



ADVOCATES COALITION FOR DEVELOPMENT AND ENVIRONMENT

COMPULSORY LAND ACQUISITION IN UGANDA

AN ANALYSIS OF THE PROPOSED AMENDMENT OF ARTICLE 26 OF THE CONSTITUTION



James Muhindo

ACODE Policy Briefing Paper Series No. 47, 2017

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List Of Acronyms

ACHPR	- African Charter on Human and People's Rights
CSCO	- Civil Society Coalition on Oil and Gas
CSOs	- Civil Society Organizations
ICESCR	- International Covenant on Economic, Social and Cultural Rights
IFC	- International Finance Corporation
LAA	- Land Acquisition Act
LARF	- Land Acquisition and Resettlement Framework
LARRP	- Land Acquisition, Resettlement and Rehabilitation Policy
LSSP	- Land Sector Strategic Plan,
MEMD	- Ministry of Energy and Mineral Development
MLHUD	- Ministry of Lands, Housing and Urban Development
NDPII	- National Development Plan II
NRM	- National Resistance Movement
UBOS	- Uganda Bureau of Statistics
UDHR	- Universal Declaration of Human Rights
UN-CESCR	- United Nations Committee on Economic, Social and Cultural Rights
UNRA	- Uganda National Roads Authority

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The views expressed in this policy briefing paper are those of the author, who takes sole responsibility for any errors or omissions. The author hopes that this policy briefing paper will contribute to the policy discourse on matters of Land Access in Uganda and will provide new insights for research, policy, and advocacy on the subject

Executive Summary

For over a century, the land question has haunted Uganda manifesting in various forms, from generation to generation. Basing on this premise, this paper examines the historical background to the problem of compulsory land acquisition in Uganda; analyses Uganda's international and regional obligations regarding compulsory land acquisition; analyses Uganda's proposed amendment to Article 26 of the Constitution; and makes recommendations based on comparative analysis with other jurisdictions.

The issue of land expropriation (Compulsorily land acquisition) has remained controversial through the decades as indicated in this paper. This can be traced back to pre-colonial times when Kings and their subjects clashed over land, through to the colonial agreements that conferred big chunks of land to the colonial Government and, local Kings and chiefs. The post-colonial land issues were between the state and the Kingdoms resulting, not only into the abolition of Kingdoms in the 1960s, but also the nationalization of all lands in the country in 1975. This remained the status quo until 1995 when the Constitution introduced the current land ownership system i.e. Freehold, Leasehold, Mailo and Customary land tenures as ways in which Ugandans currently hold land.

The reversion to private ownership of land by Ugandans meant that government had forfeited its autonomous control over land and granted people the right to own such land privately. Like its predecessors, government is currently outraged by the fact that citizens are increasingly becoming civically active and resisting arbitrarily taking possession of private land without prior, adequate and fair compensation. It is upon this background that the Attorney General proposed an Amendment to Article 26 of the Constitution, which provides for the right to property. Article 26(2) of the 1995 Constitution of Uganda as amended provides that;

“No person shall be compulsorily deprived of property or any interest in or right over property of any description except where there is prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property”

This proposal was made through Constitutional (Amendment) Bill No. 13 of 2017. The purpose of this Bill is precisely to amend the aforementioned Article 26 (2) and allow government to take possession of private land, proceed with developments and pay the land owner later. The argument is that this will only be evoked in the event the land owner does not accept the compensation awarded by the Chief Government Valuer.

In view of the fact that most Ugandans depend on land for survival, allowing government to take possession and compensate the affected persons at a later date not only denies them enjoyment of their right to property, and the internationally acclaimed principle of free, prior and informed consent before taking of possession, but also exposes the affected persons to uncertainty after being displaced without being compensated.

This paper proposes alternative solutions for conclusively addressing this land question conundrum, other than the amendment of article 26 of the Constitution. These include; 1) Amendment of other Land Laws such as The Land Acquisition Act, The Land Act, The Access to Roads Act, and parts of the Registration of Titles Act; 2) Provision for the expeditious disposal of court cases related to Land Acquisition by inserting a provision to that effect in the Land Acquisition Act; 3) Waiting for the final report of the commission of inquiry into land matters given that the issue of land appropriation is one of the terms of reference of the commission, and 4) Adopting the Human Rights Based approach to land expropriation as proposed in the Draft Land Acquisition, Resettlement and Rehabilitation Framework.

1.0 INTRODUCTION

1.1 Background, Objectives and Methodology

Throughout Uganda's history, the question of land ownership, rights and interests in land has always been a socio-economically sensitive issue¹. The strong citizenry attachment to their land stems from the fact that for many Ugandans, land is always and in some cases the only, source of livelihood. Without land, there is no hope for sustainability as it is used to supply the day to day basic needs of families. These needs include; shelter, food, healthcare, and in more traditional societies, clothing. One major indicator of the extent to which Ugandans depend on land is through the national dependency on agriculture. According to the Uganda Bureau of Statistics (UBOS), the agricultural sector employs over 70 percent of the workforce and about 81 per cent of households depend on agriculture, accounting for 90 percent of export earnings², and as of 2014/15; agriculture provided for 24 percent of GDP.³ It is land that is sold for children's fees, or for the access to other needs that cannot be gotten directly from land, not to mention the spiritual and cultural values attached to the land.

