



LASPNET
LEGAL AID SERVICE PROVIDERS' NETWORK



**SITUATIONAL
ANALYSIS ON
COMPULSORY
LAND ACQUISITION
MANAGEMENT
IN UGANDA**

Supported by



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COMPULSORY LAND ACQUISITION
MANAGEMENT IN UGANDA**

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ACRONYMS

ALC	Area Land Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CCO	Certificate of Customary Ownership
CGV	Chief Government Valuer
CLA	Compulsory Land Acquisition
DLB	District Land Board
DLT	District Land Tribunal
GCALA	Guidelines for Compensation Assessment under Land Acquisition
MDAs	Ministries Departments Agencies
PAPs	Project Affected Persons
UDHR	Universal Declaration of Human Rights
RAP	Resettlement Action Plan

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FOREWORD

Currently in Uganda, there is no contention of the fact that the right to property, in particular land ownership is one of the most threatened constitutionally guaranteed rights. The rush to own land either genuinely out of hard work or as a money laundering venture for those engaged in grand corruption in the country has reached heightened levels. Indeed, massive evictions perpetrated by individual land grabbers are the order of the day. The challenges are enormous especially for poor and/or vulnerable land owners of any tenure. Despite the various institutions both formal and informal that have been established to deal with land and property related wrangles the situation seems to be getting out of hand with increasing cases of unlawful evictions, land grabbing, rendering the poor and vulnerable landless. These notions surrounding land wrangles at the micro-level, between individuals are well documented in the media.

Of critical importance as well but somewhat missing in public discourse, and from an evidence-based point of view is the increasing demand by the government of Uganda to compulsorily acquire land from its citizens as it seeks to engineer economic development. The report on the situation analysis in compulsory land acquisition management in Uganda provides a valuable window, into the modalities governing compulsory land acquisition, which as it stands now, if not reformed fundamentally, is one of the rising threats to enjoyment of the guaranteed right to property ownership in Uganda. The report clearly, does not purport to present everything there is to know about compulsory land acquisition in Uganda, but triggers and rejuvenates a discourse on what a reformed legislative framework governing compulsory land acquisition should entail especially in relation to vulnerable groups such as women and customary land owners. Equipped with evidence from past literature and field incursions, the report puts to test the attempted government in 2017 to amend Article 26 of the Constitution that guarantees the right to property for compulsory acquisition and possession of land even before adequate and prior compensation to the land owner.

In this new age of the land rush, African countries positioning themselves as hubs of investment, conducive for industrialization to the foreign world, this report reminds of the need to strengthen procedural guarantees of rights protection in processes of compulsory land acquisition. It is critical that the right questions are asked today and possible answers posed for discourse to further buttress land rights protection even for the future. It is hoped that the findings of the report can be used by various stakeholders, including land actors to inform, inspire and catalyze advocacy initiatives towards both institutional and legislative reforms which are pillars of a fair land governance system that every citizen of Uganda is owed.



Sandra Oryema

Chairperson, Board of Directors LASPNET

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The Legal Service Provider’s Network, a Network of 54 Non-Government Organization mandated to coordinate and build capacity of its members to deliver quality and affordable legal services to the poor and vulnerable. The Vision of the Network is to see a “free and Justice society.” This mandate is executed through targeting three critical aspects of Networking and Coordination, Lobbying and Advocacy; Research and Knowledge to support evidence-based gathering to improve Access to Justice. In line with this, LASPNET embarked on a research to interrogate and analyse the process of compulsory land acquisition management in Uganda . The study aimed at analyzing the current situation regarding the operationalization of the government policy, legal and institutional framework on land governance in Uganda and document its impact on selected government infrastructural projects since 2008-2018.

This research is timely as it comes at a time when we are faced with rampant land disputes in Uganda. The demand for massive investment and infrastructure has increased land disputes which have in the recent past been a source of conflict and insecurity with dire human rights consequences especially for the poor and vulnerable communities throughout the country. This situation is against existence of policy, legal and institutional mechanisms aimed at ensuring proper land administration in Uganda. We remain hopeful that this evidence- based research will provide a basis upon which better policies and laws will be enacted bearing in mind the fundamental right to individual ownership of property.

In that regard, we extend our sincere appreciation to our donors VOICE who provide financial support which made the research possible and to OXFAM for the technical guidance.

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Sylvia Namubiru Mukasa
Executive Director, LASPNET

EXECUTIVE SUMMARY

The study focused on mainly three objectives; An Assessment of the Available and Operational Legal and Policy Framework Governing Compulsory Land Acquisition and Attendant Processes in Uganda; Inquire into the availability and effectiveness of dispute resolution mechanisms on compulsory land acquisition disputes/processes; Through analysis of select documented contentious compulsory land acquisitions, inquire into the validity of government stand/assertion that projected affected persons' rejection of compensation fees is the main cause of the delay in the implementation of government infrastructural development programmes; and assessing how, by way of recommendations, compulsory land acquisition governance framework can be improved to balance both property rights of citizens and government infrastructural development agenda (public interest). The study was informed by both desktop and field work incursions in affected areas of the country including but not limited to the Albertine region, Wakiso and Kampala. Some of the findings include the following classified into the objectives detailing both the positive and negative aspects;

1. AN ASSESSMENT OF THE AVAILABLE AND OPERATIONAL LEGAL AND POLICY FRAMEWORK GOVERNING COMPULSORY LAND ACQUISITION AND ATTENDANT PROCESSES IN UGANDA

1.1 Progressive Aspects of the Legal and Policy Framework

A. Three Tier Law on Compulsory Land Acquisition

The legal framework governing compulsory land acquisition in Uganda is part land/property law governed under the National Land Policy, Land Act-1998 as amended, human rights law-guaranteeing the right to property under Article 26 of the Constitution 1995 as amended and administrative law on the other side each with a potential of being invoked depending on the subject matter of contention at hand.

B. Commitment to regional (AU) and international UN human (property) rights instruments through ratification and signing

These instruments protect the right to property and the attendant bundle of rights and by extension bar compulsory acquisition of land without prior and adequate compensation. Some of them guarantee the protection of proprietary rights of vulnerable groups such as indigenous people, women, persons living with disabilities and children. These include; Universal Declaration of Human Rights (UDHR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights among others. If implemented either through domestication omnibus or inculcation into Uganda's legal framework, as has been in some cases, the above regional and international standards would fundamentally alter, positively, the patterns and trends that characterize land governance generally and compulsory land acquisition in contemporary Uganda respectively.

C. Very Progressive Constitutional Guarantees on Right to Property

Uganda boasts of strong provisions that guarantee the right to own property by every citizen either individually or collectively, protecting against arbitrary compulsory deprivation of land or any interest in land except after prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property even if it's for public use, public safety, public health among others. (Article 26 and Article 273 of the 1995 Constitution as amended).

D. Subsidiary Laws that guarantee proprietary rights of Vulnerable Groups in land use, administration and management including during compulsory land acquisition processes

- *The Land Act 1998 (as amended)*; governs the administration and management of land use in Uganda and also provides for compulsory land acquisition by both the central government and local government as provided for in Article 26 of the Constitution. But more importantly, the Land Act reinforces the protection offered to vulnerable groups within the community such as *women (Section 39 (1)-(9))*, *children and persons living with disabilities (Section 28)* on one side and what it calls '*bona fide and lawful occupants*' on land. It should be noted that this recognition and protection of the above two groups gives them a standing, a locus as persons with an identifiable claim within a particular piece of land under compulsory acquisition. Consequently, they are entitled to compensation, to taking part in the compulsory acquisition processes as persons/communities with rights in the land, a right they would not enjoy if the law as silent on their history of how they came into settlement on such lands.
- *The Land Act 1998 (as amended) strengthening the protection of customary tenure land owners-Certificate of Customary Ownership (CCO)*; The CCO buttresses the locus of the customary land owners as legal claimants in situations of land dispute including compulsory land acquisition.
- *Land Acquisition Act Chapter 226 of 1965*; The Act addresses the procedural stages that must be undertaken in the process of compulsorily appropriating land. Of critical importance is the fact that the Act gives the line Minister the power to be *exercised by way of statutory instrument*, to make regulations for the 'assessment and payment of compensation under this Act and generally for giving full effect to the provisions and purposes of the Act.

E. Progressive National Land Policy-2013 prescribing solutions for rectifying loopholes in the compulsory land acquisition legal framework

- Interestingly, the Policy *recognizes and cautions* that 'the central government has not in the past exercised this power (of compulsory acquisition of land) responsibly and in the public interest. It re-emphasizes that the 'State as a trustee for the Citizens of Uganda shall exercise the power of compulsory acquisition responsibly and in public interest.'

- Further progressively, the *policy calls for amendment of the Land Act-1998 and Land Acquisition-1965* to ensure responsible compulsory acquisition of land by the government. The amendments proposed are to;

(i) Prescribe a set of regulations and guidelines outlining the roles and responsibilities of the central government, local governments and different state organs and agencies in the exercise of this power;

(ii) Prescribe guidelines and procedures for payment of prompt, adequate and fair compensation irrespective of tenure category for local governments to exercise this power.'

F. Enactment of the Guidelines for Compensation Assessment under Land Acquisition (GCALA)-2017

- Progressively again, the aforementioned Guidelines have been in existence since June, 2017 and are meant to enhance the harmonization and improvement of the 'overall practice of valuation assessment to achieve fair and adequate compensation to project affected persons.' The Guidelines list 10 principles, informed by global standards and best practices upon which the CGV can base on in undertaking the valuation that eventually leads to determination of the compensation due to an affected person.
- The Guidelines also provide for the *five conventional valuation methods that are used or should be used in Uganda in property compensation*. These include the comparison method/Market or Direct Sales Comparison method; the Contractor's method/Cost or Replacement method; investment method (or income method derived from the physical property); Profit method (or capitalization approach) and lastly the Residual method.

CONCLUSIVELY,

If the above progressive steps in legislative strengthening and provision of safeguards in compulsory acquisition of land were to be implemented, they would go a long way in mitigating the potential disputes that arise from compulsory land acquisition processes. Even where such great strides exist, they suffer non-implementation due to among other factors political interference and corruption at various stages of the compulsory land acquisition chain rendering them stale and unhelpful to the aggrieved PAPs.

I.2 Legal and Policy Framework Challenges

A. Lack of a comprehensive policy on valuation and compensation in Compulsory Land Acquisition;

Uganda does not have a clear policy on valuation and compensation to govern compulsory acquisition. Until June, 2017 when the Ministry of Lands and Urban Development launched the GCALA, the Chief Government Valuer was using scattered pieces of provisions in different laws to undertake valuation and compensation advisory ser-

vices to the government. With the advent of the aforementioned guidelines, it remains to be seen if there will be transparency, fairness, clear and consistent standards in the valuation and compensation processes during compulsory land acquisition.

B. The controversial 'cut-off-date' phenomenon and its impact on the livelihood of PAPs

- Throughout all compulsory land acquisitions regulating framework, findings reveal the ever present contentious notion of 'Cut-Off-Date' both in project resettlement frameworks and in the Guidelines for Compensation Assessment under Land Acquisition (GCALA) defined as the 'designated date of completion of the census and developments inventory of the persons affected by the project.' Whereas it may be a best practice elsewhere, its application in Uganda has caused untold suffering to PAPs.
- Under this *cut-off-date*, the PAPs are effectively barred from further developments on the land including agricultural production especially if the crops grown shall take more than 12 months to maturity. This cut-off-date agenda is based on the presumption that the PAPs shall be compensated (those opting for cash payment) or resettled within 12 months from the date of valuation. Evidence from the field paints a different painful reality of suffering, and desperation.

C. Lack of time limits in approval of valuation reports

In practice, there is no stipulated time in law nor practice for approval of Valuation Reports and indeed compensation rates compiled by the District Land Board (DLB) by Chief Government Valuer hence explaining the delayed processes of compensation.

D. Archaic Land Acquisition Act-1965 not in tandem with the contemporary land governance requirements;

- The Act gives no room whatsoever for any person in the first place contest the process of acquisition and the justification of the said or proposed government project.
- Secondly, the law is not certain in requiring the Minister to be unambiguous on the exact amount of land required for the particular project hence making it impossible to genuinely scrutinize if the acquisition is justifiable as of public interest. Additionally, assessing the impact of the proposed appropriation on the affected persons/communities cannot be conducted transparently if the extent of the land required is not definitively known.
- Thirdly and more alarming, this approximation model has in the past been abused by the government technocrats who inflate the number of acreages needed for a particular project leading to an unnecessary increment of the costs involved.
- Fourthly, this estimation is even more problematic in relation to customary tenure land holding where there is an array of varied rights on the same piece of land, which is undocumented with its vastness only known to the owners and the local cultural/traditional institutions;

- Land Acquisition Act-1965 only provides for the procedure supposed to be followed by the government in land acquisition. The law is by design, silent on valuation and compensation related aspects and how they are to be carried.

E. Ambiguity in terminologies in the laws and thus susceptible to abuse

The 1965 Land Acquisition Act's long title alludes to the compulsory appropriation being for 'public purposes.' These same terms and others that carry similar meaning are also used in Article 26 (public use) and 237 (public interest) of the Constitution of Uganda all in reference to the justification for compulsory acquisition. The law and the Constitution are however silent on the exact meaning of the term which is the basis of the acquisition which makes it ambiguous and susceptible to abuse due to multiple interpretations.

F. Archaic Land Acquisition Act 1965

Uganda's domestic legal framework as it stands now is fair in as far as the Constitution and other subsidiary legislations such as the Water Act e.t.c. guaranteeing the right to property, providing for procedural rights such as right to be heard, to appeal and prompt, prior and fair compensation before state compulsorily taking possession of one's property. The fairly progressive general land administration, management and adjudication framework that houses compulsory land acquisition mentioned earlier is undermined by the archaic Land Acquisition Act 1965 which is not in tandem with the contemporary developments on land acquisition. The processes laid down in the land acquisition Act (in particular sections 2, 6 and 14) have been criticized as redundant, outdated and lengthy yet the same procedures could be reduced further without necessarily putting the rights of PAPs in harm's way.

2.0 INQUIRE INTO THE AVAILABILITY AND EFFECTIVENESS OF DISPUTE RESOLUTION MECHANISMS ON COMPULSORY LAND ACQUISITION DISPUTES/PROCESSES;

The study's exploration of the current institutional set up governing land justice and more so, compulsory acquisition in Uganda today reveals more appalling loopholes that continue to be manipulated to defeat rule of law as manifest in the following summary of findings on the specific institutions.

2.1 Progressive Aspects of the Institutional Framework

A. Progressive role of the District Land Boards in Compulsory land acquisition processes

The Land Act-1998 as amended establishes the District Land Boards which are body corporates with rights to sue and be sued. One of the many functions of the DLBs, central to compulsory land acquisition, is their power granted by the Act to '*compile and maintain a list of rates of compensation payable* in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed; and to also review

every year the list of rates of compensation referred to above.’ Herein within the law lies a great opportunity for the DLBs to mitigate potential contestations arising out of complaints revolving around compensation at least at the district level.

B. District Land Tribunals: present in the law but missing in action

Progressively again, the Land Act-1998 as amended establishes the District Land Tribunals (herein after DLTs). Just like the DLBs, the DLTs are meant to play a vital role in relation to compensation for land acquired compulsorily by either the central or local government. The DLT, at least according to the law, has mandate to determine any dispute relating to compensation for land compulsorily appropriated. Additionally, the DLT, must in addition to compensation assessed, provide for a ‘disturbance allowance 15 percent or, if less than six months’ notice to give up vacant possession is given, 30 percent of any sum assessed. This mechanism or body was meant to decentralize adjudication of disputes that may arise out of compulsory acquisition of land in quick, accessible justice to the local communities.

C. Chief Government Valuer Office

Uganda also has the above captioned office situate within the Ministry of Land, Housing and Urban Development, in the division of valuation within the department of land administration housed by the Land Management Directorate. The Division is responsible for providing timely and reliable real property valuations to aid decision making in government. Among the other many roles of the CGV include the assessing Stamp duty, advising the government on property rates and also supervising government projects. Designating the office of CGV is key in enhancing accountability in relation to valuation and compensation complaints from the PAPs.

D. Judiciary: Progressive steps of specialization and case backlog strategies that need bolstering

The judiciary of Uganda established under Article 126 (1) of the Constitution right from the highest Court of the land-the Supreme Court is tasked with the duty of checking land injustice both inter-individuals and disputes between State and individuals such as in situations of compulsory land acquisition. Accordingly, the Judiciary *boasts of specialized land courts, such as the Land Division* of the High Court and the Execution and Bailiffs Division to improve access to land justice if and when harnessed. There have also *been efforts to deal with the case backlog especially in the Land Division by establishing the Judiciary case backlog Committee* to come up with diverse strategies to deal with the many unheard cases, a situation that delays justice. Bolstering the above efforts would strengthen to some extent, access to land justice in compulsory land acquisition in Uganda.

2.2 Institutional Framework Challenges

A. Incapacitation of the District Land Boards hence frustrating compensation of PAPs

DLBs, even though mandated in the law to come up with compensation rates at the district level to guide the CGV in compensation valuation, they hardly compile these

compensation rates. DLBs *do not have enough funding to facilitate the DLB meetings to discuss the compiled rates and consultations* with the communities to have their input into the proposed rates. In Hoima district for example, this compilation of compensation rates was only undertaken after the intervention of the Global Rights Alert-a national NGO focusing on extractives and human rights.

- The absence of these *compensation rates by the DLBs exposes the deprived persons to the arbitrary estimated compensation rates* provided by the government consultants and contractors, majority of whom with no concrete knowledge of the diverse local/grassroots' communities' socio-economic and religious considerations and attachments to particular types of properties.

B. District Land Tribunals 'Ghosts' and their impact on compulsory land acquisition

The DLTs which would have taken cases of land disputes including such land as is subject of compulsory acquisition had their operations halted leaving behind a huge backlog that was transferred to the Magistrates' Courts. As such, despite their being creations of the 1998 Land Act, they remain ghost entities leaving behind a big loophole that contributed to the backlog in the main judiciary, hence delay of justice resultantly impacting negatively on access to justice in compulsory land acquisition governance framework.

C. Chief Government Valuer Office

The study revealed that the CGV office is riddled with incapacitation owing to the understaffing and under resourcing that does not match the magnitude of the work of this office that is needed to provide oversight on property valuations in over 100 districts. Because of this incapacitation, the GV has always advised the relevant government ministries, departments and agencies to seek private consultants to provide valuation services with his role being relegated to approval of the same. This has only added to the injury casting into debate the authenticity of private valuers and by extension private land surveyors, two professional fields so central to process of compulsory acquisition yet so out of reach of government superintendence for quality assurance purposes and curtailing abuse of their offices.

D. Judiciary: Corruption, inordinate delays in delivery of justice, case backlog and financial and human resources constraints

- Findings reveal that According access to land justice today is 'fluid and has considerable limitations'...with population facing 'serious difficulties and do not have free and unhampered access to justice.' These difficulties are both classified as manifesting 'in terms of physical and functional access to justice.'
- The non-operationalization of the local council courts proximate to the communities to deal with micro-level disputes on lands, which may be the subject matter of compulsory acquisition continues to hamper accessibility to justice. The situation is likely to be complicated further with the ongoing

phasing out of the Magistrates Grade II Courts there by creating a further burden for aggrieved persons to travel long distances to physically access Courts.

- Corruption coupled with the confrontational litigious nature of Uganda's legal system that requires expensive specialized legal representation have made land justice expensive. Inordinate delays and constraints in both human and financial resources complete the woes of the Judiciary edging it out as a formidable point of reference to one in pursuit of land justice in compulsory land acquisition processes.

3. INQUIRE INTO THE VALIDITY OF GOVERNMENT STAND/ ASSERTION THAT PROJECTED AFFECTED PERSONS' REJECTION OF COMPENSATION FEES IS THE MAIN CAUSE OF THE DELAY IN THE IMPLEMENTATION OF GOVERNMENT INFRA-STRUCTURAL DEVELOPMENT PROGRAMMES

The study sought to put to test the widely fronted government assertion that the need for amendment of Article 26 of the Constitution to allow government of Uganda take over land under compensation contestation is because majority of government projects have been delayed as a result of disputes fronted by PAPs.

A. Understaffing of the MDAs in the Compulsory Land Acquisition Process Chain

Findings further reveal that the understaffing of UNRA specifically but also generally, of MDAs that are part of the compulsory land acquisition chain for example in key positions responsible for undertaking the verification related exercises upon which the batches for payment to PAPs to pave way for land acquisition depend, cause delays in land acquisition. Over 14 road construction project delays were occasioned in the 2016/2017 financial year due to this understaffing of UNRA.

B. Late Submission of Land ownership documentation by the PAPs

Further evidence also attests to the fact that the delays have been an offshoot of late submission of the necessary documentation by the PAPs to facilitate the assessment, verification and subsequently payment of the compensation. Whereas this is attributable to the PAPs, it is not necessarily a delaying tactic on part of the communities. Indeed, some of them do not have the requisite documents to authenticate their interest in the land under appropriation while other, at the time of the processes of land acquisition start to pursue them such as titling. Over 5 road construction project delays were occasioned in the 2016/2017 financial year due to delay of submission of verification documents by the PAPs to facilitate valuation and compensation.

C. Delayed Valuations Reports by the CGV

Some of the projects run by UNRA delayed due to delays from the CGV in sending the necessary valuations to facilitate process of payment of compensation to the

PAPs. Affected projects included *Sub-Programme/Project: 1176 Hoima-Wanseko Road (83Km)*. Another factor posed by UNRA is the shortage of surveyors in the country to undertake the necessary surveying and production of requisite reports to facilitate valuations and eventual payment of compensation. This was highlighted as partly the justification for the delay in the implementation of their '*Sub-Programme: 1158 Reconstruction of Mbarara-Katuna road (155 Km)*'; *SubProgramme/Project: 1312 Upgrading mbale-Bubulo-Lwakhakha Road*; and *SubProgramme/Project: 1158 Reconstruction of Mbarara-Katuna road (155 Km)*.

D. Intra-family and other land disputes

The other delays have been occasioned as offshoots of intra-family land disputes with different factions of one family conflicting over ownership of the property, also a subject matter of compulsory requisition by government agencies-in this context, UNRA. One of the most prominent of such cases was *Prince Kalemera H. Kimera v The Kabaka of Buganda & Buganda Land Board* concerning land in Kyadondo, Masajja, Block 273 Plots 87, 99, 110 and 38 which was the center of the dispute. It delayed the construction of the Kampala – Jinja Expressway and Kampala Southern Bypass Project.

E. The absentee land lords' phenomena

The process of compulsory acquisition of land has also been negatively affected by the litany of absentee land lords on lands that government agencies want to acquire. Of the grossly affected agencies is UNRA. Normally, when these PAPs are identified, a Verification exercise is undertaken to aid in payment of compensation to the rightful claimants of the land. When land lords are absent, not only is it difficult to pay them their compensation, this also extends to the occupants on the land-bibanja holders who can only access compensation for their plots if they have proof of consent from their land landlords. According to UNRA, under the Kampala-Jinja Expressway (KJE), there were over 32 plots of land that had not been cleared due to the absentee Landlord phenomena. In another project, there are over 108 absentee land lords within the demarcated regions of Gulu- Atiak –Nimule road Section which is also due for construction.

F. The non-functionality of the District Land Boards

The non-full capacity operations of the DLBs meant to provide local compensation rates to the Chief Government Valuer to facilitate compensation of affected communities in particular districts has also been highlighted as a cause for delayed projects having nothing to do with the PAPs. This has replayed prominently both in Albertine Region/Hoima district. The same phenomenon played out recently in Busoga region in relation to the Standard Gauge Railway Compensation. In 2016, around 630 PAPs in Jinja district whose land was appropriated to pave way for the construction of the Standard Gauge Railway (SGR) had to wait for compensation due to the absence of a District Land Board that was yet to be substituted.

G. Late disbursement of compensation to the PAPs

Other delays have been occasioned by issues relating to delayed disbursement of compensation to PAPs to pave way for their delivering vacant possession of the land.

These delays in compensation have also been registered in Tororo where more than 2,000 residents-PAPs affected by the Standard Gauge Railway (SGR) project passing via Tororo Municipality sought to petition the Executive owing to this delay. The land acquisition and attendant compensation process had taken close to three years without the promised assessed compensation. The PAPs also, as has been elsewhere, complained of under valuation while in some cases, there was no valuation at all by the SGR team yet in other instances, the assessment was undertaken in absence of the PAPs. The delayed compensations undermine the PAPs' right to an effective remedy, particularly, the constitutionally guaranteed requirement for prompt payment of fair and adequate compensation before actual possession.

H. Slow land registration processes

UETCL also decried the slow land registration process that has also contributed to the suits they face during delayed compensation to PAPs. The company collects all the titles from the PAPs to facilitate land conveyancing processes of mutation and transfer on completion of compensation. This process is supposedly meant to take 6 months. However this time eventually translates to 4 years considering the delay in registration in the different land offices. Accordingly, the PAPs that surrendered their titles to facilitate transfer and compensation naturally become jittery and restless owing to the long haul wait. As a result some seek legal redress from the Courts of law over un-returned titles and unpaid compensation, which occasions a cost on the Company a result.

