



REPUBLIC OF UGANDA



**UNDERSTANDING LAND
ACQUISITION CHALLENGES THAT
HAVE NECESSITATED
THE CONSTITUTIONAL
(AMENDMENT) BILL, 2017**

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Cover picture: An artistic impression of the
proposed SGR Kampala Terminal

FOREWORD



Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant.

This power is known by a variety of names depending on a country's legal traditions, including *eminent domain*, *expropriation*, *takings* and *compulsory purchase*. Regardless

of the label, compulsory acquisition is a critical development tool for Governments, and for ensuring that land is available when needed for essential infrastructure—a contingency that land markets are not always able to meet.

Sustainable development requires Governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, transportation (road and railway construction), social and economic enhancement, and protection and restoration of the natural environment (wetlands and forest reserves).

In Uganda, the power to compulsorily acquire Land by Government is enshrined in the Land Acquisition Act, 1965 and the 1995 Constitution Article 26. The provisions in the Land Acquisition Act have facilitated Government to compulsorily acquire land smoothly until a critical provision under section 7 was expunged by both the Constitutional and Supreme Court in 2014. This provision gave the Minister of Land, after an award of compensation valued has been made by an assessor, to take possession at any time after the publication of the declaration if the Minister certified that it is in the public interest for him or her to do so.

The ruling of the Courts followed a petition in the case of: *Uganda National Roads Authority Vs. Irumba Asumani & Peter Magelah, Supreme Court Constitutional Appeal No.2 of 2014*

The background to the case arose when Government of Uganda commissioned a project to upgrade the Hoima-Kaiso-Tonya road, leading to Uganda's oil fields in the Albertine Graben. Acting under the Land Acquisition Act, the Government compulsorily acquired the project land and the Uganda National Roads Authority (UNRA) took possession under section 7 of the Land Acquisition Act before payment of compensation to the owners. This is so because few people had rejected the compensation value and yet the rest had been paid and work was ongoing. So, to avoid delay of the World Bank loan with its conditionality, Government took possession pending resolution on compensation value.

The few landowners, through an NGO challenged the constitutionality of the Land Acquisition Act that permitted the Government to compulsorily acquire land before payment of compensation since Article 26(2) of the Constitution provides that no person can be

compulsorily deprived of property without prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.

The Constitutional Court found the Land Acquisition Act unconstitutional to the extent of its inconsistency with Article 26(2) of the Constitution in so far as it did not provide for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of any property by the State.

Therefore, since the time this section was expunged, Government has had a no fall back provision to cater for taking possession in exceptional cases where very few individual objects to a compensation value awarded. Since then, many projects have stalled due to few individuals objecting unreasonably to the value awarded, many file cases in Court, obtain Court injunctions to stop Government work in their Land. This has led to Government incurring unnecessary costs being charged by contractors for the time their equipment remain idle while a resolution of dispute on compensation value is ongoing. This must be addressed.

The current amendment is not for compulsory acquisition but to address the following scenarios:

- a) where majority of land owners have accepted the value of the land and a few have rejected it;
- b) to avoid a stalemate where Government cannot proceed with the infrastructure projects because one or two project affected persons have rejected the compensation value;
- c) to avoid expenses being incurred by Government like payments of penalties on idle equipment and interest on borrowed loans;
- d) for Court to give an independent decision on the value of compensation which shall be binding on all parties;
- e) to allow Parliament to determine the time frame within which compensation issues must be resolved expeditiously.

Further, the amendment is targeting Land Acquisition for public purpose clearly defined

under Article 26 which is Land for:

- **Public use**
- **Public safety**
- **Public order**
- **Public health**
- **Public morality**
- **In the interest of defence**

Therefore, the fear that many Ugandans will be rendered landless and their property acquired compulsorily without fulfilling the principles of prior, adequate, fair and prompt compensation are unfounded.

It is critical that we expedite the process of land acquisition for strategic and development activities, such as;

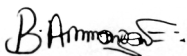
- **Roads**
- **Railways**
- **Health centres / hospitals**
- **Schools**
- **Water**
- **Electricity**

There may be some cases of misrepresentation and mis-information of the intentions of this Bill to the public to frighten them that the Bill is meant to grab their land. This is not true

and the good intentions of this Bill should not be overshadowed by false allegations of land grabbing.