In view of the fact that not only the livelihood, but also sustainability and survival of Ugandans depends on land, regulation and governance of land ought to be handled with diligence. In the past, Ugandans from all walks of life – young and old, male and female – have expressed willingness to do anything in defense of their land and property rights.

IMAGE 1: Women in Northern Uganda staged naked protests to protect their land from being taken over by government.



Source - Steven Okello for the Daily Monitor

¹ John T. Mugambwa, 2002, Source Book of Uganda's Land Law – Kampala, Fountain Publishers, p.3

² Uganda National Bureau of Statistics, 2015, The National Population and Housing Census 2014. At P. 42

³ *Ibid*, P. IX



On three different occasions in 2015, Ugandan media and the general public witnessed the boldness and resilience with which some women stood nude to be counted in pursuit of their land rights. This move was out of the ordinary for two reasons; (i) Traditionally women's bodies are believed to be sacred. (ii) it has been argued that women largely have neither land rights nor ownership due to patriarchal cultures that place land ownership as a preserve for men⁴. The actions of women in Acholi and Teso who chose their last resort option to protect land from being arbitrarily taken, by government, signified the verbosity of the discussion around compulsory land acquisition by government.

In this light, government's decision to legitimize acquisition of private land prior to compensation, by amending the supreme law of the land needs to be treated as sensitive issue and a matter of national importance. The Uganda Human Rights Commission in 2016 advised government to call for a referendum to address the controversial proposal to acquire land without giving prior compensation.⁵ This advice from the Uganda Human Rights Commission buttresses the threat the proposed amendment of the Constitution poses to the economic, social and cultural rights of Ugandans across the board as well as its political implications.

⁴ Chidinma Unigwe, 2016, Women Strip Totally Naked to Protest Land Grabbing in Uganda. Available at <https://www.thetrentonline.com/women-strip-totally-naked-protest-land-grabbing-uganda-photos-nudity-2/>

⁵ Francis Emorut, 2016, Hold Referendum on Compulsory Land Acquisition, The New Vision. Available at https://www.newvision.co.ug/new_vision/news/1435535/hold-referendum-compulsory-land-acquisition

This policy briefing paper set out to address five objectives:

- (i) To examine the historical background to the problem of compulsory land acquisition in Uganda;
- (ii) To explore and analyse Uganda's international and regional obligations regarding compulsory land acquisition;
- (iii) To evaluate Uganda's proposed amendment to Article 26;
- (iv) To compare Uganda's proposed amendment with the legal position on compulsory land acquisition in selected jurisdictions; and
- (v) To suggest appropriate recommendations for addressing the challenge of compulsory land acquisition in Uganda.

The methodology adopted in this policy briefing paper included review of documents and comparatively analyzing the legal position in other jurisdictions. The issue of land in Uganda is one of the most researched topics hence the availability of relevant literature which was relied upon. A review of domestic and comparative legislations on compulsory land acquisition was also done to buttress the recommendations made. The structure of the paper includes a historical background of the land expropriation laws in Uganda, an analysis of the proposed Constitutional amendment and comparative analysis of the of other legal regimes. The paper finally highlights key emerging issues and makes recommendations.

1.2 Understanding the Policy Problem

The government of Uganda, like many other governments in developing countries has continued to grapple with the challenge of land acquisition for infrastructure development. The issue of compensation of persons affected and/or displaced to pave way for government's infrastructure and investment projects is said to be making the cost of these projects prohibitively high. This results in project delays in cases where an affected person rejects compensation and resorts to court.⁶ In government's argument, those who resort to court are always in pursuit of their inherent and inalienable right granted under article 26 of the 1995 Constitution of the Republic of Uganda. The right is to the effect that fair and adequate compensation ought to be paid to any person whose private property or land has be acquired, demolished or affected by a public project⁷.

⁶ Johnson Thembo, 2017, Minister Amongi says Compulsory Land Acquisition Law Helps Ugandans. Available at <http://theinsider.ug/index.php/2017/07/18/minister-amongi-says-compulsory-land-acquisition-law-helps-ugandans/>

⁷ See Article 26(2)(b)(i) of the 1995 Constitution of Uganda

According to government, the solution to this conundrum is to moderate the right and allow government to get access to the land and proceed with development plans as the affected person pursues the matter in court⁸.

