



NATIONAL DIALOGUE ON COMPULSORY LAND ACQUISITION 2019

































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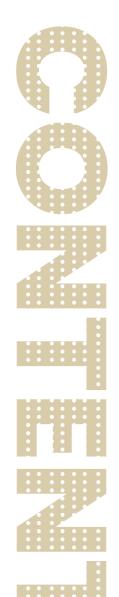
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WELCOME MESSAGE

Uganda has embarked on an ambitious programme for developing her infrastructure. Nobody should put this into question. At the same time; justice for her citizens and the Rule of Law must be guaranteed.

What could and should both the Parliament and Government of Uganda do to improve the current conditions around compulsory land acquisition, considered unsuitable for ensuring progress and justice simultaneously?

Germany wishes to facilitate a national dialogue which should enable Ugandans to clarify amongst themselves their interests and priorities, and the best way forward.

Dr. Albert Conze

German Ambassador to Uganda

CONVENERS

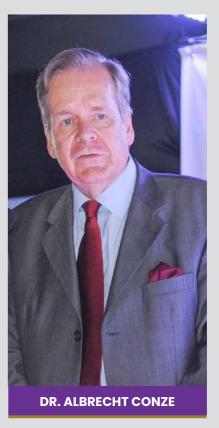


Dean, School of Built Environment, Makerere University Board Chair, LANDnet Uganda



Minister of Lands, Housing & Urban

Development



German Ambassador to Uganda







STEERING COMMITTEE



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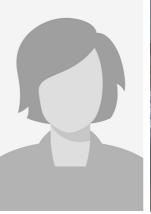


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NATIONAL DIALOGUE COMPULSORY LAND ACQUISITION IN UGANDA

MARCH 21 2019 ◆ NAGURU SKYZ HOTEL

SUMMARY

As a result of the underlying tension between the citizens and the government regarding the move to amend Article 26 of the Constitution, failure to get consensus on the matter of Compulsory Land Acquisition emerged. That notwithstanding, the government has embarked on the process of repealing and replacing the current law to align it with the Constitution. However, there is still low uptake from the citizens due to broken trust and mixed messages in the public domain. The failure to resolve the legal regime on compulsory land acquisition has led to stagnation of government projects because of issues related to compensation and valuation. This has ruined the relationship between the citizens (project affected persons) and government.

A transparent and inclusive platform dubbed the 'National Dialogue on Compulsory Land Acquisition'

was held by LANDnet Uganda, Ministry of Lands, Housing and Urban Development and the German Corporation, to regenerate consensus as well as build trust between the government and the public on the current proposed reform.

This report includes all information on the discussions during the National Dialogue on Compulsory Land Acquisition. The dialogue that spanned 7 hours, constituted three [3] major sessions namely, the Opening Plenary, the Land Acquisition Bill Unveiled and the experience, best practices and lessons from other countries and Uganda in the past. Questions regarding repealed sections and clauses, tenure, gender and legislation in the Bill were raised but also proposals reflecting consensus if enforced were suggested by the public.

Chapter

CONSTITUTING THE NATIONAL LAND DIALOGUE



1.1 INTRODUCTION

On the 21st of March 2019, LANDnet in partnership with the Ministry of Lands, Housing and Urban Development and the German Cooperation brought together stakeholders to discuss the future of compulsory land acquisition in Uganda at SKYZ Hotel, Naguru. The current legal framework on compulsory land acquisition is enshrined in Articles 26 and 237 of the Constitution and the Land Acquisition Act, Cap. 226. The lacuna is caused by the fact that the Act came into force long before the Constitution and as such, the two do not speak to each other.

The Constitution being the supreme law of the land overrides the Land Acquisition Act and because of this, the Supreme Court in *Uganda National Roads Authority Vs. Irumba Asumani & Peter Magelah* (Supreme Court Constitutional Appeal No.2 of 2014) confirmed the sanctity of property rights under the Constitution. The court stated that Article 26 of the Constitution on freedom from deprivation of property provides for prompt payment of fair and adequate compensation prior to the State's compulsory acquisition of any property. The Court ruled that the Land Acquisition Act (Cap 226) is unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner. This decision left the compulsory land acquisition process without a clear law or procedure. To fill this void, Government is drafting the Land Acquisition Bill that will repeal and replace the current Land Acquisition Act.

The Dialogue generated debate on compulsory land acquisition and it is hoped that these views will inform the drafting and the passing of the new Bill into law. The goal of the dialogue was to help Uganda citizens make more informed decisions on public policy relating to compulsory land acquisition.

1.2 COMPULSORY LAND ACQUISITION DEFINED

What can the state demand of the individual citizen whom it both governs and represent?

The specific vehicle for examining the proper relationship between the individual and the state in relation to land is through the compulsory acquisition clause of the Constitution, which is to the effect that **private property cannot be taken for public use without just compensation.**

The power of compulsory acquisition as discussed here is a tool of land policy administration. However, the principle also underpins the government's authority to regulate the use and management of land, the environment and other natural resources. In rapidly developing urban settlements such as Kampala, eminent domain is often used as a tool of the land assembly process. The public sector, or other governmental public agencies such as Uganda Investment Authority, often assembles land to remove or prevent blight and create opportunities for redevelopment. Most of the land may be acquired through negotiated purchase with a willing seller. However, if negotiated purchase is unsuccessful, government may resort to acquire the property through the power of eminent domain.

Usually, compulsory acquisition (using the police powers of the state) is expected be a means of last resort. In most cases, responsible governance requires alternative analysis similar to that required for environmental impact analysis that considers all reasonable alternatives to the use of eminent domain. These would include alternative site plan or location or infrastructure,

acquisition through voluntary sale, adaptive reuse, taxincentives, etc. If compulsory acquisition is for investment or to comply with a development plan, give the property owner the opportunity to rehabilitate the property or participate in development. In effect, land policy regulations must permit a model that has meaningful applicability to such an important issue of whether or not the taking of private property is necessary to achieve public benefits. Thus government good faith consideration of all reasonable alternatives should be encouraged to avoid use of eminent domain.

The police power in the Constitution refers to the capacity to maintain peace, law and good order as a central function of government. It includes, but is not limited to the right to regulate speech, contracts and property¹. In effect the regulatory powers of the state are manifested and enforced through police power and remains an inherent attribute of sovereignty at all levels of government. However, a constitutional provision that sanctions the police powers of the state also specifies its proper use with respect to due process, contracts and equal protection.

¹ The principle derives from the recognition that, if individuals can justify the use of force in self-defense against their neighbors, so too can the state, when it acts on their behalf.

1.3 THE STEERING COMMITTEE

The Steering Committee was put in place to lead the organization of the dialogue, taking into consideration the available time, political environment and legal regulations governing public meetings. The Steering Committee ensured impartiality and independence, provided the organizational capacity to hold a well-structured dialogue and have credibility that helps generate support for constructive dialogue with government, media and the general public.

The steering committee was mandated to -

- **a.** Oversee the overall dialogue coordination including branding, development of the program and managing the time for the dialogue.
- **b.** Oversee the selection of moderators, keynote speakers and presenters including preparation of the Terms of Reference for each.
- c. Decide the Dialogue format including organizing the topics and time limits for opening and closing statements, question time, and the length of the entire dialogue as well as audience conduct preparation of stage material, questions to be posed by the moderators and briefings with the moderators.
- **d.** Oversee media engagements including determining the media houses to engage and agreeing on top quality production arrangements.
- **e.** Review and manage the participants to ensure that there is a multi-stakeholder balance in participation covering government Ministries, Departments and Agencies, Parliament, academia, Private Sector and Non-Governmental Organizations.
- **f.** Oversee and manage the National Dialogue.

1.4 APPROACH TO THE DIALOGUE

The dialogue was a result of the initial preparatory work that was undertaken by LANDnet and German Cooperation. This was through;

- **a.** Establishment of the dialogue coordination group
- b. Partnering with the Media
- **c.** Organize the topics and the time limits
- **d.** Identifying the moderators, panelists and presenters
- **e.** Identifying the Key Stakeholders to the National Dialogue

Because of the sensitivity of the matter, a multistakeholder process was seen as the best suited approach to lead the organization of this national dialogue, taking into consideration the available time, political environment and stakes on the subject.

Developing an effective partnership with the print and electronic media was essential to ensure that that the dialogue reached the widest possible audience. Because of the political stakes surrounding the proposed amendments, the public and participants scrutinized all aspects of the draft bill. The viewing or listening audience was envisioned as greater than those that attended the event in person. For this reason, the dialogue had to be prepared with the home audience in mind.

The Dialogue focused on specific topics that allowed for a more in-depth discussion and ensured these areas were addressed by the presenters. A lot of preparatory work went into notifying the presenters on the expectations beforehand. It was important to manage time for the opening and closing statements, question time, and the length of the entire dialogue as well as audience conduct. Moderators sought prior time for preparation in order to digest on the concept of the dialogue.

The role of moderators and panelists were central to the success of a dialogue. Moderators managed the dialogue and ensured that the time was well managed. The moderators were **Mr. Charles Mwanguhya Mpagi** and **Ms. Jane Kasumba** who were identified as impartial and adequately experienced to manage the task effectively.



Mr. Charles Mwanguhya Mpagi



Ms. Jane Kasumba

Because of the political sensitivity of the subject, it was foreseeable that convincing the right people to facilitate the dialogue would be challenging. To address this, the steering committee ensured that the national interest in holding the dialogue was more pronounced throughout the media and public engagements. Additionally, the involvement of government in the preparatory stages built the confidence of the presenters and other panelists.

As a result, the dialogue attracted the key Ministries, Departments and Agencies involved in land acquisition like Ministry of Lands, Housing and Urban Development; Ministry of Energy and Mineral Development; National Environment Management Authority; Ministry of Water and Environment; Ministry of Justice and Constitutional Affairs; Uganda Wildlife Authority; National Forestry Authority; Uganda Investment Authority among others. It also had participation of the Private Sector actors and the funders of huge infrastructure programs in Uganda such as the European Union and the World Bank. The Civil society actors especially those implementing land rights projects were invited such as ACODE, CRED, LEMU and ULA. Others included organizations working on Agriculture - PELUM and FRA, and international organizations such as Trocaire, GIZ, ZOA, GLTN, Transparency International Action Aid and Oxfam. There was also a representation of local governments and CBOs in areas where compulsory land acquisition has occurred is prospected to.

It was anticipated that the dialogue would host 150 participants drawn from the different sectors while the general public would be engaged through social media .

The dialogue constituted three major sessions, namely; the 'keynote address', the 'major components of the draft Land Acquisition Bill' and the 'Experiences, challenges and best practices on Compulsory Land Acquisition in Uganda'.

The Keynote address titled 'The Political Economy of Compulsory Land Acquisition' sought to examine the historical, socio-cultural, and political factors underlying the efforts at reforming the land acquisition laws in Uganda. The components of the draft Land Acquisition Bill was discussed by Ms. Sheila Ampeirwe and Mr. John Paul Edoku, from the Department of First Parliamentary Counsel in the Ministry of Justice and Constitution Affairs gave an overview of the draft Bill while the third component of the dialogue focused on experiences, challenges and best practices on compulsory land acquisition. This session was followed by a plenary discussion.

A number of challenges experienced during compulsory land acquisition were discussed, some of which included; weak institutions to oversee compensation and tenure security, speculative purchase, delays in compensation, land ownership disputes, differing land use practices, controversy on appropriate option for compensation (cash, land swapping, resettlement etc.). The panelists therefore appraised how the proposed Land Acquisition Bill addresses the various challenges associated with compulsory land acquisition in Uganda based on previous experience. The presentations were as practical as possible with experiences and based on actual projects where compulsory land acquisition power was exercise.

1.5 THE SPEAKERS

MAHMOOD MAMDANI

Prof. Mahmood Mamdani is the Director of Makerere Institute of Social Research (MISR) since 2010. He received his PhD in Government from Harvard University. Professor Mamdani is Herbert Lehman Professor of Government in the Department of Anthropology and Political Science and of International and Public Affairs at Columbia University, where he was also Director of the Institute of African Studies from 1999 to 2004. He has taught at the University of Dar-es- Salaam (1973-79), Makerere University (1980-93), and University of Cape Town (1996-99) and was the founding director of Centre for Basic Research in Kampala, Uganda (19987-96). He has written widely on several topics.