I. Corruption in the compulsory land acquisition process chain

Corruption allegations related to compulsory land acquisition have also been highlighted as part of the causes for delay of these projects. One particular example related to the Uganda Electricity Transmission Company Limited (UETCL) with its senior officials being implicated in taking advantage of PAPs and grabbing their land in the construction of Tororo-Apuuyo -Lira electricity transmission line. Additionally, some PAPs maintain that the UETCL coerced them into signing compensation forms at the behest of armed soldiers even when the compensation was not adequate and subject to contestation. In one other example, PAPs were rightly assessed and a compromise was reached on their due amount. However, their payments were diverted to other persons and the rightful owners received nothing. In the same vein, is the grand corruption that was gathering in the Isimba Dam Project compensation before it was nipped in the bud by the Commission of Inquiry into land matters. The above challenges surrounding the alleged dubious compensation awards led to the stalemate of the construction of the hydropower dam project.

J. Compulsory land acquisition in wetlands: the emergency of land fraud cartels

The corruption has been extended further to connivance amongst government officials to defraud government of compensation monies on land situate in wetlands. Some government agencies have been accused of valuing titles that were issued for land in wetlands and forest reserves causing financial loss to the government which issues out compensation monies for alleged PAPs with titles issued in Government

wetlands and reserve forests-property it already owns under the public trust doctrine. Again the Uganda Electricity Transmission Company Limited (UETCL) offers an interesting but sad story.

K. Poor planning by the MDAs

In another dimension, practitioners in land law contend that the biggest challenge in compulsory land acquisition is poor planning by the relevant government agencies that seek this land. Many a time, they contend, massive government infrastructures are co-funded with the government providing a particular percentage of the project money as well as development partners. Often, the development partners' contributions come early before the government portion is even appropriated in the budget. The government contribution could for example be targeted towards settling compensation for land to host the project. When it delays to pay the affected persons for the project to kick off, such a delayed project is not an offshoot of land owners' adamancy rather its poor planning manifested in delayed appropriation of the necessary funds by the government.

4.0 RECOMMENDATIONS

Assessing how, by way of recommendations, compulsory land acquisition governance framework can be improved to balance both property rights of citizens and government infrastructural development agenda (public interest). From the foregoing findings and analysis, the study recommends the following;

TO PARLIAMENT/UGANDA LAW REFORM COMMISSION/MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

a) Legislative Reform (Article 26 (2) of the Constitution of Uganda):

Need for legislative reform, in particular to define the central terms that justify compulsory land acquisition for conceptual clarity. These terms as used in Article 26 (2) of the Constitution include 'public interest,' 'public order,' 'public safety' and 'timely, 'adequate,' 'fair and prompt.' Such amendments would rely or purpose to consolidate the progressive inroads that have been made by the Court of law in their quest to define these terminologies. This recommendation is fronted without prejudice to the Court judgements that have defined these terms but rather with the recognition of these efforts as scattered and case by case decided.

b) Amendment of the Land Acquisition Act 1965:

There is need to amend the Land Acquisition Act 1965 to bring it into conformity with the Constitution of the Republic of Uganda as a way of operationalizing the Supreme

Court decision in *Uganda National Roads Authority vs. Irumba Asumani & Peter Magelah*.¹ The amendment of the Land Acquisition Act Cap 226 should aim at prescribing for prompt, adequate and fair compensation prior to compulsory acquisition by Government.

c) Enactment of Regulations to govern Assessment and Payment of compensation:

The Minister of Lands and Urban development should enact the regulations to govern assessment and payment of compensation under the Land Acquisition Act as stipulated in Section 20 of the same. These regulations should provide for a reasonable, equitable formula on how to determine what is fair, adequate and prompt compensation and also provide for a time frame within which a PAP should receive compensation for his/her property after the date of assessment. The regulations should additionally create standing compensation tribunals in all districts and sub-counties that host these projects to guarantee accessibility to inexpensive justice to PAPs. The regulations could also offer further directive on the meaningful participation of women and vulnerable groups in host communities in compulsory land acquisition processes especially compensation.

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT AND MINISTRY OF LOCAL GOVERNMENT

a) Capacity Building for the District Land Boards on their obligations and limitations:

Capacitate the District Land Boards through increased funding and training of members of the Board to ensure the timely appraisal of District compensation rates which are key for expedient compensation assessment for Project Affected People at the district level;

b) Establishment of A Standard Data Base for Land Market Information:

Need to cultivate and sustain a standard database for land market information that can be used by the various government MDAs that may want to appropriate land. This could curb the corruption revolving around over and under valuation of properties of PAPs since each MDA undertakes and determines its own generated land market information.

c) Rejuvenation of the District Land Tribunals and Area Land Committees;

Rejuvenate the functionality of the District land tribunals and Area land committees through increased funding and capacity building to boost their potential role at the local government in the expeditious resolution of land disputes on government appropriated land so as to forestall stalemate of government projects. Their functionality

1 This recommendation is in consonance with the government aspiration under the National Land Policy Implementation Work/Framework Plan, 2015 which priorities the need to 'Amend laws as necessary to circumscribe the power of the State to exercise compulsory land acquisition, ensuring a sensible approach to defining public purposes and to ensuring timely and just compensation.' See Ministry of Lands, Housing and Urban Development, 'The Uganda National Land Policy Implementation Action Plan-2015/16 - 2018/19,' March 2015, at 27.

shall also contribute to reduction of the case backlog related to land disputes in the mainstream formal Courts of law.

e) Reformation of the Land Registry to Enhance Expeditious land conveyancing

Reform of the Land registry to ensure that titling of land is done expeditiously to allow government agencies proceed with the necessary compensation of PAPs which is mostly dependent on title transfers both within individuals but also for MDAs acquiring the land.

**MINISTRY OF FINANCE AND ECONOMIC PLANNING AND THE
MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS & OTHER MDAS**

a) Establishment of an Escrow Account;

Consider the possibility of establishing an Escrow account managed by the Courts of law in cases involving land disputes. This should ONLY be in cases where the land condensation is inter-family or individual disputes around ownership of the land under State appropriation and not around compensation rate. In this case, government use of the land can proceed as the conflicting parties settle the matter in Court. Whoever the Court declares the rightful owner is entitled to the already agreed upon compensation.

b) Establishment of a Special/Restricted Single Vote for Land Acquisition

Consider the possibility of creating a special/restricted single vote for land acquisition in the national budget, run and managed in a central pool to counter corruption manifest in agency/ministry/department run votes.

c) Gazettement of all Projects Requiring Land Appropriation

There is need for the Government to periodically gazette all its projects that shall require land appropriation before commencement of the actual exercise of the acquisition. This is in line with the governance principle of providing all citizens with the necessary information as a directive of Article 41 of the Constitution and in line with the Access to information Act to enhance transparency.

d) Development of a Comprehensive Communication Strategy

There is need for the development and adoption of a comprehensive communication strategy that brings together all the MDAs that shall have a role to perform during the implementation of a particular project prior to land acquisition. In this way, misinformation and deliberate concealment of information by some agencies to the detriment of the public generally and PAPs specially shall be mitigated.

e) Enact the Administration of Justice Act

This is necessary to generally empower the Judiciary but more specially to establish financial independence of the Judiciary which is key in delivering its mandate of expeditious adjudication of cases. The money spent in setting up ad hoc units, desks and departments in various sectors of the government should be re-channeled to the judiciary to fill up the over 400 vacancies at Magisterial level to function effectively and

efficiently. The Ad hoc units should be disbanded forthwith to close up the multiplicity of power centers handling land matters breeding confusion and wastage of resources.

f) Special Tribunal/Division for Compulsory Acquisition Land Disputes

Establish a specialized quasi or judicial mechanism in the form of a Tribunal specializing in handling disputes and complaints in compulsory land acquisition expeditiously so that the government infrastructural developments are not stalled in the event of prolonged litigation.

NEMA/NWSC/UNRA/UETCL/MINISTRY OF WORKS, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

a) Capacity Building for Personnel in the Compulsory Land Acquisition Chain

The Government needs to initiate capacity building and strengthening programmes for the various personnel in the various government agencies, central and local government levels that handle land acquisition to enhance professionalism and their knowledge base on effective and efficient execution of this aspect. The capacity building would also aim at enhancing the expertise of these personnel with a Human Rights Based Approach (HRBA) to compulsory land acquisition especially during compensation and settlement stages

b) Development and Dissemination of Sensitization Programmes on the Importance of Infrastructural Developments to elicit public support.

There is need to develop and dissemination sensitization programmes aimed at the public generally and more especially those in regions hosting massive infrastructural development programmes on the importance of these projects and how they relate to the improvement of their lives.

c) Development and Operationalization of an Inter-Sectoral Coordination and Cooperation Framework During Compulsory Land Acquisition

There is need for development and operationalization of an inter-sectoral coordination and cooperation framework between the various MDAs across the board to help in the restoration of the livelihoods of the PAPs specifically but also in the general compulsory acquisition processes;

d) Development and Dissemination of a Financial Literacy Programme for PAPs

The inter-sectoral consortium of MDAs and CSOs dealing land rights and more so compulsory land acquisition should design and disseminate through sensitization financial literacy programmes for the PAPs so that they can effectively and efficiently manage their compensation monies to avoid its abuse which has in the past, as the study has shown, created destitute.

e) Equip the IGG office to counter Corruption in CLA processes

Facilitate the Office of the Inspector General of Government (I.G.G) to adequately investigate, and prosecute the corrupt agents in the different MDAs in the chain of compulsory acquisition of land.

1

Introduction

INTRODUCTION

BACKGROUND TO THE STUDY

- 1.1** Uganda boasts of a total area of 241,550.7 square kilometers. Of these, open water bodies cover 36,527.4 square kilometers which is 15.1 percent of Uganda's total area while 1.9%, approximately 4,500 square kilometers are wetlands. Additionally, land area covers 200,523.2 square kilometers (83.0 percent of Uganda's total area).² The above taken together is land in Uganda, a topic that has remained contentious even before the 18th century colonial era. In 1995, Uganda in a gigantic progressive step to re-direct her destiny sought to change its brutal history characterized by abuse of human rights and freedoms, absence of rule of law and generally poor governance. After almost 2 years of intensive debates by the Constituent Assembly, convened purposely to chart a constitutional path for the politically, economically and socially battered country, a new Constitution-1995 was enacted, adopted and passed to be the supreme law of Uganda. One of the fundamental rights upheld within this new Constitution is the right to property, under Article 26 of the Constitution which guarantees individual and collective ownership of property. To further entrench this right, the framers of the Constitution insulated it against abuse from the State but conditioning State appropriation of any person's private property/land to prior, fair and adequate compensation to the owner before possession.
- 1.2** In the same vein, of further guaranteeing individual rights and freedoms over land, the Constitution of Uganda through Article 273, later revisited in this study, bestowed upon its citizens and indeed non-citizens ownership rights over land, through four tenures of private mailo, freehold, customary and leasehold-which operates exclusively as a window for foreigners to own rights in land. This was a fundamental departure from Uganda's troubled history of land governance by decree and so many countries that after independence pursued nationalization of land or arbitrarily State ownership as it is in Mozambique among others.
- 1.3** The Constitution of Uganda tasked the government through the Parliament to enact a law that would operationalize the governance, administration and adjudication framework that would breathe life into the rights and freedoms relating to land that had been fundamentally ushered into the post-1995 Constitutional order dispensation. This path of progression, not common on the African Continent, saw the enactment of a progressive land law in 1998 that further guaranteed rights of women, children, persons living with disabilities, squatters on land, bibanja holders on land, basically granting protection to almost every person who had an interest in land regardless of the potentially contestable way that person had entered on to that particular land. There was a very clear attempt, for the wider part, of sanitizing land ownership relations amongst land owners and persons with lesser equitable interests in land to avert anarchism

2 Uganda National Bureau of Statistics (UBOS), '2014 Statistical Abstract,' November, 2014, at 1-3.

that has characterized land management in Africa. The progress was further witnessed by the creation of various institutions to the last centre of power in the decentralized system to manage, administer and adjudicate over matters of land expeditiously using people centered justice so proximate to the common man. These included the Area Committees, District Land Boards, and District Land Tribunals among others.

- 1.4** Despite the above progress, there is emerging evidence that the country is retrogressing. Land ownership, governance, administration and adjudication remain part of the unresolved political and governance issues in post-independence and interestingly post-1995 Constitution Uganda. The non-resolution of the above amicably has continued to attract a wide range of land disputes manifesting in diverse ways all with serious implications. Some of these disputes are historical in nature dating back to unsettled colonial legacies of land administration models. Others are born of yesterday when the rush for land incarnate in large scale land acquisition in the quest for land for large scale agriculture took shape across Africa. An example of this is in Mubende district where close to 4000 people were violently evicted from land they had occupied for decades, in 2001/2 to make way for coffee plantations by the local company Kaweri Coffee Plantation Ltd., a 100% subsidiary of the Neumann Kaffee Gruppe (NKG) based in Hamburg/Germany.³
- 1.5** Other conflicts involve individuals, seemingly minor but later emerging to involve whole families from one generation to another as the fight for land disputed takes years in courts of law. Others have involved citizens taking on the State in their private capacity for various issues including lack of compensation for compulsorily acquired lands. In Uganda, boasting of a collection of over 52 tribes, with some historical conflicts that have never been solved, we have witnessed land disputes taking on an ethnic approach. The land fund which was set up to mitigate shocks amongst the communities is in paralysis characterized by inadequacies where available and abused to the detriment of the vulnerable persons, tenants to whom it was originally established to help to strengthen their land rights.⁴

3 FIAN-Germany, '*Human Rights violations in the context of Kaweri Coffee Plantation in Mubende/Uganda*,' Shadow Report to the UN Committee on Economic, Social and Cultural Rights, 2015. Accessible at https://www.fian.org/fileadmin/media/publications_2015/ParallelReport_UGA_CESCR54_E.pdf See also Nakayi Rose, '*Interrogating Large-scale Land Acquisitions and Land Governance in Uganda: Implications for Women's Land Rights*,' Centre for Basic Research, 2016. Accessible at <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/56333/IDL-56333.pdf?sequence=2&isAllowed=y> (Accessed on 10/01/2019)

4 Ephraim Kasozi & Jalira Namyalo, '*Land probe: More evidence on Land Fund loot revealed*,' Daily Monitor, 22/May/2018. Accessible at <https://www.monitor.co.ug/News/National/Land-probe-More-evidence-Land-Fund-loot-revealed/688334-4575074-Is5diq/index.html> (Accessed on 6/02/2019); See also The Independent, '*Uganda land fund is empty- Amongi*,' 10/May/2018. Accessible at <https://www.independent.co.ug/uganda-land-fund-is-empty-amongi/> (Accessed on 6/02/2019); Uganda Radio Network, '*Businessman Mwesigye grilled over Shs 13bn Land Fund money*,' 31/May/ 2018. Accessible at <https://observer.ug/news/headlines/57804-businessman-mwesigye-grilled-over-shs-13bn-land-fund-money.html> (Accessed on 6/02/2019)

- 1.6** The quest to show might and power in land governance and conflicts in Uganda has deliberately sipped in the hitherto professional Uganda Peoples' Defence Forces (UPDF), the Uganda Police Force among other security personnel.⁵ These have been used to provide protection to the execution of wrongful court orders or restraining the implementation of rightful court orders for and against the moneyed and powerfully connected classes of the community. Brutal, inhumane and degrading evictions characterized also with arrests, beatings of land occupiers resisting the evictions, torture, etc. have been executed late in the night or early in the morning with the power of the barrel of a gun as the common man evicted wonders what next.⁶ The brutality shown has been non-discriminative hitting hard the women and children as well as persons living with disabilities.
- 1.7** In western Uganda, injustice on land rights has been partly facilitated by the unfortunate reality that less than 10% of the land in sub-region is surveyed and therefore registered. This has facilitated inter-clan, family and district conflicts arising from boundary contentions, disinheritance, made communities vulnerable to land grabbing and increased insecurity of tenure.⁷ It has additionally rendered land of less value since it has no title to it due to non-registration and as thus cannot act as collateral in any financial setting. This scenario of non-registration is not any different from other parts of the country that host the customary tenure system of land ownership such as Northern Uganda all totaling to over 68.6% of such customary land. The paltry registration of land is currently at only 18% of land in Uganda as titled/registered.⁸
- 1.8** The traditional/cultural institutions have not been spared this land in/justice chaos either as perpetrators of land injustice or as victims as well to dubious cartels of land grabbers. In Tooro Kingdom, the Queen Mother, Best Kemigisha has been specifically accused, of unlawful land evictions of bona fide occupants on the kingdom land using the military attached to the her security detail prompting a warning from the President of Uganda.⁹ This abrogation of the law has been executed despite the protection accorded to bona fide and law-

5 Sadab Kitatta Kaaya, 'Mubende gold row: Inside story of forceful evictions', The Observer, 16/August/2017. Accessible at <https://observer.ug/businessnews/54412-mubende-gold-row-inside-story-of-forceful-evictions> (Accessed on 7/02/2019)

6 The Kampala Post, 'Museveni Orders Inquiry into Eviction of 500 People in Wakiso District', 16/October/2018. Accessible at <https://kampalapost.com/content/news/museveni-orders-inquiry-eviction-500-people-wakiso-district> (Accessed on 8/02/2019)

7 Pascal Kabura and Francis Tuhaise, 'Land Injustice in Western Uganda: Select Studies from Kasese, Kabarole and Bundibugyo', Human Rights and Peace Centre, Makerere University, 2017 at viii.

8 Frances Birungi Odong, Sylla Oumar, Antonio Danilo and Simon Peter Mwesigye, 'Strengthening Women's Land Rights And Security Of Tenure For All On Customary Land Settings; Implementing Innovative And Gendered Land Tools And Approaches', A paper prepared for presentation at the '2018 WORLD BANK CONFERENCE ON LAND AND POVERTY', The World Bank, Washington DC, March 19-24, 2018 at 4.

9 Felix Basiime, Alex Ashaba And Agencies, 'Museveni warns Tooro Queen mother over illegal land evictions', The Daily Monitor, 8/09/2017 Accessible at <https://www.monitor.co.ug/News/National/Museveni-warns-Tooro-Queen-mother-against-illegal-land-evictions/688334-4087252-8iaw6a/index.html> (Accessed on 9/01/2019)

ful occupants under the Land Act, 1998 under section 32 and 92.¹⁰ The other very interesting inter-ethnic conflict on land has manifested itself in western Uganda amongst the kingdoms of Tooro, the *Obudhingiya bwa Bwamba* and the *Obusinga bwa Rwenzururu*, as each seeks to cut out a geographical curve of power and influence all revolving around land.¹¹

- 1.9** Another on and off conflict, among others, has been in Bullisa district, with the recently discovered oil exploration possibilities. Bullisa also hosts the Murchison Falls National Park and Budongo Forest reserve gazette during the colonial area covering up almost 80% of the land in the district. The remaining 20% was reserved as a grazing corridor and has since been used for the Bagungu tribe for over 70 years.¹² In 2004, the area was invaded by nomadic pastoralists claiming that they had bought the land. A violent standoff between the two ethnicities would later involve the military restore the ‘temporary calm.’
- 1.10** The increase in population has come with unprecedented pressure on land, an inelastic resource.¹³ With one of the fastest population growth rates of 3.4 per annum, it is expected that by 2025, Uganda shall have a total population of 55 million people.¹⁴ Experts have warned that this will only increase socio-economic problems including ‘land fragmentation, low agricultural productivity, family related land disputes, and loss of forest cover, environmental degradation and encroachment on critical key ecological systems.’¹⁵ As the land increasingly becomes commoditized, this coupled with the increase in population, amplification of agriculture and discovery of oil and mineral resources is leading to increased conflicts amongst communities.¹⁶
- 1.11** The chaotic land governance paradigm in Uganda has not spared the vulnerable groups of people mainly the women, children and persons living with disabilities. Despite the explicit progressive provisions within the 1995 Constitution and the Land Act, 1998 that are gender responsive guaranteeing women ac-

10 Gaaki Kigambo, ‘Oyo of Tooro: Uneasy lies the head that wears a crown,’ *The East African*, 18/02/2017. Accessible at <https://www.theeastafrican.co.ke/magazine/King-Oyo-and-the-burden-of-the-Tooro-crown/434746-3817632-xx7qxi/index.html> (Accessed on 9/01/2019)

11 Margaret A. Rugadya, ‘Escalating Land Conflicts In Uganda; A review of evidence from recent studies and surveys,’ International Republican Institute (IRI), 2009 at 13.

12 Rugadya, 2009 at 15.

13 ACODE and IIED, ‘Catching up with the fast pace of land access change in Uganda,’ Policy Brief, January 2017 Accessible at <https://www.acode-u.org/Files/Publications/17415IIED.pdf> (Accessed on 8/01/2019)

14 Zurah Nakabugo, ‘Uganda’s population likely to hit 55 million by 2025, gov’t worried,’ *The Observer*, 9/03/2018 Accessible at <https://observer.ug/news/headlines/57146-uganda-s-population-likely-to-hit-55-million-in-2025-gov-t-worried.html> (Accessed on 8/01/2019)

15 Nakabugo, 2018.

16 OXFAM, ‘Women’s Land Rights in Northern Uganda (West Nile, Acholi, Lango, Teso and Karamoja,’ 2014 at 17. Accessible at http://www.landcoalition.org/sites/default/files/documents/resources/Securing%20Women%20Land%20Rights%20Report_with%20covers%20_0.pdf (Accessed on 8/01/2019); See also Charles Peter Mayiga, ‘Reasons land conflicts are on the rise,’ *The New Vision*, Accessible at https://www.newvision.co.ug/new_vision/news/1456461/reasons-land-conflicts-rise (Accessed on 9/01/2019)

cess rights to land, the practice is contrary to the latter of the law.¹⁷ The unprogressive customary practices characterized by a patriarchal orientation that dehumanizes, demeans and under looks women continues to be a blockade towards the realization of the statutory promotion and protection of women's land rights.¹⁸

1.12 The National Land Policy summarized the aforementioned quagmire that confronts Land Administration and Land Management Issues in Uganda:

'The land administration system is inadequately resourced and performing below expected standards with tendencies to fraud and corruption. The dual system of land administration (the formal/statutory and informal/customary) breeds conflict, confusion and overlaps in institutional mandates. For the greater percentage of Uganda, where customary tenure still abounds, the roles of traditional institutions of land management, dispute resolution and land governance have not been legally accepted, integrated and mandated to execute their functions. Some elements of political interference have severely hindered progress in the public delivery of land services, making it slow, cumbersome, frustrating and too costly to the public. Decentralized services are very thin on the ground and have failed to perform to expectations of the public.'¹⁹

The above situation has been summarized by some other scholars as an acute representation of 'weakness of land management institutions and their inability to enforce the law on land: political interference; and vices of corruption and abuse of power in land management processes.'²⁰

17 Progressive provisions include Section 27 of the Land Act which 'explicitly holds that any decision taken in respect of customary tenure that denies "women or children or persons with disability access to ownership, occupation or use of any land" or violates any other rights granted to them under the Constitution shall be null and void. Section 39 furthermore prohibits a person from engaging in any transaction in respect of family land without the prior consent of the resident spouse while Section 38A explicitly protects the right of a spouse to have access to and live on family land during the subsistence of marriage.' See further UWONET, *The National Land Policy addressing the unfinished tasks Gender Transformation & Empowerment; A foundation to women to women's rights*, 2015 at 10. Accessible at <https://www.uwonet.or.ug/download/documentations/THE-NATIONAL-LAND-POLICY-ADDRESSING-THE-UNFINISHED-TASKS-A-foundation-to-women-to-women%25E2%2580%2599s-rights-2015..pdf> (Accessed on 7/01/2019).

18 Frances Birungi Odong, Sylla Oumar, Antonio Danilo and Simon Peter Mwesigye, *Strengthening Women's Land Rights And Security Of Tenure For All On Customary Land Settings; Implementing Innovative And Gendered Land Tools And Approaches*, A paper prepared for presentation at the '2018 WORLD BANK CONFERENCE ON LAND AND POVERTY', The World Bank, Washington DC, March 19-24, 2018

19 Uganda National Land Policy, 2013 at 7. See also Birungi et al, 2018 at 4 who maintain that 'the land administration bodies are extremely weak, grossly under-resourced and lack necessary facilities to effectively perform their duties.'

20 Kabura and Tuhaise, 2017 at 2.



Construction site for the expansion of the Northern by pass highway. In Uganda, the rush for land for direct foreign investment and industrialization has informed the manifest colossal investment in infrastructure development including airports (both new and expansion of the existent ones), roads across the country, railway (through the Standard Gauge Railway project) etc. This calls for compulsory land acquisition, the quest of this research.