This policy problem has persisted in Uganda. During pre-colonial times, Kings and later the imperialists, always contended with some form of hindrance to acquire land for public projects⁹. However, Uganda's expropriation law as we know it today can be traced back to 1965. On the 2nd day of July 1965 the first Parliament of the Republic of Uganda passed into law the Land Acquisition Act, Cap 226. This Act (which still has the force of law)¹⁰ together with the Constitution regulates the acquisition of privately owned property/land by government.

The 1995 Constitution introduced a new Constitutional order regarding ownership of land and protection of property rights for Ugandans. Pursuant to Chapter fifteen, ownership of land is vested in the Citizens of Uganda¹¹. Secondly, in Chapter Four, the Constitution provides for more stringent protection from deprivation of property under Art. 26 which states as follows:

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 reading of Article 26(2)(b) is unequivocally clear that payment of fair and adequate compensation must precede the taking of possession of an individuals' property. This goes ahead to provide for recourse to court to ensure that one's interest and/or rights in land are adequately protected and compensated for prior to taking over the land.

⁸ Constitution (Amendment) Bill No. 13 of 2017

⁹ Morrison and Read, 1966, Uganda the development of its Laws and Constitution, London; Steven and Sons, Pp 44-45

¹⁰ Save for Section 7 of the Land Acquisition Act, which was declared unconstitutional by the Supreme Court of Uganda in the case of **Uganda National Roads Authority Vs Asuman Irumba and Another Constitutional Appeal No2 of 2014 Would be good to state why it was declared unconstitutional**

¹¹ Art. 237 of the 1995 Constitution of Uganda

Faced with this human rights blockage to the quick attainment of economic growth and other ambitious development targets, the government of Uganda started devising means of solving this Constitutional dilemma once and for all. In 2014, the President of Uganda started mooted the idea of compulsorily acquiring land. This was in respect to granting investors access to mineral-rich land without negotiating with the land owner.¹² This discussion continued through 2015 with some stakeholders hoping that it would be part of the Constitution (Amendment) Bill of 2015, but this never happened. It is argued that the land issue could have been found too sensitive to deal with just months before the 2016 general election as this could have potentially had electoral ramifications.¹³

In mid-2016, the amendment discussion was revamped during a cabinet retreat involving the President and Ministers, a process that culminated into the controversial Constitutional (Amendment) Bill No. 13 of 2017; that was on June 8th 2017 published in the Uganda Gazette. In September 2017, the National Resistance Movement (NRM) government exhibited its commitment to amending this article when the President devoted two weeks of appearing and addressing different radio audiences on live radio talk shows across the country, to rally support for the proposal to amend this provision of the Constitution¹⁴.

The purpose of this Bill is precisely to amend the aforementioned Article 26 (2) of the Constitution that protects privately owned land from being compulsorily acquired without free, prior and informed consent, and upon prompt payment of a fair and adequate compensation prior to taking of possession or acquisition of the property¹⁵.

1.3 The Compulsory Land Acquisition Conundrum

The land question remains the most contentious and unanswered questions in Uganda's History tracing its roots even far before the signing of the 1900 Buganda Agreement. In spite of the historical challenges in land governance and administration in Uganda, this issue now faces contemporary challenges resulting from among other things increased pressure on land, capitalism, natural resource and extractives (Oil, Gas & Mining) as well as development and investment.

¹² James Muhindo, 2016, Proposed Changes to Land Law are Anti-steady progress, The Daily Monitor, Available at <http://www.monitor.co.ug/OpEd/Commentary/Proposed-changes-to-land-law-are-anti-steady-progress/689364-3360962-12cmownz/index.html>