Government shall prioritize consultations and ensure that all the land acquisition challenges are understood by the stakeholders and resolved, while safe guarding and respecting the land rights of land owners as provided for under Article 26 of the Constitution.

I therefore seek your support in disseminating the reasons and other information about the Constitutional amendment, which will benefit the entire country. Further, I implore you to provide views on how Government can fast-track its public infrastructure projects to be able to achieve the middle income economy by 2020.



Amongi Betty Ongom (MP)
Minister of Lands, Housing & Urban
Development

THE PROPOSED CONSTITUTIONAL AMENDMENT BILL, 2017

As you are aware, Government has introduced a proposal to amend Article 26 of the 1995 Constitution to facilitate faster land acquisition for Public infrastructure; The Amendment proposes to insert immediately after clause (2) the following:

“(3) Where the owner of property or any person having interest in or right over property objects to the compensation awarded under the law made under clause (2)(b), the Government or Local Government shall deposit with Court for the Property owner or any person having an interest in or right over the property, the compensation awarded for the property, and the Government or Local Government shall take possession of the property pending determination by the Court of any dispute relating to compensation.

(4) The owner of property or person having any interest in or right over the property shall have a right to access the

compensation deposited with the court referred to in clause (3), at any time during the determination of the dispute.

(5) Parliament shall, by law, prescribe the time within which any dispute referred to in clause (3) shall be determined.”

This Bill seeks to introduce new clauses mentioned above to achieve the following:

- a. To enable Government or Local Governments to deposit the compensation award with court, for land owners who have objected to the value awarded by the Chief Government Valuer for the property declared for compulsory acquisition;
- b. To empower Government or Local Governments to take possession after the compensation award has been deposited in Court and continue with work;
- c. To empower the property owner or person having an interest in or right over the property, to access the deposited compensation awarded at

any time during the dispute resolution process; and

- d. To empower Parliament to prescribe, by law the time within which disputes arising out of compensation shall be resolved.

This proposed amendment of Article 26 is expected to facilitate expeditious compulsory acquisition of land by Government or Local Government to avoid delaying Government or Local Government infrastructure and investment projects, while allowing for persons dissatisfied with the compensation amount awarded to resolve the dispute in court in the time as shall be determined by Parliament.

This proposal presents 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.

THE CURRENT LEGAL PROVISION OF LAND ACQUISITION

The current provision under Article 26 of the Constitution which facilitates land acquisition for public purpose will remain unchanged. The current provision states that;

26. Protection from deprivation of property.

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied—

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for—

- (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
- (ii) a right of access to a court of law by any person who has an interest or right over the property.

The Constitution is supported by the Land Acquisition Act, 1965 which is the law supporting land acquisition for public purpose. The **Commencement date for this Act was 2 July, 1965.**



A section of a road that is not yet complete because one land owner has refused the compensation claiming that it is inadequate.

The current process of compulsory acquisition of land for public infrastructure is undertaken under the above Act; through experience, it takes between 3 months to one year depending on the magnitude of the Land to be acquired to arrive at a fair and adequate value of land.

Hence, if even one person rejects the compensation value, the Government is stuck and has to repeat the whole process leading to delay in delivering the public good to the majority who always accept the value presented through a participatory process.



A few land owners' refusal to take the Chief Government Valuer's compensation award has delayed completion of sections of Mukono-Katosi-Nyenga road.

KEY PROVISIONS IN THE LAND ACQUISITION ACT (CAP 226)

The current law gives the Minister of Land powers to acquire land under the following sections:

2. Power to enter on and examine land.

(1) In order to ascertain the suitability of any land for a public purpose, any person authorized by the Minister may enter upon the land and—

- survey the land;
- dig or bore into the subsoil and remove samples; and
- do any other thing necessary for ascertaining its suitability for that purpose.

(2) The Government shall pay compensation to any person who suffers damage as a result of the exercise of the powers conferred by subsection (1).

(3) Any dispute as to the compensation

payable under this section shall be referred by the Attorney General to the court for decision.

3. Declaration that land is needed for public purpose.

(1) Whenever the Minister is satisfied that any land is required by the Government for a public purpose, he or she may, by statutory instrument, make a declaration to that effect.

(2) An instrument made under subsection (1) shall specify—

- (a) the location of the land to which it relates;
- (b) the approximate area of the land; and
- (c) 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 a copy of every declaration to be served on the registered proprietor of the land specified in the declaration or, as the case may be, on the controlling authority and, if

the proprietor is not the occupier of the land, on the occupier.