1.13 In Uganda, the rush for land for Foreign Direct Investment and industrialization has informed the manifest colossal investment in infrastructure development including airports (both new and expansion of the existent ones), roads across the country, railway (through the Standard Gauge Railway project), hydropower involving dam construction, and general urbanization development for public good. All such major infrastructural developments require and indeed have necessitated the acquisition of vast pieces of land-both government and privately owned land. And this is partly the essence of this study-inquiring into the modalities governing compulsory land acquisition in Uganda which of course must be contextualized in light of all the aforementioned vagaries facing land justice in Uganda today.

1.14 Central to the above, the quest for massive land for infrastructural development has had diverse misgivings surrounding such acquisitions both from the persons affected by such projects (herein after PAPs) and interestingly from the government. In particular, the government of Uganda insists that the current law as it is, in particular the Constitution Article 26 that guarantees right to property, has created a blockade to the compulsory land acquisition. In context that people delay these projects by resisting the compensation given by the government and in the process, they cannot hand over the land for the contractors to commence their works. In fact, so frustrated has been the government that the Ministry of Lands, Housing and Urban Development has been toying with an amendment to the law to allow government take over land and deposit its valuated compensation fees to the affected persons with the bank as contentions continue to be settled in Court. This study, partly seeks to inquire into and assess the validity

of the government's assertion that PAPs' rejection of compensation fees is the most and singular problem standing in the way of infrastructural development.

1.2 Study Objectives and Research Questions

The main objective of the study was to undertake a situational analysis of policy, legal and institutional framework on compulsory land acquisition and governance in Uganda. To achieve this, the study further specifically framed the following four objectives;

- 1) Undertake an assessment of the available and operational legal and institutional framework governing compulsory land acquisition and attendant processes in Uganda;
- 2) Inquire into the availability and effectiveness of dispute resolution mechanisms on compulsory land acquisition disputes/processes;
- 3) Through analysis of select documented contentious compulsory land acquisitions, inquire into the validity of government stand/assertion that projected affected persons' rejection of compensation fees is the main cause of the delay in the implementation of government infrastructural development programmes;
- 4) Assessing how, by way of recommendations, compulsory land acquisition governance framework can be improved to balance both property rights of citizens and government infrastructural development agenda (public interest).

Subsequently, to deal with the above objectives, the following research questions were formulated to guide the study based on thematic spheres.

In relation to the legislative framework;

- Whether the available legal and policy framework is **adequate** and **aligned** to internationally recognized best standards to facilitating equitable compulsory land acquisition? If it is existent, to what extent has it been implemented by the responsible entities meant to enforce or/and follow it?
- What substantive and procedural legal guarantees exist to facilitate project affected persons to negotiate compensation rates, obtain prior prompt payments, and if not satisfied, pursue further reliefs through appealing government valuation/ compensation decisions in independent adjudication bodies i.e. Courts of law or before tribunals?
- How, if at all, does the legal framework provide for cushioning of occupants on and owners of appropriated land against the diverse vagaries connected to resettlement and reconstruction of the livelihoods of deprived?
- Is the law adequate enough to accommodate compensation for unregistered customary tenure rights held mostly by indigenous peoples and other marginalized and vulnerable local communities including special protections for women holding land?

In relation to compulsory acquisition of land;

- How have compulsory land acquisitions controversies affected the communities owning or occupying the compulsorily acquired land?
- Beyond dismissing off these compensation disputes as a blockade to development, the study also examined them to assess the merit of complaints and resistance by the affected/aggrieved communities-what occasions them?
- How many projects, if ascertainable, have been delayed as a result of the above disputes? What is the financial burden to the tax payers as a result of these delays?
- Beyond the widely fronted alleged adamancy by the affected persons rejecting the compensation, are there other factors that potentially explain this delay in government projects but not focused on as well?

1.3 Study Methodology

The study was conducted using both qualitative and quantitative methodologies. The qualitative aspect focused on interfacing with key informants on the various sub-themes of the subject matter under probe to capture their views and study their perspectives. The respondents herein, using the purposive sampling model, were selected from line government Ministries, Departments and Agencies, and that have a role in compulsory land acquisition administration, governance and adjudication both in the Central Government and in the Local Governments as well of the selected districts. The study also sought views from opinion leaders and centers of societal influence in relation to land justice. These included members of the academia specializing in land law, social power relations and political science generally.

Field work incursions to select parts of the country

The study was extended to the select respondents from the civil society fraternity (CSOs) working on issues of land and natural resources governance, human rights and generally governance including those that work with victims of land injustice in the targeted areas such as the Albertine region, in Hoima district, Northern By-Pass/Southern By-Pass Entebbe and Jinja highways including Jinja district among others. The respondents also included members of the communities that have suffered land injustice especially in cases of compulsory land acquisition by the government of Uganda in its to develop its massive infrastructural agenda. As such, the study involved incursions into select areas within Uganda that have proven contentious and could potentially offer insights into land governance and justice generally but more specifically, compulsory land acquisition. The selected field sites for the study were purposively chosen owing to their historical land injustice cases that continue to rage on unabated. Other areas such as the Albertine region were selected because they present interesting cases of land injustice in the era of extractives, a totally new terrain for Uganda. In principle, the literature review undertaken also contributed to the determination of the particular sites to visit due to partly them being dubbed hot spots in land conflicts.

Data collection tools

The data collection was guided by an interview guide which catered for the various targeted groups that the research field work sought to reach (a copy is attached in the annex). Because the study was largely seeking to establish information on procedural aspects of land justice in compulsory land acquisition, a lot of attention was accorded to the duty bearers owing to the enormous studies that have been undertaken on the impact of land injustice on the affected communities. The quantitative aspect of the study sought to document the various government projects that have been stalled due to the contestations that surround compulsory land acquisition by the government. The study also relied heavily on past literature on the subject matter both domestic and international to trigger further spheres of questioning and deeper analysis of particular aspects highlighted by past researchers on the matter. The researcher also reviewed extensive footage of the hearing and fact finding missions of Commission of Inquiry into Land Matters in the various parts of the country touching on various aspects of land administration, justice and management and more specially cases of compulsory land acquisition and how it's executed in various parts of the country²¹. The collected data has been categorized into different themes that now inform this report.

1.4 Limitations of the study

Diverse challenges manifested during the execution of the study. One of such was the misconception of compulsory land acquisition as large scale land acquisition. Most of the technical respondents working in various MDAs upon which the processes of compulsory land acquisition revolve would not make out the distinction despite the two processes being totally different and requiring diverse mechanisms of safeguards. In the same vein, some of the respondents

21 On 8th/12/2016, President Museveni in exercise of the powers conferred upon him, under the Commission of Inquiry Act, cap 166, constituted a Commission of Inquiry - "The Commission of Inquiry into the Effectiveness of the Law and Processes of Land Acquisition, Land Administration, Land Management and Land Registration in Uganda. The Commission is headed by Justice Catherine Bamugemereire. Other members include Mrs. Mary Odupa Ochan, Owekitibwa Robert Sebunya, Mrs. Joyce Habasa, Dr. Rose Nakayi, Hon Fred Ruhindi, Mr George Bagonza Tinkamanyire, Mrs Olive Kazzarwe Mukwaya (Commission Secretary), Mr Ebert Byenkya (lead Counsel) Dr Douglas Singiza (Assistant Secretary) and Mr. John Bosco Rujagaata (Assistant lead Counsel). The terms of reference for the Commission included;

- I) Investigate and inquire into the law, processes and procedures by which land is administered and registered in Uganda;
- II) Investigate and inquire into the role and effectiveness of the Uganda Land Commission (ULC in administering public land and the Land Fund;
- III) Investigate, inquire into and review the effectiveness of the relevant bodies in the preservation of wetlands, forests and game reserves and examine ways in which the challenge of human habitation in those areas can be resolved;
- IV) To investigate, inquire and solicit views on the role of traditional, cultural and religious institutions who own large tracts of land with occupants in a bid to enhance better landlord/tenant relationships;
- V) To assess the legal and policy framework on Government land acquisition;
- VI) To identify, investigate and inquire into the effectiveness of the dispute resolution mechanisms available to persons involved in land disputes;
- VII) To inquire into any other matter connected with or incidental to the matters aforesaid and make recommendation.

were uneasy responding to some questions during the interviews concerning various aspects like amounts of money paid out to PAPs among others. The research team mitigated this by guaranteeing them anonymity during the writing of the report. Additionally, despite the transparency within which the study was undertaken, including LASPNET writing officially to the relevant stakeholders introducing to them and requesting an interface with the researcher to gather the necessary information under study, there still remains a culture of secrecy within the MDAs. This made access to information difficult and where it was provided, it was after repeated but unnecessary follow ups and in some extreme instances parting payment to the records officers. The study was commenced in November 2018, a critical time for most respondents who were unavailable owing to end of year busy schedules of MDAs. This was mitigated by varying the dates of the assignment.

1.5 Report layout

The report is comprised of four parts. Part I is the introductory part which details the background and research questions of the study. Part II of the report discusses the legislative and policy framework governing compulsory land acquisition in Uganda. It discusses the established norms governing proprietary rights at the international (UN normative legal framework level) and at the regional (African continent) level under the auspices of the African Union (AU), analyzing both binding treaties and persuasive soft laws such as resolutions and principles. It concludes with an in-depth analysis of the national legal framework. In this particular discourse, the legal framework is probed to assess the extent it reflects on the internationally recognized standards on compulsory land acquisition and the attendant processes of compensation and land valuation. It also probes the notion of compulsory acquisition as a concept in land law.

The third part of the study delves into the processes of compulsory acquisition and the various challenges including the averment by the government of Uganda that the compulsory acquisition for infrastructural development has been frustrated by Project Affected Persons (herein after to be called PAPs) adamantly resisting to vacate the land after rejecting compensation monies. Using various Ministries, Departments and Agencies as well as particular public projects under construction by government of Uganda as examples, the study makes an inquiry into the processes of compulsory land acquisition and lays bare the various shortcomings that have characterized such ventures. In some of these, the study arguments, have nothing to do with the PAPs per se rather government weaknesses at various levels of the chain of compulsory land acquisition. The study, in part four, makes conclusions and potential recommendations to various stakeholders concerned on how to best balance the delicate question of compulsory land acquisition for public purposes and individual proprietary rights that are the embodiment of the Constitution of the Republic of Uganda.

2

Conceptualization of Legal and Institutional framework governing Compulsory Land Ac- quisition in Uganda

CONCEPTUALIZATION OF LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING COMPULSORY LAND ACQUISITION IN UGANDA

2.1 Compulsory Land Acquisition: A Conceptual Overview

Compulsory land acquisition has been defined as ‘the action and right of the government to take land for public use for public benefit in the countries having private land ownership.’²² According to the World Resources Institute and Landesa Rural Development Institute, Compulsory Land Acquisition is the ‘involuntary extinguishing of private land rights by government.’²³ Other practitioners define it as the ‘power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.’²⁴ The Uganda National Roads Authority (UNRA), conceptualizes compulsory land acquisition as ‘the process by which the government or government institutions acquire private land for the purpose of industrialization, development of infrastructural facilities or urbanization of the private land, and provides compensation to the affected land owners and their rehabilitation and resettlement.’²⁵

2.1 In essence, compulsory land acquisition is one of the exclusive reserves through which the State can access property that would otherwise be unavailable and as thus frustrating public interest development programmes. Indeed, the State must exercise this sovereign right following legally established frameworks that are fair, accountable and transparent. There must be a strong rationale for the dispossession of land from its rightful owners clearly showing the significance of the proposed projects to the wider public warranting the overriding of proprietary rights of the affected private land owners.²⁶ It should also be noted that compulsory land acquisition may be justified in situations where the land sought is for public interest/purpose but held by and acquisitioned for a private entity especially where there is privatization of supply of public goods/services such as electricity transmission.²⁷

2.2 World over, methods of compulsory land acquisition take various methods in-

22 Subash Ghimire, Arbind Tuladhar, Sagar Raj Sharma, ‘Governance in Land Acquisition and Compensation for Infrastructure Development,’ *American Journal of Civil Engineering*. Vol. 5, No. 3, 2017, pp. 169-178 at 1-3.

23 World Resources Institute and Landesa Rural Development Institute, ‘*The Compulsory Acquisition of Privately-Held Land by Government*,’ Focus on Land in Africa Brief, December, 2010 at 2. Accessible at http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Uganda/files/HLP%20AoR/Uganda_Brief_Compulsory_Land_Acquisition_By%20Government_2010_EN.pdf Accessed on 4th/01/2019)

24 Food and Agriculture Organization of the United Nations, ‘*FAO Land Tenure Studies 10; Compulsory acquisition of land and compensation*,’ 2008 at 4.

25 Norah Njangali and William Matovu, ‘*Presentation on Challenges Affecting Land Acquisition for Infrastructure Projects in Uganda*,’ 2016. Accessible at <http://www.surveyorsofuganda.org/downloads/CHALLENGES%20of%20LAND%20ACQUISITION%20FOR%20INFRASTRUCTURE%20PROJECTS%20IN%20UGANDA%20xx.pdf> (Accessed on 3rd/01/2019). As at end of 2016, Ms. Njangali was the Head Land Acquisition, Uganda National Roads Authority (UNRA) while Mr. Matovu was Senior Land Surveyor in UNRA.

26 Subash Ghimire, et al, 2017, at 4.

27 FAO, 2008 at 4.

cluding the prominent three of Voluntary purchase, land consolidation (re-adjusting) and lastly the compulsory purchase/acquisition.²⁸ Voluntary purchases takes the form of land exchange, while land consolidation essentially involves 'land re-adjustment...by re-parceling,' while the compulsory purchase or expropriation involves the State compulsorily taking private property albeit after adequate and prior compensation within the available fair legal framework.²⁹

2.3 Generally, the entire land acquisition process for large scale infrastructure is characterized by crucial technical processes such as land valuation, compensation among others.³⁰ The various activities involved in compulsory land acquisition are summarized below:³¹

TABLE 1: Summary of Activities Involved In Compulsory Land Acquisition

ACTIVITY	OUTPUT
Undertaking Reconnaissance surveys	Inception Reports, Work plans
Stakeholder and Community sensitization	Sensitization reports, Engagement Photos, Record of minutes
Survey and Valuation data capture	Pegged right of way, survey & valuation reports/field notes
Compilation of detailed strip maps and valuation tables	Strip maps, lists of both affected properties and persons, filled & signed assessment forms, Photographs of affected properties, compensation rates, land values etc.
Preparation of valuation report	CGV's approved valuation report
Identification, Verification & Disclosure	Signed and stamped verification books
Preparation of payment batches	Reviewed payment batches
Subdivision & Titling	Job Record Jackets (JRJs), instructions to survey, certified deed plans, processed certificates of titles & residue titles

2.4 Along the above chain of activities, as attested by examples to be alluded to later in this report, are violations of rights and freedoms, loss of ownership and disruption of the socio-economic livelihoods of affected communities through among others loss of farm lands and economic activities.³² The above at times has bred land conflicts both within communities and between communities and the State agents/agencies, some leading to losses of lives and delays of the pursued development projects.

28 Subash Ghimire, et al, 2017, at 4.

29 Ibid.

30 Subash et al, 2017 at 3.

31 Adopted from Norah Njangali and William Matovu, 2016 with modifications.

32 Subash et al, 2017 at 3.

RULE OF LAW AS A PRECURSOR TO COMPULSORY LAND ACQUISITION

- 2.5** The entire compulsory land acquisition discourse must be placed within the wider discourse of land governance but even more importantly, rule of law, human rights and constitutionalism in Uganda. Whereas procedural aspects of compulsory acquisitions differ from country to another, the international community has come up with common denominators as the minimum core principles that should govern and work towards equitable compulsory land acquisition processes. These principles of land governance all seek to positively influence the delicate balance between country infrastructural development agendas and individual or collective proprietary rights. Land governance encapsulates defining and employing sustainable land policies and creating resilient relationship between persons and land. In this context, land governance entails ‘policies, rules, processes...’ characterized by solid principles such as ‘participation, consensus orientation, strategic vision, responsiveness, effectiveness and efficiency, accountability, transparency, equity, rule of law.’³³
- 2.6** In the same vein, the World Bank too under its Governance Assessment Framework (LGAF) discusses various governance principles for emulation in land governance. These include ‘...integrity and accountability, efficiency and effectiveness, civic engagement & public participation, equity, fairness & impartiality, legal security and rule of law, subsidiary, autonomy, transparency, consistency & predictability.’³⁴ Similar principles have been fronted in the Voluntary Guideline of Governance of Tenure (VGGT), including human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approaches, consultation and participation, rule of law, transparency, accountability, and continuous improvement.
- 2.7** Conclusively, all the above principles are fundamental to the well-functioning of a compulsory acquisition framework. Such a framework requires finding the balance between the public interest/purpose/use for the sought after land and the individual rights over property and the attendant security of tenure. This balance can only come if there is no abuse of this eminent power from the State, where there is guarantee of procedural rights and freedoms that accrue to the affected persons/communities such as right of notice, fair hearing and therein a right to appeal when dissatisfied by available means of adjudication.
- 2.8** There should be certain legislation that should provide for ‘fair and transparent procedures and equivalent compensation.’³⁵ Because of the ‘inherent’ disruptive nature of compulsory acquisition even when all the compensation is fair and the necessary laws have been followed, any disregards for rule of law can only escalate the socio-economic effects of compulsory acquisition to the detriment of individuals and communities.³⁶

33 Graham, J. (2003), ‘Principles for good governance in the 21st century,’ Policy brief, quoted in Subash et al, 2017 at 2.

34 Subash et al, 2017 at 2.

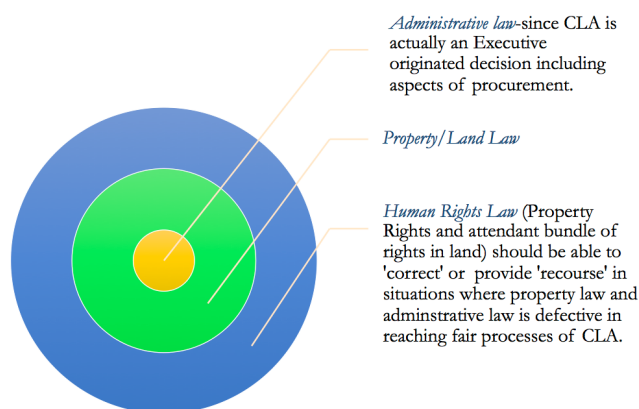
35 FAO, 2008 at 5.

36 FAO, 2008 at 6.

COMPULSORY ACQUISITION AND THE RIGHT TO PROPERTY: REGIONAL AND INTERNATIONAL HUMAN RIGHTS STANDARDS

- 2.9** Compulsory acquisition of land presupposes and rightly so that title in the land is invested in another person, who or his/her assignees use and occupy the land the State seeks to appropriate. Majority of land governance regimes across the world recognize and protect the right of persons to own property including land. The centrality of this right is the confidence bestowed upon the owner that his/her right to this property though not absolute and indefeasible, cannot be dispossessed of his interest arbitrarily without following the rule of law including among others prompt and adequate compensation prior to this dispossession if it's done by the State.
- 2.10** Therefore, just like in other jurisdictions, the legal framework governing compulsory land acquisition is part land/property law, human rights law and administrative law on the other side each with a potential of being invoked depending on what is at stake. But more importantly, the administrative aspect is very fundamental considering that these processes of acquisition are basically administrative and about governance by the Executive hence the need for procedural guarantees to allow affected persons to be able to challenge these decisions if passed unfairly.

Figure I: The Three Tier Category of Legislative Framework Governing Compulsory Land Acquisition



- 2.11** This right to property and the attendant bundle of rights therein is provided for amongst a number of international and regional human rights law instruments to which Uganda is a party having ratified them and therefore obligated to protect, promote and endeavor to fulfill the provisions therein. Other instruments are persuasive soft-law standards but with high acclaim in implementation that they are almost inescapable. All these various instruments recognize the 'financial, sentimental and emotional value', land has to a person.³⁷

37 Subash et al, 2017 at 3.

a) United Nations human rights system, the right to property and compulsory acquisition of land

At the UN level, various binding and non-binding instruments of human rights have been crafted with various countries around the world declaring their allegiance to them through ratification and later domestication in to their national laws. Some of the pertinent instruments are as discussed below;

- 2.12** Under the *Universal Declaration of Human Rights*, Article 17 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 property.”³⁸
- 2.13** In compulsory land acquisition affecting indigenous peoples, their rights are re-affirmed by the *International Labour Organization’s Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)*. Article 14(1) therein provides that that: “The rights of ownership and possession of [indigenous people] over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities.”³⁹
- 2.14** In the same vein, the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* by implication prohibits discrimination against women in relation to property related rights. Article 14 (1) of the CEDAW enjoins States Parties to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and bids them to take all ‘appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.’⁴⁰
- 2.15** Further, States Parties are directed to ‘take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women their right to: (g) ...have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in resettlement schemes.’⁴¹

38 Universal Declaration of Human Rights, 1948 accessible at <http://www.un.org/en/universal-declaration-human-rights/>

39 C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)-Convention concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 Sep 1991). Accessible at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

40 Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1). Accessible at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> (Accessed on 14/01/2019)

41 Article 14 (2) of the CEDAW.

2.16 More explicitly, the CEDAW seeks to establish equity and equality in relation to property shared by the women and men. In Article 16 of CEDAW, States Parties such as Uganda are obligated to ‘...take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.’⁴² Essentially therefore, women are supposed to be effective and full participants in situations of negotiating for compensation during compulsory acquisition as this involves ‘disposition of property.’

SOFT LAW: PERSUASIVE BUT NON-BINDING ON COMPULSORY ACQUISITION OF LAND

2.17 The other soft-law-non-binding that protects the property rights of the vulnerable is the *United Nations Declaration on the Rights of Indigenous Peoples of 2007*. Under Article 10, it provides that ‘Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.’⁴³ In the same vein, the Indigenous peoples have the right to redress, by means that can include ‘restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’⁴⁴ The Declaration also offers insight into what kind of compensation that should be accorded to indigenous people whose land has been taken over. This can take the form of ‘lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress’ unless otherwise freely agreed upon by the peoples concerned.

2.18 Of equal importance are the fundamental *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, by FAO and the Committee on World Food Security. These call for the States to recognize and take all reasonable ‘measures to identify, record, safeguard and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.’⁴⁵ The States are enjoined

42 Article 14 (2) of the CEDAW.

43 Article 10, the United Nations Declaration on the Rights of Indigenous Peoples, 2007 at 39. Accessible at <http://crossculturalfoundation.or.ug/wp-content/uploads/2018/04/@CCFU-Legal-instruments-related-to-Culture-2015.pdf> (Accessed on 8/01/2019).

44 Article 28 of the United Nations Declaration on the Rights of Indigenous Peoples, 2007 at 39.

45 Guideline 3A (1-2), FAO and the Committee on World Food Security, ‘*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*,’ 2012.

to protect these legitimate claimants from ‘threats and infringements... and further....protect tenure right holders against ‘the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.’¹⁴⁶

2.19 FAO further calls up States to undertake the necessary legislative reforms with the purpose of eliminating ‘...the particular obstacles faced by women and girls with regard to tenure and associated tenure rights...’. The reforms should as well strengthen the protection and ensure the enforcement and implementation of laws accorded to women. These reforms should ensure that women can freely and legally enter into ‘contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests.’¹⁴⁷

2.20 In the same vein, in undertaking responsible governance of tenure of land, fisheries and forests, States are reminded to apply the guidelines of ‘Human dignity-recognizing the inherent dignity and the equal and inalienable human rights of all individuals; Non-discrimination, Equity and justice: Gender equality: Consultation and participation: ‘engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes,’ Rule of law: Transparency: ‘clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.’ Additionally is accountability: holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.’¹⁴⁸

2.21 Further, these laws and policies and procedures should be developed through participatory processes that provide for an equal platform that involves all affected people including both women and men. The laws should also incorporate gender sensitive approach; widely disseminated in known and applicable local languages.⁴⁹ In relation to the land market, the guidelines provide for the need for the establishment of safeguards that protect ‘the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems, such as land registries.’⁵⁰

2.22 As regards, large scale land acquisition, the guidelines implore the governments to undertake ‘appropriate consultation and participation, provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights in

46 Guideline 3A (1-2), FAO and the Committee on World Food Security, 2012.

47 Guideline 5.4, FAO and the Committee on World Food Security, 2012.

48 Guideline 3B, FAO and the Committee on World Food Security, 2012.

49 Guideline 5.5, FAO and the Committee on World Food Security, 2012.

50 Guideline 11.6, FAO and the Committee on World Food Security, 2012.

their national context.⁵¹ The guidelines emphasize the need for States to ensure that the 'planning and process for expropriation are transparent and participatory.' Anybody that is likely to be affected by the expropriation must be identified, and appropriately informed and consulted at all stages of the appropriation. The guidelines further provide that 'consultations, consistent with the guidelines, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods.' States are further encouraged to be '...sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable.'⁵² The involvement of the affected communities' right from the planning processes should not be tokenism rather where need be they should be supported to enhance their effective participation. Their presence is central to helping the acquiring agency to 'consider fully the cultural, social and environmental concerns of local communities,' and with their help mitigate the potential negative effects of the project.⁵³

2.23 Of fundamental revelation to the subject matter at hand, guideline 16 is clearly instructive in how the State should deal with **expropriation and compensation**. It provides that the State should 'expropriate only where rights to land, fisheries or forests are required for a public purpose.' It should further and more concretely define the notion of public purpose in law to allow those contesting the acquisition an opportunity for judicial review. It goes on to urge States to 'respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law.'