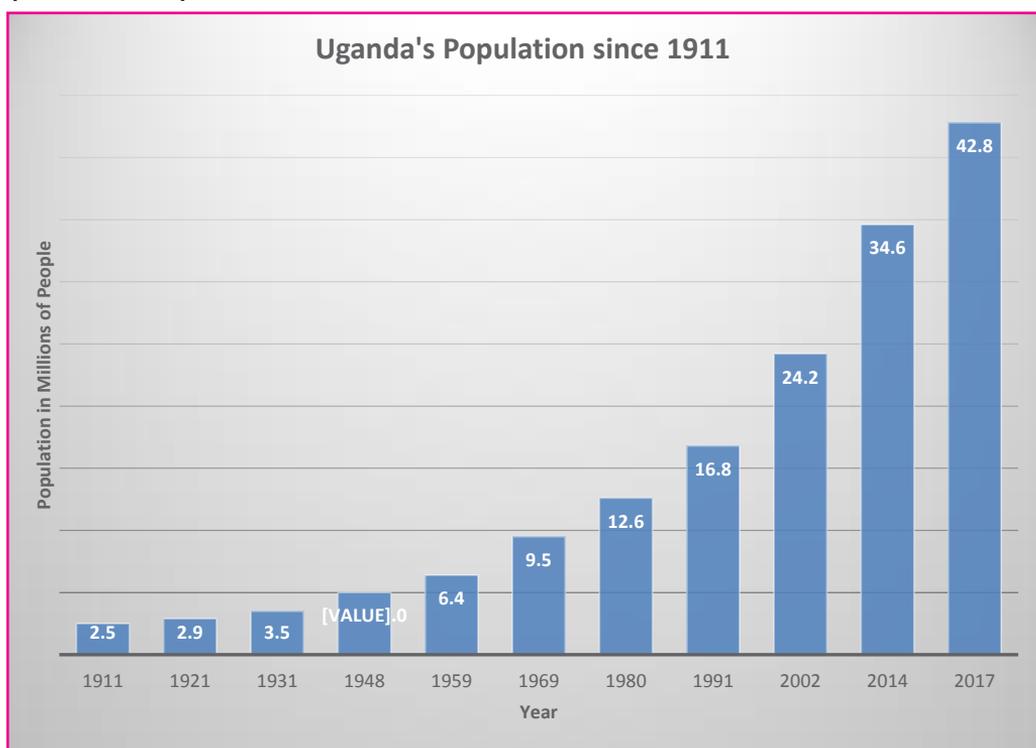
¹³ *Ibid*

¹⁴ Daily Monitor, 2017, "Museveni Resorts to Radio to explain Land Amendment Bill". Kampala: Daily Monitor, Available at <http://www.monitor.co.ug/News/National/Museveni-radio-Land-Amendment-Bill-Masaka-Amongji/688334-4081948-e3anv5/index.html>

¹⁵ Art. 26 (2)(b)(i) of the Constitution

Population growth is one of the key factors that have increased pressure on land in Uganda. During the first national population census held in 1911 under the colonial government, Uganda had a population of 2.4 million people. Eighty years later, the population had grown in 1991 to 16.6 million at a rate of 3.3% per annum which was one of the fastest in the world (behind Yemen and Niger). In 2002, the population grew to 24.2 million people but this rate of growth has since dropped to 3.0% as the population grew to 34.6 in 2014¹⁶. According to the 2017 World population Data sheet, Uganda’s population stands at 42.8 million people¹⁷. Today there are 173 persons per square kilometer much higher than some of her neighbors (South Sudan – 18, Tanzania – 54 and Kenya – 74) for the same year. However, it was lower than that of Rwanda (421) and Burundi (377)¹⁸.

FIGURE 1: A bar graph showing Population growth trends for Uganda (1911 – 2017).



Source: Uganda Bureau of Statistics (UBOS)

¹⁶ National Housing and Population Census 2014, Main Report at p.8

¹⁷ Population Reference Bureau, 2017, The 2017 World Population Data Sheet. Available at www.worldpop-data.org

¹⁸ 2014 World Population Data Sheet of the of the Population Reference Bureau

These demographics alone show how the pressure on land has exponentially increased since the area on which this population survives remains at 93,065.3 square miles. It is apparent that Uganda's Population growth has not been matched with commensurate industrial growth, integrated land use management, urban planning and other structural developments that would reduce dependence and pressure on land. Population growth without population planning is the root of this problem, as there are countries with higher population densities but less land governance challenges.

Besides these contemporary challenges, Prof. Apollo Nsimbabi in 1997 highlighted six major causes of land conflicts and most of them still exist today. These causes of land conflict included *inter alia* the absence of a clear land policy, limited protection of indigenous people's land rights against exploitation by foreigners, corruption in the land administration system and land evictions¹⁹. Over 20 years after the passing of the Constitution, Government continues to grapple with the same problems notwithstanding the various legal, policy, regulatory and institutional reforms that have taken place.

The failure to address the administrative and structural challenges have increased land evictions where by thousands of Ugandans are currently leaving away from their home and/or in Internally Displaced People's Camps (IDP Camps) due to land evictions²⁰. The situation is dire in areas where there is oil and gas prospects, minerals, and natural resources such as forests, as well as areas impacted by government infrastructure and investment projects. Most of the land evictions are perpetuated by or with the endorsement of some state actors such as police, the land registrars, judicial officers, the army or politicians²¹.