4. Land to be marked out, etc.

On the publication of a declaration under section 3 in respect of any land, the assessment officer shall cause 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.

5. Notice to persons having an interest

(1) As soon as may be after the publication of a declaration in respect of any land, the assessment officer shall cause a notice to be published in the Gazette and exhibited at convenient places on or near the land, stating that the Government intends to take possession of the land and that claims to compensation for all interests in the land may be made to him or her.

(2) 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 interests in the land;
- (b) the amount and particulars of their claims to compensation for those interests; and
- (c) their objections, if any, to any plan of the land made under section 4 or otherwise.

(4) The day specified under subsection (3) shall not be earlier than fifteen days and, unless the Minister otherwise directs, 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 pursuance of 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 under this section to be served on the registered proprietor of the land to which the notice relates or, as the case may be, on the controlling authority, and, if the proprietor is not the occupier of the land, on the occupier.

6. Inquiry and award.

(1) Where a notice is published under section 5 in respect of any land, the assessment officer shall, on the day specified in the notice, proceed to hold an inquiry into claims and objections made in respect of the land and shall make an award under his or her hand specifying—

- (a) the true area of the land;
- (b) the compensation which in his or her opinion should be allowed for the land; and
- (c) the apportionment of that compensation among all the persons known or believed by him or her to have an interest in the land, whether or not they have appeared before him or her.

(2) An inquiry held under this section may be adjourned from time to time by the assessment officer as the occasion may require.

(3) For the purposes of an inquiry under this section the assessment officer shall have the same power to summon and enforce the attendance of witnesses and to compel the production of documents as is vested in a magistrate's court in its civil jurisdiction.

(4) Where an assessment officer makes an award under this section in respect of any land—

(a) he or she shall cause a copy of the award to be served on the Minister and on those persons having an interest in the land as are not present personally or by their representatives when the award is made; and

(b) Subject to subsection (5), the Government shall pay compensation in accordance with the award as soon as may be after the expiry of the time within which an appeal may be lodged.

(5) Where—

- (a) an appeal is lodged against an award made under this section;**
- (b) a person awarded compensation under this section refuses to accept payment; or**
- (c) any other circumstance arises which renders it inexpedient, difficult or impossible to make payment in accordance with the award, the High Court, on the application of the Attorney General, may order payment to be made into court on such conditions as it thinks appropriate.**



Numerous water projects have been delayed because of rejection of compensation by a few land owners.

THE REPEALED SECTION OF THE LAND ACQUISITION ACT THAT HAS NECESSITATED THE CONSTITUTIONAL AMENDMENT BILL, 2017

7. Taking possession

(1) Where a declaration has been published in respect of any land, the assessment officer shall take possession of the land as soon as he or she has made his or her award under section 6; except that he or she may take possession at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him or her to do so.

(2) Where the assessment officer takes possession of land under subsection (1)—

the land shall immediately, by the operation of this Act, vest in the Land Commission free from all encumbrances; and

the estate and interest of every person having an interest in the land immediately before the land so vested shall be deemed to have been converted into a claim for compensation under this Act.

As soon as may be after taking possession of land under subsection (1), the assessment officer shall forward to the registrar of titles a copy of the declaration relating to the land endorsed with a certificate signed by the assessment officer, which shall state that the assessment officer has taken possession of the land and specify the date when he or she did so.

On receipt of a declaration endorsed in the manner provided by subsection (3), the registrar of titles shall, notwithstanding any inconsistency with the Registration of Titles Act, take such steps as may be necessary to give effect in the Register Book to the operation of subsection (2) in respect of the land specified in the declaration.

An examination on the 1965 Land Acquisition Act indicates that the Constitutional Amendment is to realign the Constitution with the Land Acquisition Act. It is to cure a mischief which had successfully facilitated government to take possession before compensation in circumstances where the Minister certifies that it is in the public interest for him or her to do so under the current Section 7 of the Land Acquisition Act.

THE RATIONALE AND NEED FOR THE AMENDMENT OF ARTICLE 26 OF THE 1995 CONSTITUTION

The 1995 Constitution guarantees the right to ownership of property individually or in association with others under Article 26. This fact is not disputed by Government. That notwithstanding, the Government has a Constitutional mandate to acquire land for public use (e.g. land for Roads, Railways, Health centres / hospitals, Schools, Water and Electricity; among others) and that the principle of prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of property is adhered to.