Prof. Mamdani is the author of Good Muslim, Bad Muslim: America, the Cold War and the Origins of Terror (Patheon 2004); When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda (Princeton 2001); Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism (Princeton 1996); and ten other books. Mahmood Mamdani was president of CODESRIA (Council for the Development of Social Research in Africa) from 1999 to 2002.

As the keynote speaker, Prof. Mamdani set the stage for Dialogue with is illuminating address 'The Political Economy of Land Acquisition in Uganda' tackling the historical, sociocultural, and political factors that explain the efforts at reforming land acquisition laws in Uganda. His knowledge in this field is unparalleled and therefore enriched and set the tone for the audience.





JOHN PAUL EDOKU

Mr. Edoku is a Senior State Attorney/Senior Legislative Drafter for the Uganda Government in the Directorate of First Parliamentary Counsel, Ministry of Justice and Constitutional Affairs. He is currently part of Legislative drafting team in the ongoing reforms of land related laws including land acquisition and valuation law.

He is a talented multi-skilled Attorney with over 8 years working experience specializing in legislative drafting, policy analysis, formulation, review and reforms; constitutional drafting, review and reforms; natural resources and energy law and policy; electoral law reforms; civil procedure laws; judicial processes; public service reforms; international law and providing legislative and legal advisory services to the Government and its allied institutions. He was part of the team that drafted the Uganda Petroleum laws of 2013. He has participated in the review and reform of the mining and mineral sector policy and formulation of the draft Geothermal Policy.

Mr. Edoku is equally skilled in legal analysis, research, writing, editing and interpretation; negotiations; procurement; strategic planning; administration, supervision and leadership. He set pace for audience to better conceptually absorb the draft bill reading that was performed by his colleague right after. His presentation was an eye opener to the components of the zero draft land acquisition bill.



SHEILA AMPEIRWE

Sheila Ampeire Lwamafa is a legal and legislative drafting expert, and advocate of the High Court of Uganda with wide experience in drafting parliamentary Bills and amendments of the various laws. Over the last 9 years, she has been involved in advising Government and its allied institutions on matters of policy and legal development, reforms, and amendments or regulatory frame works. Sheila is an attorney in the Directorate of First Parliamentary counsel, and executive office under the Ministry of Justice & Constitutional Affairs. Sheila deliberated on the different changes suggested for the 1965 Land Acquisition Act and hence the zero draft bill presented for dialogue.

WINNIE NGABIIRWE

Winfred Ngabiirwe is a human rights activist with over 15 years of experience in development work. She holds a Master's degree in Human Rights, and a Bachelors of Social Work and Social Administration. She is passionate about inclusive development and believes that access to information, participation and access to justice are key ingredients for a meaningful natural resource government regime in Africa. It is this experience in advocacy for a well governed and accountable natural resource sector in Uganda that she brings to Global Rights Alert as Executive Director. The organization works around land acquisition, resettlement and compensation among people affected by oil and gas infrastructural developments in the Albertine Graben provides platforms for women and young people to articulate their concerns and interests, as well as improving the responsiveness of governments and private investors. This was a niche for Ms. Ngabiirwe that she provided the background on the experiences and challenges of compulsory land acquisition to the livelihoods of the area.





JAMES MUHINDO

James Muhindo works at the Advocates' Coalition for Development and Environment (ACODE) as the National Coordinator of the Civil Society Coalition on oil and Gas (CSCO). James is an Advocate of the High Court of Uganda, and human rights advocate with keen interest in transparency and good government of Natural Resource. James holds a Bachelor of Law Degree (LLB) from Makerere University, a post Graduate Diploma in Legal Practice (Bar Course) from the Law Development Centre and is currently a Master of Law (LLM) candidate at Makerere University school of Law. As a human rights advocate, James has for over five years worked with Civil Society organizations, in

pursuit of good governance of Land and other natural resources at national, regional, and international levels. He has also played an active role in legal and policy reform advocacy on land, oil, gas and mining in Uganda, and has undertaken policy research and published articles on the Subject. He is a pioneer member of the Network of Public Interest Lawyers (NETPIL), where he chairs the Land and Natural Resource Working Group, and is also a member of the National Advisory Committee for the Uganda Law Society Supporting Inclusive Development in East Africa Project. Mr. Muhindo joined the dialogue panel, appraised and scrutinized the legal approaches suggested by the bill. He deliberated on the challenges of weak institutions and delays in correspondence to the law reforms.

PETER MAGELA

Magelah Peter Gwayaka is a lawyer and social scientist with vast experience in Human Rights, Law and Extractives. Before joining Chapter Four, Peter worked a research officer Advocates Coalition for Development and Environment (ACODE) as a Research Officer where he was in charge of the Oil and Gas Project. His work at ACODE saw him work on the Oil and Gas laws in Uganda, review of different policies in extractives sector as well as work on local content in oil and gas in Uganda. Before joining ACODE, Peter worked with Human Rights Network Uganda (HURINET -U) where he was in charge of the Law Reform Project. Peter has worked on a number of initiatives for legal reform in Uganda and strategic litigation. He was one of the panelists who shared experiences, challenges and best practices that should inform the draft Bill.

Chapter

THE OPENING PLENARY



OPENING REMARKS



Significance of the National Dialogue to shaping compulsory land acquisition in Uganda

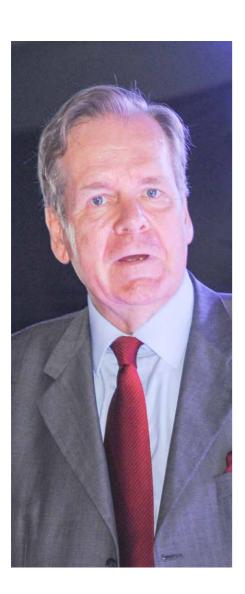


Dr. Moses Musinguzi, Dean School of Built Environment – Makerere University and Chair Board of Directors - LANDnet

ompulsory land acquisition is a very controversial topic since the enactment of the Land Acquisition Act in 1965. Various names have been preferred to in other jurisdictions such as eminent domain, expropriation and compulsory land acquisition however, the Ugandan jurisdiction settled for the latter. In Uganda, it is a very important subject, where the government takes land for the benefit of the public. It is understood in diversity by the various individual and approaches in handling the acquisition processes and guidelines. These approaches have specially resulted in public mistrust of the government. While Government has blamed the compulsory land acquisition process for frustrating and delaying government projects, property owners have on the other hand blamed

government for compulsorily acquiring their land and failing to compensate them fairly and timely. Therefore, the dialogue was meant to build consensus between the key stakeholders. The dialogue also sought to help in the improvement of the Compulsory Land Acquisition Bill with the hope of making it acceptable to everyone.

This National Land Dialogue on compulsory Land Acquisition and the various sessions including the sharing experiences, learning from the best practicing countries facilitates genuine generation of ideas to inform the country's situation. In a nutshell, the dialogue will help the stakeholders understand the issues surrounding compulsory land acquisition and reach some agreements on how the subject will be handled in policy, law and practice henceforth.



Why would the German Embassy engage is such a fragile topic?



H.E Dr. Albrecht Conze - The German Ambassador to Uganda

he German Cooperation working through GIZ engages on land governance in various areas of Uganda and partnership with government of Uganda and civil society is crucial for the success of any activity. For this National Land Dialogue, partnership with government departments and LANDnet was necessary. This is the best possible platform and approach to have a truly multi stakeholder process to talk about the challenges and opportunities of compulsory land acquisition for the development of Uganda, stimulate critical thinking and share ideas for the best way forward.

The dialogue was timely since the Bill will soon be tabled before Parliament. All

outputs from the National Land Dialogue are extremely vital for purposes of informing the process. This open and transparent platform should yield good results and delve into contentious matters that have led the Government of Uganda to delay public projects and lose millions of dollars as well as address the human rights concerns of its citizenry. Civil Society Organizations and the public have imminent fear that the current national trajectory of dealing with compulsory land acquisition disadvantages property owners yet court processes take forever to decide compensation related matters hence the need to arrive at a common position to address matters of compulsory land acquisition in a manner that will foster a win-win situation for all.



Balancing between the public good and security of tenure in infrastructure projects in Uganda



Dr. Anthony Thompson - Country Manager - World Bank Uganda

and is a critical factor for development and an aspect of identity and economic success but complex as well. The World Bank partnered with Government before and will continue to do so to better land administration in Uganda especially through the implementation of the National Land Policy, even if much more work is still needed. The Government is supported to put up public infrastructure, however, delayed land acquisition has been a major problem in public infrastructure projects. This is mainly because of the weaknesses in the procedures of compulsory land acquisition in the country.

The dialogue very timely. There is need to strike a balance between the public good

and security of tenure in ownership of land and also develop better value computation procedures for the rates of compensation. The key principles guiding compulsory land acquisition such as; mitigation of effects of compulsory acquisition; fair and timely compensation; involvement of project affected persons in the project design; disclosure of information related to the acquisition and most importantly, fair and timely compensation are needed to minimize conflicts by using alternative designs instead of the current systems. It is a good initiative from the organizers and hopefully the public and government to obtain good recommendations that will shape the Compulsory Land Acquisition process in Uganda.



The need to amend the law in order to facilitate expeditious compulsory acquisition of land by government or local government



Hon. Chris Baryomunsi (MP) Minister of State for Housing, Ministry of Lands, Housing and Urban Development in a speech read by Richard Oput, Director Land Management

n behalf of my Ministry, the Government has current proposals to reform laws relating to land acquisition, majorly; the amendments to the Land Acquisition Act (Cap 226), to bring it into conformity with Article of the Constitution of Uganda. According to Government, the proposed amendments are expected to facilitate expeditious compulsory acquisition of land by Government or Local Government avoid delaying Government or Local Government infrastructure and investment projects, while at the same time, allowing for persons dissatisfied with the compensation amount awarded to resolve the disputes in court in the time to be determined by the laws put in place. These proposals, will present a mechanism for Government to access land for development purposes without

depriving the property owners the right to prompt, fair and adequate compensation, prior to taking possession or acquisition of the property.

I am aware that some provisions of the Land Acquisition Act 1965 were declared by the Supreme Court unconstitutional under and inconsistent with Article 26 (2) of the Constitution in as far as they do not provide for prompt payment of fair and adequate compensation prior to taking possession or acquisition of any property by the State. This created a gap in the land acquisition process and hence the need to review the whole Act to address these gaps. In the interim Government put in place a framework to guide Land Acquisition in the oil and gas sector activities based on the current laws and best international practices to ensure that the process is

transparent and at the same time allows no delays in the development of the necessary infrastructure. In addition, government is in advanced stages of developing the Land Acquisition Resettlement and Rehabilitation Policy (LARRP) and it is expected that this framework will address issues relating to land acquisition, resettlement and rehabilitation of Project Affected Persons.

The consultative process is ongoing and is expected to be complete by end of this year. As you are also aware, His Excellency the President of the Republic of Uganda has traversed the whole country sensitizing the public on the need to reform land acquisition laws in a bid fast track implementation of Government projects, as any delay has negative impacts on Government, in form of delayed service delivery, increased cost of investment, as well as interest rates paid on borrowed funds to undertake these infrastructure projects.

Therefore, the dialogue was timely since it is meant to discuss issues relating to land acquisition and making recommendations to improve on both the laws and policies. The public has not had a chance to look at the proposals in the Land Acquisition Bill, 2018 which Government proposes. The First Parliamentary Counsel made a presentation on the provisions of the bill so that no one is suspicious of Government's intent. There is still confusion of the two bills, (the Constitution Amendment Bill,

2017 which was withdrawn from Parliament by government and now the draft Land Acquisition Bill, 2019 before parliament) which consulting are being conducted. There's need to understand the difference between the two bills so that you can make substantive submissions which will inform the Land Acquisition Bill, 2019. Further to this, the Land Acquisition law will be reinforced by the valuation law which is also in the draft form as we speak.