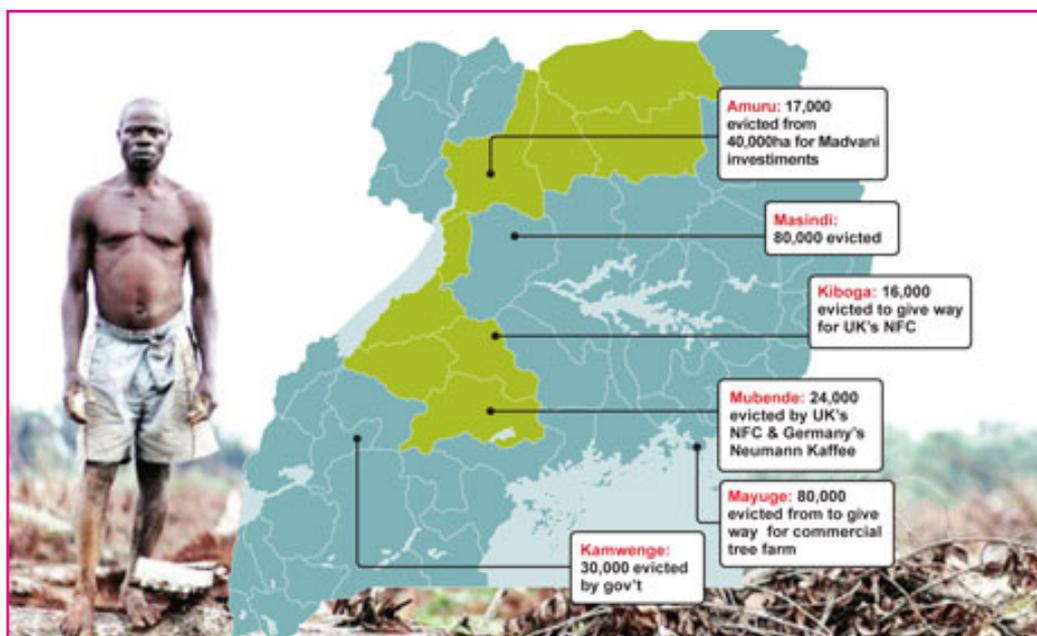
The evictions leave the ordinary Ugandan at the mercies of CSOs and other human rights defenders that relentlessly fight for the rights of affected people. It is the prevalence of inhuman, brutal and violent evictions by state actors that create pessimism among Ugandans at to what would happen in the event article 26 (2) of the Constitution is amended.

¹⁹ Apollo Nsibambi, 1997, Conflict and the Land Question in Uganda. A paper presented at the international Conference on Conflicts under the auspices of Makerere Institute of Social Research, Makerere University

²⁰ Kanya Mathew, 2017, The Rampant Land evictions in Uganda. Available at <http://leadershipmagazine.org/?p=14009>

²¹ *ibid*

FIGURE 2: A Map of Uganda showing selected human displacement cases as result of land evictions by government and/or investors.



Source: Somcon²²

As per the map above, approximately a quarter a million people were affected in just six eviction incidents. This signifies that government and investors have created a track record of using force or arbitrary means to access private land, or land which has multiple claims and interests. The map also shows that the evictions are spread across different regions of the country²³.

As stated in the introduction, this fuels social discomfort and unrest, as well as loss of trust in government's ability to act in the interest of the common man. Public land that is under the control of district land boards and the Uganda Land Commission has also been mismanaged²⁴, an issue that makes government lack the moral authority to ask citizens to expose their land to being taken for public use. For government to earn confidence of the people there is need to stop illegal land evictions which are triggers for recent conflicts.

²² See <http://www.somcon.com/content/museveni-angry-over-ngo-report-land-grabbing>

²³ *Ibid*

²⁴ This can be adduced from the Terms of reference of the commission of Inquiry into land matters, and numerous media reports on the subject

FIGURE 3: A Timeline for Compulsory Land Acquisition

Time / Period	Events / Developments on land Acquisition	Discription of Event/development
1899	Acquisition of land for the East African Railway	The question of the crown having access to land arose and the Law Officers of the crown gave an opinion. It was argued that in protectorates where the crown exercised authority under the treaties, the right to compulsorily acquire land accrued to the crown by virtual of the right to the protectorate.
1900 -1901	Buganda and Tooro Agreements of 1900 and the Ankole Agreement of 1901	These agreements established a semblance of and tenure systems. Land was divided and some was gazette as public land or land for the crown in the different Kingdoms
1902	Order in Council of 1902	Defined crown lands as " <i>all public lands which are subject to the control of His Majesty by virtual of any treaty, convention or agreement and all lands which have been acquired by His Majesty for Public service or otherwise whatsoever</i> "
1903	Crown Land ordinance	This ordinance gave the crown powers to alienate land in freehold.
1928	Busuulu and Envujjo Law	Protected the rights of tenants and provided that tenants could only be evicted for; (i) Public Purposes, and (ii) For other good and sufficient cause with an order of eviction from court
1935 - 1950	The Tooro, and Ankole Landlord and Tenant Laws of 1937 and 9147 respectively	These laws more or less domesticated the terms of the Busuulu and Envuujo Law (above) which was only applicable in Bugnda, to Tooro and Ankole Kingdoms as well.
1965	Compulsory Land Acquisition Act (LAA)	The current LAA come into law in 1965 to lay down the procedural steps for compulsory acquisition of land government
1969	Public Lands Act	First past in 1964 as a Public Lands Ordinance, the 1969 Public Lands Act introduced the lease hold land tenure system over public lands. This system eventually became the only tenure in 1975, with the coming into force of the 1975 Land Decree.