However, the Government has experienced scenarios where property owners and/or persons having interest in /or right over property object to compensation awarded by the Chief Government Valuer claiming that the compensation awards are inadequate.

An act of rejection by one property owner or persons having interest in /or right over the property within the project corridor causes delays and at times makes the project

unattainable. For instance, on linear projects such as roads, power lines, water supply lines and Railway lines, if a project affected person rejects compensation, thus denying Government access to the property and thus, the project cannot be implemented and completed as a whole.

Once rejected by the property owner or persons having interest in property, Government cannot proceed with payment as per the Constitutional requirement and thus Government cannot take possession to proceed with the development projects. This creates delays with far reaching consequences such as:

- a) Contractor claims for failure to hand over project sites;
- b) Accumulated interests on the unspent loans totaling to about **\$ 27m (UGX 97 billion)**;
- c) Tying of capital, where monies have been spent but the projects are not completed in time to benefit the citizens;
- d) Development Partners losing interest

in funding projects as Government is seen as having inadequate capacity to absorb funds for delivering vital public goods;

- e) Litigations arising out of failure by Government to meet its obligation under contracts.



A map showing SGR lines in Uganda. Only those in the project area shall be affected and not everybody.

SELECTED EVIDENCE OF THE DELAYED LAND ACQUISITION AND THE CONSEQUENCES

Projects under NWSC

Case 1: Kyambogo

In August 2015, the Private Property owner rejected a valuation amount approved by the Chief Government Valuer of **UGX. 23,595,000** insisting that the appropriate compensation award to the land (0.23 acres) based on easement was **UGX. 15,880,000,000** .

By end of May 2017, a joint valuation report based on an agreed upon valuation methodology, led to the Valuer of the property owner disagreeing over the issue of disturbance allowances (**UGX. 316,060,000** vs **UGX. 394,132,000**).

The standoff has left an isolated incomplete section of the project, without which the entire sewer project cannot not work because the section is part of the trunk sewer line. **Every day of delay causes a loss of Sh. 100m in contractor claims.**

Case 2: Kitante road and Centenary Park

The leasehold property owner objected to NWSC's work in the area even when the Controlling Authority (KCCA) had cleared NWSC to commence works in this section of the project area. NWSC is not sure of access to site as the leasehold property owner demands to be "compensated" for her to give a **No objection** to NWSC to lay a sewer pipeline in this section of the project area. **By June 2016, this denial of access to NWSC had cost the country UGX 979,915,047=.**

Case 3: Shoprite – Ben Kiwanuka Street

The management of Shoprite Ben Kiwanuka Street objected NWSC's work of laying a sewer pipeline which connects Nakivubo sewer network to another sewer network around Goods shed – Entebbe road. They citing issues related to inconveniences that the project work will cause to the Supermarket customers and other Tenants at the Shoprite building. Their refusal to have work undertaken in this area caused the contractor to demobilise his equipment and human resource - attracting claims to NWSC. NWSC has been involved in endless discussions with the managers of

Shoprite and up to date, no conclusive position has been drawn.

Case 4: Land in Banda: Plot 1A – Plot 8A, Mukaabya – Banda close

A project affected person (PAP) rejected the compensation award of **UGX 79 million** attached to his land, as approved by the Chief Government Valuer and insisted on **UGX 1,150,856,789**. Several negotiations were held with the PAP and his agents but he was not willing to consent to negotiation terms. NWSC asked the PAP to allow for works to be commenced as negotiations continue. The PAP through his son accepted, but later evicted the contractor and fenced off the whole land before work was completed.

Case 5: Land in Kinawataka – Kasokoso

Work is scheduled to commence by end of July 2017. The Chief Government Valuer approved a valuation report to compensate PAPs in this area (2.7 KMs) majority of whom had crops and semi-permanent structures. This approval was backed up by the guidance of the Solicitor General, NEMA, KCCA and NFA.

NWSC has constantly created a rapport with people in this area, informing them the benefits of the proposed sewer line which is to be laid traversing their area. NWSC has assured them of fair compensation – based on easement.

Out of 135 project affected persons who were cleared by the office of the Chief Government Valuer – for receiving approved compensation awards, 43 have contested and rejected the approved compensation awards and so **work cannot proceed**.