The National Dialogue on Compulsory Land Acquisition, is still timely in regards to the consultations that the government is making hence making it a win, win situation for both government and the people. The representatives of participants in this room, conveyed a very rich selection of stakeholders, as it included policy makers, development partners, land acquisition experts from government and private sector, MDAs who are involved in land acquisition processes, CSOs working on land, Cultural leaders, Land owners, tenants on land, representatives of vulnerable groups across the country and the press.

Solid proposals and recommendations to Government were greatly expected for the benefit of all Ugandans. Thank you to the organizers of this dialogue mainly the Germany Embassy; His Excellency the German Ambassador, LANDnet Uganda and officers from the government Ministries. The dialogue officially opened.



2.2 THE KEYNOTE ADDRESS

How do we determine fair compensation? It is wise not to leave this to a case-by-case discussion?

Professor Mahmood Mamdani – Director, Makerere Institute for Social Research, Makerere University- Kampala y task, as I understood it, was to initiate the terms of the day's discussion. A reflection on the wider context in which the discussion was taking place, I had three observations.

First, we are living in rapidly changing times, not only because the technology is changing at an incredible speed, or because we are destroying the environment, shooting ourselves in the foot as we move slowly to the head. This is also a time of rapid political change when the hegemony of a single global power is rapidly eroding. The situation is pregnant with dangers and possibilities. On the positive side, there is growing interest in Africa, reflected in intense

competition between old and new powers. The terms of engagement over Africa are rapidly changing. One result is the rapid growth of infrastructural development.

Second. this changing environment has external triggered internal changes. We are in a period of rapid accumulation of wealth. For those with hands on the levers of power, this has taken two forms: violent appropriation, as of cattle and land in areas of insecurity and armed conflict, and gross corruption in the rest of the country. Our leaders are rapidly losing interest in small projects, so much so that we seem to be making a fetish of big ones.

Why are our policymakers so interested in building a single hospital costing half a billion dollars, when half that money can build viable health centers in every district in the country? Our leaders have learnt that the bigger a project, the larger the cut. But in this case, the point may not be the cut, for this project may never be realized. In that case,

the point will be the compensation demanded by the proposed investor. As we all realize, compensation is at the heart of the issue we are discussing today.

Third, as the race for accumulating wealth gathers pace, owners of big property are divided into two groups: if the old group is still interested in productive investments, the new group has a keen roving eye for speculative gain. The search for speculative gain is articulated in different languages: one side claims to stand for development whereas other side champions rights of private property in absolute terms. Both claims can be heard in the debate on compulsory acquisition of land, the subject of the discussion today.

Proponents of development have often couched private interests in the language of the public good. Developmental talk needs to be put to public scrutiny: how aligned is it to the public good? Does the half-billion-dollar hospital I just talked about serving the public good? Does every infrastructural project serve the public good? I hope you will hold a discussion on this another day. For today, I will focus on claims regarding the right of private property.

The right to property is not absolute. It is subject to eminent domain, an essential part of state sovereignty, whose exercise is subject to one qualification, the goal must be the public good. Eminent domain is subject to two essential conditions: private property is to be taken only for public use and just compensation must be paid for the property taken.

Eminent domain must be distinguished from expropriation. The distinction does not lie in consent. Eminent domain is not a willing seller /willing buyer arrangement; it is not a market sale. Neither is it outright expropriation. The difference lies in just or fair compensation.

How do we determine fair compensation? It is wise not to leave this to a case-by-case discussion. Instead, we need to look for a methodology that can apply to all cases.

Should we make a distinction between different kinds of property owners, large and small, when discussing compensation? Are there different kinds of demands for compensation, some just but others not?

What's the Place of Women in compulsory land acquisition?

Take, for example, the question of procedural delays which are said to hinder development projects and cost the authorities billions in damages. Procedural delays can be turned into a deliberate strategy for extortion, especially by those who are wealthy enough to afford to wait for compensation. Culling worth (1980) cites a UK case where the Minister of Transport in a memorandum in 1958 to the Minister of Housing and Local Government suggested adding 30% to market value of property subject to compulsory acquisition – hoping this would induce

property owners to throw fewer procedural hurdles in the way of the process. His hoped to bribe speculators, a strategy that is likely to be self-defeating.

The point is that only owners of large property have the resources to ride procedural delays; the small *bibanja*-owner does not.

Can we distinguish the speculator from other large property owners? Can we level the playing field for the small *bibanja* owner and the large property owner, say of a *taka*? I will come to this issue after drawing some lessons from examples around the world.

- **Step 1:** Negotiation. Compulsory negotiation before exercising compulsory acquisition. This is accompanied by advance information: Compensation details are available for review in the US for a month before action is taken.
- Step 2: Consider alternatives to monetary compensation. Where sales are few and markets are imperfect, the market price is likely to be lower than market value. Roughly, market value is the replacement value of a property, the value of purchasing a roughly equivalent piece of land. Should the payment thus be in kind, rather than as cash with payment in the form of a roughly equivalent piece of land?

For a *kibanja*-owner, i.e., the owner of a family farm, there are strong reasons to favor compensation in kind rather than cash. First, it provides some safeguard against patriarchal privilege: to avoid a loss to family members, should the head of the family appropriate all compensation. It is also a safeguard against other contingencies: to avoid loss in case of failure to find an adequate replacement, etc.

There are many examples of Compensation in Kind: land for land (Australia), home for home (Canada, India). The strategy

works where there is sufficient Crown land available to the state.

- **Step 3:** Compensation in kind is often accompanied by a supplementary compensation in cash this is compensation for other losses, say emotional: loss of ancestral lands and burial grounds kinship ties, friendships. American courts acknowledged the general rationale until 1919.
- Step 4: Where compensation is in cash, a direct purchase is often considered as preferable to compulsory acquisition. In Vietnam, local authorities often sell land at competitive land auctions to determine the market price. Compulsory acquisition is the last resort where the owner refuses to sell, but for the word compensation to be meaningful, it has to compensate!
- step 5: To acknowledge the fact of disagreement, one may need to go a step beyond the proposal in the Minister's statement on the proposed constitutional amendment with regard to Article 26 of the 1995 Constitution. This would be to deposit with the courts, not just the amount offered by the government but an additional amount which would be subject to negotiation or arbitration. In addition, there would be need to rationalize the Appeal process so it does not consume undue time. In Kenya, appeals used to go to the High Court till 1990, after that the law created specialized Compensation Tribunals.
- **Step 6:** Should compensation be the same for all? Political philosophers talk of two types of compensation: individualistic and social.

Utilitarian or individualistic thinkers call for equal Justice for each individual. Critics say this disregards the difference between different categories of individuals. The alternative has been formulated by the Harvard philosopher John Rawls. He

calls for justice as fairness – as social justice. Lay juries in the US before 1919 tended to select a measure of fairness which would ensure that the worst affected group would end up marginally better off. They thus added at least 10 per cent of the market value, but only for the worst off group.

The idea is that the worst off group should end up slightly better off with compensation. Compensation should thus involve an element of social redistribution. Rawls justified this as an emphasis on the public good. This is justified as a consideration of the public good.

The Question of History - focus on Uganda

We have learnt that one size does not fit all. Questions may be universal, but answers are not. No one answer is true for all times and places. All answers are historical and contextual. It is true that we can learn something from the study of other times and places, but that cannot be a substitute for a study of this time and this place. So let us focus on Uganda.

I will begin with a history of compulsory land acquisition.

Thathistory begins with the 1900 Agreement and the expropriation of 8,000 square miles of land in which all customary rights of bibanja-owners were abrogated. These rights transferred to roughly 1000 recipients of Mailo land, owners of taka. Rather than an exercise in the right of the public domain in the public interest, this needs to be understood as an exercise in the right of conquest. The conquering state turned the right of eminent domain into an exercise in the expropriation of land rights of the vast majority; it was an expropriation without compensation.

The expropriation of the property was part of a larger injustice: ethnic cleansing. The most notorious act of ethnic cleansing

was the forced removal of Catholics from Mengo and its surroundings to Masaka.

In all cases, whether or not they were forced to move, the peasant in the *kibanja* retained the traditional right to use the land. But in all cases, this became subject to the right of property which was now vested in the taka owner.

The next major exercise in the right of the public domain was the 1928 Busulu and Envujo Law. With its passage, the state put a statutory limit on the ground rent (obusulu) and the rent on cash crops (envujjo) that the take holder could demand from the bibanja owner. The result was to qualify the right of private property: there was some restitution for the previously expropriated majority without any compensation to landowners. The justification was historical: partially correcting an injustice whereby Mailo landowners had been beneficiaries of state-initiated political largesse, rather than any market-based transaction.

The third notable exercise in the public domain was the 1975 Land Act under Idi Amin. It declared all land as state land and all landowners and users as lessees and sub-lessees of the state. From this point of view, the 1975 Act should be seen as building on the 1928 Busulu and Envujjo Law.

The final act in this historical chain was the 1995 constitution which restored the rights of landowners at the expense of *kibanja*-dwellers. In restoring the privileges of Mailo landowners, the 1995 constitution undermined the rights that *bibanja*-owners in Buganda had earned in 1928 and peasants throughout Uganda had won in 1975.

If the judgement on these developments is passed, some lessons have to be drawn from this history.

One, 1900 was unjustified: the colonial state turned the right



of eminent domain into an exercise in the expropriation of small peasants without any compensation.

Two, in contrast, 1928 was justified: the colonial state used the sovereign right to make a law to provide some restitution – justice – for those who tilled the land.

Three, 1975 was justified, broadly speaking, since it

built on 1928 and abrogated the remaining privileges conferred on taka owners in 1900.

Finally, 1995 was a return to the 1900 Agreement in the interest of owners of big landed property. The 1995 constitution should thus be seen as a negative development. In undermining the legitimate rights of the peasant majority throughout

Uganda, it had the impact of a counter-revolution.

There is also a history expropriation outside Buganda, especially in the north and east of the country. In all these cases, whether in the colonial period or after, as during the counterinsurgency in Karamoja, Acholi and Teso, expropriation was without compensation. These cases of historical injustice have been documented by students at Makerere Institute of Social Research in numerous research studies. Questions of historical injustice need to be dealt with separately, at a time when the political climate is right.

Social Justice

Returning to the question of whether all landowners should be treated the same. For a start, landowners are not all the same. There are three kinds of land-owners: the speculator, the owner of small property and the big property owner.

The speculator is one who has bought the land with the foreknowledge that compulsory acquisition is on the agenda and the expectation of turning a handsome speculative gain through compensation. My suggestion is that speculators need to be penalized rather than rewarded: all land bought in anticipation of the announcement of a project by those in a position to access such information, or bought after the announcement of the project, also with the expectation of making a speculative gain, need to be identified and penalized. I suggest that all those who bought the land during a year (or even two) before the announcement of the project be paid no more than the sum at which they bought the land as just compensation.

This leaves two groups with a rightful claim to fair compensation. The first is the kibanja-owner: one for whom land is the principal source of livelihood. Property for the kibanja-owner is not only an economic asset; it also has emotional and sentimental value because the loss of and is also a loss of ties to an area and a loss of friendship and kinship ties. In my view, this is the group with the most legitimate claim on compensation, one that goes beyond the market value of the land to include financial compensation for non-monetary injuries (such as loss of ancestral land, disruption of kin relations, etc.).

Finally, there is the large-scale property owner for whom the land does not constitute the main source of income or livelihood. This is the owner who both has a claim to fair compensation and the resources either to wait to clear procedural hurdles or to make a contribution to the public good. The real challenge is how to handle this group. This, in my view, is a political challenge. To understand its nature, we need to return to the two cases where the state was able to use eminent domain to qualify the rights of owners of taka in the interest of kibanja-owners.

