the following:

- The past strength of the Ugandan economy was based on the agricultural sector, which still contributes more to GDP and exports than any other sector
- Given Uganda's rich natural resources, highly suitable climate and the demand for increased exportable agricultural surpluses from neighboring countries, present and future growth of the economy is geared to increases in agricultural productivity and diversification.

- A critical need to rehabilitate former agro-industries exists in order to achieve import substitution, capture potential gains through domestic processing and broaden the tax base
- The losses due to idle or low-productivity agricultural and agro-industrial properties can be reversed by a regularization process that provides both security of ownership and incentives to invest and increase output
- Given Uganda's recent history and experience, substantial interest and agricultural experience exist, which not only generate a demand for agricultural properties, but also ensure that they can be properly rehabilitated and operated effectively
- It is also more likely that the GOU can obtain from the donor community the necessary foreign exchange and technical assistance to rehabilitate agricultural and agro-industrial properties than would be the case for commercial and residential properties.

* * * * *

This chapter has provided a brief overview of the status of the properties administered by the Custodian Board. It has also recommended that the regularization of the properties be initiated with the agricultural and agro-industrial operations and has provided the rationale for that approach. The next chapter assesses the organizational status of the Custodian Board.

III. PRESENT ORGANIZATION AND FUNCTIONS OF THE
CUSTODIAN BOARD

A. Organization of the Board

1. Composition

The Assets of Departed Asians Decree No. 27 of 1973 vested the management of these expropriated properties with the Departed Asians Property Custodian Board, referred to in this report as the Custodian Board. The Board consists of:

Chairman: Minister of Finance
Members: Ministers of Commerce, Lands,
Local Government, Justice (Attorney General)
and two presidential appointees.

The Board's day-to-day activities are managed by an Executive Director (who also serves on the Board), his staff, and one of the two presidential appointees. The Executive Director reports directly to the Minister of Finance.

2. Duties and Responsibilities

The following are the duties and responsibilities of the Board:

- Management of the assets and liabilities of the properties of the departed Asians
- Processing of applications for repossession by former property owners
- Leasing, including sub-leasing, properties to tenants
- Collection of the rental income

- Verification of the ownership of the properties to be returned to the former owners (through the Verification Committee)
- Negotiation of potential joint venture arrangements between the GOU and the former owners (through the Negotiation Committee)
- Sale of properties and issuance of sales certificates to the purchasers, through the Minister of Finance
- Valuation of the properties through an independent Board of Valuers.

B. Role, Tasks and Status of the Functional Committees

Some duties of the Custodian Board are carried out by external bodies and committees. To assist the Custodian Board, there are two independent inter-ministerial committees that handle the verification and negotiation functions of the Board. There is also an independent Board of Valuers, consisting of eight private, professional assessors responsible for determining the value of Board properties.

1. The Verification Committee (VC)

The main function of this Committee is to examine and verify the authenticity of each application for repossession by former owners, and to determine whether the GOU may wish to acquire or retain interest in any property or business for which repossession is being applied.

No valuation is performed on properties to be returned to former owners, nor is there any provision for compensation, as former owners will be required to accept properties in their current condition.

a. Membership

The Committee consists of the following members:

Chairman: Appointed by the Minister of Finance and currently chaired by a prominent businessman

Members: The Permanent Secretaries of Lands, Commerce, Internal Affairs, Local Government, and Foreign Affairs, plus the Solicitor General and two other members appointed by the Minister of Finance.

b. Constraints

To date, this Committee has only examined 400 out of 1,667 applications for repossession, mostly agricultural farms and estates. The Committee's work is bogged down by the following constraints:

- Lack of easy access to title documentation at the Ministry of Lands
- Missing or forged title deeds and other documents
- Difficulties in verifying and confirming ownership
- Difficulties in confirming registry through the Ministry of Justice -- it can take months to obtain written replies
- Long time required to verify the immigration status of the applicants
- Inability of the Committee to achieve a quorum because of the other pressing duties of the members

- The responsibilities of the Committee members cannot be delegated by law.

Unless steps are taken to facilitate and streamline the work of the Committee and hence speed up the verification process, it will take two to three years to complete the task of verifying the remaining 1,267 applications for repossession.

2. The Negotiation Committee (NC)

The main function of the Negotiation Committee is to negotiate the conditions under which properties are to be repossessed by former owners. The Committee also considers, where applicable, the terms for potential GOU joint venture arrangements with the former owners.

a. Membership

The Committee consists of the following members:

Chairman: Minister of Finance

Members: Ministers of Commerce, Lands, Local Government, and Justice plus two additional members appointed by the President.

Of the 400 cases acted upon by the Verification Committee, only 200 have been reviewed by the Negotiating Committee. The Committee's work is also often delayed by the inability to achieve a quorum.

3. Assessment of Progress to Date

The slow work pace of the Verification and Negotiating Committees is constraining the repossession of properties by former owners. Takeover and rehabilitation will consequently be delayed

until the title and ownership issue is resolved, since the current occupants have little incentive to maintain the properties. The longer the waiting period, the higher the eventual costs of rehabilitation.

It is also clear that the former owners will not wait indefinitely to repossess their properties. Thus, it is critical that the work of the Verification and Negotiation Committees be accelerated. At the current pace, the work could take up to two years to complete, during which time the properties will continue to deteriorate.

4. The Board of Valuers

After the expulsion of the Asians, the GOU set up a Valuation Committee to: (1) determine the value of the expropriated properties, and (2) compute the compensation due the former owners. This Committee was established in 1973 and was composed of four Cabinet Ministers. There is no trace of the valuation work done by that original Committee. In 1987, a new Board of Valuers comprising eight independent and qualified assessors was appointed.

a. The Valuation Process

A valuation is required to determine both the compensation (to former owners) and the sales value of the Custodian Board properties. The Board of Valuers has been instructed by the Custodian Board to give first priority to the valuation of the industrial and agricultural properties, second priority to the commercial, and third priority to the residential properties.

Current tenants are not owners and have no incentive to maintain or invest in the properties. It is imperative, therefore, that the valuations be completed as quickly as possible, before the properties are completely run down.

Before the Asians left the country, they were asked to declare the value of their properties. Unfortunately, this information cannot be traced. Therefore, the valuation will be based upon the development of a current value at the time of inspection.