Time / Period	Events / Developments on land Acquisition	Discription of Event/development
1975	The 1975 Land Reform Decree ¹	<ul style="list-style-type: none"> • First major post-colonial legislation aimed at reforming Uganda's land regulation and management. • Decree sought to address a decades long need, of government having the autonomy to compel development of any part of the country based on government priorities • It made all land in Uganda Public Land and was to be administered by the land commission in accordance with the Public Lands Act of 1969 • Abolished freehold and mailo tenures and converted them into leases of 99 years for individuals and 199 years for public bodies. • The decree saved customary tenure
1995	The 1995 Constitution of the Republic of Uganda	Introduced under article 26 the right to property. This protects land or property owners from arbitrarily being deprived of their property with getting fair and adequate compensation prior to the taking of land
1998 - 2010	The Land Act, 1998 The Land (Amendment) Act, 2010	This is the principle subsidiary legislation that governs land in Uganda. It was intended inter alia to operationalize the provisions of the 1995 Constitution on Land.
2011 -2015	The National Land Policy, 2013	<ul style="list-style-type: none"> • The Land Policy makes a policy statement in relation for Compulsory land acquisition that the state, as a trustee for the citizens of Uganda shall excise the power of compulsory acquisition responsibly and in the public interest. • The policy also enjoins the state to prescribe guidelines and procedures for the payment of prompt, adequate and fair compensation to those affected in the course of compulsory land acquisition.²
	The land Sector Strategic Plan (LSSP) for 2013 – 2022	The LSSP provides that government should Review, update and Clarify Procedures for Land Acquisition by Government. ³
	The National Development Plan II	NDP II enjoins the Ministry of Lands Housing and Urban Development to facilitate faster acquisition of land for planed urbanization and infrastructure development. ⁴

Time / Period	Events / Developments on land Acquisition	Discription of Event/development
2016	The Commission of Inquiry into land matters ⁵	<p>In 2016, the president instituted a commission of inquiry headed by a Court of appeal Judge to review the legal, administrative and structural issues affecting the management and governance of land in Uganda.</p> <p>The issue of Compulsory land acquisition is one of the questions that the commission is expected to address and make policy recommendations on how to tackle that problem.</p>
2017	Land Acquisition and Resettlement Framework (LARF)	<p>This is a framework specific to the oil and gas sector.</p> <p>The LARF aims at address the social economic impacts that result from land acquisition and involuntary resettlement in the process of development of upstream oil and gas facilities in the Albertine Graben.⁶</p>
	The Land Acquisition, Rehabilitation and Resettlement Policy (LARRP)	<p>The Ministry of Land is currently in advanced stages of developing the LARRP. This policy will provide for an overarching framework for acquisition of land by government and the process through which the affected people shall be compensated and resettled.</p>
	The Constitutional (Amendment) Bill No. 13 of 2017	<p>This Bill seeks to amend the Article 26 of the Constitution that provides for adequate and fair compensation prior to compulsory acquisition of land.</p>

2.0 ANALYSIS OF CONSTITUTIONAL (AMENDMENT) BILL NO. 13 OF 2017

2.1 Rationale for the Amendment

The key objective of the Bill is the amendment of article 26 of the Constitution. In government's view, the rationale for the amendment is to solve the prevalent challenge of delayed government infrastructure and investment projects due to disputes arising from compulsory land acquisition processes. This difficulty causes government significant financial loss as a result of penalties from contractors for redundant machinery as well as loss in terms of litigation of the resultant court disputes.

Government seeks to take away people's inherent right under article 26 of the Constitution because the continued enjoyment of the right delays government projects thus causing financial loss to both government and contractor. This rationale also does not take cognizance of the social cost of arbitrarily displacing a population with little or no compensation for the loss. The effect such human displacement has on the livelihoods of the affected would in the long term cost government much more in taking care of the destitute population, than the financial losses for penalties referred to above.

Provisions of the Bill

The Bill seeks to empower government or local government to take possession of property declared for compulsory acquisition, upon deposit with court, the compensation awarded by government Valuer for property in question in the event a person with rights or interest in the land demands a higher compensation. The bill suggests that the affected person should be at liberty to access the money deposited in court in the course of litigating the dispute. It also seeks to empower parliament to make law prescribing the time within which this dispute should be resolved. If passed, the bill seeks to include all this procedural detail in the Constitution.

A constitution is supposed to be a state's fundamental law that contains the essential elements of government organization, the basic principles of governmental powers and the enumeration of citizen rights. A constitution is meant to have permanence and brevity. Statutory law (Acts of parliament), on the other hand, provides the details of government operation and is subject to frequent change by the legislature. Typically, constitutional amendments are proposed to authorize new programs, ensure that reforms are not easily undone by future legislation or seek protections for special interests. The dichotomy



IMAGE 2: A signage that says it all. This was put on Land which government earmarked for the oil Refinery in Hoima District.

between the Constitution and Acts of Parliament is meant to safeguard the constitutional tenets of permanence and brevity. Procedurally, the proposed amendment seeks to import so much unnecessary detail in into the Constitution, a move that would distort the structure and brevity of the Constitution.