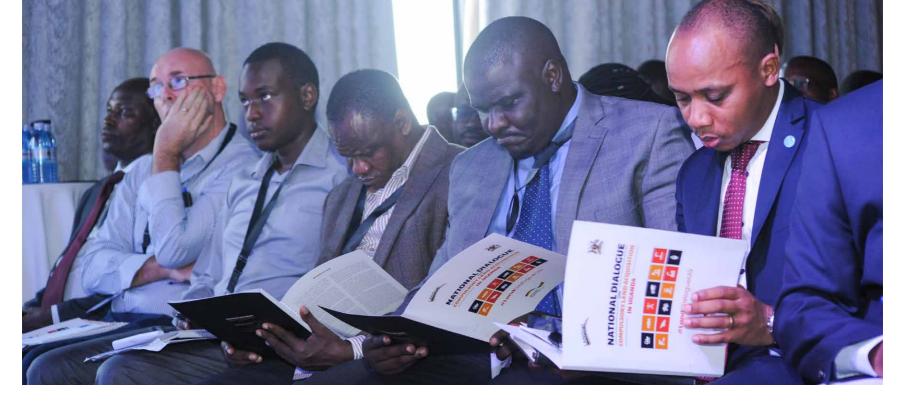
Beginning with the background to the 1928 Busulu and Envujjo

Law. The 1900 Agreement needs to be analyzed as a political document. The British understood that they would not be able to rule Buganda alone; they needed allies. The 1900 Agreement first and foremost spelt out the terms of the alliance between the British and the pro-British faction of landlords in Buganda. The 1900 Agreement was at the expense of three groups in Buganda. The first loser was the Kabaka, who ceased to be a trustee of all land in Buganda as the Ssabataka, but was now turned into just another landlord, even if the biggest. The second loser was the group of the bataka, the clan heads who traditionally had a role as trustees of clan land and who were now totally marginalized. The largest group to lose were peasants (bakopi), who were now turned into tenants of landlords with absolute private property rights in Mailo lands, rights these landlords never possessed before but which they could henceforth use to evict tenants at will.

Two important changes took place in Buganda from 1900 to 1928. First, colonial power stabilized with the help of Mailo landlords. Second, these Mailo landlords began to flex their economic muscles and demand more rent from tenants, as both ground rent (obusulu) but also rent on cash crops (envujjo), the main one being cotton. They even took to expelling those who were either unwilling or unable to pay the increased rent. The result was a decline in peasant production of cotton in Buganda.

Figures collected by the colonial government showed that the acreage of cotton planted in Buganda and Eastern Province was roughly the same in 1911-12. But in a short space of five years, it had declined in Buganda from 27,380 to 20,100 acres but increased in Eastern Province from 29,720 to 97,961 acres. Even worse, there was the possibility of a political crisis, since the bakopi in Buganda were being organized by The Bataka Association who demanded that the 1900 Agreement be revised.

It is in this context that the colonial government decided to



redefine, actually cut down, the powers of Mailo landlords. They did this through two changes. To begin with, the colonial government claimed the right to appoint all chiefs in Buganda, as in the rest of Uganda, and to define their job description. Led by the Katikiro, the big chiefs resisted. In the confrontation between Postlewaith, the Acting Provincial Commissioner, and the Katikiro, Sir Apollo Kagwa, most leading chiefs, including the katikiro, the omuwanika (treasurer) and the Secretary to the Lukiko (Yusufu Bamuta) were dismissed. Martin Luther Nsibirwa, the former clerk in the Protectorate Government, was appointed the new katikiro, and Serwano Kulubya, an interpreter and a former inspector of schools with the Protectorate Government, was appointed the new *omuwanika*.

Once the Protectorate Government had broken the political backbone of the Mailo landlords, it set about undermining their economic position. That was done through the 1928 Busulu and Envujjo law. The law not only set a limit on the rent the landlord could demand from the tenant, but it also gave the tenant effective security of tenure.

These changes had an immediate and positive effect on Buganda. Peasants responded by increasing production.

Amin's 1975 law also needs to be seen as political development. Amin was able to neutralize the opposition of taka owners because of the enormous political capital his regime had accumulated in the aftermath of the Asian expulsion of 1972. Amin was seen as the one who had brought economic independence to Uganda in 1972.

The lesson for the NRM today is to deal with the opposition of taka owners to compulsory acquisition, not as a developmental challenge, but as a political challenge.



















2.3 SUMMARY OF DISCUSSIONS ON THE OPENING PLENARY

The opening plenary session was crucial for the stakeholders in the dialogue to ask fundamental questions and seek clarifications from the first speakers. There were key outstanding matters raised in this session

- registered land and less on customary land which forms over 80% of land in Uganda. Whereas compensation assessments are easier on registered land and there are court precedents on this matter, customary land does not enjoy the same privilege. This has caused immense suffering in the country and particular attention needs to be paid to this.
- b) The role of traditional leaders is critical in the compulsory land acquisition discussions as these institutions hold vast amounts of land on behalf of their subjects. These lands are currently targeted for infrastructure projects and no clear modality of compensation have been developed for where land is held in trust for a community.



Adv. Peter Mulira shares his views

- c) The inequality in participation. The consideration in compensation discussions has often been hinged on land owners who are mostly men. Women and children have suffered the brunt of unfair and flawed compulsory land acquisition processes, often ending up on the streets as prostitutes and beggars with very little or no choice at all. The place for women and children in the compulsory land acquisition procedures needs to be clarified to ensure that their interests and needs are not excluded in the resettlement plans or compensation.
- d) The cultural significance and value of land particularly in pastoralist areas has often been disregarded as no value at all. This has raised grave concerns in the communities whether the value of land stretches beyond the fiscal value.
- e) Infrastructure projects are a priority and really required for National Development. They are the only pathway to a country's advancement. However, it is important that human rights be taken into consideration right from the design to the execution of these projects.
- f) It is important to be mindful that not all infrastructure projects are public projects that fall within the ambit of the law on compulsory land acquisition. There is need for full public disclosure of the projects in order to cultivate public trust as well as build a common understanding of what is needed.
- g) Speculators have often taken advantage of Government causing huge losses of revenue as they defraud the public on whose land the infrastructure projects are going to be developed and at the same time connive with officers

- of Government to escalate the compensation rates. The weaknesses in valuation laws are being exploited by the speculators and Government often finds its hands tied. Measures to minimize or eliminate speculation need to be devised and built into the legal framework. Furthermore, there is need for increased transparency and accountability in the procedures for compulsory land acquisition.
- h) The World Bank funded projects in no way support the dispossession of the people with no due process and compensation, which could take several forms. In its quest to support human development, the World Bank is keen to see Uganda make people better off rather than worse off as a result of the land acquisitions. Livelihood options are central to this process especially taking into account the most vulnerable sections of society affected by the infrastructure development projects.
- i) Matters of land in Uganda are rather complex, entangled in politics and the law. Academia is one of the avenues that could sufficiently make a distinction around these complex issues but has been ignored as key participants for the longest time.
- currently the land question has been highly politicized and is an extremely tense issue for Buganda and the entire Central Region. This is because, the central region is a migrant territory with weak cultural ties to the land that they occupy. The central region is shaping the land market in Uganda and as such courts take a central role in resolving land disputes. The inefficiencies in court processes create anxiety in the rights seeking public as justice delayed is justice denied.



Chapter

THE LAND ACQUISITION BILL UNVEILED

3.1 WHY THE LAND ACQUISITION BILL?

The draft Land Acquisition Bill 2019 is a response to the national outcry to stay the amendment to Article 26 of the Constitution of the Republic of Uganda to pave way for the simplification of procedures and conditions for compulsory land acquisition. The Option open to the State has been to design a new law on compulsory land acquisition that will instead repeal the current Land Acquisition Act Cap 226. The Land Acquisition Act's application has been challenged in the courts of law and has been rendered obsolete and lacking in the procedure to be followed in the process of compulsory land acquisition. Furthermore, it is not in conformity to the provisions of Article 26 of the Constitution and as such has resulted into a large number of court cases against the State, leading to delays in the development of infrastructure projects as well as loss of government funds in court awards.

The draft Land Acquisition Bill defines the scope of public use and public good, it streamlines circumstances under which government or local governments can compulsorily acquire land. The Land Acquisition Bill should not be confused with the Constitutional Amendment Bill of Article 26 that was withdrawn from Parliament.

The Bill provides for the compensation modality to take into account the principle of willing seller – willing buyer, laying out an elaborate procedure for compulsory land acquisition starting from; the purpose of the land to be acquired, the area of the land and review of the existing plan of the land among which, after the government or local government making a request to the land owners to compulsorily acquire land. The Minister of Lands would then publish a declaration in the Gazette. The publication is a declaration expected to freeze any developments or transactions in the land to be acquired. This will serve as a measure to curb speculative purchase.

The land Acquisition Bill is being drafted alongside the Land Valuation Bill since the two laws complement each other. The Land Acquisition Bill Places emphasis on the reinforcement of the criteria and professionalism in the process of valuation.

The Bill seeks to put into consideration the cost of acquiring underground land. However, measures of depth must be included in the assessments so as to avoid affecting surface rights.

3.2 MAJOR COMPONENTS OF THE LAND ACQUISITION BILL 2019



It's important to note that the contents below represent the current proposals in the Bill as at 21st March, 2019 and is still work in progress. The final version of the Bill will have to be approved by Cabinet before the Bill is sent to Parliament.

Part II - Compulsory Acquisition of Land

4. Compulsory acquisition of land.

- (1) The Government may acquire land in accordance with articles 26 and 237 of the Constitution.
- (2) Subject to subsection (1), the Government may compulsorily acquire land-
 - (a) for public use or public interest;
 - (b) in the interest of defense;
 - (c) for public safety;
 - (d) for public order;
 - (e) for public morality; or
 - (f) for public health

- (3) Forpurposes of this section, "publicuse" means use of land by the Government for the benefit of the public for infrastructure and public works including road, railway, airport, airfield, aerodrome, power line, water pipeline, fiber cable, hospitals, public institutions, schools and resettlement due to war, calamities or acts of God.
- (4) The Government in the compulsory acquisition of land under subsection (2) shall make prompt payment of fair and adequate compensation, prior to taking of possession of the land.
- (5) The compensation in subsection (4) shall be effected within six months in case of cash payment or twelve months in case of resettlement or relocation as may be voluntarily agreed by the project affected person, from the date of disclosure of the award in accordance with section 11(4).
- (6) For purposes of this section "prompt payment of compensation" means the payment of compensation within six months in case of cash payment or twelve months in case of resettlement or relocation from the date of the award.

5. Compulsory acquisition of underground land.

- (1) The Government may compulsorily acquire underground land in any locality in accordance with section 4 for infrastructure and public works.
- (2) The Minister shall, by statutory instrument, make regulations providing for the depth, width, rates for compensation on use of surface land for Government acquisition of underground land in subsection (1).

6. Request for compulsory acquisition of land.

- (1) A Ministry, Department or Agency of Government or local government which wishes to compulsorily acquire land under section 4 of this Act, shall submit a request in writing to the Minister.
- (2) A request under this section shall specify-
 - (a) the purpose for which the land is to be acquired;
 - (b) a map indicating the location of the land to which it relates;
 - (c) whether surface or ground land only or both surface and ground land to be acquired;
 - (d) the approximate area of the land required;

- (e) the time frame within which the land is required; and
- (f) a plan of the land if any;

7. Power to enter and examine Land.

- (1) Subject to section 5, the Minister may authorize a professionally competent person for the purpose, to enter upon any land in order to ascertain the sustainability of the land for compulsory acquisition in accordance with the constitution and this Act.
- (2) A person authorized to enter upon land under subsection (1) may
 - a) Survey the Land
 - b) Dig or bore into the sub soil and remove samples; and
 - c) Do anything necessary for ascertaining the suitability of the Land for compulsory acquisition.
- (3) A person authorized to enter and examine Land under this section, shall before entering upon the Land, give notice of not less than seven days of the authorization for entry to a registered proprietor or customary owner and any person having interest in land in accordance with the Land Act.
- (4) The Government shall pay compensation to any person who suffers damage as a result of the powers conferred by subsection (1)

8. Declaration that Land is needed for compulsory acquisition.

- (1) Whenever the minister is satisfied that any Land is required by the government for compulsory acquisition, the minister shall, by statutory instrument published in the Gazette make a declaration to that effect.
- (2) An instrument made under subsection (1) shall specify
 - a) The purpose for which the land is to be acquired.
 - b) A map indicating the location of the land to which it relates.
 - c) Whether surface or ground land only or both surface and ground land to be acquired;
 - d) The approximate area of the land required.
 - e) The time frame within which the land is required and
 - f) If a plan of the land has been made, a place and time at which the plan may be inspected.
- (3) The Minister shall cause to be published, a copy of every declaration made under subsection (1), to at least two newspapers of wide national circulation.
- (4) Upon the declaration by the minister under this subsection, the estate and interest of every person having an interest in the land immediately before the declaration shall be deemed to have been converted into a claim for compensation under this Act

- (5) Upon the declaration by the Minister under this section, any development, improvement or transaction on the land or property shall free instantly.
- (6) Where a person carries out any developments or improvement on the land or property after the declaration by the Minister, the development or improvement shall not be considered in the assessment of compensation for the land or property.
- (7) The process of compulsory land acquisition shall take one year in which assessment report and compensation shall be valid.

