

# Legal issues, challenges and prospects associated with land acquisition for socio-economic development In Uganda

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## Abstract

*Uganda's land question is a very contentious issue today due to the increased pressure on it especially by the growing population together with government's desire to acquire land for investment so as to bring about socio-economic development. This has also been exacerbated by the existing complex land tenure system in Uganda combined with the prevailing competing interests for both public and private development. It is to that effect that the paper analyses the current existing legal and policy framework relating to land acquisition for socio-economic development. The paper finds that amidst the acquisition, there are existing challenges such as issues of compensation, increased instances of land grabbing and inadequate implementation of the existing legal and policy framework amongst others. Therefore, the research proposes that land acquisition should be done within the perspective of land conservation to avert the effects of environmental degradation for the enjoyment of present and future generations.*

## A) Introduction

In Uganda, land is vested within the citizenry as elucidated in its legal system. Nevertheless, everyone acknowledges that for there to be socio-economic development in Uganda, land has to be made available to the government to facilitate it in meeting the needs of the populace.<sup>1</sup> Therefore, this paper dwells into the legal issues, challenges and prospects associated with land acquisition for socio-economic development in Uganda. This entails looking at Uganda's current land tenure system; the concept of land acquisition; the law regulating the process of land acquisition; challenges associated with the process of land acquisition and lastly the prospects for facilitating development in Uganda.

## B) Uganda's Land tenure system

Uganda's land tenure system is documented in the 1995 Constitution as amended. The Constitution recognizes basically four (4) land tenure systems. These include Customary

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1 LEMU. The challenges of finding land for development <http://www.land-in-uganda-org/wp-content/uploads/2022/03/compulsory-acquisition-doc-1-Challenges-of-finding-land-for-development.pdf/> (accessed 20<sup>th</sup> February 2024).

tenure; freehold tenure; leasehold tenure; and *mailo tenure* which comprises public and private *mailo*.<sup>2</sup> Under freehold, land is held or owned by an individual registered on the certificate of title as the land owner for life.<sup>3</sup> The rights accrued to freehold land owners include using and developing their land, entering into land transactions, taking and using produce from the land, and giving it away to any person in a will upon his or her demise.<sup>4</sup>

Leasehold tenure refers to the holding of land for a given period of time from a specific date of commencement, on such terms and conditions as maybe agreed upon by the lessor and lessee.<sup>5</sup> The lessor as the land owner grants another person called the lessee to take exclusive possession of their land for a specific period of three years or more in exchange for rent.<sup>6</sup> Once a person is granted a lease, he or she must make use of the land for the specific purpose as agreed upon with the land owner in the lease agreement.<sup>7</sup> A lease is created by law whereby if the person granted a lease dies, his or her new successor is registered as the new owner; non-citizens or companies can only acquire land through leasehold and thus can't own *mailo*, customary or freehold land; and where a Ugandan holding land under freehold and *mailo* loses their citizenship, their land automatically changes to a lease of 99 years as a non-citizen can only own land under leasehold.<sup>8</sup> Much so, where government intends to compulsorily acquire land under leasehold, the law recognises both the rights of the lessor and lessee. Therefore, both parties in such insistence have to be compensated in the event that the land is acquired by government.<sup>9</sup>

With regards to Customary land tenure, land ownership is regulated by customary rules which are limited in their operation to a particular description or class of persons.<sup>10</sup> Basically, land is owned basing on customary rules created from norms and cultures of clans, families and communities.<sup>11</sup> Customary land connotes land owned by indigenous communities and managed in accordance with their customs.<sup>12</sup> In Uganda, customary land has existed since time immemorial and covers more than half of the country with most of it found in eastern, northern and some areas in western.<sup>13</sup> Much so, this customary land is privately owned mostly by individuals, families or clans and usually used for farming,

2 Article 237(3), 1995 Ugandan Constitution as amended; Section 2, Land (Amendment) Act 2010.

3 Uganda Consortium on Corporate Accountability. Handbook on land ownership, rights, interests and acquisition in Uganda. May 2018, p 16.