It should be noted that the value of real estate in Uganda is directly related to the lease period allowed by the government. The longer the lease period, the higher the value. Leases of 30 years or more are considered as long-term leases, and are considered to have the maximum value. However, the value of any lease less than 30 years decreases proportionally to the number of years remaining on the lease.

b. The Valuation Method

The following methods are presently used in arriving at the valuation of different components of the properties:

Land: The value of the land is based on similar land values

Buildings, Plants and Machinery: The value is computed based on the depreciated replacement cost of existing assets, reflecting age, present condition and economic obsolescence.

c. Constraints to the Operations of the Custodian Board

1. Legal Problems

Although the GOU transferred the ownership of the departed Asian properties to the Custodian Board, actual title transfers did not take place. Therefore, in some cases it is not known who holds the title. This situation is further complicated because the properties changed hands under different political regimes.

The legal problem is also compounded somewhat by the claim from the Mailo and former freehold landowners who wish to regain the

ownership of their properties at the expiration of the lease periods. However, the 1975 Land Reform Decree nullifies these two categories of land tenure and the government has further determined that no transfer of titles should take place until the status of any given property has been regularized.

2. Logistical Problems

The major problem facing the Board of Valuers is the lack of easy access to the title deeds at the Ministry of Lands. The Board is required to pay U.Shs. 1,000 for each document provided by the Land Ministry, and each request for information must be in writing. This bureaucratic and administrative red tape has delayed the valuations considerably. For instance, the Board of Valuers has inspected virtually all the agricultural properties but they are unable to value them due to lack of easy access to the title deeds.

Since most of the industrial, commercial and residential properties are in urban areas, namely Kampala, it is estimated that the eight valuers could complete the valuations of the agricultural properties within three months, provided the problem with the Ministry of Lands is resolved. Otherwise, at the current rate, it may take them up to three years to complete the task.

3. Rental Values

Rental rates were established in 1973 and, although modest, periodic adjustments have been made, these have not reflected inflation, maintenance costs and real market values. As a result, the Custodian Board cannot raise sufficient revenues to cover the cost of required maintenance, and most properties (especially the residential ones) are in a serious state of disrepair.

D. The Board's Administrative Functions

The daily administrative functions of the Custodian Board are

performed by a cadre of administrators, headed by a competent executive director, who reports directly to the Minister of Finance.

The current executive director was appointed over a year ago and inherited an organization consisting of five Departments and 274 employees, as shown below:

<u>Department</u>	<u>Number of Employees</u>
Administration	73
Finance	61
Property & Claims	83
Engineering	32
Verification	<u>25</u>
Total	274

1. Collection of Rent

The main income of the Board is the rent from various properties, in addition to interest earned on invested funds. The Board's current annual budget projects total revenues of U.Shs. 436 million and expenditures of about Shs. 431 million, generating a small surplus of Shs. 5 million, or 1% of the total revenues.

2. Administrative Constraints

The Board lacks the capacity to properly manage its basic administrative, financial and reporting functions. It collects a massive amount of information, but is incapable of turning this information into a useful reporting and tracking system.

The recording of basic data is manually performed by various clerks in different sections of the organization, and there is no concise, consolidated and centralized reporting system at the departmental or sectional levels.

Most of these clerks work without close supervision from the department heads. Manual recording and reporting results in overstaffing. An attempt is being made, with the assistance of the Uganda Cooperative Alliance, to computerize the system. Computerizing the data and generating useful reports should be made a high priority to assist the Board and its various functional committees.

VI. RESTRUCTURING THE CUSTODIAN BOARD

A. Introduction

The Custodian Board as currently organized is unable to carry out its responsibilities in a timely manner. Also, documents and information are not consolidated in a useable reports. Many functions are being carried out without proper supervision and by part-time employees. There is not an adequate sense of priorities and, consequently, processing of information and the flow of work is very slow. Thus, important decisions are not made in a timely fashion. In short, the Board is bogged-down by its own structure and processes.

B. Need for Reorganization and Restructured Priorities

The Board requires streamlining with clearly defined, functional departments that have a clear sense of direction and priorities.

It should also be remembered that the divestiture process involves different approaches, requiring different expertise and organizational support, depending on the type and status of the property. The types of property include:

- Properties to be repossessed by former owners
- Properties in which the government wishes to retain 100% equity or enter into joint ventures with private investors
- Properties to be sold to qualified buyers via public tender
- Unsaleable properties that should be liquidated.

If the GOU agrees with the recommendation that the agricultural and agro-industrial properties should be divested first, then it is further recommended that these properties be classified using the four categories listed above. Once classified, it is then recommended that the process of repossession by former owners be given top priority and divestiture by public tender be made the second priority. The Board should prepare to divest appropriate properties in the latter category by public tender in the near future.

C. Organizational Recommendations

The following major organizational changes to the Custodian Board are recommended:

Recommendation 1: Establish a Custodian Board Executive Committee (CBEC) to direct the Board's activities and become the executive authority (decision-making body) of the Board.