9. Land to be marked and measured.

Upon publication of the declaration under this Act, the assessment officer shall causer the land to be marked out and measured and a plan of the land to be made if a plan of the land has not already been made.

10. Notice to persons having an interest in land

(1) Within fourteen days after the publication of a declaration in respect of any land, the assessment officer shall by notice published in the Gazette and at least two newspapers of national wide circulation and exhibition at the convenient places or near the land, state that Government intends to take possession of the land and that claims for

- compensation relating to all interests in the land may be made to the assessment officer.
- (2) Without prejudice to subsection (1), the assessment officer may, whenever he or she thinks it convenient or desirable to do so, publish and exhibit two or more notices in respect of the land, each notice relating to a separate part of the land.
- (3) A notice published under subsection (1) shall give the particulars of the land to which the notice relates and shall require all persons having an interest in the land to appear personally or by agent before the assessment officer on a day and at a time and place specified in the notice in order to state-
 - (a) the nature of their respective interest in the land;
 - (b) the amount and particulars of their claim for compensation for the interest; and
 - (c) their objections, if any, to any plan of the land made under section 8.
- (4) The day specified under subsection (3) shall be fourteen days from the date of publication of the notice unless the Minister directs otherwise not later than thirty days after the publication of the notice in which it is specified.
- (5) The assessment officer may require a statement made in respect of the subsection (3) to be made in writing and signed by the party making it or his or her agent.
- (6) The assessment officer shall cause a copy of every

- notice published to be served under this section-
- (a) to the registered proprietor or customary owner of the land to which the notice relates;
- (b) where the registered proprietor or customary owner is not in occupation of the land, to every person having interest in land in accordance with the Land Act; and
- (c) to every person in respect of whom an encumbrance or instrument is registered on the certificate of title or certificate of customary ownership.

11. Inquiry and award.

- (1) Where a notice is published under section 9 in respect of any land, the assessment officer shall, on the day specified in the notice, hold an inquiry into claims and objections made in respect of the land and shall make an award specifying-
 - (a) the true area of the land;
 - (b) the compensation which in the opinion of the assessment officer is fair and adequate for the land; and
 - (c) the apportionment of the compensation among all the persons ascertained by the assessment officer as having an interest in the land, whether or not they have appeared before him or her.
- (2) for the purposes of an inquiry under this section,

where a person who has an interest in land neglects, fails or otherwise deliberately or wantonly refuses to appear as required by notice, the assessment officer shall proceed with the assessment as if such person was in attendance.

- (3) where an assessment officer makes an award under this section in respect of any land, he or she shall cause a copy of the award to be served on the Minister and the implementing agency.
- (4) upon the receipt of the award copy, the implementing agency shall disclose the award to the project affected persons.
- (5) Subject to subsection (8), the government shall pay compensation awarded under this section within six months where no contestation of the award is lodged.
- (6) Where the compensation award has not been paid within six months, interest shall begin to accrue at ten percent of the total amount due to be compensated per annum.
- (7) Where the owner of property or a person having an interest in or right over the property has contested the amount of compensation awarded, the owner or that person shall have the right to pursue the claim for the amount of compensation in dispute in accordance with this Act.
- (8) Where-
 - (a) a person awarded compensation under this section refuses to accept Payment on any ground

other than the amount of compensation awarded; or

- (b) there is a dispute on ownership of the land;
- (c) there is dispute as to who is entitled to receive the compensation; or
- (d) any other circumstances arise which renders it inexpedient, difficult or impossible to make payment in accordance with the award,
 - the implementing agency shall instruct the Attorney General in writing to apply to the High Court seeking direction of the court to deposit the unclaimed compensation amount in a suspense account and the government shall take possession of the land or property.
- (9) Where the court directs that the money be deposited in the suspense account, that money shall not accrue interest.

12. Independence inquiry and award.

- (1) Where a person is dissatisfied with the compensation awarded under section 10, the person may lodge may lodge a claim against the award to the implementing agency within fourteen days from the date of disclosure of the award in section 11(5) in a form prescribed in Schedule 2.
- (2) The implementing agency shall, after receipt of the communication in subsection (2), submit the claim

- to the Minister within fourteen days from the date of receipt of the claim.
- (3) The Chief Government Valuer shall, after receipt of the communication in subsection (2), submit the claim to the Minister within fourteen days from the date of receipt of the claim.
- (4) The Minister shall appoint an independent assessment officer at a Government cost to carry out reassessment of the land of the claimant and make a report of reassessment to the Minister within fourteen days from the date of the appointment.
- (5) Upon receipt of the report in subsection (4), the Minister shall direct the Chief Government Valuer to meet with the independent assessment officer and the claimant to reach a settlement within seven days from the date the direction is issued.
- (6) Where the claimant is dissatisfied with the outcome in subsection (5), the claimant may file a claim with a Land Acquisition Tribunal in accordance with this Act.

13. Assessment of compensation award.

- (1) in assessing compensation under this section, the assessment officer shall take into account, among other factors, the prevailing market value of the land, developments, improvements and activities on the and.
- (2) The rates applicable for assessment under sub section (1), shall be the prevailing rates of

- compensation referred to in section 59(1) (e) of the Land Act, Cap. 227 used in determining the amount of compensation payable.
- (3) The minister, shall by statutory instrument, make regulations for the assessment of compensation under this Act.
- (4) Not withstanding subsections (2) and (3), the compensation rates determined shall be valid for two years.

14. Payment of compensation.

- The government shall promptly pay to the registered proprietor or customary owner or any other person whose interest in the land has been ascertained by the assessment officer, fair and adequate compensation determined by the assessment officer.
- 2) In addition to compensation assessed under section 13, there shall be paid as a disturbance allowance.
 - (a) Fifteen percent where notice to give up vacant possession is six months and above; or
 - (b) Thirty percent of any sum assessed, if the notice to give up vacant possession is less than six months.

15. Resettlement and rehabilitation

(1) The government may, on voluntary basis resettle and rehabilitate the project affected persons in lieu

of cash compensation payment.

(2) The minister, may by statutory instrument make regulations for resettlement and rehabilitation of the project affected persons.

16. Livelihood restoration.

The government may, in resettling the project affected persons in section 13, provide means of livelihood and restore the livelihood of the project affected communities to a state they were in before the project.

17. Taking possession.

- (1) The government shall take possession of the land immediately vest, free from any encumbrance, in the case acquired by;-
 - (a) Government, in the Uganda Land Commission.
 - (b) A local government, in the local government.
- (3) After taking possession, the implementing agency of government shall forward to the registrar of titles or recorder copy f the declaration relating to the land endorsed with certificate signed by the assessment officer has taken possession of the land from the date indicated in the certificate.
- (4) The registrar or recorder shall, notwithstanding any inconsistency with the registration of titles Act, Cap 130 or Land Act, enter the Uganda Land Commission

or the local government respectively, in the Register book as the registered proprietor or customary owner of the land.

18. Declaration relating to part of house, manufactory or other building.

- (1) Where the minister makes a declaration which relates to part only of a house, manufactory, or other building, the minister shall extend the declaration to include the whole house, manufactory or building on the advice of the assessment officer.
- (2) The registered proprietor, customary owner or occupier, may by application to the Minister, seek to disagree with the advice of the assessment officer under subsection (1) at any time before the assessment officer determines the compensation payable in respect of the house, manufactory or building.
- (3) Any dispute as to whether any land proposed to be acquired under this section does or does not form part of the house, a mandatory or other building may be referred to the Tribunal established by section 21 of this Act.
- (4) In deciding a reference made under subsection (3), the court shall consider whether the land proposed to be acquired is reasonably required for the full and unimpaired use of the house, manufactory or building.

19. Acquisition of excess portion of land.

- (1) Where land is acquired by declaration under section 5 and a person having an interest in the land makes a claim for compensation on account of severing the land from his or her other land which is in the opinion of the Minister excessive, the Government may acquire under this Act, the severed portion of the land or the whole of the land of which the land first sought to be acquired forms a part, notwithstanding the fact that only the land first sought to be acquired is needed for public use.
- (2) A person dissatisfied with the decision of the assessment officer under subsection (1), may seek redress from the Tribunal established under this Act.

20. Temporary occupation of waste or arable land.

- (1) Whenever the Minister is satisfied that the temporary occupation and use of any waste or arable land are required by the Government for public use, the Minister may appoint a public officer or other person to procure the occupation and use of the land for a specified term, not exceeding three years from the commencement of the occupation.
- (2) The appointed officer shall -
 - (a) give notice in writing to any person who has interest in the land of the purpose and term for which the land is required and of the date on which the term is to commence; and

- (b) pay to any person for the occupation and use of that land for that term, for the materials, if any, to be taken from the land and for the standing crops on the land, if any, fair and adequate compensation, either in a gross sum of money or by monthly or other periodical payments, as may be agreed in writing between the appointed officer and the person having interest in the land.
- (3) Any dispute as to the compensation payable under subsection (2), shall be referred to the Tribunal established under the Act.
- (4) The Tribunal may order compensation payable under subsection (2), to be paid into a suspense account on such conditions as it deems appropriate, if it is satisfied on the application of the appointed officer that he or she cannot trace the person to whom the compensation is due or where the ownership of the land is in dispute.
- (5) The appointed officer shall enter and take possession of the land after payment of the compensation in accordance with the subsection (2) or (4).

Part III - Withdrawal from Acquisition or Temporary Occupation of Land

21. Withdrawal from acquisition or vary.

(1) Subject to this section, the Minister may revoke or vary a declaration made under section 8 of this Act

at any time before the compensation is paid.

- (2) Where the Minister revokes a declaration under subsection (1), the Government shall pay to any person having an interest in the land compensation for any damage suffered by the person as a result of any action already taken under this Act in respect of the acquisition.
- (3) A person dissatisfied with the compensation awarded under subsection (2), may apply to the Tribunal established under this Act for redress.

22. End of temporary occupation.

- (1) When the temporary occupation of any land comes to an end in accordance with this Act, the Government shall withdraw from the land and
 - (a) shall pay compensation to any person having an interest in the land in accordance with the Land Act for any damage done to the land during the occupation, other than damage for which compensation has already been paid; or
 - (b) may, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the occupation and if all the persons having an interest in the land so require, proceed to acquire that land under this Act as if it were required permanently for public use.
- (2) Subsection (1) (b) shall not apply where land occupied under secition 18 has become permanently

unfit to be used for the purpose for which it was used immediately before the occupation by reason only of the fact that stone, marram or other building or road-making material has been taken from an area which is less than 4 percent of its total area.

(3) A person aggrieved by a decision in subsection (1) may refer any dispute as to the quantum of compensation payable under this section to the Tribunal under this Act.