2.24 FAO proposes a seven step approach as a best standard in executing fair compensation for the compulsory acquisition of one's land.⁵⁴ First and foremost, in planning which involves identification of exact location, size of the land and the potential impact of the proposed project on the affected persons. Secondly, is publically taking deliberate efforts to inform owners and occupants of that land government seeks to acquisition with the necessary deadlines and procedures of compensation including procedural rights to those that may need them. This could also include public meetings so that the communities learn more about the proposed projects. Thirdly, it involves the valuation and submission of claims by the affected persons/communities and response from the necessary government agency, a process that may also involve negotiations.

2.25 Fourth is the payment of compensation to the people who have lost their land either through cash or resettlement on alternative land. The fifth step is possession of the land both physical and legal ownership by the government. The sixth step involves appeals should there be any owners and occupants who want to

51 Guideline 12.5, FAO and the Committee on World Food Security,' 2012.

52 Guideline 16.2, FAO and the Committee on World Food Security,' 2012.

53 FAO, 2005 at 20.

54 FAO at 3.

contest the compulsory acquisition and attendant processes and procedures including the amount of compensation offered. The seventh and last stage which is rear involves restitution of the land to the original owners should the purpose for which the land was needed be exhausted.

- 2.26** Additionally, the guidelines provide for the provision of 'access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.'⁵⁵
- 2.27** If implemented either through domestication omnibus or inculcation into Uganda's legal framework, the above soft law standards would fundamentally alter, positively, the patterns and trends that characterize land governance generally and compulsory land acquisition in contemporary Uganda respectively.

b) Regional human rights standards: the African Union

- 2.28** At the regional level, in particular, African Continent, the African Charter on Human and Peoples' Rights, 1986 provides for the right to property under Article 14 noting: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." The Charter further guarantees rights of disposal of a peoples' natural resources under Article 21. It provides that 'All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it...in case of expropriation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.'⁵⁶

EXCEPTIONS TO THE RIGHT TO PROPERTY

- 2.29** It should however be noted as from the aforementioned regional and international human rights law standards that the right to property is not an absolute right. It is thus at all times subject to an 'eminent domain' the innate right of the State to take over part or whole of one's property in exercise of the State sovereignty for a legally justified reason mainly for/in public interest within the ambit of the law after due compensation.

55 Guideline 3A, FAO and the Committee on World Food Security,' 2012.

56 The regional human rights system of the Americas too carries similar fortification for the right to property. The American Convention on Human Rights 1969, under Article 21 protects the right to property. It provides that;
"1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law."

c) Domestic/National Legal Framework

2.30 Over the past 30 years, Uganda has undertaken an aggressive agenda of crafting the various laws that have an implication on property rights generally and more specifically on compulsory land acquisition. Whereas not all of them are a subject of this paper, they shall be referred to as and when necessary including among others, the Petroleum (Exploration and Production) Act. Uganda's compulsory acquisition laws can be classified, into two categories namely;

- I) The generic laws which generally set the threshold of what is expected before, during and after compulsory acquisition for what they term as public interest, or public purpose.⁵⁷
- II) The second category are the laws that are very specific in terms of the purpose for acquisition such as the Water Act which categorically make known the 'specific requirements of infrastructure' needed. These laws leave no room for ambiguity as they clearly provide for what particular public purpose the land in question would be sought by the State.⁵⁸

The main legal framework governing compulsory acquisition is incarnate in the Constitution of Uganda 1995 and operationalized by the Land Act of 1998 (as amended) and the Land Acquisition Act Chapter 226 of 1965 and the Land Regulations of 2004.

THE 1995 CONSTITUTION (AS AMENDED); GUARANTEEING PROPERTY RIGHTS

2.31 As the Supreme law of the land, the Constitution of Uganda, 1995 as amended, guarantees for every citizen to own property either as an individual or in association with others as provided for under Article 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—

57 Liz Neate, 'Compulsory Acquisition Of Land: The Need For Robust Governance To Deliver Public Interest Projects Through Land Assembly,' Paper prepared for presentation at the "2018 World Bank Conference On Land And Poverty", The World Bank - Washington DC, March 19-23, 2018 at 6-7.

58 Neate, 2018 at 6-7.

(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.”*

2.32 The second tier of the Article further guarantees protection from arbitrary deprivation of one’s land or property or interest therein. In the same tier however, exceptions to this right are introduced. These include State appropriation compulsorily but only if the land is found to be necessary for *public use or in the interest of defence, public safety, public order, public morality or public health*. But even then, this compulsory acquisition must be after there has been *prompt payment of fair and adequate compensation* before the State takes possession of the said property.

2.33 The third tier introduces a remedial recourse in case of any person having an interest in the land under acquisition, he or she must have *a right of access to a court of law*. Article 26 further calls upon the Parliament to enact a law that provides for the procedure of compulsory acquisition to operationalize the above provisions in the Article. Suffice to note that this directive would have required Parliament to enact a compulsory acquisition law but there was one of 1965, and still prevalent but Courts would later find that it is not in tandem with the Constitution and the operational, practical contemporary land use, management, adjudication and administration dynamics that confront the country.

2.34 Arguably, property ownership rights aforementioned in Article 26 of the Constitution are further buttressed by Article 237 which vests land ownership in Uganda in the hands of the Citizens. This, it does by prescribing the four main tenures of land holding through which one can own land in Uganda. These include the private mailo, leasehold, customary and freehold tenures. However, even under Article 237, the Constitution still reinforces State appropriation of private land through the introduction of the exception providing that the government or a local government may acquire one’s land *‘in public interest.’* The same Article also mandates the Parliament to enact a law to govern compulsory land acquisition. It provides that;

(1) *Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.*

(2) *Notwithstanding clause (1) of this article—*

(a) *the Government or a local government may, subject to article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament.*

2.35 The vesting of land ownership rights in the citizens was a fundamental departure from the pre-1995 Constitution era where the government practically owned all land in Uganda facilitated by 1962 Constitution, 1969 Public land Act and the so called 1975 land reform decree issued during the reign of President Idd

Amin Dada. Using this Decree, Amin completely altered the land tenure terrain by vesting title to all land in Uganda in the State. All the subsisting freehold and mailo titles were reduced to leaseholds. As such, all mailo tenancies and customary tenants on State land were also reduced to tenancies on sufferance.⁵⁹

2.36 But even this, was a continuation of the colonial legacy of dispossession of land perpetuated through the 1903 Crown Lands Ordinance enacted by the British which effectively vested land in the person of Majesty the Queen of England when it converted all customary land prevalent before colonialism into Crown land with a new 'landlord'-the Crown government in England.⁶⁰ Nakayi terms this 'indirect historical acquisitions' which, though did not end in physical land dispossession or actual displacement of the native Africans, it was nevertheless 'an indirect large-scale technical dispossession' characterized by '...making the de facto occupiers and owners of land mere tenants on land.'⁶¹ As such, even the post-independence Uganda was governed on the same philosophy as incarnate in the 1903 Crown Lands Ordinance where the incontestable authority of the Crown in land governance was passed on intact to the new governments.⁶² The 1995 Constitution and the attendant 1998 Land Act transformed the above position fundamentally.

RIGHT TO PROPERTY IN THE POST-1995 CONSTITUTION: JUDICIAL INTERVENTIONS

2.37 The judicial and quasi-judicial institutions in Uganda have played an assertive role in relation to upholding the sanctity of Article 26 of the Constitution that guarantees the right to property. A number of cases attest to this. In a rather contentious case of *Julius Caesar Okot Gwara v Attorney General*, before the Uganda Human Rights Tribunal, compulsory acquisition was litigated upon.⁶³ Therein, the government of Uganda had dispossessed the complainant of his land situate in Northern Uganda citing national security-public safety and security. The UPDF sought to establish a military detach on the land. It went ahead and entered possession without any prior, prompt and adequate compensation to the owner as stipulated under Article 26 (2) (b) (i). The aggrieved party sought the intervention of the Uganda Human Rights Commission Tribunal contending

59 Mark. A. Marquardt and Abby Sebina-Zziwa, 'Land Reform in the Making,' in Holger Bernt Hansen and Michael Twaddle, 'Developing Uganda,' Eastern African Studies, Foundation Publishers, 1998 at 177.

60 Rose Nakayi, 'The Legal and Policy Framework and Emerging Trends of Large Scale Land Acquisition in Uganda: Implications for Women's Land Rights,' Center for Basic Research Working Paper No.109/2015, 2015 at 4.

61 Nakayi, 2015 at 4.

62 Nakayi, 2015 at 4.

63 Complaint No. UHRC/G/149/2000 but decision was given in 2006. The case is also discussed in Henry Onorio, 'Jurisdiction *ratione materiae* of the Uganda Human Rights Commission: Making Sense of the Ambiguity in the Jurisprudence,' 2010 (10) African Human Rights Journal at 59. The Commission later decided to treat the case as one of civil nature, a land dispute matter and not necessarily human rights. See also Human Rights Network-Uganda, 'Reviewing Chapter Four of the 1995 Constitution: Towards the Progressive Reform of Human Rights and Democratic Freedoms in Uganda,' 2013 at 21. Study was authored by Professor Joe Oloka-Onyango; also Nakayi, 2015, at 10.

that this was deprivation of the right to property. The UHRC Tribunal ruled that government occupation of the land ruled was trespass.

- 2.38** In the same vein, in *Ostraco (U) Limited V Attorney General*, the High Court re-affirmed Article 26 of the Constitution. In this case, the plaintiff owned property Plot No.69 Mbuya Hill, a suburb of Kampala. The employees of the defendant-the Ministry of Information and Broadcasting who were in occupation of the premises refused to vacate despite the repeated pleas from the plaintiff. As a result, she sought relief from the Court seeking an eviction order to be issued against the Ministry so as to vacate the premises.
- 2.39** The AG argued that the Court was bound by the then Section 15 (b) of the Government Proceedings Act that barred actions such injunctions, eviction order being issued against government for this would halt government processes. Instead, in such cases, this section was instructive to Court to at most issue declaratory orders that a complainant is entitled to particular land and not an eviction order against the government. The Government Proceedings Act (herein GPA) was in essence circumventing the Article 26 that guarantees the right to property and barring an effective remedy to the complainant.
- 2.40** The High Court held in favour of the plaintiff ordering for vacant possession of the suit property and failure of which, after 30 days from the passing of judgment, an eviction order against the government was to ensue. It averred that Section 15 (b) of the GPA was inimical to the sanctity of Article 26 and it was futile to issue a mere declaratory order as this would not be effective a remedy since there would be no recovery of the land by the deprived owner. The Court noted that Section 15 had to be read in the post-1995 Constitution era for conformity purposes with the necessary modifications, adaptations, qualifications and exceptions as stipulated by Article 237 (1) of the Constitution. This ground breaking Judgment was unanimously upheld by the Court of Appeal in *Court of Appeal Civil Appeal Number 32 of 2002 Attorney General vs. Osotraco Limited*.

Land Acquisition Act Chapter 226 of 1965

- 2.41** The Land Act which governs the administration and management of land use in Uganda also provides for compulsory land acquisition by both the central government and local government as provided for in Article 26 of the Constitution.⁶⁴ But more importantly, the Land Act reinforces the protection offered to vulnerable groups within the community such as women, children and persons living with disabilities on one side and what it calls 'bona fide and lawful occupants' on land. As it shall later be shown, these are some of the groups of people who have borne the brunt of inequitable compulsory land acquisition leading them to protest both politically by blocking compulsory land acquisition processes and legally by going to Court to challenge government compensation related assessments. That notwithstanding, the land Act provides for various

64 Section 42 of the Land Act.

provisions that seek to cement women's role in land ownership, governance, administration and adjudication, some of which reproduced below.

TABLE II: Legal Provisions Augmenting Women's Land Related Rights

Law/Provision in the Land Act, 1998	Commentary
1. Section 39 (1) - (9) (<i>Spousal Consent</i>)	Makes it a mandatory requirement for prior written spousal consent to be given in all cases involving any transactions taking place affecting what the law defines as family land. These transactions may among others include sell, exchange, transfer, pledge, mortgage, lease or even granting as gift inter vivos. However, it (the provision of spousal consent) has been criticized as having no enforcement mechanism. ¹
2. Section 28 (<i>Rights of women, children and persons with a disability regarding customary land</i>).	The law provides that any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned. However, any decision that denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33 (Rights of Women), 34 (Rights of Children) and 35 (Rights of persons with disabilities) of the Constitution on any ownership, occupation or use of any land shall be null and void.
3. Section 17 (4) (b) (<i>Communal Land Associations and Management Committee</i>)	The law provides for formation of communal land associations by any group of persons for any purpose connected with communal ownership and management of land, whether under customary law or otherwise. On its management committee, the association must have a minimum of a 1/3 as part of its officers.
4. District Land Boards	The law provides for the establishment of District Land Boards, a third of which must be women.

The aforementioned provisions, if and when invoked, would ably or to some extent be used to assert the rights of women and other vulnerable groups in compulsory acquisition processes, however what has been noted from the study is the lack of implementation by the diverse government MDAs in the chain of compulsory land acquisition.

PROTECTING BONAFIDE OCCUPANTS AND LAWFUL OCCUPANTS

2.42 In relation to the above, the Land Act protects two peculiar groups of people who have interests in land that are not and are non-registrable, i.e. the bona-

bona fide occupants and lawful occupants.⁶⁵ It should be noted that this recognition and protection of the above two groups is a double edged sword especially in the context of compulsory land acquisition. Firstly, the first part of the sword pierces positively any blockade that may still prevail to stop such groups from compensation during land acquisition for their land simply because their interest is not registrable. This recognition and protection gives them, a locus, as persons with an identifiable claim within a particular piece of mailo/freehold/leasehold land under compulsory acquisition. Consequently, they are entitled to compensation, to taking part in the compulsory acquisition processes as persons/communities with rights in the land, a right they would not enjoy if the law is silent on their history of how they came to settle on such lands.

2.43 Respect for existing land rights such as the aforementioned has been highlighted as one of the key features of an equitable compulsory land acquisition framework that adheres to the rule of law.⁶⁶ The second side of the sword pierces negatively for the presence of those two groups contributes to the contentious notion of multiplicity of land interests especially (if not only) on mailo land which has been highlighted as one of the challenges facing compulsory land acquisition processes. Nakayi notes this dilemma too averring that ‘...the (1995 Constitution) reforms have led to complicated land governance scenarios resulting from multiple and overlapping interests in land which are all legally recognized although with varying degrees of hierarchy.’⁶⁷ She further contends, that in large scale land acquisitions (including government), such a situation with ‘complicated and intersecting webs of land rights, the women’s case becomes more complicated since they rarely own certified rights to land.’⁶⁸

CERTIFICATE OF CUSTOMARY OWNERSHIP (CCO); PROTECTING CUSTOMARY LAND HOLDERS

2.44 In the same vein, the Land Act in an effort to strengthen the protection of customary tenure land owners, it provides for Certificate of Customary Ownership (CCO) under section 8 of the Land Act. Once issued, a certificate of customary ownership ‘shall be taken to confirm and is conclusive evidence of the custom-

65 According to Section 29 of the Land Act, (1) “*Lawful occupant*” means—a person occupying land by virtue of the repealed—(i) Busuulu and Envujjo Law of 1928; (ii) Toro Landlord and Tenant Law of 1937; (iii) Ankole Landlord and Tenant Law of 1937; (b) a person who entered the land with the consent of the registered owner, and includes a purchaser; or (c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title. In the same vein, “*Bona fide occupant*” means a person who before the coming into force of the Constitution—(a) had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or (b) had been settled on land by the Government or an agent of the Government, which may include a local authority.

66 Ingrid Gildseth, ‘*Land tenure practices and land acquisitions in oil region: The case of Hoima, Western Uganda,*’ Master Thesis of Geography, Department of Geography, Norwegian University of Science and Technology Trondheim, May 2013 at 51.

67 Nakayi, 2016 at 15.

68 Nakayi, 2016 at 15.

ary rights and interests specified it, and the land to which the certificate refers shall continue to be occupied, used, regulated and any transactions in respect of the land undertaken and any third party rights over the land exercised in accordance with customary law.⁶⁹ With the certificate, customary land owners have the liberty to transact on it since it's recognizable by 'financial institutions, bodies and authorities as a valid certificate for purposes of evidence of title.'⁷⁰

2.45 The CCO buttresses the locus of the customary land owners as legal claimants in situations of land dispute including compulsory land acquisition. It should however, be noted that despite its CCO potential to mitigate land ownership disputes since its documentary evidence, the government is yet to roll out and expedite the process of issuance of CCO in the areas where customary tenure of land holding is prevalent. The process of CCO issuance of course comes with its risks that would disadvantage women as it would inherently follow the customary patriarchal mode of land governance where the male as the head of the family would automatically become the title holders in such communities.⁷¹

Land Acquisition Act Chapter 226 of 1965

2.46 The Act addresses the procedural stages that must be undertaken in the process of compulsorily appropriating land. The process requires the Minister to make a declaration, through a statutory instrument, to the effect that he/she has identified land suitable for public purposes, and serve the same declaration upon the registered proprietor or/and occupier of the land.⁷² Central to this process is the assessment officer who issues a notice through a gazette and places the same at a convenient place on the land declaring the intention of the government to appropriate the land.⁷³ The assessment officer is the current day Government valuer. The same notice calls upon any person with any interest in the same land to make it known to the assessment officer. On the publication of a declaration in respect of any land, the assessment officer is supposed to superintend over the marking out and measuring of the land to produce a plan of the land.⁷⁴

2.47 The Act provides only two grounds of objection by any affected persons-namely, the plan of the land that has been marked out and measured and the compensation award for the appropriated property.⁷⁵ The law gives no room whatsoever for any person to, in the first place contest the process of acquisition and the justification of the said or proposed government project.⁷⁶ Secondly, the law is not certain in requiring the Minister to be unambiguous on the exact amount of land required for the particular project. Rather it provides for him/her, in the

69 The Land Act 1998.

70 The Land Act, 1998, Section 8.

71 Nakayi, 2016 at 16.

72 Section 3 of the Land Acquisition Act, 1965.

73 Section 5 (1) - (4) of the Land Acquisition Act, 1965.

74 Section 4 of the Land Acquisition Act, 1965.

75 Section 6 (5) of the Land Acquisition Act, 1965.

76 Neata, 2018 at 9.

declaration to specify the location of the land and *'the approximate area of the land;* and if a plan of the land has been made, a place and time at which the plan may be inspected.⁷⁷

2.48 The above state of affairs creates four problems namely;

- I) Non-definitiveness of the area required for the project for which compulsory acquisition is sought makes it impossible to genuinely scrutinize if the acquisition is justifiable as of public interest.
- II) Assessing the impact of the proposed appropriation on the affected persons/communities cannot be conducted transparently if the extent of the land required is not definitively known. As such, as Neata notes, '...it is impossible to weigh the balance of the lost rights against the benefits of the purpose for which the land is being acquired;⁷⁸
- III) And more alarming, this approximation model has in the past been abused by the government technocrats who inflate the number of acreages needed for a particular project leading to an unnecessary increment of the costs involved.
- IV) This estimation is even more problematic in relation to customary tenure land holding where there is an array of varied rights on the same piece of land, which is undocumented with its vastness only known to the owners and the local cultural/traditional institutions.⁷⁹

2.49 The Act also gives powers to the Minister to make a temporary acquisition of land to fulfill a waste management or arable land oriented public purpose by way of temporary occupation not exceeding three years from date of occupation.⁸⁰ Critically is the fact that the Act gives the line Minister the power to be exercised by way of statutory instrument, to make regulations for the 'assessment and payment of compensation under this Act and generally for giving full effect to the provisions and purposes of the Act.'⁸¹ Over forty years later, the Minister has yet to come up with any such regulations which would perhaps have mitigated the current challenges surrounding compulsory acquisition.

2.50 The Act's long title alludes to the compulsory appropriation being for 'public purposes.'⁸² The law is however silent on the exact meaning of the term which is the basis of the acquisition which makes it ambiguous and susceptible to abuse

77 Section 3 (2) (a)-(c) of the Land Acquisition Act.

78 Neata, 2018 at 9.

79 For example, Customary tenure at least as practiced across northern Uganda boasts of two types namely :communal land which essentially is grazing areas, forest, hunting grounds and burial sites with its Management superintended over by the clans that ensure free access rights to clan members but without 'ownership rights' over the same. The same type is the 'individual holdings by the head of family or extended family as the custodian for future generations with guaranteed user rights for all members.' See OXFAM, 2014 at 19.

80 Section 10 of the Land Acquisition Act, 1965.

81 Section 20 of the Land Acquisition Act, 1965.

82 It reads, 'An Act to make provision for the compulsory acquisition of land for public purposes and for matters incidental thereto and connected therewith....'

due to 'multiple interpretations'.⁸³ These same terms and others that carry similar meaning are also used in Article 26 (public use) and 237 (public interest) of the Constitution all in reference to the justification for compulsory acquisition. In some jurisdictions, to curb the potential abuse of this power of compulsory acquisition by governments, they have adopted a restrictive approach by listing the potential types of government projects that could fall under 'public purposes', a move that creates certainty.⁸⁴ In other countries, they have adopted an egalitarian, open ended approach to this notion to avoid constraining government especially in relation to future unanticipated needs for compulsory acquisition-leaving the term as ambiguous as possible to allow opportunistic interpretation and discretion.

2.51 What is clear however, is the sole justification that the government takes over the land on the notion that the project communal/societal benefits that shall accrue from the project for which the land is being compulsorily appropriated override the affected individual or restricted community ownership rights to the same piece of land. But it should also be noted, that the Land Acquisition Act only provides for the procedure supposed to be followed by the government in land acquisition. The law is by design, silent on valuation and compensation related aspects and how they are to be carried. It is precisely for this reason, as mentioned earlier, that it granted the Minister responsible powers to enact regulations to guide the actual processes of valuation and compensation.

83 Nakayi, 2015 at 16.

84 According to FAO, there are a wide range of countries laws that are specific providing for these public interest/purposes to include among others transportation uses including roads, canals, highways, railways, bridges, wharves and airports; Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs; Public parks, playgrounds, gardens, sports facilities and cemeteries; Defence purposes. See FAO, 2008 at 11.

TABLE III: Summary of the Laws Governing Compulsory Land Acquisition in Uganda

<p>A. THE CONSTITUTION (1995 as amended), LAND ACT (1998 as amended) & THE LAND ACQUISITION ACT-1965. [Provisions within the Constitution and attendant laws that GENERALLY govern compulsory land acquisition]</p>		
1.The Constitution of Uganda 1995 as amended	Article 26 (1) & (2)	Guarantees individual or/and associational ownership of property providing an exception for compulsory State acquisition of land for public use or in the interest of defence, public safety, public order, public morality or public health.
	Article 237 (1) & (2)	Notwithstanding that the Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the Constitution, the Government or a local government may, subject to Article 26 of the Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament;...”
2. The Land Act 1998 as amended	Section 42	The Government or a local government may acquire land in accordance with Articles 26 and 237(2) of the Constitution.
3. The Land Acquisition Act-1965	Section 3	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. The Purpose and therefore acquisition may be permanent or temporary.
<p>SUBSDIARY LAWS [Laws that establish agencies or/and cover a specific aspect but also dealing with compulsory acquisition]</p>		
1. Uganda Posts and Telecommunications Corporation act (1984) ²	Section 13 (1) & (2)	The corporation may acquire land or an interest in land by agreement with the land owner if the land is held under a lease or by notification to the Ministry of Lands that a particular piece of land is required. The Minister then invokes the procedures under the Land Acquisition Act to compulsorily take over the land.
2.Uganda Railways Corporation Act (1992) ³	Section 32 (1) & (2)	The Corporation on failure to acquisition the land by itself, can notify the Ministry of Lands to undertake the process of compulsory acquisition on its behalf. The land eventually vests in the Corporation.

3. Uganda Communications Act (2000) ⁴	Section 47 & 43	If an operator considers the Acquisition of land or an interest in land greater than the right of use, necessary for the purpose of providing communications services to the public, the operator may with the approval of the Commission request action from the Minister of Lands to enable compulsory acquisition. The operator bears all the associated costs with the acquisition.
4. Water Act (1997) ⁵	Section 84	The Minister or the authority, if authorized by the minister, may acquire an interest in land and any structures on the land for purposes of the Act in accordance with Article 26 of the Constitution of Uganda.
5. Electricity Act (1999) ⁶	Section 71 (1)-(5).	Any licensee, whether a public or private entity who requires acquisition of land or an interest in land necessary for the purposes of providing or maintaining electricity supply lines may with the approval of the authority request action by the Minister of Lands for compulsory acquisition.
6. Historical Monuments (1968) ⁷	Section 2	The Minister of Lands upon request from the Ministry in charge of culture etc., may for the purposes of preservation of or affording access to any object declared as preserved under the Act, acquire compulsorily any land. Such land shall vest in the Uganda Land Commission.