4 Ibid.

5 Section 1(s), Land (Amendment) Act 2010.

6 Supra Note 3.

7 Section 3(5), Land (Amendment) Act 2010.

8 Section 40, Land (Amendment) Act 2010.

9 Supra Note 3, p 17.

10 Section 1(L), Land (Amendment) Act 2010.

11 Justice Centres Uganda. Customary land tenure <http://www.justicecentres.go.ug/glossary/customary-land-tenure/> (accessed 10<sup>th</sup> March 2024).

12 Ibid.

13 Ibid.

grazing, hunting or burial amongst others.<sup>14</sup> One characteristic associated with this land system is that most owners don't own or have land titles though a Certificate of Customary Ownership can be issued and a freehold title given where such customary land is converted to freehold tenure.<sup>15</sup>

The Ugandan Land (Amendment) Act 2010 highlights the characteristics associated with this land system and these include its specific applicability to a certain area and description to a class of persons; subject to nondiscrimination and governed by rules generally accepted as binding and authoritative by the class of people it applied to; applicability of local customary regulation as subject to section 27;<sup>16</sup> applicability to any person(s) acquiring land in that area in accordance with those rules either through sale, gift or inheritance; applicability of local customary regulation and management to individual and household ownership, use and occupation of, and transactions in land; provision for communal ownership and use of land; parcels of land which may be recognized as subdivisions belonging to a person, a family or a traditional institution; and perpetual ownership.<sup>17</sup> Overall, it is one of the most complex land tenure systems without necessarily having a precise definition though over time culture is evolving and it is increasingly getting individualized.<sup>18</sup>

Lastly, is the mailo tenure land system which involves a land owner herein the "landlord", and recognized occupants on land called "tenants". These tenants are classified as either lawful and *bonafide* occupants.<sup>19</sup> This tenure system allows separate ownership rights and user rights over registered land.<sup>20</sup> This is also the most legislated form of land tenure in Uganda, having its origins from the 1900 Buganda Agreement.<sup>21</sup> It is widely practiced in central Uganda especially in Buganda region and some areas in western Uganda, in particular Kibale district.<sup>22</sup>

The 1900 Buganda Agreement dealt with several administrative matters including land matters where Clause 15 showed the allotment of land in Buganda by the Protectorate Government.<sup>23</sup> It assumed that the entire of Buganda region comprised of 19,600 square

14 Ibid.

15 Ibid.

16 Section 27 of the Land (Amendment) Act 2010 relates to rights of women, children and persons with a disability regarding customary land. It states that any decision taken with regards to customary land has to be made without denying women, children or persons with disabilities access to ownership, occupation or land usage, as this shall be declared null and void as it contravenes articles 33, 34 and 35 of the Constitution on ownership, occupation or use of any land.

17 Section 3. Land (Amendment) Act 2010.

18 LANDnet. Customary land registry resource book. 2021, p 20.

19 Justice Centres Uganda. Mailo land tenure <https://justicecentres.go.ug/glossary/mailo-land-tenure/> (accessed 15<sup>th</sup> March 2024).

20 Ibid.

21 LANDnet. A guide to peaceful co-existence on private mailo land. 28<sup>th</sup> February 2018, p III.

22 Ibid, p 7.

23 Ibid, p 9.

miles which were subsequently divided amongst the Uganda Administration, the *Kabaka (King of Buganda)*, chiefs, *Namasole* (formal title given to the King's mother in Buganda Kingdom), the Princes and Princesses, county chiefs, and other Royals, the Regents, Mbogo the head of the Mohammedan faith, three Missionary Societies, 1,000 chiefs and private landlords.<sup>24</sup>