Part IV - Compensation Dispute Settlement

23. Land Acquisition Tribunal.

- (1) There is established a Tribunal to be known as the Land Acquisition Tribunal.
- (2) The Tribunal shall consist of a chairperson, a vice chairperson and three other members, appointed by the President with the approval of Parliament.
- (3) The Chairperson and Vice Chairperson of the Tribunal shall be persons who qualify to be appointed Judges of the High Court.
- (4) The members of the Tribunal shall comprise of -
 - (a) a registered valuation surveyor;
 - (b) a registered quantity surveyor; and
 - (c) a registered land surveyor;

(5) At least forty percent of the members of the Tribunal shall be Women.

24. Qualifications of members of Tribunals.

- (1) A person shall not be appointed a member of the Tribunal unless that person
 - (i) is of sound mind;
 - (ii) is of high moral character and proven integrity;
- (2) A person holding office as a Member of Parliament or a member of a local government council shall relinquish the office upon appointment as a member of the Tribunal.

25. Tenure of Office.

- (1) The members of the Tribunal shall hold office for a period of five years and shall be eligible for reappointment for one further term.
- (2) Members of the Tribunal shall hold office on a full-time basis.
- (3) A member of the Tribunal may resign from office in writing addressed to the President.

26. Oath of Office.

A person who is appointed as a member of the Tribunal shall, before assuming the duties of his or her office, take and subscribe the oath of allegiance and the judicial oath in the Fourth Schedule to the Constitution.

27. Disqualification of member of Tribunal.

A member of the Tribunal may be removed from the office by the president only for –

- (a) Inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) Misbehavior or misconduct;
- (c) Incompetence;
- (d) If that person has been convicted of an offence involving moral turpitude; or
- (e) If that person has been declared bankrupt.

28. Jurisdiction of Tribunal.

- (1) The Jurisdiction of the Land Acquisition Tribunal shall be to determine any dispute relating to amount of compensation awarded by the Government for land to be acquired and incidental matters thereto under this Act.
- (2) A person dissatisfied with the amount of compensation awarded by the Government, may file a claim against the award to the registry of the Tribunal, upon payment of such fees as shall be prescribed by the Minister by regulations, within fourteen days from the date the disclosure on award was made under this Act.

(3) On receipt of a claim under subsection (1), filed with the registrar of the Tribunal, the Tribunal shall hear and determine the claim within thirty days from the date of filing of the claim and after satisfying itself, makes an appropriate order or decision.

29. Powers of Tribunal.

- (1) For the purpose of a proceeding before a Tribunal, the Tribunal may
 - (a) take evidence on oath;
 - (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
 - (c) adjourn the proceeding only on reasonable ground.
- (2) For the purpose of hearing of a proceeding before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it
 - a) to give evidence; or
 - b) to produce books, documents or things in the possession, custody or control of the person named in the summons that are mentioned in the summons.
- (3) Where a Tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered

to make a full and true reply to the interrogations.

- (4) A Tribunal shall have power to issue a commission or request to examine witnesses abroad.
- (5) A Tribunal may make an order as to costs against any party, and the order shall be enforceable in like manner to an order of the High Court.

30. Management of administrative affairs of Tribunal.

- (1) The chairperson is responsible for managing administrative affairs of the Tribunal.
- (2) In the management of the administrative affairs of the Tribunal, the Chairperson shall be assisted by the Registrar of the Tribunal and such officers and employees as may be necessary for the efficient discharge of the functions of the Tribunal.
- (3) The registrar and other officers and employees of the Tribunal shall be appointed by the tribunal in accordance with the Judicial Service Commission regulations.

31. Registrar of Tribunal

- (1) There shall be a Registrar who shall be in charge of the registry of the Tribunal and shall receive claims filed with the Tribunal.
- (2) The Registrar of the Tribunal shall be a person qualified to be appointed a Registrar of the High

Court.

- (3) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chairperson under section 28.
- (4) The Chairperson may give the registrar directions regarding the exercise of his or her duties under this Part.

32. Rules of procedure of Tribunal.

- (1) The Chief Justice shall, by statutory instrument, make rules of procedure to be applied by the Tribunal and the appellate court provided for in this Act.
- (2) Subject to subsection (1), the Chief Justice shall take into account the need to have rules of evidence with such modifications as are necessary to ensure the expeditious disposal of compensation disputes and related matters under this Act.
- (3) The Chief Justice, shall in making rules of procedure under this section, consider the principles and rules of mediation.

33. Remuneration of members of Tribunal.

The members of the Tribunal shall be paid remunerations and allowances specified in their instrument.

34. Immunity.

The members and staff of the Tribunal or any person acting on the instructions of the Tribunal, shall not personally liable for any act or omission done or omitted to be good faith in the exercise of his or her duties under this Act.

35. Appeal.

- (1) An appeal shall lie from the decision or award of the Tribunal to the High Court.
- (2) A party to a proceeding before the Tribunal who is dissatisfied with the decision of the Tribunal under this Act, may, within fourteen days after being notified of the decision or award of the Tribunal, lodge a notice of appeal with the registrar of the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.
- (3) The High Court shall hear and determine the appeal under subsection (2), within forty-five days from the date of lodging of the notice of appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision or award of the Tribunal or an order remitting the dispute to the Tribunal for reconsideration.
- (4) The High Court Judge determining appeal from the Tribunal, may require the technical assistance of

- both the Government Valuer and private Valuer in arriving at his or her decision or award for any item, part of the item or the whole compensation award in dispute.
- (5) The decision of the High Court in exercise of its appellate jurisdiction under subsection (3) shall be final.

Part V- Miscellineous

36. Offences and penalties.

Any person who-

- (a) willfully obstructs a public officer or other person in the exercise of a power or the performance of a duty conferred or imposed by this Act;
- (b) willfully fills up, destroys, damages or displaces any trench or mark made 4 under section 8, commits an offence and is liable on conviction to a fine not exceeding twenty for currency points or to imprisonment not exceeding twelve months or both.

37. Service of notices.

Without prejudice to any other method of service, any notice, declaration or similar document required to be served for the purpose of this Act may be served by post or, if it relates to land or premises and it is not practicable after using due diligence to serve it on the person on whom it should be served, by delivering it to some person on the land or premises to which it relates or, if there is no person on the land or premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the land or premises.

38. Regulations.

- (1) The Minister may, by statutory instrument, make regulations for the better carrying into effect the purpose and intentions of this Act.
- (2) Without prejudice to the general effect of subsection (1), regulations made under this section may provide for-
 - (a) procedure for assessment of compensation;
 - (b) the assessment and payment of compensations under this Act;
 - (c) inquiry and issue of award by assessment officer; and
 - (d) any other matter incidental thereto for the better and effective implementation of this Act.
- (3) Regulations made under this section may, in respect of any contravention of any of the regulations-
 - (a) prescribe a penalty of a fine not exceeding ten thousand currency points or imprisonment not exceeding twelve years or both;





















3.3 EXPERIENCES, CHALLENGES AND BEST PRACTICES ON COMPULSORY LAND ACQUISITION IN UGANDA

The current practices for compulsory land acquisition in Uganda

Ms. Winnie Ngabiirwe, Executive Director, Global Rights Alert



ompulsory Land acquisition necessitates the balance between the public need for land on the one hand and the provision of land tenure security and the protection of private property rights on the other. It is an inherently disruptive process. Even with generous compensation and fair and efficient procedures, the displacement of people from established homes, businesses and communities entails significant human costs. Where the compulsory acquisition process is badly designed or poorly implemented, the economic, social and political costs can be enormous. Attention to its procedures is critical if a government's exercise of compulsory acquisition is to be efficient, fair and legitimate.

The exercise of State power in compulsory Land Acquisition

There are fundamental questions that need in-depth reflection and research if Uganda intends to draft a law on compulsory land acquisition that truly reflects the architecture of the Ugandan society and addresses the development needs at the same time. Questions for further interrogation include but are not limited to – will the compensation law, valuation methods and approaches lead to full and just compensation or are there shortcomings? What are the good ways to act and what principles, such as equality and fairness should the draft Bill on compulsory Land Acquisition take into consideration? What are the bad examples that should be avoided? For whom is the land acquired?

Compulsory acquisition is the exercise of the power of government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government's exercise of this power is to be efficient, fair and legitimate. Processes for compulsory acquisition of land for project-based, planned development are usually different from processes for acquiring land during emergencies or for land reforms. Purpose of the draft Land Acquisition Act which promotes expeditious—quick and fast acquisition should be taken with a pinch of salt.

Challenges with the Current Practice of compulsory land acquisition;

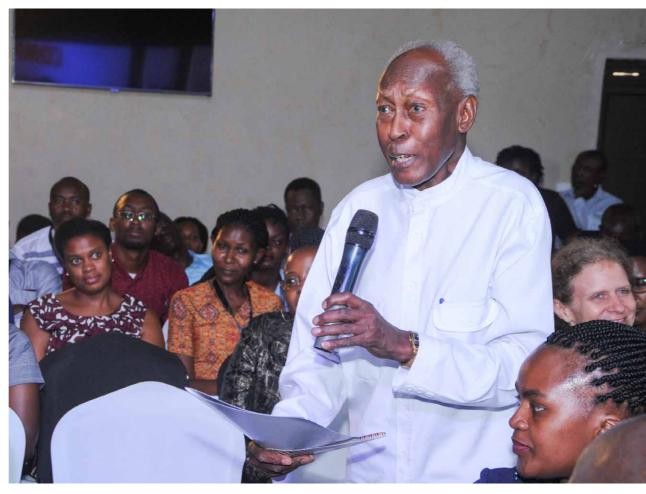
- a) Limited disclosure; There was limited disclosure of information among the Project Affected Persons (PAPs) with regard to size of land needed, when it was needed, when the compensation would start and end was limited and conflicting. "We knew the land would be taken very" soon" but not sure how soon was soon.
- b) Delayed compensation and Resettlement; this was witnessed with the various form as of compensation sought by the claimants and agreed upon by both parties. For example; after valuation and cut off dates '2nd June 2012' those people who sought for money got it between Dec 2013, and those that requested for houses got them in 2015 with a single borehole serving over 70 households. No land titles have been given to the resettled persons yet which highly threatens their tenure security.

- The declaration of the ownership of the land for resettlement; People were resettlement on land for which they were no longer certain or guaranteed to their original rights held on land from which they were displaced. This was observed when Atacama was acquiring land for the Tilenga pipeline project, whereby people who had been resettled were ordered by the consultants to register as tenants and not land owners since the land where government took them is in someone's names. This culminated into an eviction in less than 5years. This extremely affected the livelihood of the people affected.
- demarcation and surveying: During this process, the land owners were not informed especially for the project along the East African Crude Oil Pipe Line (EACOP) corridor and the refinery area. People asked redundant question which would have actually been avoided if they had been fully involved. The Resettlement Action Plan (RAP) committees created by contractors did not take it upon themselves to inform the affected people but then validated the exercise. There is need to declare the kind of support is given to RAP committees to undertake thorough outreach?

e) Market Value Basis

There is a weak grievance handling mechanism where complaints on compensation rates and values have not been handled in time and some members said to be compromised by contractors. This has been noticed where the authorities are highly reluctant and the issues can only be addressed for those aggressive

affected persons that continuously move back and forth to seek justice. forwarded Sometimes cases to national level receive weak feedback and in some cases no feedback is provided at all. Also the local councils often blackmail the communities accusing of frustrating government projects. This forces the affected persons to sign against compensation amounts that are not sufficient to meet their needs in transition or even resettle in a manner that restores them to their current status. People need to be offered options but with full sensitization to enable them negotiate the best deal for themselves and their families. There is also need to seek equal or improved status of housing in calculating the compensation rates. For example; some affected people may have had huts with enough privacy and were in compensation provided a bungalow on a small parcel of land, eliminating privacy previously enjoyed. All these assessments are required in order to determine the best compensation value before resettlement of the affected persons can be executed.



Mr. Kajabago Karusoke from the National Leadership Institute, Kyankwanzi, submitting at the Dialogue

Finally, districts lack updated compensation rates and hence end up providing low value estimates. The procedures and resources for determining compensation rates by the districts should be fully disclosed to the public. The following questions raise key issues for

consideration -

- Is the average property owner satisfied with the market value as the measure for determining compensation?
- Is the market value fair when taking into consideration the landowner's possibilities to acquire an equivalent property?
- Is the market value an objective measure for determining compensation?
- How should uncertainty of valuation be handled by legislators and the courts?