As can be observed above, the Minister of Lands, Planning and Urban Development remains the lead actor on all compulsory land acquisitions concerning what he/she deems land of public interest. However, it should be noted that on acquisition, the title of the land may vest in the requesting entity which also bears the costs surrounding the actual acquisition including compensation of the affected individuals or communities.

NATIONAL POLICIES, GUIDELINES, REGULATIONS AND PROJECT RAP FRAMEWORKS

The National Land Policy, 2013

2.52 In 2013, the government of Uganda launched the Uganda National Land Policy after over 20 years, the preliminary process of enacting one having started way back in 1983.⁸⁵ The policy operates on the vision ‘a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialized economy with a developed services sector.’⁸⁶ It has a goal

85 The Uganda National Land Policy, 2013 at 6.

86 The Uganda National Land Policy, 2013 at 8.

'to ensure an efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development.'⁸⁷

2.53 In relation to compulsory land acquisition, the Policy re-emphasizes that the 'State as a trustee for the Citizens of Uganda shall exercise the power of compulsory acquisition responsibly and in public interest.'⁸⁸ Interestingly, the Policy recognizes and cautions that 'the central government has not in the past exercised this power (of compulsory land acquisition) responsibly and in the public interest. The same power is also extended to local governments without sufficient capacity to meet compensation requirements.'⁸⁹ The policy further lays strategies of ensuring responsible acquisition of land by the government. Central to these strategies, it calls for amendment of the Land Act and Land Acquisition to:

- '(i) Prescribe a set of regulations and guidelines outlining the roles and responsibilities of the central government, local governments and different state organs and agencies in the exercise of this power;
- (ii) Prescribe guidelines and procedures for payment of prompt, adequate and fair compensation irrespective of tenure category for local governments to exercise this power.'⁹⁰

2.54 Despite the policy guidance provided above, there has yet to be any proposed amendments to the two principal laws affecting compulsory land acquisition. It should be noted that besides the above policy directive, the Constitution prohibits any compulsory deprivation of property or interest in property from anyone by the Government or Local Government except if this appropriation is undertaken under a law.⁹¹ This law should provide for prompt payment of fair and adequate compensation prior to taking possession or acquisition and additionally provide for a judicial recourse to any person who may have an interest in the property.⁹² The available law in use, the Land Acquisition Act, Cap 226, enacted in 1965 has been criticized as obsolete and not in consonance with the

87 The Uganda National Land Policy, 2013 at 9. Among the many of the objectives of this policy include:
I) 'Stimulate the contribution of the land sector to overall socio-economic development, wealth creation and poverty reduction in Uganda;
II) Harmonize and streamline the complex tenure regimes in Uganda for equitable access to land and security of tenure;
III) Clarify the complex and ambiguous constitutional and legal framework for sustainable management and stewardship of land resources;
IV) Redress historical injustices to protect the land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity.'

88 Uganda National Land Policy, 2013 at 14.

89 Uganda National Land Policy, 2013 at 14.

90 Clause 2.3.11, Uganda National Land Policy, 2013 at 14.

91 Article 26 (2) (b) (i-ii) and Article 237 (2) (a) of the Constitution of Uganda, 1995 as amended.

92 Article 26 (2) (b) (i-ii) and Article 237 (2) (a) of the Constitution of Uganda, 1995 as amended.

coming into force of the Constitution and is unable of providing appropriate legislative direction.⁹³

2.55 From the foregoing discourse on subsidiary laws, the legal framework in Uganda is also clear as to who has the right/mandate to compulsorily acquire land. It is either the government of Uganda or the local government. The central government Ministries, Departments, Agencies and other statutory autonomous agencies can compulsorily acquire land as well but even then, only through the Ministry/Minister of Lands who is given power within the Land Acquisition Act as the central office in the process. In Uganda these examples include NEMA, National Water and Sewerage Corporation (NWSC), Uganda National Roads Authority (UNRA), Uganda Electricity Distribution Company Limited (UEDCL) among others. Each agency bears its own costs and details its own compulsory acquisition processes and stages as long as they are in tandem with the best standards and laws.

GUIDELINES FOR COMPENSATION ASSESSMENT UNDER LAND ACQUISITION (GCALA)-2017

2.56 After over 40 years, in June, 2017, the Ministry of Lands, Housing and Urban Development developed and launched the Guidelines for Compensation Assessment Under the Land Acquisition (herein after GCALA). The GCALA are aimed at harmonization and improvement of the 'overall practice of valuation assessment to achieve fair and adequate compensation to project affected persons.'⁹⁴ They also seek to further 'support the Chief Government Valuer (CGV) who is mandated to standardize proposed annual District compensation rates for approval by the district land boards country wide.'⁹⁵ The guidelines come to remedy what the follies within the land acquisition sphere which the Minister summarized as '...undervaluation, delayed compensation and ownership disputes on one hand (mainly the aggrieved persons) and the acquiring authority challenged by unjustifiable compensation demands, speculative tendencies and absence of updated District compensation rates and regulations to bridge the gaps...'⁹⁶

2.57 In crafting these Guidelines, the government of Uganda borrowed heavily from international best valuation standards and the phenomenal World Bank Environmental and Social Standard 5 of 2016 and the International Finance Corporation Performance Standards 5 of 2012. These standards all emphasize undertaking compensation for affected persons at replacement cost-i.e. market value excluding depreciation. The Guidelines list 10 principles upon which the CGV

93 Bashir Twesigye, 'Who is to blame for property valuation mess?' Oil in Uganda Magazine, 31/03/2014. Accessible at <http://www.oilinuganda.org/features/social-impacts/who-is-to-blame-for-property-valuation-mess.html> (Accessed on 12/18/2018).

94 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 5.

95 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 6.

96 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 6.

can base on in undertaking the valuation that eventually leads to determination of the compensation due to an affected person summarized herein below.⁹⁷

TABLE IV: Principles Determining Valuation in the GCALA

PRINCIPLE	PROVISION
Principle 1	The principles allude to the notions of fairness, adequacy, prior and prompt compensation.
Principle 2	Valuation at replacement cost including incidental costs such as disturbance allowance
Principle 3	Cut-off date as the determinant of eligibility for compensation
Principle 4	Information flow and consultation of the affected persons during every step of the valuation and compensation processes
Principle 5	Appointment of assessment officer by Minister and payment of compensation within one year after project cutoff date
Principle 6	Claiming of compensation
Principle 7	Reinstatement of affected infrastructure where required and feasible
Principle 8	Multiple layers of rights on affected land and property recognized according the apportionment of 60%-70% to the tenant and 30%-40% to the land lord.
Principle 9	Seeking of relevant expertise by the valuers to guide their assessment in special purpose properties.
Principle 10	Grievance Mechanisms both at the sub-county level and courts of law.

Land Compensation Market Value and the Customary Land Tenure System

2.58 The Guidelines also provide for the five conventional valuation methods that are used or should be used in Uganda in property compensation. These include the comparison method/Market or Direct Sales Comparison method; the Contractor’s method/Cost or Replacement method; investment method (or income method derived from the physical property); Profit method (or capitalization approach) and lastly the Residual method.⁹⁸

2.59 Uganda’s main method based on market value as basis of compensation has been criticized as aloof in as far as customary land tenure holding is concerned. It should be noted that the customary tenure is the major form of land holding in Uganda accounting for between 75-80%, with only 15-20% of land as the formally registered.⁹⁹ There is contention based on the fact that this market value assessment assumes that every person having an interest in land views it in monetary terms yet this is not necessarily the case especially in customary land ownership. Herein, land is held in trust by one generation for the posterity to come with the elders viewing themselves and indeed acting as ‘stewards’ of the

⁹⁷ The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 10-11.

⁹⁸ The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 11-12.

⁹⁹ Nakayi, 2015 at 20.

land and not necessarily the 'owners of an asset'.¹⁰⁰ To them therefore, the land is invaluable as it's intertwined with their identity and survival of their lineages. It's a factor of family, community reproduction and longevity.¹⁰¹

2.60 Can market value method be a suitable measure of compensation then for aggrieved persons holding customary land? Neata contends and rightly so that 'a monetary sum based on land value cannot compensate for lost community connections, nor the lost land of future generations.'¹⁰² In the same vein, most of the customary land in Uganda is held and used jointly either as a family or a community. As such, there may be different families/households claiming particular rights in this bundle of rights over the land under appropriation. Nakayi summarizes this arrangement;

'Recognition and allocation of rights to land under customary tenure is not uniform across the country; rights are instead allocated and sanctioned or recognized following the customs of a given community. Although these differ from community to community, and at times clan to clan and further from sub-clan to clan-land and even family to family, there are some cross-cutting modes and allocation/acquisition of rights to customary land.'¹⁰³



Construction of the Kaiso-Tonya Road which connects Hoima, Kaiso and Tonya along the eastern shores of Lake Albert passes through Kabaale Village, Buseruka sub-county, in Hoima District. The road was the subject of a Constitutional and later Supreme Court by one of the Project Affected Persons contesting the taking of possession of his property before prior, adequate compensation paid as provided for in the Constitution.

100 Neata, 2018 at 16.

101 Customary tenure is one of the tenures provided for under the Constitution Article 237 (3) (a) and the Land Act section 3 (1) (a) - (h). The Land Act provides for the key characteristics of customary tenure to include: it applying to a specific group of people; applies rules accepted as authoritative to those people; regulated according to customary rules of that group; allows for communal ownership, family ownership, institutional ownership and individual ownership of land in perpetuity; applies customary rules as long as they do not hinder the enjoyment of the same for women, children and persons with disability.

102 Neata, 2018 at 17.

103 Nakayi, 2015 at 20.

- 2.61** The above predicament is manifested further in the fact that the customary tenure governance is exceedingly relying majorly on custom and norms in managing the land matters much of which being unregistered. This in itself presents challenges of ownership identification within what many call ‘the capitalized environment’ characterized by ‘highly formalized /legalized procedures...and evidence-driven settings of courts of law.’¹⁰⁴ By its nature, customary land tenure remains one of the most sought-after housing large chunks of land while its owners/occupiers remain the most vulnerable and at risk of unfair capitalist oriented modes of land valuation and attendant compensation.
- 2.62** The current compulsory land acquisition legal framework is not alive to the peculiarities, complexities, sensitivities and the over bearing patriarchal setups surrounding family/community customary lands. Rather it opts to treating occupiers/and owners of customary lands in their singular as a ‘customary owner.’ At the least, this is simplistic and escapism and has been highlighted as the cause of conflicts within families and communities surrounding cash payment compensation which normally comes as payment for assessment of family/community land as a lumped up single interest in land.
- 2.63** Besides, the lack of a specially designed model of dealing with customary land tenure holding during acquisition processes opens the process to many loopholes that may disenfranchise the women, children and persons living with disabilities who are not favoured by the largely patriarchal traits that remain manifested in customary tenure. Indeed, as evidenced from the field findings, there has been exclusion of the aforementioned marginalized groups from sharing on the paid compensation in case of dispossession of land, and in many cases their views have not been considered during family/clan/community deliberations on compensation/resettlement related discourse in the vent of land appropriation. This goes contrary to the best standards recommended internationally under the FAO principles that provide for protection of the lands of indigenous peoples and communities that use customary tenure land holding.¹⁰⁵ In all decisions affecting their tenure, there should be effective participation of all members, men, youth with special equitable access for women that could also come through their local or traditional institutions.
- 2.64** The closest to efforts that have been undertaken to provide a solution to the multiplicity of rights on land is in the new valuation guidelines but even then, they are ambiguous in relation to customary land ownership. The Minister provides specific guidelines for land valuation and more so in situations of multiplicity of ownership rights over land such as trees, rights to forest products, building among others. The guidelines recognize that each of the aforementioned interests and more, may be representative of a ‘significant loss to its holder’ on appropriation of the said land.¹⁰⁶ The guidelines further provide that the determination of compensation award should consider each of the legal

104 Nakayi, 2015 at 20.

105 Principle 9.2

106 Guideline 6.2.2 (IV) at 13.

interests in the land and developments on the land 'for example where there is freehold, mailo, leasehold, customary and other holders such as lawful and bona fide occupants.'¹⁰⁷

2.65 The Guidelines attempt to synchronize the work of the Chief Government Valuer/Assessment Officer with that of the District Land Boards who are mandated by the Land Act to compile local compensation rates for various items ranging from crops to mud houses. But even then, in some part, this synchronization is simplistic in as far as it provides for use, again, of the DLB compiled rates.¹⁰⁸ It is hoped though, that with this harmonization, the stand offs that have existed between the DLB and the Government Valuer over the compensation rates compiled by the DLB pending approval from the GV shall cease. These clashes and blames have in the past centered on the argument by the GV that the DLBs either delay or never at all submit the district compensation rates to his office for approval.¹⁰⁹ On the other hand, DLBs such as that of Hoima district maintain that even when the compensation rates are sent in time, the CGV never act on them in time.¹¹⁰ Besides, they often 'slash' the rates given by the DLBs (devaluation) without explanation revealing the enormous discretionary power the CGV has in relation to approval of the DLB compiled rates even in light of advice by local leaders on ground.¹¹¹

THE CUT-OFF-DATE PHENOMENA AND ITS IMPACT ON THE LIVELIHOOD OF THE PAPS

2.66 Throughout all compulsory land acquisitions regulating framework, there is the ever-present contentious notion of 'Cut-Off-Date' both in Project Resettlement Frameworks and now recently is has been embedded within the soft-law of the Guidelines. According to the guidelines, the Project cut-off-date is the 'designated date of completion of the census and developments inventory of the persons affected by the project.'¹¹² This date is different from the valuate date which is simply the 'effective date of the valuation.'¹¹³ Accordingly, any persons (also referred to as encroachers) that later, after this date, occupy the project area, cannot be eligible for compensation and/or resettlement assistance.¹¹⁴ In

107 Guideline 6.2.2 (IV) at 13.

108 For example, Clause 6.6.1 defers the guidelines for valuation of graves and cultural heritages to the approved district compensation rates and so it does under clause 6.5.1 for valuation of crops and trees. See the Ministry of Lands, Housing and Urban Development, 'The Guidelines for Compensation Assessment under Land Acquisition (GCALA)', 2017, at 16-17.

109 Bashir Twesigye, 'Who is to blame for property valuation mess?', Oil in Uganda Magazine, Monday, 31st March 2014. Accessible at <http://www.oilinuganda.org/features/social-impacts/who-is-to-blame-for-property-valuation-mess.html> (Accessed on 12/18/2018).

110 Interview with Respondent, Hoima district, November, 2019

111 Interview with Respondent, Hoima district, November, 2019; See also Bashir Twesigye, 'Who is to blame for property valuation mess?', Oil in Uganda Magazine, Monday, 31st March 2014. Accessible at <http://www.oilinuganda.org/features/social-impacts/who-is-to-blame-for-property-valuation-mess.html> (Accessed on 12/18/2018).

112 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 23.

113 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 24.

114 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 21.

the same way, any fixed developments that are undertaken after the disclosure of the project cut-off-date, and end of the developments inventory cannot be compensated. By 'fixed developments', the guidelines envisage 'any properties such as built structures, annual and perennial crops, woodlots and fruit trees on the land.'¹¹⁵ The guidelines further clarify that the project cut-off-date is not the 'same as a declaration or notice under the Land Acquisition Act.'¹¹⁶

2.67 This project-cut-off-date has been received differently depending on how affected a person is. The PAPs are effectively barred from further developments on the land including agricultural produce productive especially if the crops grown shall take more than 12 months to maturity. This cut-off-date agenda is based on the presumption that the PAPs shall be compensated (those opting for cash payment) or resettled within 12 months from the date valuation. Evidence from the field paints a different painful reality. In Buseruka for example, PAPs were refused to cultivate their main staple crop of cassava under the belief that they would soon be resettled or compensated to find alternative land where they would re-establish their lives and as thus grow whatever they wanted regardless without time restraint.¹¹⁷ Indeed households abandoned agriculture which is not only their source of livelihood but source of income since they used to practice subsistence farming.¹¹⁸

2.68 These communities were now plunged into unprecedented food insecurity. In an effort to survive, many were lured into taking loans from money lenders hoping to make payments when the compensation had been done by the government.¹¹⁹ And so family after family became subjects of unscrupulous money lenders in the project areas characterized by dubious and unconscionable agreements between themselves and the desperate PAPs awaiting compensation.¹²⁰ By the time compensation money was paid, majority of the PAPs lost between 25%-50% to the money lenders as payment with extortionist rates of interest. The remaining amounts were most of the time insufficient to re-establish their lives through land acquisition and putting up developments they lost as a result of the acquisition. Additionally, the trainings that were conducted within the communities/PAPs were centered on allegedly skilling PAPs on how to start a business, yet the compensation money that was to accrue to them was to assist them in buying land so that they can re-establish their agrarian life'

2.69 From the above, on the face of it, one can claim that this is clear financial indiscipline on behalf of the PAPs but far from it. The PAPs were in a tough situation because the compensation and resettlement promised was not implemented in time to allow them make a quick and smooth transition to their new live. Rather, the already frustrating predicament of delay in payment was catalyzed by the

115 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 21.

116 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 21.

117 Interview with Respondent, Hoima district, November, 2019

118 Interview with Respondent, Hoima district, November, 2019

119 Interview with Respondent, Hoima district, November, 2019

120 Interview with Respondent, Hoima district, November, 2019

food insecurity riding on the notion of project-cut-off-date that effectively rendered PAPs destitute who were restricted from further developments including agriculture from the land they formally held. Not any different from the views gathered from the field, AFIEGO summarizes this dilemma of the PAPs arising from the cut-off-date phenomenon:

‘...while setting a cut-off date is a best practice, the way it has been applied in Uganda has not only negatively affected rights provided for under Article 26 of Uganda’s supreme law, it has also led to untold suffering, desperation, isolation and many other evils...setting cut-off dates without a timeline within which they will expire has facilitated delayed compensation and has made many PAPs become landless and poorer –as they are not allowed to develop their land after the cut-off date-, that sometimes, they have ended up encroaching on and destroying critical resources such as forest reserves, game reserves, river banks, lake shores and other delicate biodiversity resources out of desperation.’¹²¹

2.70 From the government/project developers’ point of view, this date is essential to manage and counter speculative developments. There is evidence that any large scale project land acquisition in Uganda, has been often followed by increased land speculation, land grabbing and encroachment often by land dealers that siege the affected communities all driven by the anticipated huge payments for compensation. The government of Uganda concedes to this reality and notes that it comes with ‘significant risk for any resettlement program... (as) they can hinder the opportunities for those who are rightfully entitled to compensation.’¹²²

2.71 In the past, the government has not had a known and clear plan to deal with this phenomenon. This situation changed with the passing of the guidelines wherein the government lays its agenda in curbing land speculation. It introduces the ‘development moratorium and associated cut off-date’ an agenda that is geared towards precluding an influx of people from different part of the country, mainly land speculators, into the project area and therefore limit compensation/or/ and resettlement entitlement to honestly affected communities/persons. In the new guidelines, the Ministry intends to declare a freeze on any land transactions on titled land through the Commissioner Land Registration of the area and relevant local authorities in the region where the compulsory acquisition is taking place.

2.72 To further monitor and enforce this development moratorium, the Ministry shall undertake an aerial survey of the project area to obtain satellite imagery both in still and video data to capture the prevalent state of development of the area prior to the cut-off-date. Additionally, it shall undertake a ‘rapid asset inventory marking/tagging of structures’ with the help of spray paint recording owners of these developments situate in the project area to ascertain those that pass the

121 AFIEGO, ‘Memorandum of Proposals by Civil Society for the 2016 Draft Land Acquisition & Resettlement Framework for the Oil Sector,’ 22/11/2016 at 4.

122 The Guidelines for Compensation Assessment under Land Acquisition (GCALA),’ 2017 at 19.

test of compensation eligibility. It shall also demarcate the required project area with the participation of the local leaders and the affected communities.¹²³

2.73 Lastly, the Ministry shall establish what it calls a ‘strong and representative committee’, of the PAPs and work with them to counter land speculation and encroachment through establishment of temporary restriction zones.¹²⁴ Progressive as the measures above are in curbing land speculation and encroachment, in this paper we cannot make a fair conclusion of the extent to which the ministry has applied them in the most recent considering that are have been in use for hardly a year since June 2018.

2.74 From the foregoing discourse, one can conclude that the available legislative framework comprising of both the international, regional and domestic human rights instruments and laws is insufficient in delivering an equitable compulsory land acquisition legal regime recommended internationally. The problem has been identified largely around the archaic Land Acquisition Act of 1965 that is not in tandem with the contemporary challenges in land acquisition. It is also clear that what would have cured this law, the enactment of the regulations to guide valuation and compensation during the CLA processes has never been undertaken. The various guidelines in international instruments, progressive as they are, too have not been fully appreciated domestically in Uganda by the implementing MDAs. But for laws to work, they must be enforced by institutions. Are the institutions available in Uganda to at least enforce and implement the progressive provisions within the aforementioned laws? The next part probes this.

INSTITUTIONAL FRAMEWORK GOVERNING COMPULSORY LAND ACQUISITION IN UGANDA

2.75 As Neata notes, the legislative framework alone, however robust cannot alone provide rational means of compulsory land acquisition for public interest infrastructure projects.¹²⁵ These laws must be backed up and indeed by upheld by strong, independent national institutions to provide oversight and accountability of the highest standards. These institutions provide or must be able to provide checks and balances on each other but more so to the executive since it’s the main protagonist in the quest for compulsory land acquisition. It is fundamental that the public officials that occupy these institutions, ‘act in both the letter and the spirit of the laws’ to safeguard the rights of the most vulnerable persons during compulsory land acquisition. An exploration of the current institutional set up governing land justice and more so, compulsory acquisition in Uganda today reveals more appalling loopholes that continue to be manipulated to defeat rule of law.

123 The Guidelines for Compensation Assessment under Land Acquisition (GCALA),’ 2017 at 20-21.

124 The Guidelines for Compensation Assessment under Land Acquisition (GCALA),’ 2017 at 20-21.

125 Neata, 2018.

a) District Land Boards

2.76 The land Act establishes the District Land Boards which are body corporates with rights to sue and be sued.¹²⁶ The DLBs were introduced in the revolutionary quest of reforming land administration through decentralization to adequately deal with the peculiar land issues that may only be particular to a given community in a given district requiring local terrain knowledge. One of the many functions of the DLBs, central to this discourse, is their power granted by the Act to 'compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed; and to also review every year the list of rates of compensation referred to above.'¹²⁷ It is presumed that members of DLB being residents of the districts know better their communities.

2.77 The Guidelines for Compensation Assessment under Land Acquisition (GCALA) recognize and seek to rely on it for in-depth knowledge on coming up with compensation rates. Indeed, the Guidelines allude to the philosophy behind the 'matter of compensation' noting that the 'local people know what the local prices really are. They are assumed to know local costs for both labour and materials.'¹²⁸ In undertaking this work, the DLB is supported to be independent of the Uganda Land Commission, and not subject to any 'direction or control of any person or authority' rather, in executing its work, it must take into account the national and district council policy on land and 'the particular circumstances of different systems of customary land tenure within the district.'¹²⁹

2.78 However, in compiling the list of compensation rates, it must consult the technical officers at the district including but not limited to expertise in natural resources, forestry, engineering, community development and agriculture.¹³⁰ These technical experts not only support the BLD but can be and indeed are solicited by the Assessment Officer and the Chief Government Valuer. They are supposed to be sent by their line ministries of semi-autonomous Departments and/or Agencies including National Forestry Authority (NFA) for trees, Ministry of Energy and Mineral Development (MEMD) for minerals; Ministry of Agriculture, Animal Industry and Fisheries for both annual and perennial crops and fish farming; the Ministry of Works and any other relevant MDA for valuation and compensation processes.¹³¹

b) District Land Tribunals

2.79 In the same vein, the Land Act establishes the District Land Tribunals (herein after DLTs). Just like the DLBs, the DLTs play a role in relation to compensation for land acquired compulsorily by either the central or local government. The

126 Section 56 of the Land Act.

127 Section 59 (1) (e) and (f) of the Land Act.

128 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 5.