Furthermore, under mailo system, registered land is held in perpetuity and as explained above, arises out of allotments from the 1900 Uganda Agreement and is subject to statutory qualifications.<sup>25</sup> Despite the existence of a registered owner, much of land is comprised in peasant tenancy (*Bibanja* holders) where the tenants don't hold ownership rights.<sup>26</sup> Their stay on land is legally protected though they face some restrictions on what to make use on the land.<sup>27</sup> For insistence, where the *Bibanja* owners wish to sell of their interest, first priority should be given to the landlord/registered owner of the land.<sup>28</sup> This further implies that landlords and their descendants retain ownership rights as those entailed in freehold though they must respect the rights of tenants who are either lawful or *bonafide* occupants and their descendants.<sup>29</sup> Section 4 of the Land (Amendment) Act reinforces that the mailo land owner holds land in perpetuity and has all the powers of a freeholder but such land is also subject to customary and statutory rights of lawful and *bonafide* occupants.<sup>30</sup>

Mailo tenure is characterized by a number of features such as the land owner holding the land forever or for unlimited time; the land owner is free to pass on title to other parties; a mailo owner possess a Certificate of Title as proof of ownership while a lawful and bonafide occupant possesses Certificate of Occupancy, social occupancy by oral evidence and receipt of payment for ground rent<sup>31</sup>; lawful and *bonafide* occupants have a right to make any legal transaction on the land though they must obtain the consent of the owner/landlord; and upon eviction of the lawful or bonafide occupant, the owner/landlord

24 Ibid.

25 Section 1(f), Land (Amendment) Act 2010.

26 Supra Note 18.

27 Ibid.

28 Ibid.

29 Ibid.

30 Section 29, Land (Amendment) Act 2010 defines lawful and bonafide occupants. A lawful occupant is a person occupying land by virtue of the repealed Busuulu and Envijjo law of 1928, Toro Landlord and Tenant Law of 1937, and Ankole Landlord and Tenant Law of 1937; one who entered the land with the consent of the registered owner, and includes a purchaser; or a customary tenant whose tenancy was disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate. A bonafide occupant refers to a person who before coming into force of the 1995 Constitution had occupied, utilized and developed any land unchallenged by the registered owner for a period of 12 years or more; or who had been settled on land by government or agent of government including a public authority.

31 Ground rent is a nominal payment by the tenant to the landlord and is supposed to be set by either the District Land Board or Minister for Lands.

has to give the latter the first option to buy and also requires the tenants before assigning their tenancy to give the owner/landlord the first option to buy.<sup>32</sup>

Therefore, these different land tenure systems in Uganda clearly indicate that most of the land is owned by the citizens. The tenure system impacts on land usage and development by both the citizens and government. More so, land in Uganda is of great cultural significance to individuals as it is sacred and its associated with community or family continuity. As such, the government has to take into account the interests and rights of the citizens when it desires to acquire land for public interest so as to foster socio-economic development.

### **C) Land Acquisition in Uganda**

Land acquisition is also known as compulsory land acquisition, eminent domain, expropriation or takings and compulsory purchase.<sup>33</sup> It refers to the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant.<sup>34</sup> In Uganda, it is the process by which the government acquires land from private persons in the interest of the public.<sup>35</sup> For government to compulsorily acquire private land, it must prove that its doing so on grounds of public interest. This arises where the interest is necessary for public use; security purposes; public safety; public order; public morality; and public health.<sup>36</sup> In **Bhatt and Another v Habib Rajani**,<sup>37</sup> public interest was defined to mean the same purpose or objective in which the general interest of the community as opposed to the popular interest of individuals is directly and virtually concerned. Therefore, land acquisition must be in general interest of a community, and not particular individuals.<sup>38</sup>

Additionally, government has to take into consideration certain principles when compulsorily acquiring this land. These include the principle of equivalence, severance and injurious affection. The principle of equivalence requires compensation to be fair, adequate and timely; and should be paid before possession is effected.<sup>39</sup> Secondly, the principle of severance occurs when government exercises its power to take over privately owned

32 Supra Note 17.

33 Ministry of Lands, Housing and Urban Development. Understanding land acquisition challenges that have necessitated the Constitutional (Amendment) Bill, 2017, July 2017.