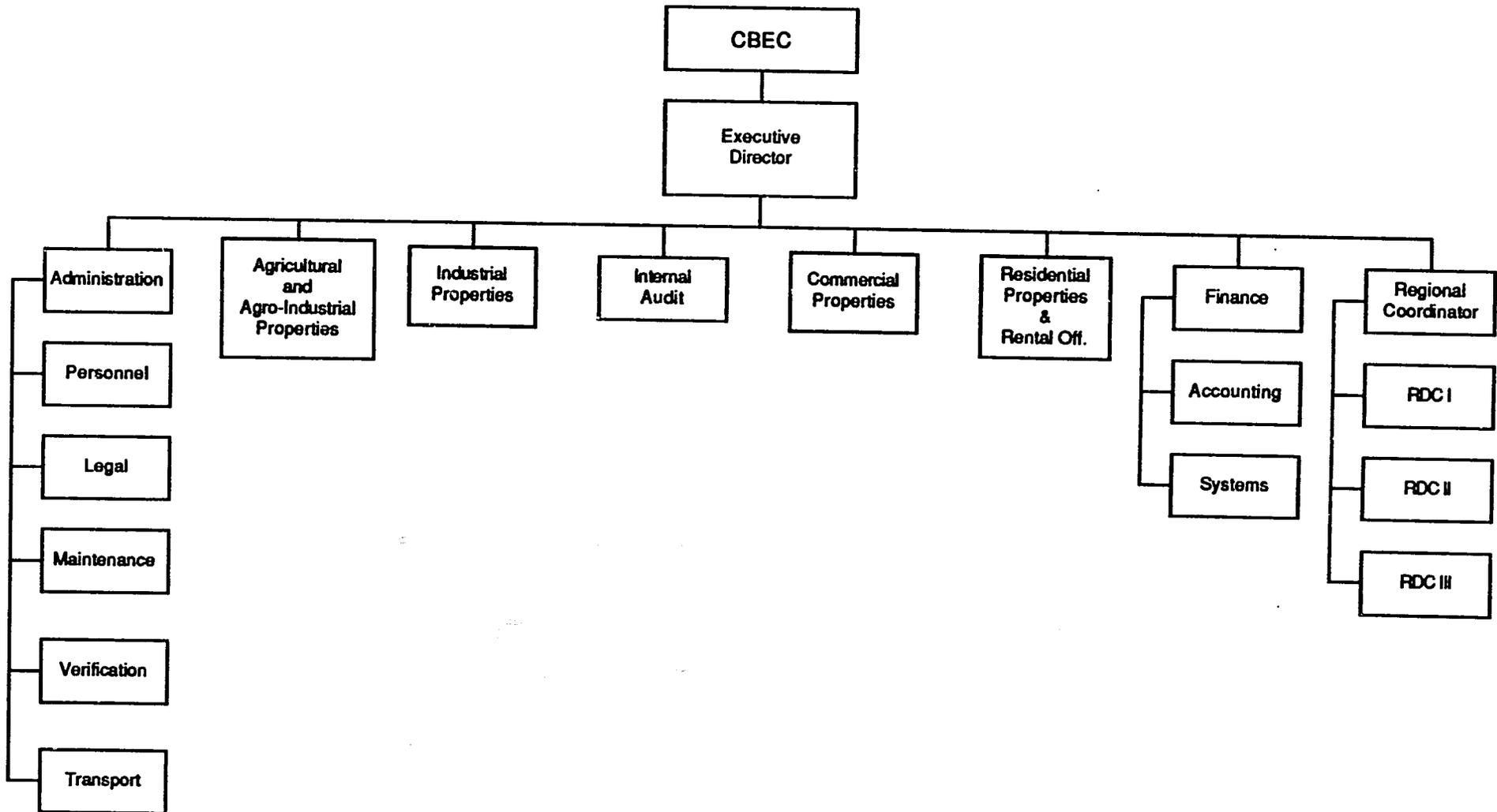
Recommendation 2: Abolish the Verification and Negotiation Committees (which are dealing with the properties to be reposessed). Verification activities should be continued by a Verification Department within the Custodian Board and negotiation functions should be carried out by the CBEC.

Recommendation 3: In view of the wide geographical distribution of the properties, create regional divestiture committees. Delegate to them adequate authority and provide them with clear guidelines for undertaking divestiture action.

Table 1 on the following page demonstrates the proposed changes. The recommendations are described in the sections which follow.

TABLE I:

**Recommended Organizational Chart
for the New Custodian Board**



17a

D. Custodian Board Executive Committee (CBEC)

It is recommended that this Committee be given the necessary executive powers and assistance to determine which properties will be repossessed by former owners, which should be retained by the GOU, which shall be divested by public tender, and which should be liquidated. It should also determine the terms of the title transfers for each category of property.

The Committee chairperson named should be of unquestionable integrity and high moral standing. The chairperson should be given a high-level political-administrative rank, such as that of a Minister of State. The chairperson will report to the Minister of Finance, but the decisions of the Committee should be final and have legal authority.

Committee Members: It is recommended that the Committee consist of five members including the chairperson, a lawyer, a banker, a prominent business person and a senior representative of the Ministry of Lands. A major criterion for their selection should be high integrity and moral values. In addition, the present Executive Director should serve as an ex-officio member of the Board. Each Committee member, except the representative of the Ministry of Lands, will serve on a full-time basis. The representative from the Ministry of Lands, who will serve on a part-time basis, will be required to attend all formal committee meetings. All members should be Presidential appointees who have been recommended by the Minister of Finance.

All Committee members except the Executive Director will be voting members. Committee members should be remunerated in accordance with the level of responsibilities entrusted to them.

E. Functions of the Custodian Board Executive Committee (CBEC)

The proposed CBEC will serve as the full-time policy and

executive authority of the revamped Custodian Property Board. The decisions of the CBEC will be made by the Executive Director to whom all administrative units or departments of the Custodian Property Board will report on a daily basis.

The major functions of the CBEC should include the following:

- Review and ultimate verification of all basic documentation (title deeds, registries, etc.)
- Determination of the divestiture strategy of each property: (1) repossession, (2) sale via public tender, (3) GOU joint ventures, and (4) liquidation
- Negotiation of the terms and conditions for the repossession of properties by former owners
- Approval of the sales price (reserve price) and method of sale for each property to be sold via public tender
- Review of all tender bids and approval of the terms of sale for each property
- Legal transfer of all property titles
- Formulation of policy and priorities for the Custodian Board and its functional and technical departments
- Approval of the terms of reference and recruitment of long-term professional staff and short-term consultants
- Approval of operating budgets and financial statements and reports.

F. Regional Divestiture Committees

To facilitate the work of the CBEC, given the large number of Custodian Board properties outside Kampala, it is necessary to decentralize some functions of the Board's Executive Committee for selected properties. Regional Divestiture Committees should be appointed and assigned specific tasks to facilitate the sales of properties located up-country.

1. Functions

Since all documentation including title deeds is located in Kampala, the work of the regional committees will be limited to:

- Physical inspection, description and inventory of all Board properties located within the committee's jurisdictional area
- Recommendations (with justification) to the CBEC concerning the properties to be divested, retained by the GOU and liquidated
- Preparation and submission of property information for inclusion in tender documents to be prepared centrally by the legal department of the Custodian Board
- Review and ranking of tender bids from prospective buyers, submission of selected bids to the CBEC for bid approval and preparation of legal title transfer to the selected owner
- Deposit into a Custodian Board account all rents collected within their jurisdiction.

2. Committee Members

Each Regional Divestiture Committee will consist of five members appointed by the Minister of Finance, recommended by the Executive Director of the Custodian Board. Committee members should be selected on the basis of their residence in the jurisdiction of the committee, local prominence and integrity, and their professional capabilities given the tasks assigned to the Committee.

Each Committee should consist of a Chairman and four additional members. All members will serve on a part-time basis. A District Administrator from the jurisdiction should be a member of the Committee. All members of the committee should be remunerated in accordance with the level of effort and responsibility required.

G. Role of the Executive Director

The position of Executive Director should be retained and the person serving in that office will continue as the senior administrative officer of the Custodian Board. He shall report to the Chairman of the Custodian Board Executive Committee. All functional and technical departments of the Board should report to the Executive Director who will be responsible for implementing the policies and priorities of the Executive Committee.