129 Section 60 (1) of the Land Act.

130 Section 59 (5) of the Land Act.

131 The Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 7.

DLT has determine any dispute relating to compensation for land compulsorily appropriated.¹³² In determining that compensation, the DLT must take into account the following; (a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land; (b) the value of the buildings on the land, which shall be taken at open market value for urban areas and depreciated replacement cost for the rural areas; (c) the value of standing crops on the land, excluding annual crops which could be harvested during the period of notice given to the tenant.¹³³ Additionally, the DLT, must in addition to compensation assessed, provide for a 'disturbance allowance 15 percent or, if less than six months' notice to give up vacant possession is given, 30 percent of any sum assessed.'¹³⁴

2.80 Herein within the law lies a great opportunity for the DLBs to mitigate potential contestations arising out of complaints revolving around compensation at least at the district level. However, this has not be exploited considering that the DLBs hardly compile these compensation rates. Even when they are compiled, it takes the intervention of the NGOs to provide funding to facilitate the DLB meetings to discuss the compiled rates and consultations with the communities to have their input into the proposed rates. In Hoima district for example, this compilation of compensation rates was only undertaken after the intervention of the Global Rights Alert-a national NGO focusing on extractives and human rights.¹³⁵

2.81 The absence of these compensation rates by the DLBs exposes the deprived persons to the arbitrary estimated compensation rates provided by the government consultants and contractors, majority of whom with no concrete knowledge of the diverse local/grassroots' communities' socio-economic and religious considerations and attachments to particular types of properties.¹³⁶

C) Chief Government Valuer Office

2.82 Situate within the Ministry of Land, Housing and Urban Development, the CGV is the head of the division of valuation within the department of land administration housed by the Land Management Directorate. The Division is responsible for providing timely and reliable real property valuations to aid decision making in government. Among the other many roles of the CGV including the assessing Stamp duty, advising the government on property rates, valuing property for rent by the government and also supervising government projects.¹³⁷

132 Section 76 (1) (b) of the Land Act.

133 Section 77 (1) of the Land Act.

134 Section 77 (2) of the Land Act.

135 Interview with Respondent from Global Rights Alert, Kampala, November, 2019. See also Hoima District, 'Approved Compensation rates in Uganda Shillings for Crops/ Trees and various non- permanent properties for year 2016/2017.'

136 Francis Tumusiime, 'The Right to Own Property: Towards a Just and Fair Compensation in Uganda's Oil Sector', Policy Briefing No.60, SAIIA, November, 2012, at 2.

137 Guidelines for Compensation Assessment under Land Acquisition (GCALA), 2017 at 6.

2.83 In the same vein, the GV office is riddled with incapacitation owing to the understaffing and under resourcing that does not match the magnitude of the work of this office that is needed to provide oversight on property valuations in over 100 districts. Because of this incapacitation, the GV has always advised the relevant government ministries, departments and agencies to seek private consultants to provide valuation services with his role being relegated to approval of the same.¹³⁸ This has only added to the injury casting into debate the authenticity of private valuers and by extension private land surveyors, two professional fields so central to process of compulsory acquisition yet so out of reach of government superintendence for quality assurance purposes and cur-tailing abuse of their offices.

D) Judiciary

2.84 The judiciary of Uganda is established under Article 126 (1) of the Constitution. The Article is to the effect that 'Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.' The Constitution further provides principles upon which the Courts in deciding any civil or criminal contestations must adhere to. These are; justice shall be done to all irrespective of their social or economic status; justice shall not be delayed; adequate compensation shall be awarded to victims of wrongs; reconciliation between parties shall be promoted; and substantive justice shall be administered without undue regard to technicalities. The Constitution also guarantees that in doing its work, the Judiciary 'shall be independent and shall not be subject to the control or direction of any person or authority.'¹³⁹

2.85 The Judiciary, right from the highest Court of the land-the Supreme Court is thus tasked with the duty of checking land injustice both inter-individuals and disputes between State and individuals such as in situations of compulsory acquisition. According to the Judiciary of Uganda, access to land justice today is 'fluid and has considerable limitations'...with population facing 'serious difficulties and do not have free and unhampered access to justice.'¹⁴⁰ These difficulties are both classified as manifesting 'in terms of physical and functional access to justice.'¹⁴¹

2.86 In relation to physical accessibility, it should be noted that the local council courts that are proximate to the communities and the members thereon would ideally possess superior and perhaps historical knowledge about a dispute are not operational yet. Indeed, since some of the land disputes in compulsory land acquisition processes are at micro-level (individual disputes on land ownership)

138 Twesigye, 2014.

139 Article 128 (1) of the Constitution of Uganda, 1995.

140 Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 5. Accessible at <https://www.judiciary.go.ug/files/downloads/Judiciary%20Presentation%20to%20Land%20Commission%20of%20Inquiry.pdf> [Accessed on 8/1/2019]

141 Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 5.

especially at the stages of compensation, the LC Courts would have come in handy to deal with such at the lower level. The Judiciary aptly captures the would be importance and lacuna created by in-operational LC Courts and its impact on access to land justice;

Failure to operationalize the Local Council Courts; Local Council Courts are a particularly important avenue for protection and dispute resolution and are embedded in the communities and much more accessible than the regular courts of law. The Local Councils also play an instrumental role in facilitating land transactions at the local levels. If this role is well played, it has the effect of reducing the occurrence of land disputes or dealing with the root cause of the disputes. The major value of these courts was to promote access to justice at the grass root and to decongest the formal court system.¹⁴²

- 2.87** In the same vein, the district land tribunals that were the flagship of decentralization of land justice mechanisms and specialized courts in land matters were closed due to ineffectiveness hence widening the loophole further. Not different is the ongoing phasing out of the Magistrates Grade II Courts there by creating a further burden for aggrieved persons to travel long distances to physically access Courts. In a related situation, Northern Uganda stands out as an example of poor infrastructure which was deteriorated further by the over 20 year armed conflict, leading to a scenario where the justice 'delivery points are far apart rendering access to justice difficult.'¹⁴³
- 2.88** The confrontational nature of litigation in Uganda demands that an aggrieved person hires the services of a dully qualified advocate to plead his/her case before the Courts of law. The entire process over and above appearing as alien and eliciting fear amongst the poor who are the majority suffering land injustice, it is also expensive to hire and retain a professional advocate. Additionally, has been the wide spread corruption that has gripped the adjudicating bodies in the country with the Courts, more particularly, judicial officers being at the centre of this scourge. The Judiciary and the Uganda Police Force, two of the central institutions in the quest for land justice have been ranked repeatedly, by Transparency International as some of the most bribery prone institutions in the country. These are closely followed by the Land registrations services office.¹⁴⁴
- 2.89** On the other hand has been the weaknesses of the oversight and accountability mechanisms over the judicial officers to discipline the judicial officers engaged in the widespread cartel like connivance that has sieged the courts hence occasioning land injustice. More specifically, the Judicial Service Commission which is among others, mandated to receive and process aggrieved peoples' complaints on judicial officers and the administration of justice. As such some commentators maintain that the JSC has 'grossly failed to prove effective', in its oversight and supervisory role of administration of land justice.¹⁴⁵

142 Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 12.

143 Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 8.

144 Transparency International, *'The East African Bribery Index,'* 2017.

145 J. Oloka-Onyango, *'Land Injustice, Impunity and State Collapse in Uganda: Causes, Consequences and Correctives.'* Human Rights and Peace Centre, Makerere University, October, 2017 at 48.

2.90 Access to land justice has further been frustrated by the inordinate delays of case hearings within the various levels of the Judiciary. The institution is riddled with backlog of cases to an extent that on average, any land related matter takes an average of 5 years within the system, unconcluded. According to the Case Backlog Reduction Committee (herein after CBRC), as at the close of 31st January 2017, there were over 155,400 cases pending at the various levels of the Court system.¹⁴⁶ Of these, 7837 had been in the justice system for over 2 years-which is the Judiciary's classification of 'back log.' Further, the report noted that 44% of unresolved cases were criminal matters, 33% accounting for civil matters, while land cases constituted 14%.¹⁴⁷

2.91 Further according to the Committee, the High Court Land Division as at 2016, had 3,400 cases. Interestingly, even the backlog in criminal matters has a connection to land disputes gone violent inform of assaults, battery, attempted murder and murder. The increase in land cases and the attendant criminal cases before courts of law point to the reality that land is increasingly becoming of the most conflictual aspect of social interaction in contemporary Uganda. The Judiciary, on its own volition, decries this delay in land justice noting that;

There is a chronic delay in case disposal and a huge backlog in land matters. This can be attributed to a number of factors which include: limited use of forensic evidence facilities, Unnecessary adjournments for unprepared lawyers, corruption, frivolous and vexatious filings, unnecessary injunctions for the purpose of delaying proceedings, unnecessary references to the Constitutional Court as a delay tactic, filing in multiple courts in order to forum shop, unavailability of witnesses (25% witness absence rate), failure to track witnesses (no fixed residence), loss of interest without notifying the court, often caused by poor witness protection program and failure to serve/prepare witnesses.¹⁴⁸

2.92 Access to justice in compulsory land acquisition process has also further been hampered by the inadequacies within the Judiciary and the other attendant justice, law and order sector entities largely due to budgetary constrictions. Accordingly, even with the introduction of specialized land courts, such as the Land Division of the High Court and the Execution and Bailiffs Division to improve access to land justice, the efforts have been frustrated by limited resources in terms of human, finance and equipment. Such judicial specialization such as the Land Division has thus not been rolled out to different parts of the country where these services are most needed to enhance access to land justice. The Judiciary is still housed as a department of the Ministry of Justice and Constitutional Affairs and as thus constrained in appropriation and management of its budget. The Administration of Justice Act, a law that would have further

146 This Committee was instituted in 2015 following the revelation of a Court Case Census Committee which established that there was a backlog of 11,474 cases with 968 having been in the system for over 10 years. See Betty Amamukirori, 'Judiciary clears over 170,000 cases in 2017,' The New Vision, 29th January, 2018.

147 Ephraim Kasozi, 'More than 150,000 cases still unresolved in Courts-report,' The Daily Monitor, March, 2017.

148 Judiciary Memorandum to the Land Commission of Inquiry, 2018 at 7-8.

enhanced financial independence of the judiciary remains in limbo hence constraining further is worked as an adjudication pillar.

E) Informal 'powerful' ad hoc bodies

- 2.93** Aside from the afore mentioned formal and legally/constitutionally mandated bodies to deal with land justice, there has been a litany of other informal, ad hoc platforms or units that have been set up. These too administrative in nature, or executively established during Presidential speeches have been fronted as the missing panacea in solving land injustice related issues. The reality however shows a mixed score card. These entities include the State house land desk based in the Presidential office. It is famed for by-passing, ignoring and sometimes outrightly rejecting court orders concerning land matters.
- 2.94** The Uganda Police Force has not been a bystander in the land injustice debacle in Uganda. The institution established what they called 'the Land Protection Unit' (LPU). The mandate of this entity is as hazy as the work it does and how it does it. It has been accused of corruption and dispensing justice to only those it gets orders to help. The Police has been reported on numerous occasions protecting persons carrying out evictions of bonafide occupants from land. In other instances, the same Police has been offering guarding services to wealthy land dealers or politically connected individuals resting court orders of vacating particular land. Some commentators have dismissed it as a mere 'scratch on the surface', intimating that the land injustice issues within which the country is plagued are far more complex to be sufficiently addressed by an unclear unit within the Uganda Police Force.¹⁴⁹
- 2.95** In the past, the President constituted and launched the Nantaba Committee, a collection of 8 various persons led by the State Minister for Lands then, Hon. Idah Nantaba to counter illegal evictions around the country.¹⁵⁰ Needless to say the Committee mandate lapsed and was never renewed after unearthing the confusion in the land administration and management spheres. In its own concluding report to the President, the Committee decried the fact that it had been frustrated in its work majorly because it had no legal basis during formation and as thus had no cooperation from the Uganda Police Force and the Director of Public Prosecutions.¹⁵¹
- 2.96** The above units have common denominators that are manifest. Access to all of them is mostly too easy for those individuals that are connected to the ruling system or power holders. They thrive in undertaking populist decisions and implementing them ruthlessly with occasional muscle of the military-the gun. What then do we make of all the above diverse entities that deal with land injustice? Oloka-Onyango paints a sad picture of this debacle asserting that the

149 Ngabirano Dan, '*Policing Land: The Role of the Uganda Police Land Protection Unit in Confronting the Elusive Land Question*,' ACODE, 2012 as cited in Oloka-Onyango, 2017 at 49.

150 Olive Eyotaru, '*Nantaba Suspends land Committee*,' The Daily Monitor, 31st May 2013.

151 See John Semakula, '*Nantaba Land Committee Awaits New Mandate*,' The New Vision, 21st October, 2013.

above situation can only breed 'confusion and conflict' characterized by a 'blame game, deflecting attention from their (each entity) misdeeds and finger-pointing at others.'¹⁵² Why then, even with a fair legal and institutional framework governing land in Uganda, haven't we observed progressive land justice especially to the poor?. He summarized the plight facing the institutions governing land administration in Uganda as an offshoot of 'predatory presidentialism and institutionalized corruption.'

152 Oloka-Onyango, 2017 at 50.

3

Compulsory Land Acquisitions and Government Infrastructural Development Programmes Stagnation: Examining The Causes

COMPULSORY LAND ACQUISITIONS AND GOVERNMENT INFRA-STRUCTURAL DEVELOPMENT PROGRAMMES STAGNATION: EXAMINING THE CAUSES

3.1 This part of the study sought to put to test the widely fronted government assertion that the need for amendment of Article 26 of the Constitution to allow government of Uganda take over land under compensation contestation is because majority of government projects have been delayed as a result of disputes fronted by PAPs. It further probes the disputations on compensation surrounding government infrastructural development programmes inquiring into the trends and patterns they take. Additionally, beyond dismissing off these compensation disputes as a blockade to development, this part also examines the merit of complaints and resistance by the affected/aggrieved communities-what occasions them? The study probes. The part also seeks to ascertain, if possible, how many projects have been delayed as a result of the above disputes and assess the financial burden to the tax payers as a result of these delays. Equally of importance and tackled in this part is the question whether beyond the widely fronted alleged adamancy by the affected persons rejecting the compensation, there are other factors that potentially explain this delay in government projects. For us to appreciate better the above, the study adopted case studies of compulsory land acquisition around the country. But even before an in-depth quest for discovering the causes of the said delays, it's critical to note that Uganda's history is littered with similar chaotic resistance movements against compulsory land acquisition which would later fundamentally delay the colonial government infrastructural developments.

3.2 Compulsory Acquisition and PAPs resistance: Lessons from History

The historical apprehension around compulsory acquisition of land in Uganda is best explained by the pre-independence struggles between Buganda Kingdom and the Colonial/Protectorate government. In 1944, the then Makerere College (current day Makerere University) which was the principal education establishment in the Protectorate sought to expand. It thus required an extra 200 acres of land to make this expansion possible. In the same year, the Empire Cotton Growing Corporation too needed land in Kawanda, a suburb in North Kampala for establishment of an 'experimental cotton station.'¹⁵³ In both cases, land was in 'African freehold possession and in neither case did the Ganda (Baganda) owners wish to sell.'¹⁵⁴

3.3 The Protectorate government sought to rely on Clause 15 of the 1900 Buganda Agreement where in it was provided that the government would acquire land in Buganda Kingdom for defence and communications purposes 'and other useful public works.'¹⁵⁵ Technically, the aforementioned two projects were found not

153 Temple-Perkins E.A, 'Such is the Burden', Rhodes House, Oxford. Unpublished draft, Rhodes House Library, Oxford at 46 as cited in Gardner Thompson, 'Governing Uganda: British Colonial Rule and its Legacy,' Foundation Publishers, 2003 at 233.

154 Gardner, 2003 at 233.

155 Gardner, 2003 at 233.

to be covered in the formulation of 'useful public works'. Consequently, the Protectorate government sought to amend the agreement by replacing 'public works' with 'public purposes' to enable it compulsorily purchase the land from the individual owners. Temple-Perkins recorded the intense opposition that followed after this proposition in a letter noting 'the immense difficulty I had in 1944 in trying to persuade the Baganda to revise one line of the Agreement. It was my unenviable task to try to persuade the Baganda to amend the words 'public works' to the words 'public purposes.'¹⁵⁶

3.4 The repeated calls to the Lukiiko in 1944 to amend the agreement was met with stiff opposition from the entire membership of it save for a one Kulubya, the Omuwanika who was later targeted as anti-fellow black man.¹⁵⁷ The anti-amendment group maintained that the Crown government had enough land in the whole of the Protectorate to run its dream projects. The move was castigated as a ploy to rob the African of land and make subject them to 'wandering about the country like strangers,' and aimed at providing the Protectorate government with 'free access to every inch of land in Buganda with impunity.'¹⁵⁸ In the late 1944, the Buganda Kingdom published and circulated a pamphlet titled 'Buganda Nyafe' (Buganda Our Mother) rallying the masses on the protection of their land. The stalemate would later acquire racial overtones with the natives bitterly decrying this agenda as meant not for African development but enriching the European expatriates, Indian community at the expense of the poor black African.

3.5 In *Advocates for Natural Resources Governance and Development, Irumba Asumani and Peter Magelah v Attorney General and UNRA* the Constitutional Court, in its judgement against the government for taking away the petitioner's land without prior compensation noted the essence of undoing historical land injustice. It noted that;

The history of this country was characterized by compulsory acquisition of property without prior payment of compensation. Most notably compulsory acquisition by government of properties belonging to the Kabaka of Buganda and the government of Buganda in 1965 to 1966, the nationalization of foreign companies in 1969 in what came to be known as *The Nakivubo Pronouncements* and the expropriation of Asians (citizens and non-citizens) properties in 1972 to 1973 by the military government at the time. I am inclined to think that in Article 26(2), the Constitution intended to put that history to rest and to firmly assert the people's rights to property.¹⁵⁹

Indeed, as history attests, the power of the State to compulsorily acquire land from private citizens is clothed in resistance or at least was until the post 1995 period.

156 Temple-Perkins, 1946 at 139 as cited in Gardner, 2003 at 234.

157 Gardner, 2003 at 234.

158 Gardner, 2003 at 234.

159 Constitutional Petition Number 40 of 2013.

3.5 Enter Post -1995 Constitution Compulsory Land Acquisitions

In the post-1995 Constitution era, the country has witnessed rapid large scale land acquisitions by the government in its quest for infrastructural development to steer economic growth. Whereas these acquisitions have been diverse and in different parts of the country, this study adopts cases in the oil rich Albertine graben more specifically in Hoima district where the agenda by the government to construct a pipeline and generally oil exploration activities have been rife with various repercussions. One such case is in Buseruka as summarized below;¹⁶⁰

160 The story of Buseruka has been reduced into an uninterrupted narrative but it is a collection of interviews conducted between 12/01/2019-16/02/2019 in both Kampala and Hoima district with PAPs and government officials at the Local government level and Non-Governmental Organisations working on land rights.

Case Study I: Kabaale Parish, Buseruka Sub-County PAPS

One of such examples is in Kabaale Parish, Buseruka Sub-County in Hoima district, land measuring 29.57 Square Km which the government of Uganda acquired compulsorily to facilitate the construction of the oil refinery (60,000 barrels of oil per day), an international airport, crude oil storage, project warehousing Petrochemical Industries among other attendant and associated facilities. To facilitate the involuntary process of resettlement occasioned by the land acquisition, the government of Uganda through the Ministry of Energy and Mineral Development contracted SFI to prepare and under the resettlement process. The SFI developed the project RAP assumably based on the reckon international and regional compulsory land acquisition and resettlement best practices. The compulsory land acquisition process in Buseruka was premised or (supposed to be) premised on this Resettlement Action Plan (RAP) to provide a systematic framework through which compensation and resettlement of the PAPs would be undertaken. According to the RAP, only 63.4% of the households were land owners, 18.8 % were co-owners, 10.8% were squatters with 6.6% being tenants, while 0.2% licensees, and 0.1% had no information to ascertain their status.

The Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka Sub-County, October 2012, provided for diverse means of compensation including buying land on a case-by-case basis for each of the households which opted for resettlement (land for land compensation), and issuing a land title of land comparable to their former land hosting a house as well as a title to each household. Of the 1221 PAP households, 93 opted for land for land compensation. The other households of 1,128 opted for cash compensation for the total assessed value of their property and the assets there on including structures and plantations. The cash compensation package was to be based on the prevalent market value of the land at the time-2011/2012 in addition to a blanket disturbance allowance 30% of a PAP's compensation total cash. It later emerged that the compensation paid in cash had been based on 2010 compensation rates far below the prevailing land market price of 2012. Considering the level of land price appreciation that had shot up at the time due to the land speculation in the area, the PAPs interviewed contend that the paid compensation could not adequately afford them land comparable to the size they had held before the acquisition due to the wrong rates of compensation used of 2010. It was not surprising therefore, when later 38 households rejected the compensation fee as inadequate due to the erroneous valuation mechanism that had been used.

In executing the process of valuation of the affected lands, the Resettlement Action Plan provided for a cutoff date as June/2012. As such, this effectively was meant to bar the PAPs from undertaking any further developments on the land for they would not be considered during compensation. This also meant that the PAPs would not cultivate some of their staple foods such as cassava which take a longer time of maturity. This was only possible if the compensation was to be made immediately for the PAPs to establish an alternative life, this however was not the case. The RAP set a timeline of 12 months from the date of completion of assessments -June 2012 within which the PAPs that opted for land to land compensation would be handed over their houses complete with the land titles and other attendant assets that were to be lost during the displacement.

The PAPs that opted for resettlement had to wait for over four years for them to be resettled. As at March, 2016, around three years after the Kabaale land had been gazetted for the construction of the oil refinery, the 93 families were yet to be resettled despite the fact that the promised time within which this was to happen had been communicated to the PAPs as six months from June 2012, the cut of date. The first forty six houses to the PAPs, located in Kyakaboga Parish, Buseruka Subcounty Hoima District were commissioned on the 10th/August/2017 by the Ministry of Energy and Mineral Development. Even at the time of the resettlement, the various livelihood restoration facilities that were needed to help in the transition of the lives of the resettled populations were either non-existent or those available were in meagre numbers compared to the households in the area. For example at the time of the commissioning of the houses, only one bore hole had been installed, connection of electricity to the houses was yet to be undertaken, opening of the roads in the resettlement area were not finished, the promised construction of a commercial and community centre in the area were yet to commence.

Indeed, at the opening of the first term of school in February, 2018, the parents resolved to take their children to another school, Buseruka Primary school which is about 5 km from their resettlement community residence in Kyakaboga village, Nyakabingo parish. The government promise of refurbishing Nyahaira primary school which was within reasonable distance for the Community had not materialized at term opening according to the Oil Refinery Residents Association (ORRA) Vice chairperson, Innocent Tumwebaze then.⁸ However, it should also be noted that in the Ministry had undertaken work on rehabilitation and expanding of Buseruka and Kabaale health centres and Buseruka Primary school.

In relation to gender dynamics in the land acquisition processes, in Buseruka, stories abound of how men, after getting the cash that had been assessed as compensation, immediately from the bank, they never went back to their homes. They abandoned their families and moved to other neighboring villages marrying off every lady in their wake. Women who survived on land through subsistence farming were left totally destitute with majority resorting to doing casual work to survive while others returned to their parents' homes further burdening the poverty stricken homesteads of the old. The compulsory acquisition process that is not anchored in the dynamics of local power relations based on land where the women are the most vulnerable catalyzed this state of affairs that the Albertine continues to witness. No viable, consistent and robust models were crafted to ensure that women too have an opportunity to have their say in the compensation process to cushion them against such eventualities of being negotiated out of the compensation.

Case Study II: Hoima Kaiso – Tonya Road

The upgrade of this particular road was anchored in the need fronted by the government, to ease and facilitate the abundant oil exploration and later exploitation activities in the region including the planned construction of the oil refinery.¹⁰ Beyond the oil agenda, this road was to also provide a direct route to the border with the Democratic Republic of Congo as well as easing transport to touristic centers situate within Bunyoro such as the Kabwooya-Kaiso game reserve and Lake Albert. Through Statutory Instrument Number 5 of 2013, dubbed the Land Acquisition (Hoima- Kaiso -Tonya road) Instrument, the government of Uganda through UNRA commenced compulsory acquisition of the land in the environs of the identified road site.

The absurdity surrounding compensation woes in the Kaiso-Tonya road has probably not been experience elsewhere in Uganda. The inadequate compensation emerged as the most prominent failing of government in mainly Nyamasoga parish, in Buseruka sub-county. According to the findings from the area, some PAPs were paid monies as low as between Shs.15, 000- Shs.50, 000 for some of their properties including permanent houses among others which they argued were valued at over Shs. 20 Million and above.

The construction of this road did not only affect the PAPs whose land was compulsorily acquired, rather the impact was extended to other members of the community surrounding the areas where the contractors set camp to blast stones. Accordingly residents of Kyenjojo, Hohwa, Kaseta, Nyanseke Kataaba and Kabaale villages, all in Kabwoya sub-county claimed that they had lost property, animals and crops while some had to abandon their homes due to cracks that developed therein arising from the rock blasting and explosions that had prevailed during the road construction in 2013 by KOLIN INSAT, the Turkish construction firm. In 2017, they sued UNRA and KOLIN INSAT, the Turkish firm in Masindi High Court seeking compensation totaling over Shs. 2 billion.¹¹ Over 85 PAPs went to court for various remedies contesting among others the unfair valuation system used and subsequently inadequate compensation.

The same ghosts of corruption that have characterized similar compulsory land acquisition projects did not spare this Kaiso Tonya road. Allegations of ghost payments, double payments of the ghost payment, payment for non-existent structures, double and triple payment for the same structures, payments for properties outside the scope of impact of the road and payments to individuals for structures that belonged to the local government among others. One of such examples involved the payment of Shs. 38 million Shillings and Shs. 31 million Shillings to a one Jacent Muhawemana, who it later emerged was not known by the community in the Kiganda 1 village where she was presented as a resident. Mapcon Consults Ltd that was contracted to manage the valuation and compensation related processes of the PAPs during the construction denied these ghosts of course.