34 Ibid.

35 Sam Mayanja. Minister explains status of law on compulsory land acquisition. The Nile Post. Monday 22 Nov, 2021 <https://nilepost.co.ug/opinions/121583/minister-explains-status-of-law-on-compulsory-land-acquisition/> (accessed 20<sup>th</sup> April 2024).

36 Article 26(2)(a). The 1995 Constitution of the Republic of Uganda 1995 as amended.

37 [1958] EA.

38 Uganda Consortium on Corporate Accountability. Handbook on land ownership, rights, interests and acquisition in Uganda. May 2018. p 40.

39 Ibid, p 41.

property for public use. In instances where the value of the remaining property depreciates because of the intended use by the government of the land taken, the owner is entitled to compensation called severance damage.<sup>40</sup> Lastly, the principle of injurious affection applies where a land owner suffers injury to the remaining land when part of his or her land is acquired.<sup>41</sup> However, this damage must not be physical and doesn't include any sentimental value such as direct, physical interference or complete obstruction, and loss of view or privacy.<sup>42</sup>

Before compensation, valuation has to be undertaken by the Chief Government Valuer. Valuation is the process of determining the value of land and structures on it.<sup>43</sup> This is a key process during compulsory acquisition to determine the amount of compensation to be paid to the land owner.<sup>44</sup> The Chief Government Valuer (herein "Assessment Officer") is tasked with standardizing proposed compensation rates for approval by the district land boards.<sup>45</sup> He or she has to provide timely and reliable real property valuations to government.<sup>46</sup> This valuation has to be done in accordance with internationally recognized valuation standards.<sup>47</sup> These standards which are clearly espoused in the 1995 Ugandan Constitution are shaped by international finance institutions standards such as the World Bank Environmental and Social Standard 5(2016) and the International Finance Corporation Performance Standard 5(2012).<sup>48</sup>

The standards require for compensation to be performed at replacement cost; defined as the fair market value of the developments without taking into account depreciation plus all the transaction costs translating into equitable value.<sup>49</sup> When valuing land, it is important to value land on the basis of its open market value without any increase or decrease attributed to the scheme of development which underlies the compulsory acquisition.<sup>50</sup>

One other concept that is entailed in compulsory acquisition of land is compensation. Compensation is money paid to a person with an interest in land to make up for the loss suffered when the government takes their land through compulsory acquisition.<sup>51</sup> It is based on the principle of fairness and adequacy whereby the project affected person(s) shouldn't

40 Ibid.

41 Ibid.

42 Ibid.

43 *Supra* Note 34, p 13.

44 Ibid.

45 Ministry of Lands, Housing and Urban Development. Guidelines for Compensation Assessment under Land Acquisition (GCALA), June 2017.

46 Ibid, Guideline 3(b).

47 Ibid, Guideline 4(4.2) International Valuation Standards under Compulsory Acquisition.

48 Ibid.

49 Ibid.

50 Guideline 6(6.2): Valuation guidelines for Compensation Assessment under Compulsory Land Acquisition.

51 Ibid.

be worse off in financial terms after the acquisition than they were before.<sup>52</sup> This principle is also vividly emphasized by courts of law to persons whose land is compulsorily acquired. However, much as government tries to compensate victims, it still faces rejections from land owners who object to the compensation citing its inadequacy and unfairness.

#### **D) Regulatory framework**

When examining Uganda's legal framework on compulsory land ownership, reference is made to the land/property law provided for under the 1995 Constitution (as amended) taking into account the human rights law guaranteeing the right to own property; Land Act as amended; Land Acquisition Act; National Land Policy; and existing administrative law with the potential of being invoked depending on the subject matter of contention.<sup>53</sup>

First, the law on compulsory acquisition of land in Uganda is guided by international instruments to which the latter is a signatory too. Article 17 of the Universal Declaration of Human Rights (UDHR) 1948 provides that everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his or her property.<sup>54</sup> The International Covenant on Economic, Social and Cultural Rights (ICESR) under General Comment No.7 on Forced evictions, the UN Committee calls upon member states to ensure that all persons enjoy a degree of security of tenure thus guaranteeing the legal protection against forced evictions, harassment and other incidental threats.<sup>55</sup>