The main responsibilities of the Executive Director, aside from managing the functional and technical departments, will be the coordination of the following:

- Recruitment and selection of the professional and technical staff to be assigned to the Board's various departments

- Design of a computerized management information system for the functional departments of the Custodian Board and the CBEC
- Repair and maintenance of Board properties
- Collection of rental fees and property sales proceeds
- Preparation of all legal documentation (e.g. sales contracts, title transfers, rental lease contracts, and documentation for the legal repossession of by former owners).

H. Sectorial Departments

As there are four distinct categories of properties to be repossessed or divested, it is recommended that the Board be functionally organized around these categories, each with departmental status as follows:

- Agricultural and Agro-industrial Properties Department headed by an experienced, highly trained agriculturist
- Industrial Properties Department headed by an experienced, well-trained industrial engineer
- Commercial Properties Department headed by an economist or a trained business management specialist
- Residential Properties Department to be headed by a person trained and/or experienced in real estate

The sectorial departments will perform the following major functions:

- Complete the inspection and the physical inventory of the properties under their control
- Report on the physical condition of the properties inspected
- Recommend to the Executive Director the classification of the properties into two categories: (1) those to be divested and (2) those to be liquidated
- Review the valuation reports, obtain financial parameters from the Finance Department (where applicable) and recommend, by jurisdiction, the sale price for each property to the Executive Director
- Periodic review and assessment of rental rates.

I. Role of the Finance Department

The Finance Department will play a major role in the new organizational structure; therefore, it should be ranked at the same level as the sectorial technical departments. It will perform the following major tasks:

- Provide financial data to facilitate the valuation process
- Collect rents, sales proceeds, fees, etc.
- Manage the Revolving Fund Account (discussed below)
- Prepare budgets, financial reports
- Oversee the computerization program
- Coordinate with the banks financing the purchase of the properties.

J. Support Services

In addition to the major departments described above, the following support functions should be regrouped under one single Administrative Department:

- Personnel Services: perform manpower planning and personnel functions
- In-house Legal Counsel: render opinions on legal matters
- Maintenance Services: handle repairs and maintenance
- Transport: coordinate the transportation services and supervise the maintenance of the Board's vehicles
- Verification Services: verify the authenticity of the legal documents and the ownership of the properties. This function is currently being performed for the properties to be repossessed. It is recommended that the verification function be extended to all properties before they are divested or liquidated. This information will be required for future compensation purposes.

K. Internal Audit

The Audit Department will audit all internal financial records, legal documents such as title deeds, etc.. The Internal Auditor will report directly to the Executive Director.

V. FINANCING THE PURCHASE OF THE CUSTODIAN BOARD PROPERTIES

A. Selection of the Properties to Be Divested

As discussed in Chapter II, it is recommended that the agricultural and agro-industrial properties be given first priority for divestiture.

Before divestiture can take place, however, certain constraints must be recognized and addressed. These constraints are discussed below. In addition, three types of property sales are identified and recommended for further consideration by the Custodian Board and the GOU.

B. Constraints to Property Sales Imposed by Economic Conditions

The present lack of liquidity within the economy, particularly within the banking system, imposes a severe limit to the number of properties that can be sold if payment in full is required.

Therefore, unless financing is found to establish a special fund to finance the sale of Custodian Board Properties, sales will be limited to the extent that interested investors have cash available for the purchase or to the extent that the GOU will establish procedures for and allow installment sales. It should be noted that many current tenants will not have the cash to pay in full and consequently would be forced off the property unless bank loans or installment payments are made possible.

It may be possible to establish a special shilling fund using the local currency generated through donor-financed commodity import programs or other forms of economic assistance (e.g. the IBRD Economic Recovery Credit, and specifically OGL-generated shillings).

C. Actions Required Before Divestiture Can Take Place

Based on careful study and consultation with the Custodian Board, the following procedures are required before the properties can be sold:

- The property must be properly valued by an independent valuer to establish the sales price and the compensation value, and the valuation report should be transmitted to the Custodian Board no later than 30 days after the physical inspection date by the valuer.
- Liabilities, where applicable, will have to be determined and included in the valuation report.
- The Custodian Board Executive Committee must then approve and recommend to the Board's Executive Committee the sales value (reserve price) of each property based on the valuation reports.
- Properties to be tendered will first be offered by a formal letter to the current occupant. A deadline by which the current occupant must respond to the offer will be stated in the offer letter. By failure to meet the deadline, the current occupant will forfeit the preferred right to purchase the property. The property will then be offered for sale by public tender.
- Tenders to purchase from prospective buyers will be received and evaluated by the Custodian Board's Executive Committee, or where applicable by the Regional Divestiture Committee. The best offer will be accepted, resulting in the sale and transfer to the new owner.

D. Other Considerations and Issues

The Custodian Board must be given the power to transfer title to the new owners at the time of sale. If the purchase of the property is financed by a lending institution, the title deed will be held by the institution until the loan has been completely repaid.

E. Cash Sales

The progress of the divestiture process will depend on the extent to which potential investors have cash or access to financing to purchase Custodian Board Properties. These sales will generate local currency that should be (all or part) placed in a Special Divestiture Revolving Fund Account (RFA) which could in turn be used by the banks to finance subsequent sales of additional properties.

Thus, it is recommended that properties that have been approved for sale be sold on all cash terms so that those proceeds can be utilized to finance, through the RFA, subsequent credit sales.

It is envisioned that the potential for cash sales is likely to be limited to those properties for which the sales price is relatively low. Thus, it is recommended that properties of lower value be identified soon so that they can be advertised and sold in the near term.

F. Installment Sales

It is proposed that given the liquidity problem in the economy and within the banking system, the GOU should consider the merits and procedures that could be implemented to sell a portion of the Custodian Board properties on an installment basis.

An installment plan should require a down payment that may vary by the sales price, say, within a 20-35 percent range. Advantages of an installment sales arrangement would include the following:

- Installment sales will permit a larger number of property sales within the short to intermediate term. To the extent that installment sales increase the number and volume of sales, the economy will benefit from rehabilitated, productive properties through increases in production, income and employment.
- These sales will consequently generate through down payments additional shillings to finance the proposed special account to be utilized for credit sales.

Consequently it is proposed that an installment sales procedure be adopted in principle and designed in the near future. Several policy issues will need to be resolved, including the following:

- Categories of properties that should be sold on an installment basis
- Criteria required to review applications for installment purchases and the rights and obligations of purchasers and the government under this financial arrangement
- The down payment amounts as a percentage of the purchase price
- Management of the installment sales and collection of payments
- The contractual relationships between the GOU, Custodian Board and the lending institutions

G. Mortgage Loans

The third financing option, and most likely all three options will be required, is to provide credit through the banking system which will require down payments, and collateral to guarantee repayment.