It should be noted that again, the Mapcon Consults had emerged the worst bidder having scored only a paltry 40% during assessment yet it was awarded the contract! The same company, it later emerged, had not paid withholding tax from the contract proceeds-rather UNRA, its contractor paid it to government. It also came to light that the actual length of the Hoima-Kaiso-Tonya road was 83km, not the 92km as officials always stated.¹² As such, the government paid an extra Shs30b as payment for 9km of road length additional. The road cost the government Shs 314 Billion, that is, Shs 3.2 Billion per Kilometer hence making it one of the most expensive roads in the region.¹³

Appearing before the UNRA Probe Commission of Inquiry, UNRA's land acquisition specialist, Pamela Kemigisha confessed to payment of ghost PAPs to a tune of at least 208 million Shillings out of the 12.4billion Shillings meant for compensation.¹⁴ Another example involves Shs12.4 approved as payment to PAPs but Shs14b was certified as to have been paid out. The extra Shs2b was not accounted for.¹⁵

3.6. Debating the delays in project implementation and the Right to property

In 2017, the law governing compulsory land acquisition in Uganda fundamentally changed and positively so. As earlier noted, the lead law governing compulsory acquisition—the land acquisition Act of 1965 provided for the assessment officer taking possession of one’s land as soon as a declaration by the line Minister has been made under Section 7 of the Act.¹⁶¹ The Section in effect permitted the government to take up and enter possession of land that has been declared as necessary for public interest even before the full compensation to the owner/occupants or any persons having an interest in the land has been made. Essentially, upon possession, the law provided that any interest in the land would automatically become a claim for compensation by the affected person.¹⁶² The land would immediately vest in the Uganda Land Commission free from all encumbrances (despite the fact that even at the time of this vesting, the ‘owners’ of land would still be not paid yet.¹⁶³ The Registrar of Titles in the relevant jurisdiction would cause for the change in the names of the expropriated land upon prompting by the assessment officer by way of forwarding the declaration from the Minister.¹⁶⁴

3.7 The Land Acquisition provides for an appeal process should a land owner not be satisfied with the compensation award but even then the process is further skewed in favour of the State. It provides that ‘...an appeal is lodged against an award made under this section (6); or where a person awarded compensation refuses to accept payment; or 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.’¹⁶⁵

3.8 The above position in the Land Acquisition Act, 1965 was over turned in the case of *Advocates for Natural Resources Governance and Development, Irumba Asumani and Peter Magelah v Attorney General and UNRA*.¹⁶⁶ The case was sparked off after the Government of Uganda sought to undertake a project upgrading the Hoima-Kaiso-Tonya road to ease access to Uganda’s oil fields in the Albertine Graben. Using the eminent power provided under Section 7 of the Land Acquisition Act, the Government compulsorily attained the project land

161 The Section 7(1) provides that; ‘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 7 the declaration if the Minister certifies that it is in the public interest for him or her to do so.’

162 Section 7 (2) (b) of the Land Acquisition Act, 1965

163 Section 7 (2) (a) of the Land Acquisition Act, 1965.

164 Section 7 (3) & (4) of the Land Acquisition Act, 1965.

165 Section 6 (5) of the Land Acquisition Act, 1965.

166 Constitutional Petition Number 40 of 2013. The court however threw out the first applicant due to lack of proof of the applicant’s capacity as an NGO since there was never any attachment of certificates of incorporation and/or registration within the laws of Uganda. The Court was tasked to make a finding on whether Section 7(1) of the Land Acquisition Act-1965 as/is inconsistent with Article 26 (2)(c) of the Constitution in as far as it gave government power to take a person’s land compulsorily before prior, adequate compensation.

and thereafter the Uganda National Roads Authority (UNRA), the line agency for road construction, took possession even before payment of prompt and adequate compensation to the owners/occupants and persons with an interest in the land. This went on despite the fact that there were contestations from some of the land owners over the undervaluation of their properties by the Government valuer. In its wisdom, urged by the need to proceed with the project and supported by section 7 of the Land Acquisition Act, the Government of Uganda took possession as the contestation of the compensation value went on. One of the aggrieved landowners affected by the project, Mr. Irumba with land situate at Kyeharo–Kabwoya petitioned the Constitutional Court contending that the act of Government compulsorily acquiring their land under section 6 and 7 of the Land Acquisition Act without prior and adequate compensation for it before taking possession was inimical to Article 26(2) of the Constitution and therefore unconstitutional. His petition was not about the value of the land as assessed or the quantum of the award. It was about his right to prior adequate pay before expropriation of his land.

3.9 The Constitutional Court found that **Section 7(1)** of the Land Acquisition Act was a nullity, unconstitutional to the extent of its inconsistency with **Article 26(2)** of the Constitution. That is to say, to the extent that it does not provide for prior payment of compensation, before government compulsorily acquires or takes possession of any person’s property. In the same vein, Court declared UNRA’s taking possession of the respondent’s land prior to payment of compensation contravened his right to property as enshrined in **Article 26(2)** of the 1995 Constitution. The judgement of the Constitutional Court was upheld with approval by the Supreme Court in an appeal by UNR in *Uganda National Roads Authority vs. Irumba Asumani & Peter Magelah*.¹⁶⁷

3.10 It is also important to note that the decision in the above case sparked off the Government agitation to find a replica of a similar framework that would allow them to take possession of one’s property even before payment of adequate compensation. This would later give birth to the move to amend the Constitution to provide a fallback position for Government. Therefore, since the time this section was expunged, Government has had a no fall back of taking on possession in what the Minister called ‘...exceptional cases where very few individuals object to a compensation value awarded.’¹⁶⁸ The government of Uganda argued that since the judgement, many landowners have been emboldened to snub government compensation, filed numerous cases in Court, some gotten temporary injunctions against government works in their property leading to stalemate of infrastructural development projects ‘...due to few individuals objecting unreasonably to the value awarded...’¹⁶⁹ Consequently, the Government contends, this stalemate leads to increment in the costs of the project char-

167 Supreme Court Constitutional Appeal No.2 of 2014

168 Ministry of Lands, Housing and Urban Development, ‘*Understanding Land Acquisition Challenges That Have Necessitated The Constitutional (Amendment) Bill, 2017*’, Kampala, July, 2017 at 4-5.

169 Ministry of Lands, Housing and Urban Development, 2017 at 5.

acterized by and arising from hired equipment that remains idle and generally extension of the timeline of completion.¹⁷⁰

3.11 Impact of the Project delays

In the same vein, the government argued, these delays lead to loss of interest in the projects by the donors who are the substantive funders, decrying the 'tying of capital' involving spending of monies but without project completion hence non-beneficial to citizens and litigations arising out of failure by Government to execute its obligation under contracts for service providers.¹⁷¹ The repercussions of these delays irritating the development partners is best exemplified by their threats to halt funding to Uganda Electricity Transmission Company Limited (UETCL) Kampala meant for construction of two high voltage electricity transmission line citing over delay of project implementation. The African Development Bank wrote to the UETCL warning to withdraw funding for Mbarara-Nkenda 132kV transmission line, 160km and Tororo-Lira 132kV transmission line, 260km worth \$34 million (Shs122.4 billion) and \$31 million (Shs111.6 billion) respectively, by September, 2017 if there the state of affairs then did not change. The Government further contended that by July 2017, there were accumulated interests on the un-utilized loans totaling \$ 27m (UGX 97 billion).¹⁷²

GOVERNMENT INSTITUTIONAL AND LEGISLATIVE OCCASIONED DELAYS

3.12 Understaffing of the MDAs in the Compulsory Land Acquisition Process Chain

Among the other factors to explain this include the understaffing of UNRA specifically but also generally, of MDAs that are part of the compulsory land acquisition chain for example in key positions responsible for undertaking the verification related exercises upon which the batches for payment to PAPs to pave way for land acquisition depend. The FAO urges States to strive to the extent that resources permit, to ensure that the implementing agencies in the process of compulsory land acquisition have the human, physical, financial and other forms of capacity to ably facilitate this process without occasioning injustice to the PAPs.¹⁷³ Clearly in Uganda, as evidenced below, this principle is far from implementation. A number of delays on projects were occasioned in the 2016/2017 financial year due to this understaffing. These projects include:¹⁷⁴

170 Ministry of Lands, Housing and Urban Development, 2017 at 5.

171 Ministry of Lands, Housing and Urban Development, 2017 at 25-26.

172 Ministry of Lands, Housing and Urban Development, 2017 at 25.

173 Guideline 16.4 of FAO and the Committee on World Food Security, 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,' 2012.

174 Ministry of Finance and Economic Planning, 'Annual Budget Performance Report: Financial Year 2016/17,' 2018 at 370-375. Also accessible at <http://budget.go.ug/budget/sites/default/files/National%20Budget%20docs/ANNUAL%20BUDGET%20PERFORMANCE%20REPORT%20FY%2020116-17.pdf> (Accessed 5/01/2019)

TABLE V: Delayed Projects in 2016/2017 Due To MDAs Understaffing

PROGRAMME 0451 NATIONAL ROADS MAINTENANCE & CONSTRUCTION	
Amount of/and Sub-programme and Projected Affected (Delays in Completion)	Justification for non-absorption of the budget and therefore non-completion or advancement of the project as fronted by UNRA captured verbatim.
1. 0.001Bn Shs SubProgramme/Project:0952 Design Masaka-Bukakata road	'The <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons.</i> There were no batches presented for payment.'
2. 0.444 Bn Shs SubProgramme/Project:0954 Design Muyembe-Moroto - Kotido (290km)	'The unspent amount was not sufficient to payoff IPCs that were presented and there were no batches to be paid because the <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons.</i> '
3. 0.330 Bn Shs SubProgramme/Project:0955 Upgrade Nyakahita-Ibanda-Fort Portal (208km)	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment <i>the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons.</i> In addition, there are a number of supplementary valuations caused by disputed property valuation by number of PAPs and amount under civil works was not sufficient to pay off IPCs that were presented. The slow progress in land acquisition hinders both the payment for land acquisition and the civil works.'
4. 0.336 Bn Shs SubProgramme/Project :1034 Design of Mukono-Katosi-Nyenga (72km)	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment the <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons</i> and amount under civil works was not sufficient to pay off IPCs that were presented. The IPCs and invoices for payment were still in approval process by close of the quarter.'
5. 0.258 Bn Shs SubProgramme/Project:1035 Design Mpigi-Kabulasoka-Madudu (135 km)	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment the <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons</i> and no invoices had been presented then for payment. The land acquisition department is still understaffed and this has led to backlog of verification of Project affected Persons therefore there were no batches for payment.'
6. 0.285 Bn Shs SubProgramme/Project:1038 Design Ntungamo-Mirama Hills (37km)	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment because the <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons</i> and amount under civil works was not sufficient to pay off IPCs that were presented. There were no IPCs that were submitted for payment.'
7. 0.212 Bn Shs SubProgramme/Project:1041 Design Kyenjojo-Hoima-Masin-di-Kigumba (238km)	'The amount warranted in this quarter was not fully absorbed because batches had not been presented then for payment because <i>the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons.</i> '

8. 0.159 Bn Shs SubProgramme/Project:1044 Design Ishaka-Kagamba (35km)	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment because <i>the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons</i> and amount under civil works was because no IPCs that were presented then.'
9. 0.342 Bn Shs SubProgramme/Project:1056 Transport Corridor Project	'The quarter one warrant was not fully absorbed because batches had not been presented then for payment because the <i>land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons</i> and amount under civil works was not sufficient to pay off IPCs that were presented. There is current shortage of staff for land acquisition and IPCs and invoices that were to be paid were still in the approval process by end of the quarter.'
10. 0.197 Bn Shs SubProgramme/Project:1158 Reconstruction of Mbarara-Katuna road (155 Km)	'The amount warranted in this quarter was not fully absorbed because batches had not been presented then for payment because <i>the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons.</i> There is current shortage of land surveys hence delays in valuations.'
Others	11. 0.213 Bn Shs/ SubProgramme/Project :1176 Hoima-Wanseko Road (83Km) 12. 0.462 Bn Shs/ SubProgramme/Project :1277 Kampala Northern Bypass Phase 2 13. 0.183 Bn Shs/ SubProgramme/Project :1322 Upgrading of Muyembe-Nakapiripirit (92 km) 14. 13.710 Bn Shs/ SubProgramme:0955 Upgrade Nyakahita-Ibanda-Fort Portal (208km)

From the foregoing, it is clear that the PAPs do exist, they wanted to be paid adequately so that they can deliver vacant possession of the lands they occupy and let the government programmes of infrastructural development take place. However, the delay in verification of their claims and their person is an aspect in the compulsory land acquisition chain that they cannot control. As such, delays arising from such technical issues as verification due to understaffing cannot be imputed on them to warrant an amendment of the law.

3.13 Delayed Valuations Reports by the Chief Government Valuer (CGV)

Further delays have been occasioned by stakeholders beyond the implementing agency. Some of the projects run by UNRA stalled due to delays from the CGV in sending the necessary valuations to facilitate process of payment of compensation to the PAPs. By law, the MDAs engaged in compulsory land acquisition cannot process any payments unless the CGV has made the necessary land valuation to ascertain the fee that is supposed to be paid for a particular piece of land. Indeed, the process of pay depends on the availability of the paper work cleared by the CGV to the relevant pay masters. Affected projects included *Sub-Programme/Project: 1176 Hoima-Wanseko Road (83Km)*. Another factor posed by UNRA is the shortage of surveyors in the country to undertake

the necessary surveying and production of requisite reports to facilitate valuations and eventual payment of compensation. This was highlighted as partly the justification for the delay in the implementation of their 'Sub-Programme: 1158 Reconstruction of Mbarara-Katuna road (155 Km); SubProgramme/Project: 1312 Upgrading mbale-Bubulo-Lwakhakha Road; and SubProgramme/Project: 1158 Reconstruction of Mbarara-Katuna road (155 Km).

3.14 The non-functionality of the District Land Boards

The non-full capacity operations of the DLBs meant to provide local compensation rates to the Chief Government Valuer to facilitate compensation of affected communities in particular districts has also been highlighted as a cause for delayed projects having nothing to do with the PAPs. This has replayed prominently both in Albertine Region/Hoima district.¹⁷⁵ According to AFIEGO, 'district land boards are still weak and poorly facilitated by the central government and as such, they have failed to compile and update compensation rates in consultation with communities as required by section 59 of the Land Act 1998 (as amended). This was evident in the refinery project where the District Valuer, who is not a member of the Hoima District Land Board, erroneously approved and signed compensation rates which were used to compensate over 7,000 refinery PAPs...the use of wrong compensation rates explains why for many years, government has failed to compensate all the oil refinery project affected people including those who asked for relocation.'¹⁷⁶

3.15 The same phenomenon played out recently in Busoga region in relation to the Standard Gauge Railway Compensation. The SGR project is a \$2.3billion (about Ug. Shs77.5 trillion) contemporary, high capacity railway system being developed through the Ministry of Works and Transport meant to reduce the cost of doing business by providing for a means that is proficient, dependable, safe and affordable for both freight and passengers. The network, being implemented as a regional project, is poised to stretch from Mombasa to Nairobi through to Kampala, Kigali and as well as Juba in Southern Sudan connecting the entire East African block excluding Tanzania.

3.16 In 2016, around 630 PAPs in Jinja district whose land was appropriated to pave way for the construction of the Standard Gauge Railway (SGR) had to wait for compensation due to the absence of a District Land Board that was yet to be substituted. Jinja district at the time compensation was supposed to be paid to PAPs (November, 2016) had last had a DLB in October, 2015 when the mandate of their mandate expired pending renewal. Efforts to have a new one in place were halted after the Inspectorate General of Government (IGG) halted the process of appointment owing to procedural irregularities in contravention

175 Hoima District which has become the centre of attention due to its vast oil wells is situated in Bunyoro sub-region in South-Western Uganda, bordered by districts of Buliisa to the north, Masindi to the north-east, Kyankwanzi in the east, Kibaale District to the south, Ntoroko District to the southwest and the Democratic Republic of the Congo across Lake Albert to the west. Hoima District, Buliisa, Kibaale, Kiryandongo and Masindi, the 5 districts make up the Kingdom of Bunyoro (Bunyoro sub region).

176 AFIEGO, 2017, at 4.

of the laws governing the appointment of the members of the DLBs.¹⁷⁷ Even the move by the District Council Chairperson at the time, Mr. Titus Kisambira to engage the neighbouring district of Buikwe land board together with the Chief Government Valuer to offer the compensation rates compilation at a fee were countered in the District Council Meeting.¹⁷⁸

3.17 The archaic laws governing compulsory land acquisition

Other agencies such as Uganda Electricity Transmission Company Limited (UETCL) blame the delay in their public interest projects mainly transmission line construction on poor laws that govern land acquisitions.¹⁷⁹ These laws, according to the Managing Director, Willy Kobujuna Kiryahika, do not allow quick acquisition of the land required. Expectedly land acquisition comes with a huge budget especially if the land being appropriated is in the urban centers. The Uganda Electricity Transmission Company Limited for example avers that as at June, 2017, it had its land acquisition an estimated budget at \$139 (Ug.Shs. 500 billion) which comes in installments and if its compensation in urban spheres, money spent on compensation alone can even implement the entire planned project.

3.18 On average the UETCL needs 30-60 meters of land for corridors for transmission lines for power which vary depending on the voltage of the line. Broken down further, the 132kV require 30 meters, 220kV require 40 meters while the 400kV transmission lines require 60 meters all aimed at ensuring the recommended standards of safety for the public. The quest for land to facilitate this transmission has been on the rise since 2016 when Uganda signed a \$ 84 Million finance agreement with the government of Germany to facilitate the development of power transmission lines in Mbale-Bulambuli estimated to cost \$44 million, and the Mbarara-Masaka, costing \$39 million. This came at the

177 Abubaker Kirunda, 'IGG halts appointment of new Jinja land board,' The Daily Monitor, 8th/02/2016. Accessible at <https://www.monitor.co.ug/News/National/IGG-halts-appointment-new-Jinja-land-board/688334-3066584-gv68r0z/index.html> (Accessed on 1/01/2019)

178 Abubaker Kirunda, '600 in Jinja to miss Standard Gauge Railway compensation,' The Daily Monitor, 2nd /11/2016. Accessible at <https://www.monitor.co.ug/News/National/600-in-Jinja-to-miss-Standard-Gauge-Railway-compensation/688334-3437616-mbjh4j/index.html> (Accessed on 1/01/2019)

179 Uganda Electricity Transmission Company Limited (UETCL) for transmission is one of the three independent companies that were established and wholly owned by the government of Uganda wholly after the disbandment of the former the Uganda Electricity Board (UEB). The other two include the Uganda Electricity Generation Company Ltd (UEGCL) for generation; and the Uganda Electricity Distribution Company Limited (UEDCL), for distribution. The UETCL is a public limited company incorporated on 26th, March 2001 operating under policy guidance of the Ministry of Energy and Mineral Development (MEMD) with further oversight by an independent agency-Electricity Regulatory Authority (ERA). UETCL's mandate revolves around the establishment of high voltage electricity transmission lines with capacities above 33kV. It does this through Engineering, Procurement and Construction (EPC) contractors under the supervision of UETCL engineers, consultants and donors. It also coordinates the power system to achieve balance between supply and demand including as well exporting and importing power in Uganda in Uganda as provided for in the Electricity Act, 1999 Cap 145

heels of the anticipated completion of Karuma and Nsimbe hydro-electricity power dams.¹⁸⁰

- 3.19** The Energy sector development features prominently in the government of Uganda's priorities and objectives as espoused in its National Development Plan two seeking to expand the electricity transmission grid network from the current national power coverage at 20.5%; and additionally, reduce both the domestic and commercial consumer unit pay rate to catalyze industrial development. The stakes have been heightened with the Government's ambitious plan of establishing 22 industrial parks around the country in its quest to attract investors and development of Small and Medium Sized manufacturing companies in the country. These parks are spread across different parts of the country.
- 3.20** As a result, to power them, the Government has embarked on plans to construct power sub-stations for these parks including construction of a 5km 132kV metallic transmission line from the 132kV Nalubaale-Namanve transmission line to power the projected Namanve south industrial park substation, a 15 km of 132kV transmission line from the planned Namanve south industrial park substation to the projected Luzira industrial park substation, an 8km of 132kV transmission line from the prevalent 132kV Nalubaale-Namanve transmission line to the suggested Mukono industrial park substation and a 10km 132kV transmission line from the existent Bujagali-Tororo 132kV to the projected Igan-ga industrial park substation.¹⁸¹ Of these industrial parks shall require reliable, efficient and affordable to function maximally hence the above sub-stations which too require land to establish the high voltage transmission lines. As at June, 2017, the UETCL had more than 30,000 people that were to be affected by ongoing and anticipated transmission lines developments as PAPs.¹⁸²
- 3.21** Not different from UNRA, UETCL's projects have also delayed largely due to disputes around inadequate compensation to PAPs. Some of the stalled projects in the immediate past have included the following:¹⁸³

180 Uganda obtains surety for power transmission lines,' 6th/10/2016 Accessible at <https://www.esi-africa.com/uganda-obtains-surety-power-transmission-lines-project/>(Accessed on 1/01/2019)

181 Hadijah Nakitendde, 'Construction of Shs300bn Industrial parks power substations commence,' The Sunrise, 28th/06/2016, accessible at <http://www.sunrise.ug/news/201606/construction-of-shs300bn-industrial-parks-power-substations-commence.html> (Accessed on 1/01/2019)

182 Uganda: 'Land acquisition disputes cause project delays,' 8th/06/2019. Accessible at <https://www.esi-africa.com/uganda-land-acquisition-delay-projects/> (Accessed on 1/01/2019).

183 Office of the Auditor General, 'Implementation of Transmission Line Infrastructure Projects Uganda Electricity Transmission Company Limited - (UETCL); Value for Money Audit Report,' March, 2015 at 18.