Social safeguarding is equally an important factor to be observed during compulsory land acquisition. That is to say; who owns the land? Who uses the land? and who else benefits from the land? Women's land rights and the rights of marginalized groups are often less protected, and they may be excluded from both the process and design of any compensation payment. To take the case of women, S. 38A and 39 of the Land Act Cap 227 requires that the rights and interests of spouses not being the owners of land (who are mostly women) be taken into account in land transactions. If these rights are not, then such transaction is null and void ab initio. However, the State has consistently ignored the requirement for spouses to give their consent and as such the spouses not been owners of the land have been consistently excluded from decision making processes remedies available in the face of compulsory acquisition of land.

What has been the Experience?

Through all the land acquisition processes, negative impacts have been observed on the project affected persons for example families have broken down, there has been financial mismanagement due to lack of financial literacy; landlessness and homelessness has ensued. The civil society organizations, the community watchdogs, have been victimized for identifying the gaps in processes of remedies to the compulsory taking of land; the speculators that have potentially deprived the small holders of their rights to land have been rewarded over and above the current land values. Finally, there has been elevated social service breakdown like increased school dropout rates, limited access to sufficient and clean water and breakdown of village productivity social support structures.

Conclusion

Compulsory acquisition of land often proceeds rapidly where the political, economic and legal power of those affected directly is weakest. While expropriation should be a powerful and beneficial tool for disadvantaged people, they are in fact often its victims. Enforcement regimes tend to favor those with stronger property rights, in particular foreign investors and speculators. The unregistered properties on which the majority of Ugandans sit fetches low values compared to those with registered land in the same locality.

What has been the process of developing the draft bill on compulsory land acquisition - steps taken by the Ministry of Lands Housing & Urban Development

Mrs Naome Kabanda, Ag. Commissioner Land Administration, Ministry of Lands, Housing and Urban Development

Government consultations on the new land acquisition law

nder Article 26(2) of the 1995 Constitution, provision is made for compulsory land acquisition by Government for delivering public infrastructure.

This provision stipulates conditions under which compulsory acquisition of Land by Government is permitted which includes;

- After fair, prompt and adequate compensation;
- Prior payment of compensation before taking possession

It is important to note that compulsory acquisition allowed under article 26 of the Constitution is clearly defined which includes;

- a) Construction of roads and dams
- **b)** Construction of facilitates for oil production, refineries, pipelines and waste facilities;
- c) Power grids for extension of electricity
- d) Public health and defense
- e) Others like water, public markets, etc.



Challenges

Government has experienced some obstacles in the Law in the respect to acquiring land occasioned by mainly speculators who possess prior information on the defined project corridors, purchase land from the local and process titles, and subsequently demand excessive compensation values from the Government.

Government has also experienced scenario where speculators illegally processed titles and obtain illegal titles over legitimate customary owners' lands. These speculators try to force government to compensate them as title holders and pay the legitimate owners as occupants. In all these scenarios, they demand excessive value, reject compensation awards by the Chief Government Valuer (CGV) even when the values arrived at are based on the prevailing market values obtaining.

Government supports that the principles contained under Article 26 of the constitution should be maintained. These are:

- Prior payment of compensation before taking possession of the land;
- Fair, adequate and prompt compensation.

Government, however, wishes to address the scenarios cited or any other situation where someone rejects awards and the development of the infrastructure projects are forced to stall. This has now meant repealing the Land Acquisition Act Cap 226 that was passed in 1965 and coming up with a new law.

Government assures Ugandans that under the current law (1965 Land Acquisition Act CAP 226), the Chief Government Valuer (CGV) follows a well laid down procedure for negotiating with land owners before determining the value of any property. This process involves District Land Boards determining compensation rates for crops and other surface value developments, negotiating with the land owners and offering compensation awards obtained in the locality. Scenarios have emerged where speculators reject the scientifically determined

value and reject the Government offer even when majority of the community and district officials have consented on the values determined.

Under the current law, even if one person objects to the CGV, then that portion of the land cannot be possessed by Government. This has led to many projects slowing down or stopping altogether. The implications of this has been -

- **1.** Government spending large sums of money annually, paying for interest rates on unspent borrowed loans for government infrastructure.
- Donors losing interest in funding projects as Government is seen as having inadequate capacity to absorb funds for delivering vital public goods.
- **3.** Litigation arising out of failure by Government to meet its obligation under contracts.

Conclusion

This proposal of a new Land Acquisition Act presents a win-win formula because Government does not offend the principles of fair, adequate, prompt and prior compensation; but also the land owner who rejects a value does not hold the country and public who are to use the infrastructure hostage. In fact, countries like Rwanda, Kenya, Ethiopia, etc., compensation is either done when work is on-going or people are not compensated at all, but relocated. With this position, Uganda still remains among the best practicing countries.

Challenges of compulsory land acquisition process within the current land rights administration framework

Mr. Peter Magela, Program Officer, Chapter Four

Background

ompulsory land acquisition is broadly done for the benefit of society and aims at either protecting a certain common (natural resources etc.) or infrastructure development or for safety and security reasons. Normally two approaches are adopted in compulsory land acquisition;

- Giving land for land people are settled somewhere else as government takes their land and
- **2**. Paying owners of interests in land and taking the land.

The latter is normally done where the former is not feasible and tends to be "the easy way out"

Brief history on Uganda Land Systems

The 1995 Constitution of Uganda recognizes basically four tenure systems



i.e.

- **a.** Customary Tenure
- **b.** Freehold tenure
- c. Leasehold
- **d.** Mailo tenure

The above tenures have given different and at times conflicting rights to the holders of interests in land. These become a major challenge that any person doing compulsory land acquisition will face. It is also important to note that Uganda's land system has changed over the years.

The key changes include;

- a. The Pre-colonial communal land ownership with various forms based on each society's norms and systems.
- **b.** The colonial systems with impact on land ownership e.g. 1900 Buganda agreement which has similar agreement in Toro and Ankole giving creation of Mailo and Crown land, Busulu and Envujo laws, etc.
- **c.** The 1975 Land Reform Decree where all land became government/public land, land owners became lessees

and occupants of land became tenants at suffrage

d. The 1995 constitution all land is owned by citizens and in some cases the state can hold land in trust for citizens. With 1995 government lost ownership of land and handed it over to citizens. It meant that if government wants land for public interest, it has to go through the process of acquiring it hence compulsory land acquisition today

Compulsory Land Acquisition today;

In summary the process of compulsory land acquisition involves a) Identifying land for a project, b) Appointment of assessor c) Minister making a statutory declaration on the land needed, d) People with interest in land making their claims to the assessor, e) Assessor making awards based on market value of land and finally, f) Taking over the land.

It is important to note that the (f) was ruled unconstitutional as this requires government to first pay for the land before taking it over. There is no requirement in law for the assessors to take into consideration other social economic factors beyond the market value of the land (e.g. social attachments, the cost of moving to another place, cost incurred before a person finds another place etc.). Also any person aggrieved by the assessment can challenge it in court

Challenges

- Undocumented interests in land makes it difficult to determine the right persons to compensate
- The gender issue women own property on land (mainly crops) but compensation is often for land owners (men). At

times it is shared with the spouse and the law looks at those legally married leaving out majority of the women in Uganda.

- The culture of secrecy and failure to reveal which land, where and when it is needed has given rise to speculation, land grabbing etc. hence increasing the cost
- Mistrust between state and citizens when it comes to land matters
- Courts and court delays, the government recognizes this as a challenge for many cases of land acquisition. An average land case in Uganda will take about 3 years to resolve. However, in cases where one is suing the Attorney General it is likely to take longer cause the attorney general rarely responds on time and courts tend to be lenient on this office too.
- State has not put in place systems to ensure such issues are resolved on time
- Cut off time and delays in payment; this normally distorts the individuals plans to move and settle elsewhere hence creating some sort of internally displaced persons.
- The Change in value between cut-off date and time of actual payment also at times results in court cases.
- "Hey, come on, govt. officials are never wrong, it is you who is complaining, you the one in wrong" This is usually the attitude of government officials which as well impedes progress in land acquisition.

Conclusion

The problems of land acquisition in Uganda, are part of the broader land problems in the country and thus addressing just one aspect of land acquisition may not solve the problem.



3.4 SUMMARY OF PLENARY DISCUSSIONS ON EXPERIENCES AND PRACTICES IN COMPULSORY LAND ACQUISITION

Although there is consensus on the need to repeal the Land Acquisition Act Cap 226, giving consideration to the experiences of the speakers, plenary was concerned with how ready Uganda was at this point in time to pass a new law on land acquisition. The requirement for further discussion and consultations was necessary if this process was to be supported by the citizenry. A rushed process was not going to achieve much for Uganda. The need to handle the Land Acquisition law development in tandem with the valuation law was of paramount importance. These processes should not be seen as separate as the two laws are implemented concurrently.

A package of remedies available to Project Affected Persons needs to be presented to the community and informed consultations undertaken to ensure that the right decisions are arrived to. Where the Project affected persons opt for resettlement, security of tenure through the issuance of certificates of title must be guaranteed. The Stakeholders in the Dialogue from the Albertine Region raised concerns that the resettlements so far did not offer security of tenure as there was no legal documents provided as proof of ownership of the parcels on which the resettlement of project affected persons was done. Furthermore, gender considerations in the resettlement process was ignored. It is of paramount importance that women and children's needs and interests be taken into account in any resettlement plan.

Delay in the payment of compensation especially to those who attempt to challenge the compensation award through

litigation has been a challenge that needs remedial action. Apart from having gone through a lengthy court process, when the judgement is passed in the favour of the litigants, the payment takes a whole new turn with sometimes years of waiting.

There is clearly need to find a balance between public infrastructure development and the rights of the property owners. Promoting the use of resettlement action plans is one of the best avenues to sensitize people, engage all parties about the developments to be undertaken and build consensus on the best approaches to remedy the project affected persons.

The Academia needs engage in the debates and discussions ensuing and take more responsibility to informing policy and generating evidence to support the law reform process. Matters such as environmental conservation and environment social impact assessments need to be prioritized not as a formality, but as meaningful processes that inform decision making. There has been over politicization and romanticization of the problems associated with compulsory land acquisition. Evidence is critical to ensure the country is on the right trajectory. It must be remembered that the National Physical Development Plan still remains the central tool that should inform the development of national infrastructure projects.

Failure to give full disclosure of plans to acquire land for infrastructure development has enabled speculative purchase of land and the defrauding of the unsuspecting public in



Mr David Pulkol from Africa Leadership Institute shares his view

sites that are likely to be compulsorily acquired. For those on customary land, titles have been acquired over their lands without their knowledge, rendering them squatters on their own lands. Disentangling these complex matters if often not straight forward as the speculators are highly connected and are the powerful in society. The solution to this and to avoid crisis management, it is important to make public all information beforehand and the potential persons notified of the government plans to

acquire the land in public interest. The land values will be assessed based on the condition of the land at the date at which the announcement is made.

Although a tribunal to deal with emergent disputes over compensation was applauded, care needs to be taken to ensure that it will be fully functional. A study of the failure of most of the tribunals over the last 25 years to function needs to be undertaken with a view of learning lessons and addressing potential pitfalls before they actually happen.

The professionalism of employees of the State endowed with the authority to assess and administer compensation needs to be developed further. The experience to date is that insufficient information is provided to the project affected persons and this impacts on their ability to make informed decisions regarding the next steps. Communication should be integrated as a key element in the compensation procedures.

Gender considerations in the compulsory land acquisition process have not been elaborated in the draft Bill. The failure to address gender inequality in the law perpetuates the marginalization of women and children and will deepen poverty that has already taken on a women's face in Uganda. It is critical that the letter and the spirit of the constitution in its Article 33 must be upheld in the draft Land Acquisition Bill.