Given the present severe lack of liquidity, this option may have limited utility in the short run. However, if the government establishes the proposed Revolving Fund Account for the purpose of the divestiture of these properties, the banking system could then apply for and draw upon these funds to assist in the financing of the purchases.

If such a mortgage financing system were established, banks would bear the risk of making the loan, and the title of the property would be held by the bank financing the mortgage until the loan were fully paid off by the purchaser.

H. Joint Ventures and Partnerships

The prospective buyers of the Custodian Board properties should be encouraged to bring in local or foreign joint venture or technical partners as long as Ugandans own at least 51% of the business.

It should be recognized that, given the number of properties to be divested, there is an insufficient number of investors with experience and access to funds or technology to properly rehabilitate and operate the properties. Thus, joint ventures with other Ugandan or foreign partners will be necessary to fill these gaps.

I. Eligibility Criteria for Purchase

To be eligible to purchase a Custodian Property, an individual or entity should meet the following basic requirements:

Individual Applicant

- Is a Ugandan citizen residing in Uganda in good standing with the community and the law, with no criminal record
- Can provide the Board with a letter of recommendation with a moral character reference from a known citizen or his/her Resistance Council
- Can demonstrate financial capacity to purchase and rehabilitate the property. (A reference letter from the bank or a commitment or offer letter from a credit institution would suffice)
- Can provide evidence of a demonstrated capacity to manage the property (past relevant experience is required)
- Submission of a rehabilitation plan that shows what will be done to the property and how it will be financed
- Payment of a non-refundable application fee
- For residential properties, priority will be given to current occupants first and then to individuals who do not own other residential property in the same district.

Corporate or Firm Applicant

- A Ugandan corporation or entity in good standing with the law and the tax authorities

- Positive credit bank references
- Demonstrated capacity to manage the property
- Demonstrated financial capacity to purchase the property either from own internal sources, or through a loan from a credit institution. A lending institution's letter of commitment or offer letter must be submitted to the Custodian Board
- Payment of a non-refundable application fee
- Submission of a proposed rehabilitation plan
- Preference will be accorded to the current occupant of the property only to the extent that he fulfills the above conditions and has demonstrated the capacity and the ability to manage the property to the satisfaction of the Custodian Board.

VI. REHABILITATION REQUIREMENTS AND NEED FOR EXTERNAL SUPPORT

A. Rehabilitation: A Post-Sale Owner Activity

The majority of the Custodian Board Properties have been neglected or mismanaged since 1972. As a result, a substantial investment in these properties is required if they are to regain their former productive capacity. Financing will be required for the physical rehabilitation and/or replacement of physical assets and also for working capital for many of the new owners.

B. Rehabilitation Will Occur Over Time

The cost of rehabilitation will be substantial and will require considerable imported capital goods and inputs. It is beyond the capacity of the GOU to rehabilitate the the properties before sale. Thus, the properties will have to be sold in their present condition. In addition, most agricultural, agro-industrial and industrial properties will require substantial investment which can only occur in a phased manner.

C. Need for External Support

Given the acute shortage of foreign exchange in the economy, Uganda's external debt burden and the requirements for essential imports, the GOU will need to seek external financing for the rehabilitation of Custodian Board Properties.

The exact amount required to rehabilitate the properties is not known but is estimated at approximately \$375 million to \$400 million, of which approximately \$300 million will be in foreign currency.

D. Role of the Banking System

Ugandan commercial and development banks should ultimately be called upon to extend loans to the new owners for rehabilitation of the properties. As the rehabilitation process will usually be phased, medium and in some cases long term credit with features allowing draw-downs as needed will be required.

For the agricultural properties there already exists a medium term agricultural lending program within UCB, UDB and the Bank of Baroda. This program was established under the Rehabilitation of Productivity Enterprises Project (RPE). The loan appraisal and supervision processes, with minor modification, could readily be used to process rehabilitation loans for the new owners.

Thus, it is possible that donors could be encouraged to fund the rehabilitation of Custodian Board properties as a medium term lending program. The RPE Project could be used to channel funds, including the necessary foreign exchange to finance imported machinery, and equipment and building materials.

In addition to foreign exchange, local currency will be required for locally purchased items and materials and other working capital requirements. It is proposed that in addition to the banks' own resources for making these loans that they be given access to a Special Fund (in shillings) established by the Ministry of Finance with the sales proceeds of Custodian Board properties.

E. Need for Technical Assistance

The planned divestiture program and the envisioned role of local banks will place an added burden on the banks' technical capacity.

As the new owners will be required to prepare rehabilitation plans and feasibility studies to support loan applications, the

banks will require additional technical assistance for the preparation of loan appraisals, upon which the loans can be approved. The requirements for technical assistance needs further investigation among the banks that may participate in the credit program.

F. Main Issues to be Resolved

At this point, the following appear to be the main issues requiring the review and action by the relevant decision makers:

- Selection of the first group of enterprises to be rehabilitated
- Technical assistance
- Foreign exchange risk
- Standardized lending criteria.

Each of these is discussed below.

1. Selection of the First Group of Enterprises to be Rehabilitated

This issue is closely linked to the order which different categories of properties will be sold. In each case, their importance in economic terms given their potential for increased productive capacity, import substitution and export diversification must be taken into consideration. In addition, the government will want to avoid concentrating rehabilitation activities in only one region or among a few new owners. The preferred approach will be to regularize ownership among a large number of private investors, widely distributed geographically.

2. Technical Assistance

The technical assistance required by the participating banks will assist them to upgrade their loan appraisal capacity, especially for the agricultural and agro-industrial operations. There may be a need for bank loan officers to be trained to review the rehabilitation plans for which they will provide medium and long term lending.

It will also be necessary to determine donor interest in funding technical assistance early on. Such requests should probably be initiated and coordinated by one entity, namely the Ministry of Planning and Economic Development.

3. Foreign Exchange Risk

Since Uganda will undertake periodic adjustments in its exchange rate over the life of the program, it will be necessary to decide which party, the lender or borrower, will bear the foreign exchange risk on rehabilitation loans.

4. Standardized Lending Criteria

It will also be desirable to establish standard lending criteria for medium term loans provided by the banks financing property sales and rehabilitation loans.

VII. COMPENSATION OF THE FORMER OWNERS

A. Background

The new Ugandan Government seems to have committed itself to compensate all those whose properties were expropriated by the previous regimes. Compensation for these expropriations is one of the most politically, socially and economically sensitive issues facing the government today. As a potentially explosive subject, it must be handled intelligently. Interested parties are waiting to see how the GOU will resolve this issue.