Case 6: Wayleaves compensation claims

The current outstanding compensation claims for various power lines for Rural Electrification Agency during 2010 and 2016 now stands at **UGX 18 billion**. For instance, on the Ntenjeru-Nakisunga-Mpatta-Naama power line, a Property owner has demanded diversion of the line because of inadequate compensation. The estimated cost for the diversion is **UGX 280 million**.

Case 7: Standard Gauge Railway cases causing delays due to rejection of compensation awards approved by the CGV

- a) Ochieng Lawrence Vs Attorney General & Coordinator SGR HCCS 25 of 2016 at Mbale High Court. The complaint is about under valuation of his property. Hearing scheduled for Aug 2017;
- b) Apollo Jaramoji Ollo Vs Attorney General & Coordinator SGR HCCS 24 of 2016 at Mbale High Court. The complaint is about inadequate compensation by SGR. Hearing scheduled for August, 2017.



Government seeks to realise low transportation costs through implementation of the SGR in Uganda.

Case 8: UNRA Projects that have suffered delays due to Contestation of Compensation Awards

No	Project	LOCATION
1	KAMPALA ENTEBBE EXPRESSWAY	KIGO-LUNYA
2	KAMPALA ENTEBBE EXPRESSWAY	MUNYONYO
3	KAMPALA NORTHERN BYPASS	BUKOTO/KNBP

OWNERSHIP	AMOUNT APPROVED (UGX)	NATURE OF CONTESTATION
LEASEHOLD ON BLB LAND	1,515,903,090	REJECTED THE COMPENSATION AMOUNT
PRIVATE MAILO	284,300,000	REJECTED COMPENSATION AMOUNT
PRIVATE MAILO	41,551,225	UNDER VALUATION

No	Project	LOCATION
4	KAMPALA NORTHERN BYPASS	KYEBANDO/KNBP
5	KAMPALA NORTHERN BYPASS	KYEBANDO/KNBP
6	KAMPALA NORTHERN BYPASS	MASANAFU/KNBP
7	KAMPALA NORTHERN BYPASS	MASANAFU/KNBP
8	KAMPALA NORTHERN BYPASS	NAMUNGOONA

OWNERSHIP	AMOUNT APPROVED (UGX)	NATURE OF CONTESTATION
PRIVATE MAILO	308,723,892	UNDER VALUATION
PRIVATE MAILO	40,872,000	UNDER VALUATION
KIBANJA	3,381,000	UNDER VALUATION
KIBANJA	138,584,212	UNDER VALUATION
lease from BLB	398,568,482	UNDER VALUATION

No	Project	LOCATION
9	MUKONO KATOSI NYENGA	MULAJE/NKONJERU
10	KAMPALA ENTEBBE EXPRESSWAY	KIGO-LUNYA
11	KAMPALA ENTEBBE EXPRESSWAY	MUNYONYO

OWNERSHIP	AMOUNT APPROVED (UGX)	NATURE OF CONTESTATION
TITLED INTEREST	244,604,425	Has been paid for his kibanja interest, but has refused to vacate because he has not yet got his titled interest yet his title has an issue.
LEASEHOLD ON BLB LAND	1,515,903,090	REJECTED THE COMPENSATION AMOUNT
PRIVATE MAILO	284,300,000	REJECETD COMPENSATION AMOUNT

Case 9: Other Delayed Government Projects

- a) The delay of Kaiso Tonya road in Hoima District;
- b) The acquisition of land in Buliisa district for international oil companies in Uganda: Tullow, Total and CNOOC and for other petroleum activities and mid stream operations;
- c) Acquisition of land by Uganda Electricity Distribution Company for the power line to Kitgum district.



Delayed compensations have affected the time lines for implementation of the SGR Kampala terminal.

CONCLUSION

The proposed amendment of Article 26 of the 1995 Constitution will enable Government to take possession of or acquire property upon payment of the compensation awarded by the Government while any resolution of disputes to determine the additional amount claimed by the property owner is ongoing.

This will curb delays in implementation and Government infrastructure and investment projects will be able to be completed on time. The Bill is also expected to allow for persons dissatisfied with the compensation amount awarded to resolve the dispute in court.

All land owners and other stakeholders are therefore urged to support this Bill, which does not have any additional cost implications.

END

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