Besides the argument for the structure of constitution, it is important to note that article 26 is in the Bill of rights, hence the need to adopt a human rights view in looking at the amendment. The intension of the framers of the constitution in drafting article 26 can be inferred from the Article's heading which reads "*Protection from deprivation of property*". In essence, the article provides for prior payment of compensation for the deprivation of property by the government. This provision was informed by the historical land question that has haunted Uganda for over a century, whose mischief the Constituent Assembly sought to cure once and for all by the wording of article 26.

The need to protect the land and property rights of ordinary Ugandas was reaffirmed by the highest court of the land, in the case of *UNRA vs. Asumani Irumba and another*. The Supreme Court in this case declared unconstitutional the sections of the 1965 Land Acquisition Act. The nullified provisions allowed government to take over private land prior to compensating the land owner. One can thus rightfully argue that the proposed amendment literally seeks to defeat this 2015 decision of the Supreme Court. By so doing, the executive arm of government would be attempting to undermine the judiciary using its Parliamentary majority by passing a law that is contrary to a court decision, instead of amending the laws to align them to the court decision.

2.2 Comparative Analysis with other Legal Regimes

2.2.1 International Human Rights Law and standards

International Human Rights law has its roots in the Universal Declaration on Human Rights (UDHR). Article 17(2) of the UDHR declares that no one shall be arbitrarily deprived of his or her property. The International Covenant on Economic, Social and Cultural Rights (ICESR) does not explicitly provide for property rights, but under General Comment No. 7 on Force evictions, the UN Committee on Economic, Social and Cultural Rights enjoins member states to ensure that all persons enjoy a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.

The proposed amendment of Article 26 is not just a threat to people's right to property but the brutality with which previous evictions have been conducted for public projects does not merit, government being given the authority to evict at will as long as the Government Valuer has attached a value to property. This power would be susceptible to abuse and would result into many human rights violations.

The African Chapter on Human and People's Rights (ACHPR) provides that the right to property shall be guaranteed and may only be encroached upon in the interest of public needs or in the general interest of the community. Much as the ACHPR provides for a limitation to the right to property, this limitation should be exercised within the agreeable degree and should not be used to the detriment of the rights holder. This is the very position that is currently contained in Uganda's Constitution, i.e. the call for government to exercise some form of balancing between the individual's private right and decision to displace the



IMAGE 3: Traders in a local market collect what is left of their Kiosks and Make-shift shops after government demolished structures without due notice.

person in the public interest. If the amendment proceeds as is, the scale will have tilted to the detriment of the rights of an individual.

The International Finance Corporation (IFC) in its performance standard Number five on “Land acquisition and Involuntary resettlement” advocates for avoidance or minimal displacement of individuals from their land in the course of project development. IFC Standard 5 also enjoins project implementing government to do the necessary due diligence to minimize adverse social and economic impacts of the project on the affected communities.

In proposing the amendment, government ought to take into consideration the position of the law in the aforementioned international instruments, and the standards set therein.

2.2.2 Republic of South Africa

In the 1996 Constitution of South Africa, the equivalent of Uganda’s article 26 is provided for in article 25 of the South African Constitution. Clause 1 & 2 of this article are on all fours with the Ugandan position as stated today. The state that;

1. *No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*
2. *Property may be expropriated only in terms of law of general application—*
 - (a) *for a public purpose or in the public interest; and*
 - (b) *subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*

The above provisions are in tandem with the Uganda Constitution and rightly provide for the right and the limitation in equally precise terms as the status quo is in Uganda’s laws. What the Ministry for lands seeks to import in the Ugandan Constitution is addressed in clauses is provided for under article 25 (3), (4) & (5) of the South African Constitution. These provide that;

3. *The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—*
 - (a) *the current use of the property;*
 - (b) *the history of the acquisition and use of the property;*
 - (c) *the market value of the property;*
 - (d) *the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and*

- (e) *the purpose of the expropriation.*
4. *For the purposes of this section—*
- (a) *the public interest includes the nation's commitment to land reform, and to*
- (b) *reforms to bring about equitable access to all South Africa's natural resources; and*
- (c) *property is not limited to land.*
5. *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

Without importing so much procedural detail into the constitution, the above clauses address the conundrum that government of Uganda seeks to address. Clause 3 addresses the time problem in a balanced way the effect that both government and affected person would benefit from the expeditious conclusion of the matter. The clause also looks at the adequacy of compensation in view of “the current (prevailing) use of the property” vis-à-vis market value of the property. Clause five sums this up by asking the state to take legislative measures to operationalize this article.