##### *I. National legal framework*

###### 1. The 1995 Constitution of the Republic of Uganda as amended

The Constitution of the Republic of Uganda provides for the fundamental rights of persons which are inherent and not granted by the state and among these is the right to own property. Land in Uganda belongs to the citizenry as elucidated under Article 237(1). This right is further buttressed under Article 26(1) where every person has a right to own property either individually or in association with others. However, this right isn't absolute as it is subject to limitation within the meaning of Article 43(1) of the Constitution. It states that in the enjoyment of the rights and freedoms, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.<sup>56</sup> Therefore much as

52 Ibid.

53 Supra Note 31.

54 United Nations <https://www.un.org/en/about-us/universal-declaration-of-human-rights/> (accessed 20<sup>th</sup> March 2024).

55 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions, E/1998/22, 20 May 1997 <https://www.refworld.org/legal/general/cescr/1997/en/53063/> (accessed 20<sup>th</sup> March 2024).

56 Laws of Uganda.

land belongs to the citizenry, there are exceptions when government can acquire privately owned land from the citizens for public interest

Article 237(2)(a) provides that notwithstanding clause 1, the government or a local government may subject to Article 26, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament. However, the right to compulsorily acquire privately owned land or property as enshrined in the Constitution<sup>57</sup> is subject to limitations which grant government or a local authority to acquire privately owned property. Some of these limitations include the taking of possession or acquisition for public use, in the interest of defense, public safety, and public order, public morality and public health; the existence of a law that empowers compulsory acquisition of land taking into consideration that there is prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property; and a person having a right or interest in the land has access to a court of law.<sup>58</sup>

The above provisions have also been fortified by the courts of law. The Supreme Court with emphasis in **Amooti Godfrey Nyakaana v. NEMA and Others**,<sup>59</sup> held that “an analysis of the provisions of the Constitution (with specific reference to Articles 26, 237, 242, 245) points to the principle that although one has a right to own land through one of the systems of land tenure listed in the Constitution, there may be situations which necessitate the government—either to take over that land or to regulate its use for the common good of all people of Uganda.”

More so, the decision in the case of **Uganda National Roads Authority v Irumba Asumai and Peter Magelah**,<sup>60</sup> prompted the amendment of Article 26(2) of the Constitution to address issues with regards to government compulsory take over land pending the resolution on compensation value as some land owners rejected the award and others accepted. Government argued that, to avoid delays of the World Bank loan with its conditionality, it necessitated it to take possession of the land. That, government has further suffered unnecessary costs being charged by contractors for the time their equipment remains idle amongst others.

It is against this background that an amendment was proposed with the aim of; enabling government or local governments deposit the compensation award with court for land owners who object to the value awarded by the Chief Government Valuer for the property declared for compulsory acquisition; enabling government or local governments to take over possession of the land upon deposit the value with court and continue with work; enabling the property owner have access to the deposited compensated value awarded at any time during the dispute resolution process; and empowering Parliament to prescribe,

57 Articles 26(2) and 237(2)(a), Laws of Uganda.

58 Article 26(2), Laws of Uganda.

59 [2015] UGSC 14 (20 August 2015).

60 Supreme Court Constitutional Appeal No. 2 of 2014.

by law the time within which disputes arise out of compensation shall be resolved.<sup>61</sup> This amendment intended to provide a mechanism for enabling government expeditiously access land for developing infrastructure and investment projects; in as well as availing legal redress with regards to the compensation amount awarded to property owners who are dissatisfied with the value.<sup>62</sup>

Unfortunately, this Bill was withdrawn in September 2018 on grounds that the government needed to exhaustively consult to be in position to proceed with debating it.<sup>63</sup> To date, there is no feedback with regards to the same and the current provision under Article 26 still stands and remains unchanged.