Originally, the former owners were defined as the departed non-Ugandan Asians of different nationalities such as Indians, British, North Americans and Africans from other countries. But Ugandan Asians as well as native Ugandans who were not officially expelled nevertheless found it necessary to leave the country in view of the prevailing political situation at that time. These persons were not included among the list of legal former owners whose properties were expropriated or abandoned and are now administrated by the GOU. It was reported that the government has now included the Ugandan Asians in the definition of former owners. A number of people are arguing that all Ugandans should be included.

All former owners are allowed, by law, to repossess their properties in their present condition without compensation for deterioration. Exception is made in those rare cases where the current occupants made some improvements and hence increased the value of the property. In those few cases, the former owners are being asked to compensate the current occupants. The guidelines for this form of compensation have not been established.

It is in the best interest of the GOU to compensate the former owners in a manner that would improve the country's international image and its investment climate. The GOU claims to be committed to the return and the development of the private sector, but as long as

the compensation issue remains unresolved there will be a damper upon the investment climate of the country, undermining the country's efforts to attract foreign investment.

B. Partial Compensation

After the expulsion of the Asians, a valuation committee was established to determine the compensation to the former owners. The valuation was computed based on the residual value of the following assets: buildings, plant and equipment, stocks and matured securities, social security funds, blocked funds, and insurance policies held in companies incorporated in Uganda. The value of the land was not included in the valuation of the assets as Asians leased the land either from the government or from the so-called Mailo landlords (private Ugandans). Deducted from the valuation were the GOU counter claims against the Asians: outstanding water and electricity bills, income tax claims, etc. There is no evidence of the inclusion of the intangibles such as gratuities, pensions, salaries, accrued vacations, etc. in the compensation package. Only three categories of individuals were compensated by the Amin government:

- A lump sum of U.Shs. 13.4 million paid to the Indian government for the account of the Indian nationals
- Payment to the United Nations High Commission on Refugees for the account of 1,731 stateless claimants amounting to U.Shs. 40.5 million
- Payment to U.S. nationals (former owners of International T.V. Sales) amounting to U.Shs. 2 million.

Negotiations were apparently underway between the Ugandan and the British governments when diplomatic relations between the two countries were severed in July 1976. The latter was claiming U.Shs.

112 million on behalf of its citizens and the GOU presented counter claims amounting to U.Shs. 25 million.

Recently, the British government requested that the GOU compensate U.Shs. 16 million to 67 British citizens aged 70 years and over on humanitarian grounds. The GOU has agreed to pay this amount in installments, but there seem to be problems with the manner in which the installments would be distributed among the recipients. Neither government is willing to take the responsibility for determining the most equitable distribution method.

C. Compensation Process

The compensation process for the nationals of other countries whose properties were also expropriated has not yet been determined by the GOU. As mentioned earlier, future compensation will be based on the current residual value of the properties, factoring in the remaining lease periods on these properties as of 1972.

Considering that the Asians controlled about 80% of all the businesses in Uganda before 1972, it is estimated that the compensation value of all the properties would probably range between US\$800 million to US\$1.0 billion, or U.Shs. 120 to 150 billion.

Ideally the GOU would sell these properties for cash and make the funds available to the Ugandan Treasury for compensation. But due to the current liquidity squeeze, it is obvious that the Ugandan economy cannot produce the cash to compensate the former owners. According to World Bank sources, the total money in circulation is only U.Shs. 55 billion. Nor is there any external source ready and willing to provide the GOU with the necessary financing to assist with compensation.

In view of the magnitude of this problem and its impact on the investment climate, it is recommended that all avenues be explored, including the issuance of long term bonds by GOU in favor of the former owners, or some form of debt/equity swaps once the amount of compensation has been determined. Compensation is an issue that cannot be ignored, but unfortunately simple solutions are not in sight.

VIII. PROPOSED TECHNICAL ASSISTANCE TO THE CUSTODIAN BOARD

To implement the proposed reorganization of the Custodian Board and its various organizational units a significant level of technical assistance is required.

A. Organization and Management Specialist

A short-term consultant in organization and management is immediately required for a period of two to three months to review the proposed reorganization of the Custodian Property Board. The purpose of the consultant's assignment will be to advise on the implementation of the proposed reorganization and functions of the Board. The consultant should take steps to improve Board planning, organization, staffing, direction and control. This will involve defining the job descriptions of the members of CBEC, the Executive Director, all department heads, and the proposed regional divestiture committees. The consultant will also address internal organizational linkages, the structure and delegation of authority and work flows.

B. Property Sales Procedure Specialist

For the properties to be sold by public tender, detailed procedures need to be designed. These include formalizing all necessary documentation on the property, preparation of tender documents, definition of sales arrangements (cash, mortgage loan or installment sales), and design of evaluation criteria by which the CBEC would review, evaluate and select the ultimate purchaser.

In addition, the technical consultant will be required, in consultation with the CBEC or the Executive Director, to determine how and to what extent divestiture activities can be delegated to the proposed regional divestiture committees. He will also need to

consider how the regional committees will function and relate to the CBEC.

It is proposed that detailed divestiture manuals describing the entire process be prepared. The description would include the specific functions to be carried out by the various departments of the Board, including the role and powers of the CBEC.

It is recommended that two consultants be engaged for two to three months to design the divestiture procedures. They should have demonstrated experience with divestiture activities. One consultant would focus on agricultural and agro-industrial properties and the other on the industrial properties. It is envisioned that the same procedures could be used for commercial and residential properties, or a consultant could be recruited at a later date to focus on those, given the lower priority of the latter group of properties in the government's divestiture plan.

C. Finance and Credit Expert

As the banking system will be heavily involved in the divestiture process by providing mortgage-type loans for the purchase of properties and separate loans for the rehabilitation of the properties by the new owners, it is imperative that participating banks have adequate technical capacity to provide a large number of rather complex loans.

It is important that both mortgage loans and loans for rehabilitation be standardized among the participating banks for the different property categories (agricultural, agro-industrial, industrial, etc.). In addition, the loan appraisal process should be well-developed, tailored to the type of property to be divested and the purpose of the loan (mortgage vs. rehabilitation), and standardized among the participating banks.

It is proposed that a credit expert be recruited for a period

of two to three months to design a standardized lending manual for mortgage loans and rehabilitation loans. The manuals will detail the procedures to be followed by loan officers, including the types of data to be collected and assembled, loan appraisal techniques standardized forms to be completed, and specification of the organizational format to be followed for the preparation of loan appraisal documents.

The first priority should be to develop the manual for both mortgage and rehabilitation loans for agricultural and agro-industrial properties. The second priority would be to design the lending manuals for the industrial property loans.