2.2.3 Republic of Kenya

The protection of the right to Property is provided for under article 40 of Kenya's 2010 Constitution. The article provides every person with the right to acquire and own property, and forbids Parliament from making laws that permit the state or any person to arbitrarily deprive a person of property or of any right or interest therein. The Kenyan Constitution extends this protection to occupants who may not hold title to the land they occupy as long as they are bona fide claimants. The limitation to this right is provided for under article 40(3)(b) which states that;

The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that:

- i. *requires prompt payment in full, of just compensation to the person; and*
- ii. *allows any person who has an interest in, or right over, that property a right of access to a court of law.*

Faced with the very challenges that the Ugandan government is grappling with such as delay in government projects, land speculation and inflated cost of land, the Kenyan government in 2016 moved to initiate a process of amending

the land laws (not the Constitution) to address these challenges. According to the Kenyan Attorney General, the Land Law (Amendment) Bill 2016 sought to overhaul the compensation structure for private owners by replacing all existing statutes.

The Land Laws (Amendment) Act, 2016 which sought to align the other land laws to the Constitution. This Act amendment various laws including; The land Act, The land Registration Act, and The National Land Commission Act. The use of an omnibus amendment Bill to amend all the relevant land laws to align the Constitution was efficient in Kenya's case. This law is yet to be tested, but the approach adopted to address the Land Law conundrum on land expropriation, is commendable.

3.0 EMERGING POLICY ISSUES AND RECOMMENDATIONS

The government of Uganda has over the past three years continued to grapple with an approach to adopt in addressing the compulsory land acquisition challenges that not only delay government projects and investments but also the cost the tax payer heavily and increase government debt burden due to penalties from delayed projects. In view of the above analysis, this paper makes a number of conclusions and corresponding policy recommendations using a human rights-based approach to address this legal problem.

3.1. Amend other land laws not the Constitution

As discussed above and observed from other jurisdictions, the right to property is inherently protected by the Constitution. The Constitution, as the case is in Uganda, provides for limitations to this right which are elaborated in a statutory legislation.

The Law to amend in this case is the Land Acquisition Act of 1965, and any other relevant land laws as the Attorney General may deem fit. In effecting this amendment, government is at liberty to adopt the Kenyan approach of using an Omnibus Bill to amend all the subsidiary legislations that require amendment as opposed to using multiple Bills.

3.2. Prioritize the expeditious disposal of court cases on Land Acquisition

The policy problem at hand is the delay of infrastructure and investment projects caused by land owners rejecting compensation offered by the Chief Government Valuer and going to court to claim better compensation. The fact that an average land dispute spends three years in court means the judicial system is the major bottle neck in this process and not the affected people who resort to court to seek justice and protection of human rights.

The CSOs memorandum submitted to the commission of inquiry into land matters recommended the establishment of a special court to expedite the disposal of Land disputes in acquisition processes.

In agreement with the proposed Bill, government should put in place legislative requirements, and the requisite institutional requirements in judiciary. This will ensure that cases related to compulsory land acquisition are expeditiously disposed of to unblock the bottle neck.

IMAGE 4: CSCO Representatives appearing before the Land Inquiry



(Source: Urban Television, Vision Group Media)

3.3. Final report of the Commission of inquiry into land matters.

Legal Notice No.2 of 2017 gave the Commission on Inquiry into Land matters the mandate to make a comprehensive review of land governance in Uganda. Key among the areas that the commission was required to probe was the policies and processes of land acquisition by government and/or local governments. At the time government proposed to amend article 26, no regard was given to the work of the commission, which is yet to conclude its inquiry. Government should



IMAGE 4: “President Y.K Museveni poses for a photo with the Commission of Inquiry into Land Matters”

therefore wait for the commission of inquiry to conclude its work and issue a final report, before talking the compulsory land acquisition.

3.4 Land Acquisition, Rehabilitation and Resettlement Policy (LARRP)

The Ministry of Lands, Housing, and Urban Development is in advance stages of developing the LARRP, a policy that is intended to guide the planning and implementation of projects which involve physical and/or social-economic displacement of persons. The objective this policy is to put in place the principles, legal and institutional framework to govern land acquisition and involuntary resettlement planning and implementation of projects.

The proposed amendment of article 26 falls squarely under the ambit of this draft policy. To avoid the legislative discrepancies of passing the law before the policy, government should wait for the completion of the relevant policy framework before tabling any amendment of the Constitution or law to this regard.

4.0 CONCLUSION

The need to address the legal conundrum relating to compulsory land acquisition by Government is apparent. However, in addressing this challenge, the government should harmonize the different efforts geared towards handling this problem. At the moment, there are efforts such as the commission of inquiry into land matters, the development of the LARRP and the efforts of the Attorney General's office through the proposed Constitutional amendment Bill. All these efforts should be harmonized to comprehensively tackle the Compulsory Land Acquisition problem

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About ACODE:

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