Nevertheless, courts have gone ahead to allow government to deposit compensations awards despite their being no legal basis for such mechanism pending the constitutional amendment as discussed above. In **Uganda National Roads Authority v. Prof. Ndungutse David and Bararemwa Edward**,<sup>64</sup> court allowed the applicant to deposit the compensation award in court so as to allow government proceed with the construction of Buhimba-Kakumiro road construction works on the acquired land as the road is for the benefit of the people of Kabale.

## 2. The Land Act and its subsequent amendments of 2007 and 2010

Under the Land Act, section 42 of the Land Act grants the government or a local government the power to acquire land for public interest in accordance with articles 26 and 237(2) of the Constitution.

## 3. The Land Acquisition Act Cap.226

The Act encompasses the procedure through which the minister may acquire privately owned property for public use. The Act provides for the procedure to be followed before the compulsory acquisition of land. First, the Minister may enter or authorize any person to enter the land in order to examine and ascertain the suitability of the land for a public purpose. He /she can survey the land, dig into the subsoil and collect any samples and do any other thing necessary for ascertaining its suitability. Upon this, the government is

61 Ministry of Lands, Housing and Urban Development. Understanding land acquisition challenges that have necessitated the Constitutional (Amendment) Bill, 2017. July 2017

62 Ibid; and Uganda Gazette, No. 33, Volume CX, 8<sup>th</sup> June, 2017, Bill No.13 Constitution (Amendment) Bill 2017.

63 Parliament of the Republic of Uganda. Government withdraws Constitution (Amendment) Bill 2017. 05<sup>th</sup> September 2018 <http://www.parliament.go.ug/news/2182/government-withdraws-constitution-amendment-bill-2017/> (accessed 05<sup>th</sup> April 2024).

64 Misc. Cause No. 0008 of 2021 and Misc. Cause No. 0008 of 2021 (Consolidated ruling).

obligated to pay compensation to any person who suffers damages as a result of entering and examining the land.<sup>65</sup>

Where the minister satisfies that the land is needed for public purpose, he or she may by statutory instrument declare that the land is required by the government for a public purpose.<sup>66</sup> On publication of a declaration under section 3, the assessment officer shall cause the land to be marked out and measure a plan of the land to be made where a plan of the land has not already been made.<sup>67</sup>

As soon as may be after the publication of the declaration in respect of any land, the assessment officer causes a notice to be published in the gazette and exhibited at a convenient place or near the land. It should clearly state that government intends to take possession of the land. The notice of not less than 15 days is given inviting all people having interest in the land by the assessment officer on a day, time and place specified in order to determine the nature of their claims, the amount of compensation to be paid and any objections they may have to the plan for land usage.<sup>68</sup> Where there is any objection or claim, the assessment officer on the day specified hears the claims and makes an inquiry into such claims and objections made in respect of the land.<sup>69</sup>

An award is made by him or her specifying the true area of the land, the compensation to be allowed for the land, or the apportionment of the compensation to be paid to each person having an interest in the land.<sup>70</sup> The assessment officer has to serve a copy of the award to the Minister, those persons or their representatives, or those who were absent during the process of making the award whilst all having an interest in the land indicating the compensation to be paid in accordance to the award.<sup>71</sup> The compensation to be paid depends on the current market price of the land in the area as prepared annually by the District Land Board.<sup>72</sup>

Where a person is aggrieved by the award of the assessment officer, he or she may appeal to the District Land Tribunal or the High court.<sup>73</sup> Where after the prescribed time, there is no appeal made to the Courts of law, government will proceed to pay the compensation award for the value of the land.<sup>74</sup> After government ascertaining that all persons having an interest in the land have been fully and adequately compensated that it then takes

65 Section 2, Power to enter on and examine land.

66 Section 3, Declaration that land is needed for public purpose.

67 Section 4, Land to be marked out.

68 Section 5, Notice to persons having an interest.

69 Ibid.

70 Section 6(1), Inquiry and award.

71 Ibid, Section 6(4).

72 Land (Amendment) Act 2010, Section 59(1)(a), (e) and (f), Functions of a board.

73 Ibid, Section 76(1) (b) and (c), Jurisdiction of district land tribunals.

74 Section 6(4)(b), Inquiry and award.

possession of the land as provided under Article 26(2)(b)(i) of the Constitution.<sup>75</sup> The land is then taken over by the assessment officer upon making his or her award and shall by operation of law be vested in Uganda Land Commission free from all encumbrances as per section 7 of the Act.