Compensation on all tenure types as provided for in Article 237 of the Constitution and elaborated in the Land Act and the National Land Policy 2013 need to be addressed. All the Four tenure types are of equal stature but this principle is currently not the practice. There needs to be harmonization of laws to ensure all land owners and secondary users of land benefit equally from expropriation of land for public purpose.

3.5 KEY QUESTIONS FOR FURTHER REFLECTION IN THE DEVELOPMENT OF THE DRAFT LAW

- **1.** How do we ensure that the road is not more important than the people and their communities?
- 2. How is the value of property to be compensation determined?
- **3.** How will the tribunal be accessed by every individual regardless of the status?
- 4. Who will the tribunal serve in terms of language?
- 5. What is the ill that government is trying to address?
- **6.** Why is the academia not put at the center to inform policy to curtail the problems that result from limited research?
- **7.** What mechanisms have been put in place to ensure the protection of the environment during the acquisition process?
- **8.** How long will the ongoing Commission of Inquiry take to give its recommendation if they are to be included in the Land Acquisition Bill?
- **9.** Was a policy paper and an issues paper prepared to inform the process of drafting the Land Acquisition Bill?
- **10.** Is there a law that says that every key position should be appointed by the president?
- 11. Is it possible for the National Development Plan (NDP) 111 to address in a comprehensive way dispute resolution?
- 12. Why does the government insist on depositing the money in court rather than paying the litigants and the project affected persons directly, in cases where the person rejects

compensation paid?

- 13. The Ministry of Lands, Housing and Urban Development (MLHUD), is currently drafting the policy on Land Acquisition while the bill too is on the move. Is this not dangerous since one would greatly inform on the other?
- **14.** Would the tribunal be able to apply the various laws that are relevant to the compulsory land acquisition process given that tit will not be composed of lawyers only?
- **15.** Has it been ensured that the political spirit behind the amendment of article 26 is not the same spirit behind the land acquisition bill?
- **16.** What controls are being proposed to curb abuse of power and political interference by politicians within government?
- 17. The statutory gender quota in public institutions in Uganda has impacted on the inclusion of women. Can the space for inclusion of more women in this Tribunal be opened up?
- **18.** Will the draft Compulsory Land Acquisition law act retrospectively to address the concerns of those that have been negatively by the development of infrastructure projects?
- **19.** Has the bill addressed the criteria of assessment of community needs to use the land vis a vis the proposed public good?
- **20.** Does the bill address the factor of vulnerability taking an example of incidences on customary land?

Chapter

ROAD MAP TO PASSING THE LAND ACQUISITION BILL



4.1 CONCLUSION

The National Dialogue on compulsory Land Acquisition brought together 227 people with 176 men and 51 women engaging effectively and building a common voice in addressing the current challenges on compulsory land acquisition. Six government agencies, the private sector, civil society organizations and well as the academia fully engaged in the preparation and the execution of the dialogue as well as academia, development agencies and civil society organizations.

The importance of undertaking compulsory land acquisition in a manner that upholds gender equality and social and environmental safeguards was underscored as significant. The dialogue was intended among others, to give input to the draft Land Acquisition Bill. The First Parliamentary Counsel gave a sneak peek into the major principles of the draft Bill which includes-

- To repeal and replace the Land Acquisition Act, Cap 226;
- Align the land acquisition law with Articles 26(2) and 237;
- Give elaborate procedures for compulsory land acquisition, compensation, resettlement and rehabilitation;
- Establish the land acquisition tribunal to handle disputes relating to compensation; and
- Other related matters.

The Land Valuation Bill is being drafted to compliment the

Land Acquisition Bill. This is intended to aid the assessment of compensation to project affected persons. Genuine land reforms on compulsory land acquisition need to take in account the following –

- Make land meant to be acquired publicly known to avoid speculation
- Provide a time limit for court to hear and conclude the matters in land acquisition
- General reforms on documenting landowners and their rights should be implemented
- Reduce time between payment and cut-off date to make land immediately available for projects.
- Gender interests should be catered for in the law to match reality with law.
- Take steps to ensure more transparency in the sector and create trust
- Making public the areas targeted for compulsory land acquisition
- Promoting informed free and informed consent in the transactions
- Make clear complaint systems and mechanisms.

As input to the proposed Bill, the following proposals were made-

- The need to think through and include guiding principles for compulsory land acquisition some of which are-
 - Mitigation of effects of acquisition;
 - Fair and timely compensation;
 - Involvement of project affected persons in the project design; and
 - Disclosure of information related to the acquisition.

The inclusion of these principles in both the Land Acquisition Bill and the Land Valuation Bill is critical to the protection the rights of the people affected by development projects.

2. Negotiation before compensation and the proactive response to speculators by paying to them purchase price of the land will go a long way in streamlining compulsory land acquisition. Furthermore the provision in the draft Land Acquisition Bill providing for the freezing of transactions or developments after the Minister's declaration. This, if properly implemented will go a long way in handling speculators.



- Although the draft Land Acquisition Bill provides for government acquisition of land after payment of compensation emphasis should be placed on ensuring that full compensation is paid prior to the taking of land. The time within which the compensation award is payable should be reduced from 2 years to 1 year. The bill must clearly state procedures and compensation on injurious affections. The proposed disturbance allowance should be changed to a disturbance fee because the connotation of an allowance makes it discretionary. The Bill should provide for compensation awards to be paid in currency points.
- 4. Full disclosure of information to the project affected persons regarding the project and compensation should be a priority. The efficiency of the Tribunal to address the concerns of the aggrieved persons should be taken seriously and a petitioning process for expedient resolution of the disputes should be put in place. Furthermore, the land acquisition tribunal should be

appointed by the Judicial Service Commission instead of the President and have mandatory representation of women.

- 5. The value of registered and unregistered land in a given locality should be the same as the two tenure are constitutionally of equal stature.
- **6.** The punishments towards violation and abuse of power should clearly be defined by the bill.
- 7. The bill must be stalled and wait for the completion of the National Physical Development Plan, The Land Acquisition Resettlement and Rehabilitation Policy and the recommendations from the commission of inquiry. This is mainly to reinforce the research content before the bill can finally be passed into law.
- 8. Public education is of paramount importance in the face of compulsory land acquisition. There is need for IEC material in order to help the common man sufficiently understand the processes and procedures in the bill. This would assist on building consensus between the public and the government.
- A well-designed compulsory acquisition process for a development project should include the following steps;
 - a) Planning: This should evaluate the different land options available for meeting the public need in a participatory fashion. The exact location and size

of the land to be acquired should be identified. The impact of the project should be assessed with the participation of the people affected. In practice: 7118 people were informed government was taking that land and they had to leave. Can the people work with you to determine which land must go, because land must be acquired, no question, but in some cases, isn't there a possibility of discussing which land to acquire? People did not express their opinion.

- b) Publicity: The purpose and process, important deadlines and the procedural rights of people, should be given to owners and occupants in the designated area that the government intends to Valuation and submission of claims.
- c) Suggestions: People should be requested to submit claims for compensation. This could be performed through Public meetings, which provide an opportunity for public to learn more about the project and to express their opinions Equivalent compensation for the land to be acquired is determined at the stated date of valuation. Owners and occupants should be allowed to submit their claims. The land should be valued by the acquiring agency or another government body. The acquiring agency should consider the submitted claim and offer what it believes to be appropriate compensation. Negotiations may follow.



4.2 THE WAY FORWARD

The process of drafting the bill on compulsory land acquisition is just at its initial stages and there is room for multi-stakeholder processes to continue to ensure that the best outcome is realized to the benefit of Uganda. The following comprise the next steps from the National Dialogue on Compulsory Land Acquisition.

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Prepare and telecast a documentary capturing the current situation and continuous media engagement

The documentary will be used to raise awareness and sustain national interest on the subject. The documentary will be telecast on all National Television channels. A viewing of it by key stakeholder will be held to garner more support towards concerted efforts to development of an appropriate policy and legal framework for compulsory land

acquisition in Uganda.

Furthermore, media engagements on the topic will continue as interest increases. Media engagement will be spread across the country with talk shows broadcast in the major local languages of Uganda. This is in a bid to create awareness and generate views on what should be addressed in the Draft law.

Compose the National working Group for the drafting of the Land Acquisition Bill

The Steering Committee is being transformed into the National Working Group on the drafting of the Land Acquisition Bill. The Working group will co-opt other members that are critical to the production of a high quality and nationally acceptable document. The Working Group will



undertake consultations and take lead in the land acquisition colloquia as these are meant to delve into contentious and controversial issues that the bill seeks to address.

> Co-opt the process of drafting the National Valuation Bill into the drafting of the Land Acquisition Bill

The Drafting of the Valuation Bill will be handled in tandem with the drafting of the Land Acquisition bill as the two laws should speak to each other. The Requisite policies will be considered for finalization prior to the finalization of the draft bills. This is to ensure consistency and avoid revisions and amendments to the legal frameworks before they can be fully implemented. This process will farther ensure that the aspirations of Ugandans that are fully captured in the policy frameworks are translated into law.

Initiate Multi-stakeholder engagements through Land Acquisition Colloquia

Land Acquisition Colloquia are multi-stakeholder meetings lasting a maximum of 3 hrs. These break down the Bills into chewable chunks and the issues therein delved into in depth with well researched position papers. The results of each colloquium is synthesized into a policy brief and the recommendations drafted into legal propositions for consideration in the draft Bills. The aim is to garner consensus as much as possible on the controversial issues and deal with the sticky areas beforehand to ensure that the final product is as complete as possible.

Engage the Academia through Makerere Institute for Social Research

The Academia play a central role in providing clear pathways to resolving long standing issues in compulsory land acquisition. The place of research and new knowledge cannot be over-emphasized. The resident knowledge within the Universities particularly students at PhD level will go a long way in supporting the development of the policy and legal framework on compulsory land acquisition and valuation.

Undertake Public hearings on the two Bills

The Draft Bills will be subjected to consultations at district level. The findings from these will be presented to Regional Public Hearings in a bid to garner consensus. The emerging issues will be addressed through the revisions by the working Group.

Influence Policy makers on the need for a good law on compulsory land acquisition

Working with Parliament and cabinet to ensure that a good quality bill that takes into account the interests of the citizenry yet ensuring efficiency and effectiveness in compulsory land acquisition's will be undertaken by the Working Group. This is critical in building fertile ground for the passing of the Bill.

















5.0 **COMMUNIQUE**

LANDnet Uganda is a network engaged in research, capacity development and policy advocacy on land, gender, agriculture and natural resource management. Our mission is to create an enabling environment for effective participation of all stakeholders in the efficient use and management of Uganda's land resource for sustainable development. One of the ways in which we hope to achieve this is through multi-stakeholder dialogues that aim at building consensus and raising collective voice on key pertinent issues and emerging issues in land governance such as the one we are currently faced with on compulsory land acquisition.

It is for the above mentioned reason that we collaborated with Ministry of Lands, Housing & Urban Development and with support from the German cooperation to convene the National Dialogue on Compulsory Land Acquisition.

The National Dialogue benefited Uganda in many ways, including helping citizens make an informed choice on the way forward; encouraging both the government, the academia and civil society focus on public policy issues rather than personalities, or loyalties; reducing the potential for violence by promoting civil discourse; and help the

contending sides get their message out in place where one opinion has dominated the media environment. It also provided Ugandans with a rare opportunity to make side by side comparisons and as such provide the citizenry with an objective view point on compensation on compulsory acquisition. The dialogue also helped defuse political tension on issues of land in the country. It is important as the government will have an opportunity to make public commitment regarding the protection of scarcity of property which is one of the most worrisome issues currently in Uganda.

Our utmost sincere gratitude to the Steering Committee which stuck it out to pull off this event within a short time frame, the speakers who relentlessly addressed the issues of concern, the moderators who effectively managed the heat in the room and the participants who made the dialogue a success. Our appreciation goes to the German cooperation for not only its financial support, but for its participation as an active member of the Steering Committee.

For God and my Country!

Moses Musinguzi
LANDnet Board Chairperson





