D. Agricultural Specialist

For reasons described earlier in this report, it is recommended that agricultural and agro-industrial properties become the first priority for divestiture. It is critically important that the initial divestiture activities be deftly executed. It is equally important that the properties be sold to the most qualified buyers and that the properties be rehabilitated in a manner consistent with the new owners' expertise, financial resources, and the resources and services available in the economy.

As a consequence, it is envisioned that a consultant with demonstrated experience in agriculture, agricultural production economics, or farm management, and agricultural finance be engaged to serve as a staff advisor to the head of the proposed Agricultural and Agro-industrial Properties Department for two years. The expert would also assist the Board's liaison officer to the banking system, who would facilitate lending for rehabilitation activities.

The agricultural expert would assist in the review of valuation reports, selection of agricultural properties for divestiture, and preparation of tender documents to help facilitate the functions of the Board with respect to agricultural properties.

E. Industrial Engineer

A consulting engineer is required for one to two years to advise the head of the proposed Industrial Properties Department to fulfill functions similar to those of the proposed Agricultural Specialist.

The inventory, assessment and valuation are expected to be more complex and time consuming for industrial properties than for the other property categories. The physical and financial assessment of the requirements for the rehabilitation of industrial properties will have a significant bearing on property valuations and the ultimate sales prices these properties can command.

Unless a highly experienced consulting engineer is recruited to advise and work collaboratively with the Head of the Industrial Properties Department, any meaningful divestiture of industrial properties can be expected to be delayed indefinitely.

IX. SUMMARY AND RECOMMENDATIONS

A. Summary

The estimated 6,100 Custodian Board properties represented a large share of the economic wealth of Uganda in 1972. Today, despite their deteriorated condition, the properties continue to represent an enormous economic potential if the government can divest them and provide the necessary support for new owners to rehabilitate and operate them.

However, the operations of the Custodian Board in preparing for the planned divestiture exercise is hampered by administrative and procedural constraints. Unless these constraints are removed, the Board will not be ready to undertake a large scale divestiture program.

As a consequence, it is proposed that the Custodian Board be reorganized and given additional professional resources in the form of both short and long term technical assistance. With this assistance the Board will be able to design and implement new operational procedures and guidelines for initiating an effective divestiture program.

Even with a reorganized Board, the government will need to mobilize both domestic and donor resources to finance the sale of properties and their rehabilitation.

The following recommendations are formulated with a view to improving the operational effectiveness of the Custodian Board and enabling the divestiture process to get underway.

B. Recommendations

To achieve the divestiture goals, we recommend that the

following actions be taken expeditiously by the GOU and the Custodian Board:

1. Restructure and streamline the Custodian Board to make it operationally and administratively more efficient and responsive to the divestiture objectives.
2. Complete the computerization of the Custodian Board's internal information management system which records, assembles and reports selected statistics, including the value of the properties under the Board's control.
3. The restructuring of the Board should be given top priority. Abolish the Verification and the Negotiation Committees and establish a single, autonomous five member committee to be called the Custodian Board Executive Committee (CBEC). The CBEC Chairman should report directly to the Minister of Finance.
4. Appoint CBEC Chairman and four members. These should be appointed by the President and shall serve on a full-time basis, except the representative from the Ministry of Lands who would serve on a part-time basis.
5. Create regional divestiture committees to decentralize some of the functions of the Custodian Board Executive Committee. Each regional committee will consist of a chairman and four members to be appointed by the Minister of Finance. Each regional chairman will report to the Executive Director of the CBEC for both administrative and policy matters.
6. Give first priority to the divestiture of the agricultural and agro-industrial properties, followed by the industrial, commercial and residential properties; and reorganize the priorities and functions of the Custodian Board accordingly.

7. Abolish the current Board of Valuers and contract with independent valuers or valuation firms to function on a full-time basis. Their tasks and priorities are to be defined by the CBEC.
8. The valuation methods and techniques must be standardized by the Custodian Board Executive Committee to insure uniformity. A standard reporting format should be utilized by all valuers.
9. The valuers must be provided ready access to title deeds from the Ministries of Lands and Justice.
10. Board properties should first be offered to current occupants or allocatees, with a specified deadline by which they must accept the offer and arrange for financing to purchase and rehabilitate the property. Once the deadline is passed, they will forfeit the right to purchase their occupied property and should be formally informed of this.
11. If a current occupant forfeits the right to purchase, the property will then be sold by public tender.
12. Tenders will be reviewed on the basis of the bid price and the proposed purchasers' financial soundness, ability to arrange financing for the purchase and rehabilitation of the property, experience with the type of property being tendered and demonstrated managerial capabilities.
13. Bids will be submitted to the CBEC who will evaluate them, determine the sales price, and select the new owner.
14. New owners should be automatically as a part of the property transfer be given long term leases of 99 years to provide incentive for investment.
15. The Chairman of the CBEC is expected to be a high level

Presidential appointee, and should be empowered to transfer legal title deeds to the new owners.

16. A special task force of the Custodian Board should be commissioned to identify abandoned and/or dilapidated properties, and recommend their liquidation and method of ultimate disposal.
17. Different sales arrangements should be offered to cater to the financial capabilities of prospective buyers, including all cash sales, installment loans, and bank mortgage loans. All non-cash sales should require down payments of not less than 20 percent.
18. The proceeds from cash sales, down payments and the rental income in excess of the Board's operating expenses should be utilized to create a special Revolving Fund Account (RFA) which would be used to finance sales and the local currency component of new owners' rehabilitation programs.
19. The RFA should be tapped by participating banks for on-lending to finance divestitures or rehabilitation.
20. Rental rates should be gradually and systematically increased towards market-determined rates in order to raise sufficient income to fund the internal operating expenses of the Custodian Board and to effect the necessary repairs on the properties to be sold late in the divestiture program (commercial and residential) and at the same time contribute significantly to the RFA.
21. Since the GOU has made the determination that Custodian Board properties can only be sold to Ugandan citizens, the new owners should be allowed and encouraged, where appropriate, to bring in foreign joint venture partners.