Upon taking possession, the assessment officer forwards to the registrar of titles a copy of the declaration relating to the land, endorsed with a certificate signed by the assessment officer who states that the assessment officer has taken over possession of the land and specifies the date on which he did so.<sup>76</sup> On receipt of the endorsed declaration, the registrar of titles may take such steps to give effect in the register book to the operation of the possession specified in the declaration.<sup>77</sup>

However, it should be noted that section 7 of the Land Acquisition Act allows the assessment officer to take possession of land without prior compensation if the Minister certifies that it is in the public interest for him or her to do so. This provision became contentious and resulted into a Constitutional ruling by the Constitutional Court in **Uganda National Roads Authority v. Irumba Asumani and Peter Magelah**;<sup>78</sup> where some 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 Court found the Land Acquisition Act to be 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, with regards to compensation, Article 26(2) of the Constitution requires the enabling law to provide for prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property by the Government.<sup>79</sup> Unfortunately, the Land Acquisition Act does not provide for payment of ‘**fair and adequate**’ compensation as stipulated in the Constitution.<sup>80</sup> The Act only makes reference to compensation and does not clearly stipulate how such compensation should be assessed.

This dilemma created by this provision was decried by the Chief Government Valuer way back in 1970.<sup>81</sup> The Land Act of 1998 attempted to remove the lacuna by providing under section 41(6) that “Compensation must be paid to the land owner at a fair market

75 Supra Note 31.

76 Section 7(3).

77 Section 7(4).

78 Supra Note 56.

79 Supra Note 31.

80 Ibid.

81 Ibid.

valuation assessed on a willing seller willing buyer basis.” In effect, the Land Acquisition Act only provides for the procedure for the acquisition of land as explained above and consequently relies on the Land Act and the general valuation practices for land and developments to determine compensation awards.<sup>82</sup> The Land Acquisition Act only makes provision for the appointment of an “assessment officer” tasked to carry out the valuation assessment. Specifically, section 6(1) of the Act provides that the assessing officer shall make an award of compensation in which his or her opinion should be allowed.

As already noted, there is no legal regime for assessing fair and adequate compensation. It is against this background that the Ministry of Lands, Housing and Urban Development came up with Guidelines for compensation assessment in line with the National Land Policy 2013.<sup>83</sup> These have been in existence since June 2017 and are meant to harmonize and improve the overall practice of valuation assessment to achieve fair and adequate compensation to project affected persons.<sup>84</sup> The Guidelines aim to provide a standard acceptable professional approach which must be applied across government projects and any other compensation related transactions country wide.<sup>85</sup> The Guidelines provide for ten key principles are to be undertaken by the Chief Government Valuer in assessing and determining the compensation to any affected person.<sup>86</sup>

The above fundamental legal regime is applied in relation to other existing laws which play a vital role in facilitating project development for socio-economic development such as the National Environment Act, Cap 153; the Environmental Impact Assessment Regulations, S.I.No.13/1998; the Investment Code Act, Cap 92; the Petroleum (Exploration, Development and Production) Act 2013; the Road Act 1964; the Access to Roads Act, Cap 350; the Water Act, Cap 152; the Electricity Act, 199; the Surveys Act, Cap 232; the National Forestry and Tree Planting Act No.8 of 2003; and the Physical Planning Act No.8 of 2010.

## E) Challenges

Some of the challenges associated with land acquisition in Uganda include;

Compensation and systematic fraud in compensation. This is either inadequate, delayed or unjustifiable resulting into rejection of the compensation value. With regards to payment of compensation value, the law clearly states that a land owner should be adequately and fairly be paid for his or her interest in land which is to be taken over by government.

82 Ibid.

83 Supra Note 31, and the National Land Policy 2013 was formulated to provide a framework for articulating the role of land in national development, land ownership, distribution, utilization, alienability, management and control of land.

84 Ministry of Lands, Housing and Urban Development. Guidelines for Compensation Assessment under Land Acquisition (GCALA).

85 Ibid, Guideline 2: Objectives.

86 Ibid, Guideline 5: Key principles for compensation assessment under compulsory land acquisition.

There are prevalent instances of undervaluation of land resulting into unfair and unjust compensation. This is aggravated by the lack of knowledge regarding the law on land acquisition as well as the rights of accrued thereto especially to the affected parties.

Gross corruption within land administration which is greatly attributed to the economic and social value attached to land.<sup>87</sup> This is much worse in developing countries especially due to significant large number of small-scale landholders whose livelihoods solely depends on access to land.<sup>88</sup> Other instances are witnessed in the double allocation of the same parcel of land by the land registration offices due to the acceptance of fake titles. This complicates the process of compensation especially in determining the rightful owner in case government needs land for development.

Land scarcity which can be attributed to the growing population resulting into increased pressure on land thus leading to the encroachment on water catchment areas and forest reserves. This also has resulted into competing land interests between individuals, communities and government at large.

The complex existing land tenure system where land is solely vested in the citizens, thus resulting into existence of competing land interests. Automatically, ownership disputes have become prevalent today thus leading to increased land disputes due to the scramble of land for development by both government and the citizens. These disputes may arise due to the existence of the discovery of natural resources such as minerals, oil amongst others.

Increased need for land for development against trying to conserve and protect the environment from the effects of climate change. This is further exacerbated by the issuance of land titles in forest reserves, wetlands and water catchment areas especially to unscrupulous persons.

Poor communication amongst the different stakeholders involved in the process of acquiring land. This is coupled with loss of land titles and other documents of ownership by agencies acquiring land, together with instances of undue delay in making transfers.<sup>89</sup>

## **F) Prospects**

As a way forward, the paper proposes;

Government through the Ministry of Lands, Housing and Urban Development, Uganda Land Commission and other existing MDS should endeavor to demarcate all public land and have it tilted to avoid the over increasing land wrangles.

Increased public participation in land acquisition through sensitizing the masses on the concept of public necessity.

87 Nieves Zuniga. Land and corruption. 31 March 2023.

88 Ibid.

89 Jude Byamukama. Presentation on Compulsory land acquisition, valuation and compensation in Uganda: Principles and challenges. Supporting Inclusive Resource Development (SIRD) East Africa Training Program, 2019

Increased sensitization of the population about the concept of public necessity. This is with regards to the importance of land acquisition for governmental project implementation and the overall socio-economic development.

Wider sensitization of project affected persons on their rights during the process of government acquisition of land.

Government should create a clear system for evaluating post-acquisition so as to expose any existing loopholes and deal with them rather than waiting for litigation to address any disagreements; which in reality is a very costly, expensive and long-term process.

### **G) Conclusion**

Land acquisition in Uganda has substantially increased over the years largely due to intensified government and private investments for infrastructural development projects and agriculture. These acquisitions are governed by the current existing legal regime to ensure adequacy and fairness in compensating project affected persons whose land has been taken over by government. Needless to say, these developments have to be done with respect to conservation and protection of the environment for future generations and averting the impacts of climate change. That notwithstanding, there exists challenges within the system such as the existence of a complex land tenure system, systematic fraud in compensation, inadequate or unfair compensation, gross corruption, land scarcity, increased population, and poor communication between the different stakeholders involved in the land acquisition process amongst others. As a way forward, government needs to demarcate and title all public land to avoid the instances of increased land conflicts, encourage public participation as well as increase public sensitization on their rights and public necessity for land acquisition.