22. It is recognized that neither the GOU nor the local commercial and development banks have the resources to finance the purchase and subsequent owner rehabilitation of the properties. Therefore, it is urgent for the GOU to explore the possibilities of donor financing to support this large and comprehensive divestiture program. Donors should also be approached to provide necessary technical assistance.
23. The Mailo landlords are attempting to reclaim ownership of their former lands at the expiration of the lease periods. This is contrary to both the spirit and the letter of the Land Reform Decree of 1975 and the Expropriated Properties Act of 1982. The GOU should urgently clarify this issue and either enforce the law or modify it.
24. Recommended areas of technical assistance:

The services of the following experts will be required to assist implementing the recommendations contained in this report:

a) Five short-term consultants:

- One organization and management consultant for two to three months to draft the detailed procedures for the implementation of the new organizational structure
- Two divestiture specialists for two to three months to design detailed procedures for the divestiture of the agricultural and agro-industrial properties
- One expert for two to three months for the commercial and residential properties
- One financial and credit expert for two to three months to prepare lending manuals and devise lending procedures for

mortgage and installment sales;

b) Two medium to long-term Consultants:

- One agricultural specialist for two years to work with the Agricultural and Agro-industrial Properties Department
- One industrial engineer for one to two years to be assigned to the Department of Industrial Properties.

APPENDIX A

THE LAND TENURE SYSTEM IN UGANDA

To appreciate the complexities involved in the transfer of the title deeds of former Asians properties, it is important to understand the intricate land tenure system in the country. Although each main region in Uganda has its own land tenure sub-system dating from the days of the kingdoms, the system depicted below describes the general system used by the central government in Kampala as well as the land tenure of the Buganda region as a whole.

GENERAL SYSTEM

All land in Uganda is public land and is controlled and managed by the Uganda Land Commission (ULC). The control, management and distribution of land in urban areas is vested in the authorities of the Municipal Councils and Town Boards who hold statutory leases in freehold from ULC.

The control, the management and the distribution of land in rural areas is vested in the District and Sub-county Land committees.

TENURE

The Land Reform Decree of 1975 (LRD) abolished all forms of land ownership. This includes the so-called Mailo lands (previously owned by the Kabaka, his relatives, chiefs and other individuals who were given the land by the Kabaka as favors); the crown land (the uncultivated forests and swamps); and all freehold lands. These were converted into four different categories of tenure:

1. Leases

Leases are extended for 49 years and in some rare cases

for 99 years between the GOU and different tenants.

2. Sub-Leases

There are two types of sub-leases:

- Sub-leases between a lessee and a third party for a period of more than 3 years but less than the period of the lease

Again, no actual conversion has taken place and the freehold and the Mailo landlords still behave as actual owners of these lands.

3. Customary Tenure

This is considered an inferior system of land ownership as the customary tenure is not registered nor is the title certificate issued. Yet this is probably the most predominant type of land ownership.

4. Temporary Occupation License

This type of land tenure is not registered and no certificate of title is ever issued. Most peasants have a temporary occupation license.

THE IMPACT OF THE LAND REFORM DECREE OF 1975 ON THE ASIAN PROPERTIES

In all cases, the Asians were the lessees of the public landowners, freehold landlords or the Mailo owners. Most of the leases ran for 49 years and in some cases 99 years. As mentioned earlier, the 1975 decree automatically converted the freehold and the Mailo leases into sub-leases.

At the time of the departure of the Asians in 1972, most of the leases were still in effect. The Expropriated Properties Act of

1982 did not abrogate the leases in 1972; nor did it allow the transfer of the properties back to the original owners at the expiry of the leases, unless that was allowed by decisions of the Verification and Negotiation Committees.

THE CONFUSION

As mentioned earlier, some Mailo owners still act as if they own the land and are officially requesting title in cases where the leases have expired. The land may be automatically returned to them in most cases, however, the government has not reached a final decision with respect to the ultimate disposition of the land.

Further, some freehold and Mailo owners have arranged for "illegal" transfer of the title; there have been cases where more than one title has been issued for the same piece of property. This has created enormous problems for the Custodian Board in trying to hold onto the properties entrusted upon it under the law. The lack of easy access to the Ministry of Lands has compounded the title verification problems.

RECOMMENDATION

We recommend that the former owners returning to repossess their properties be granted the lease periods remaining on the leaseholds as of 1972. It is further suggested that the compensation value be based on the remaining lease period as of 1972.

However, at the time of the acquisition of these properties by the new investors, we recommend that these properties be given new leases of 99 years (which is a common lease period in most African countries). Although the initial cost of acquiring these properties would be high, longer lease periods would create a positive incentive for a long term investor. Conversely, anything less than 99 years would be a disincentive to the investor and the development

of the property. It is important therefore to encourage investors to think and invest long term; 99 year leases, in our opinion, fulfills that objective.

APPENDIX B

LIST OF CONTACTS

USAID MISSION

Richard L. Podol
Fred E. Winch

Mission Director
Deputy Director (Economist)

GOU

Dr. S.B.M. Kisekka
Dr. C. Kiyonga
Dr. George Kanyeihamba
Mr. Sam Sabagereka

Prime Minister
Minister of Finance
Minister of Commerce
Minister of State for Ministry
of Planning & Econ. Dev.
Minister of Housing & Urban Dev.
Minister of Justice
Minister of Foreign Affairs
Minister of State,
Prime Minister's Office
Dep. Minister of Finance

Mr. J. Wapakabulo
Mr. J.N. Mulenga
Mr. Paul K. Ssemogerere
Mrs. Betty Bigombe

Abbey Kafumbe-Mukasa

J.B. Bushara
C. Kasami
Dr. Kaberuka
Richard Kitunzi
Robert Kitariko

P.S. Industry
Ag. P.S. of Planning
President's Econ. Advisor
PM's Econ. Advisor
Minister of Water and Mineral
Resources
Minister of Transport and
Communications

Dr. Ruhakana Rugunda

PARATOTALS

Martin Kasaija

Executive Director, Custodian
Board

John Kanakulya
Frank Mwine
Joseph Adrole
Joshua Mugenyi
Peter Ocran
Felix Eyaa

Chairman, Uganda Development Corp.
Chairman, Uganda Commercial Bank
Chairman, Uganda Development Bank
Secretary/Treasurer, BOU
Senior UNDP Advisor, UCB
And. Director, UDC

PRIVATE SECTOR

Joseph Adrole
Edward Nsubuga
Joseph Mulwana

Shem Bageine
Gregory B. Baine
Thomas Kato
John Kato
Demond Ssekandi
Freddie Irumba
Francisco Opoka
Ayman Ismail Elbody
Yassin Sanad
Prof. Sam Tulya-Muhika

Industrialist, Owner Genitec
Industrialist
Managing Director,
House of Plastics
Business Developer
Trader
Industrialist, Farmer
Trader
Prominent Lawyer
Hotel Management
Owner Tire Retread Factory
Egyptian Businessman
Egyptian Investor
Economist

INTERNATIONAL ORGANIZATIONS

Girma Bergshaw
Mary Chenery-Hesse
Grant Slade
J. Lane Hanan

IMF Representative
UNDP Representative
World Bank Representative
EEC Representative