TABLE VI: Delayed Projects in 2016/2017 due to disputes on compensation

PROJECT	PROJECTED OUTPUTS	CONTENTION
1. Bujagali - Tororo 127.7km, 220kV and Mbarara-Mirama - 66 km, 220kV transmission lines and associated substations	<p>A. A constructed, tested, commissioned and fully operational 220kV Bujagali Tororo- Lessos (Uganda part), double circuit, double conductor power transmission line (approximately 127.7km) on self-supported steel lattice towers and associated bays at Tororo substation.</p> <p>B. A constructed, tested, commissioned and fully operational 220kV Mbarara- Mirama- Birembo (Uganda part), double circuit, double conductor power transmission line (approximately 66 km) on self-supported steel lattice towers and transformer stations at Mbarara North and new transformer station at Mirama substation.</p>	<p>I. Bujagali - Tororo 127.7km, even after a second re-valuation, the PAPs rejected the valuation rates approved by the CGV.</p> <p>II. Mbarara-Mirama -66 km, project delayed due to land disputes amongst PAP claimants. Examples include Tower locations AP 4/14-Kasenya wherein the PAPs could not avail the title to the land they claimed to UETCL; Tower AP2/5 situated at Nyakatoni where after compensating a PAP, another showed up claiming ownership of the same parcel of land. There were also PAPs claiming that some of their properties were not valued such as at tower- AP5/9 Ntungamo, where the owner claimed two graves had not been compensated for.</p>
2. Mputa/ Hoima-Fort Portal- Nkenda-273km, 220kV Transmission Line Project	<p>A. A constructed, tested, commissioned and fully operational Mputa - Fort Portal 220 kV transmission line (approx. 172km), Fort Portal - Nkenda (approx. 54km).</p> <p>B. A constructed, tested, commissioned and fully operational Mputa - Hoima 132 kV transmission line (approx. 73 km)</p> <p>C. A constructed, tested, commissioned and fully operational new transformer substation at Hoima substation.</p>	<p>I. Hoima-Nkenda-229km, there was delay in the payment of the PAPs, many rejected the valuation rates that had been approved by the CGV.</p>

<p>3. Mbarara-Nkenda-160 km, 132 kV and Tororo-Lira-260 km, 132 kV transmission lines and associated substations</p>	<p>A.A constructed, tested, commissioned and fully operational 132kV Mbarara-Nkenda double circuit, single conductor power transmission line (approximately 160 km) on self-supported steel lattice towers and (monopoles used across Queen Elizabeth National Park) and substation extension at Mbarara and Nkenda in (Kasese). B.A constructed, tested, commissioned and fully operational 132kV Tororo-Lira double circuit, single conductor power transmission line (approximately 260 km) on self-supported steel lattice towers and substation extension at Tororo, Opuyo & Lira substations. C.A constructed, tested, commissioned and fully operational new transformer Substation in Fort Portal.</p>	<p>I.Mbarara-Nkenda-160 km, the PAPs rejected the valuation of the CGV rates on two counts-after the second valuation; II. Tororo-Lira-260 km, even after the revaluation, the PAPs rejected the compensation. In some parts of the corridor, 44km from Amac to Lira, the surveys were repeatedly suspended due to hostilities of the PAPs to the workmen.</p>
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As can be attested, in all of the three mentioned projects, the biggest huddle lay in acquisition of right of way for the transmission lines with various complaints all related to PAPs. Other factors responsible for the delay are summarized in a value for money report by the Auditor General on UETCL:

‘The delay to acquire and fully provide physical possession of the Right of Way was caused by several factors, including land disputes, failure to involve Project Affected Persons (PAPs) during RAP surveys, failure by district local governments to update their valuation rates, rejection of Chief Government Valuer (CGV) valuations by PAPs, delays by CGV to approve valuations submitted by UETCL, and rejections by PAPs arising out of time lapses between conducting valuations and actual payments and delayed completion of resettlement houses for the paid up PAPs.’¹⁸⁴

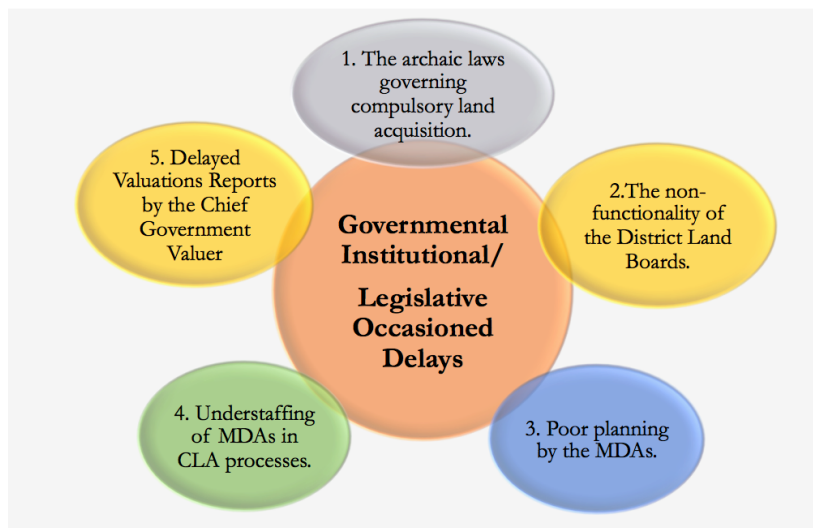
3.22 Poor planning by the MDAs in CLA

In another dimension, practitioners in land law contend that the biggest challenge in compulsory land acquisition is poor planning by the relevant government agencies that seek this land. Many a times, they contend, massive government infrastructures are co-funded with the government providing a particular percentage of the project money as well as development partners. Often, the development partners’ contributions come early before the government por-

184 Office of the Auditor General, ‘Implementation of Transmission Line Infrastructure Projects Uganda Electricity Transmission Company Limited - (UETCL); Value for Money Audit Report,’ March, 2015 at 18.

tion is even appropriated in the budget. The government contribution could for example be targeted towards settling compensation for land to host the project. When it delays to pay the affected persons for the project to kick off, such a delayed project is not an offshoot of land owners' adamancy rather its poor planning manifested in delayed appropriation of the necessary funds by the government.

FIGURE II: Summary of Government related delays in CLA



COMPULSORY LAND ACQUISITION PROCEDURAL OCCASIONED DELAYS

3.23 Slow land registration processes

UETCL also decried the slow land registration process that has also contributed to the suits they face during delayed compensation to PAPs. According to the Manager Martin Erone, in charge of Corporate Services [Legal], on acquisition of land, the company collections all the titles from the PAPs to facilitate land conveyancing processes of mutation and transfer on completion of compensation. This process is supposedly meant to take 6 months. However, this time eventually translates to 4 years considering the delay in registration in the different land offices. Accordingly, the PAPs that surrendered their titles to facilitate transfer and compensation naturally become jittery and restless owing to the long haul wait.¹⁸⁵ As a result some seek legal redress from the Courts over un-returned titles and unpaid compensation, which occasions a cost on the Company a result. One such example involves Kakira Sugar works that took the company to Court in a case that had by 2017, been litigated upon for 3 years.

185 Zahra Abigaba, 'UETCL blames project delays on long land acquisition process,' The Weekly Observer, 7th/06/ 2017. Accessible at <https://observer.ug/news/headlines/53242-uetcl-blames-project-delays-on-long-land-acquisition-process.html> (Accessed on 1/01/2019).

Kakira was contending the compensation rates being awarded for their land and crops thereon. It sought Ug. Shs 1 billion while the company's assessment was Ug. Shs. 250 million. The project had to be delayed until the disposal of the issue.

3.24 Corruption in the compulsory land acquisition process chain

Corruption allegations related to compulsory land acquisition have also been highlighted as part of the causes for delay of these projects. One particular example related to the Uganda Electricity Transmission Company Limited (UETCL) with its senior officials being implicated in taking advantage of PAPs and grabbing their land. One particular prominent case involves the construction of Tororo-Apuuyo -Lira electricity transmission line. Appearing before the Commission of Inquiry into Land Matters in Pajwenda village, Tororo, Eastern Uganda, on 4th July, 2018, PAPs in 34 villages situate in Tororo District have accused the UETCL Chief Executive Officer, Mr. William Kiryahika, and Mr John Othieno, the principal environment officer, of fraud manifest in the creation of fictitious names as affected persons to facilitate compensation.¹⁸⁶



The Commission of Inquiry into the Effectiveness of the Law and Processes of Land Acquisition, Land Administration, Land Management and Land Registration in Uganda headed by Justice Catherine Bamugemereire (inset) has been intervening in corruption related cases of dubious payments of monies to undeserving-questionable PAPs during compulsory land acquisition.

3.25 Additionally, some PAPs, as led by their leader Mr. Abwon Oketcho maintain that the UETCL coerced them into signing compensation forms at the behest of armed soldiers even when the compensation was not adequate and subject

186 Ephraim Kasozi & Jalira Namyalo, 'Locals name Mutale, UETCL top officials in ghost land claims,' The Daily Monitor, 6th/07/2018. Accessible at <https://www.monitor.co.ug/News/National/-Mutale-UETCL-ghost-land--Kiryahika-Tororo/688334-4648884-24f21hz/index.html> (Accessed on 2/01/2019).

to contestation. In one other example, PAPs were rightly assessed and a compromise was reached on their due amount. However, their payments were diverted to other persons and the rightful owners received nothing. An example is a one Ms. Hawa Mukwaya Babirye who testified that she was owed Shs42m as compensation for her 9.2-acre piece of land in addition to construction of a house for her including transport costs to help her shift to her new abode. She further averred that her property was valued at Shs75m but on payment, her money was instead paid to a one Mr. Martin Etyang, another claimant.¹⁸⁷ The above state of affairs counters the *voluntary guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, which calls upon all parties to ‘endeavor to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.’¹⁸⁸

- 3.26** In the same vein, is the grand corruption that was gathering in the Isimba Dam Project compensation before it was nipped in the bud by the Commission of Inquiry into land matters.

187 Ephraim Kasozi & Jalira Namyalo, 2018.

188 Guideline 16.6, FAO and the Committee on World Food Security, ‘*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*,’ 2012.

Corruption at the Isimba Dam Construction: the Story of the Grand Rock!

The office of the Government Valuer too has been cited in the compensation contestations with diverse allegations surrounding inflating the compensation/ valuation fee for particular individuals. A case in focus is the interdicted senior government valuer John Moses Magala who was accused of authoring a valuation report (February 5, 2015) that recommended an extra payment to a tune of Shs 132 billion to Tom Musisi Kazibwe, a former Member of Parliament for Ntenjeru South and Charles Magumba-former Town Clerk in Kayunga district both claimants of a rock and sand underneath the 28 acre Isimba dam project land site despite having been compensated earlier in 2014 and even delivered vacant possession.¹⁶

The matter that was brought to the attention of the Commission of Inquiry into Land Administration and Management headed by the Lady Justice Catherine Bamugemereire by the Chairperson of the steering committee of the Karuma and Isimba hydropower projects, Professor. Dr. Badru Kiggundu. Moses Magala authored a report that became a basis of massive compensation demands totaling Shs. 600 Billion. The compensations that Magala awarded/cleared were dubbed by many witnesses as fictitious. It emerged that Magala had come up with the report single handedly without following the established procedure of notification of his supervisors within the Ministry of Lands. On his part, Magala averred that when he received the complaint from the land owners, he passed it on to the geological department in the ministry of Lands to carry out a survey and assessment of the rock which later recommended the Shs 132 billion. He said he was acting under the direction of the chief government valuer, Gilbert Kermundo. It should be noted at this point that the rock in question is near the River Nile and as thus classified as a mineral resources and as such, under the principle of Public Trust Doctrine, it technically belongs to government held in trust for the public and not a matter of compensation.

Another group of claimants-13 people also came up seeking compensation for the same rock in the land measuring about 28.5 acres. Most of whom, bibanja holders, had already been compensated by the government and signed release documents ceding their interest in the land to the government way back in 2014. Of the 13, the nine included Disson Nsubuga, Berenado Ssajjabi, John Apoogo, John Wafula, Okuni Owori, Adiliano Okuni, Ali Kagoda, Celina Etapu and Rose Achieng all seeking payment of Shs203 billion. Others were Ms Ruth Sebadduka and Mr Charles Matovu. The others as mentioned above include Mr Kazibwe who had been compensated Shs754 million for the 60 acre-land and crops in Kiteredde Village in Nazigo Sub County in 2015. He sought an additional Shs88 billion in compensation for rock and sand reserves.¹⁷

The claimants went to court through lawyers from Galisonga & Co. Advocates sued the government and the Isimba dam contractor for nonpayment of Shs 203 billion for the rock on their land at Nakatooke village in Nazigo sub-county, Kayunga district where the dam is being built. They secured a Court order issued on 17thMay/2018 by the Mukono High Court against the contractor, China International Water and Electric Corporation (CWE), to freeze their bank account despite the fact that this company was a mere contractor not responsible for land acquisition. Dr. Kiggundu noted that because of the Court order against the Company, it was not able to meet its daily operations and as thus was set to halt the construction as well until the matter is resolved.

It took the intervention of the Land Commission to halt the payment of the compensation in a June 26th/2018 letter from the commission chairperson, Justice Catherine Bamugemereire to the Ministry of Finance and Economic Planning. The letter requested that '...all payments due over funds appropriated in the 2018/2019 budget in respect of the rock reserves along Isimba hydropower project be halted. The commission of inquiry took interest in investigating the issue of compensation of rock reserves in respect of Isimba hydro-power project...The commission has detected possible collusion between claimants and public officers in government offices such as the office of the chief government valuer, department of geological surveys in ministry of Energy and now, perhaps, ministry of Finance.... The Commission is perturbed by reports that notwithstanding the ongoing investigations, the ministry of Finance, Planning and Economic Development has earmarked Ug. Shs 100 billion out of the budget FY 2018/19 for payment of dubious claims in respect of Isimba hydro power project. The Commission strongly advises that any payment arising from the above claims before the Commission concludes its investigations will be premature and may in fact occasion financial loss to the government of Uganda. We therefore direct that any payment due to these persons be halted.'

While appearing before the Commission of Inquiry, the claimants especially Mr. Kazibwe averred that the process of their land valuation and later compensation had been marred with corruption with government officials and private valuers of Kagga and Partners, an engineering consultancy firm hired by the government to undertake valuation and compensation assessments for the PAPs for the Isimba Hydro Power Project in Kayunga District seeking for bribes to a tune of 10% off one's compensation figure to apparently 'facilitate compensation claims.'¹⁸

The Isimba Dam project is one of the flagship projects for the government in its National Development Plan II for the fiscal years 2015/16-2020/21. The above challenges surrounding the alleged dubious compensation awards led to the stalemate of the construction of the hydropower dam project.



The newly launched Isimba Hydro Power Station in 2019. The project was delayed as well owing to varied reasons but prominently the unprecedented corruption allegations that rocked the process of compensation pointing out inflation of compensation rates by the office of the Chief Government Valuer. It took the intervention of the Commission of Inquiry into Land matters to halt this dubious payment.

3.27 Compulsory land acquisition in wetlands: the emergency of land fraud cartels

The corruption has been extended further to connivance amongst government officials to defraud government of compensation monies on land situate in wetlands. Some government agencies have been accused of valuing titles that were issued for land in wetlands and forest reserves causing financial loss to the government which issues out compensation monies for alleged PAPs with titles issued in Government wetlands and reserve forests-property it already owns under the public trust doctrine. Again, the Uganda Electricity Transmission Company Limited (UETCL) offers an interesting but sad story.

Government Agencies Syndicate Corruption and Delays in Compulsory Acquisition of Land: Case of UETCL

UETCL sought to acquire land for power transmission lines to be used to distribute electricity to the established industrial parks around the Wakiso and Kampala from the newly constructed Isimba and Karuma dams in Kayunga and Kiryandongo districts respectively. UETCL undertook to develop Mutundwe-Entebbe and Namanve-Luzira power lines running through Namanve Central Forest Reserve and Bukasa Wetland. A firm, M/s New Plan group, was contracted by government to support the necessary land acquisition related processes including assessment and valuation and thereby recommend the suitable compensation rates for the various land owners. What followed was, as the Land Commission of Inquiry into Land Matters and National Environmental Management Agency (NEMA), heard, collusion and connivance by various entities within the different land governance agencies to defraud government by powerfully connected people and companies.

Environmentally protected areas-natural resources and therefore supposedly under government custodianship were titled and registered in private individuals and various companies there by helping them acquire around 600 land titles in forests and wetlands. Because the transmission lines were passing in these now titled natural resources, these lands were valued as well and this facilitated the individuals and companies to solicit for compensation from government as PAPs. The valuation report submitted to Land Commission included private companies such as Logic Real Estate and Developments owned by businessman Ephraim Ntaganda, his brother Cedric Nsongoza, High Court Judge Joseph Murangira, Emmanuel Gasana, Hood Ssemuga, Barbara Nalubega, Martin Kulaigye, Godfrey Kabogoza and Ismail Kijjambu. Of these land titles were in the names of former minister of State for Economic Monitoring Henry Banyenzaki, and businessmen Hassan Basajjabalaba.¹⁹

Part of the contentious titles were parceled out in Mugomba and Gunda Central Forest Reserves, Nambagirwa Wetland and part of Lake Victoria shores in Wakiso District. These land titles were cleared after the granting of leases by the Mukono, Wakiso and Kampala district land boards.

The M/s New Plan Group leadership also testified that the land titles in contention were issued out between 2012 and October 2014, after the Project assessment and valuation scheduled time had passed. Even then, the company went ahead and superimposed onto the strip map for the corridor earmarked for the construction of the power line the titles from those private persons and aforementioned companies among others. UETCL would later petition the Commission of Inquiry into land matters lamenting that their projects surrounding the construction of the electricity transmission lines had stalled owing to the contestations from 'fictitious claims for compensation by the purported developers who illegally acquired land titles in protected areas.'²⁰ UETCL officials at the time of writing the report are still being investigated.

The above case scenario however should not be misunderstood with situations where individuals have private mailo land titles and part of their land is a wetland.

3.28 In relation to the above, is the challenge of speculators that has escalated as the government's pursuit for land too increases for its infrastructural developments. These speculators, operating like a cartel of mafias, coordinate with government agencies planning massive infrastructural developments and share vital projects information including likely geographical locations that shall host the developments projected. They invade these areas, buy off huge chunks of land from unsuspecting members of the public and in the process cause the hiking of the land price in the area. By the time the government is set to under compulsory acquisition of land in such areas, there are new land lords, mercilessly milking the state while the ideal beneficiaries wallow in squalor of poverty have been bought out of their land at a cheap price. Some apparently develop the land after the government survey and assessment and later claim through suits that the government chief valuer deliberately by-passed assessing and valuing their property hence denying them compensation. This too leads to delays in these projects implementation.

CORRUPTION IN UNRA COMPULSORY LAND ACQUISITION

Not different from the above, the corruption that has been recorded as allegedly perpetrated during compulsory land acquisition has been most profound, at least according to records, in UNRA. According to Lady Justice Catherine Bamugemereire commission of inquiry into UNRA, over Shs. 577 billion was paid out to suspected ghost PAPs including other dubious transactions in road projects executed in a period of 7 years since 2009.¹⁸⁹ The corruption extended to payment for land that is gazetted as forest reserves and wetlands under the National Forestry and Tree Planting Act of 2003 and managed by the National Environmental Management Authority (NEMA) respectively. Another example was on the Kampala-Entebbe Expressway where Shs8b was paid to alleged PAPs settled on NEMA wetlands while Shs11b was paid to claimants who presented flawed land titles out of Shs36b which had been approved for the purpose. The Commission, alarmed at the level of cartel like conduct in the MDAs in compulsory land acquisition chain exclaims in relation to the same project,

‘UNRA officials and the office of the Chief Government Valuer, colluded to inflate the compensation value of a factory that never was in respect of the land title secured in a wetland by Excellent Services Limited. The manner and circumstances under which a factory with no visible structures but with a land title in a wetland created after the gazettment of the road and inserted on to the strip was valued at Shs18b is a classic case of white-collar crime.’¹⁹⁰

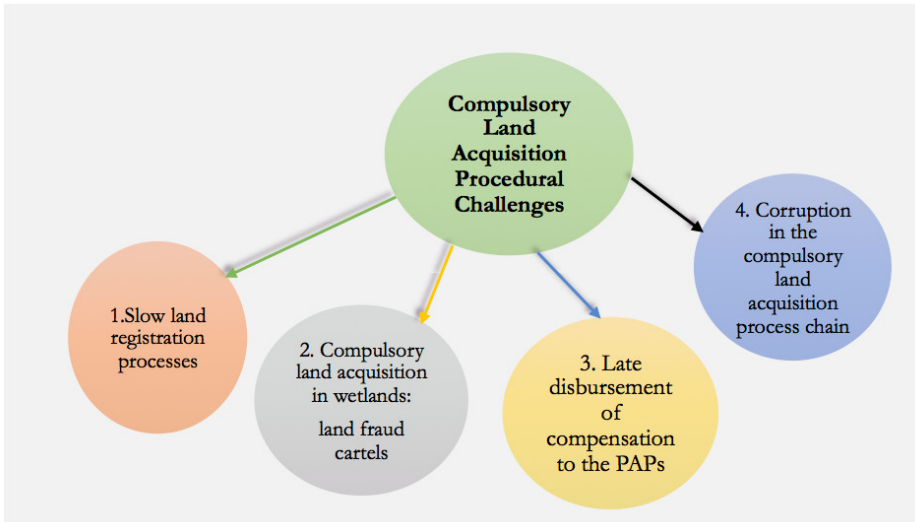
Consequently, there was delayed compensation of PAPs which in turn led to delay in land hand over to the contracted company to commence work. The project contractor, China Communications Construction Company Limited, would later claim \$150m (Shs52b) as costs for idle time since it was ready to do work but could not commence.¹⁹¹

189 The five-member Judicial Commission chaired by Justice Catherine Bamugemereire was appointed by President Museveni on June 8 last year to investigate mismanagement, abuse of office and corrupt practices in Uganda National Roads Authority. The Commission's terms of reference included among others to investigate and inquire into the procurement and contract management processes by which UNRA awarded contracts for national road works; to examine, investigate the procurement of works, services and supplies by UNRA; to investigate and inquire into the management, supervision and administration of national road works by UNRA; to generally examine and inquire into the legal and corporate governance structures of UNRA; to investigate and inquire into the financial management systems of UNRA.

190 Frederic Musisi, 2016.

191 Frederic Musisi, 2016.

FIGURE III: Summary of Procedural Occasioned CLA Delays



PROJECTS AFFECTED PERSONS (PAPS) OCCASIONED DELAYS

3.29 Disputes over and rejection of valuation and compensation payments by PAPs

There have been various complaints from the PAPs surrounding the issues of valuations and inadequate compensation involving a varied government departments, ministries and agencies. The National Water and Sewerage Corporation (NWSC) is one of the agencies that have registered a number of delays related to various projects. The cases involve the members of the public and PAPs resisting the works of the Corporation from proceeding citing a diverse range of complaints all related to under valuation and inadequate compensation for the compulsorily appropriated land. In all the documented cases, at least those released by the NWSC, the PAPs were contesting official sums for pay as assessed by the Chief Government Valuer (CGV) as being unfairly reached at citing flaws in valuation processes and eventually affecting the compensation fees. Most of these complaints have been registered within the urban centers-more specifically within Kampala and Wakiso districts as summarized below;¹⁹²

192 Ministry of Lands, Housing and Urban Development, 2017 32-38.

LOCATION OF THE LAND IN CONTENTION	CONTESTATION	DETAILS
Kyambogo, Kampala.	Valuation of land and contest over the disturbance allowance.	Owner of the land is contesting the government valuation of 23,595,000/= against 15,880,000,000 which he claims is the appropriate value. Owner is also contesting the Ug. 316,060,000/= as disturbance allowance in preference for Ug.394, 132,000/= even when the former was reached as a recommendation by the joint valuation report, the valuation methodology of which that both the government and the owner of property had agreed upon. According to the NWSC, this stalemate led to the delay of the completion of the entire sewer project as the contentious land is part of the sewer line. As a result, the delay was costing the NWSC Ug. 100,000,000/= per day in contractor claims.
Shoprite–Ben Kiwanuka Street.		NWSC had commenced works of laying a sewer pipeline connecting Nakivubo sewer network to another site on Entebbe road. The management of Shoprite international chain of stores on Ben Kiwanuka street partly the land through which the pipe must pass objected to the works of the Corporation fronting inconveniences to customers of the super market and tenants on the Shoprite building. Resultantly, the contractor demobilized the working equipment and attendant human resource with NWSC picking the bill for this delay.
Land in Banda: Plot 1A – Plot 8A, Mukaabya, Banda Close	Land valuation price/ Compensation contestation	The registered proprietor (PAP) demanded Ug. 1,150, 856,789 /= as compensation as against the Shs. 79million that was provided by the government upon approval by the Chief Government Valuer. Through negotiations, the PAP had allowed the NWSC to proceed to work as they continued discussing the price so that the project does not delay. Later, the PAP evicted the contractor of NWSC and fenced off the land restricting any entry to complete the works.
Land in Kinawataka – Kasokoso	Land Valuation price/ compensation contestation	43 out of 135 PAPs who had diverse interests on the land including agricultural produce and semi-permanent structures, rejected the government valued approved compensation costs. NWSC sought to commence construction of a sewer line in the area by way of an easement. The project had to stale until the 43 PAPs are settled for them to deliver vacant possession of the corridors.

<p>Kitante Road and Centenary Park on Jinja road.</p>	<p>Contestation is about Compensation</p>	<p>This comes at the heels of the land contestation between KCCA and the lessor of the Centenary Park area. NWSC had earmarked the area to lay a sewer pipeline connecting to other parts of the city but the leasehold property owner objected to this work until she is compensated for 'her to give a no objection to NWSC works.' This is so despite the fact that KCCA, in charge of running Kampala where the land is situated had flagged off the works of NWSC to commence. As at June, 2016, the NWSC had lost Ug. 979, 915, 047 /= in claims to contractors for delays.</p>
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3.30 Other complaints for delays arising from PAPs related issues include the Kampala City Council Authority. The KCCA has been undertaking an ambitious programme of 'Traffic Junction and Congestion Improvement' across the different parts of the city. Part of these delays have been documented around *Bwaise and Fairway* junctions; junctions on *Makerere hill* road, junctions on *Kira* road, and on *Bakuli - Nakulabye* road. In its performance report, KCCA avers that works on *Makerere hill road* and *Mambule* were delayed due to contestations of the compensation awarded by some of the PAPs.¹⁹³

3.31 The Uganda Rural Electrification Agency too contends that PAPs have delayed and led to increments in its project costs of laying wayleaves. A total of the unsettled compensation claims for several power lines for Rural Electrification Agency between 2010 and 2016 stood at UGX 18 billion as at the end of 2017. One such cost is on the Ntenjeru- Nakisunga-Mpatta-Naama power line, where a PAP demanded diversion of the line because of inadequate compensation. The estimated cost for the diversion was UGX 280 million.¹⁹⁴ Almost in all places where there have been massive compulsory acquisition and the PAPs object to the compensation rates, the chain of seeking justice has been the same. Lamentation is always followed by a petition to the President, to intervene in the matter, further exposing the notion of presidentialism and patronage over government institutions. Such examples include PAPs in Ntungamo affected by the UETCL power line transmission, PAPs in the Kabaale oil refinery land saga as discussed above among others all sought the President's ear and eye as their first line of refuge. This recourse to the fountain of honour for intervention, in all cases yielded nothing tangible perhaps due to the President's declared ambition for infrastructural development at whatever cost. On failure to reach the President, many have always sought the intervention of the Courts more often seeking primarily a Court injunction halting the works of the line/relevant government agencies from continuing with their works until the PAPs case is heard. It is partly such orders from the Courts of law that have always occasioned the so-called project delays the government is allegedly bent at correcting by re-in-

193 Ministry of Finance and Economic Planning, 'Annual Budget Performance Report: Financial Year 2016/17,' 2018 at 389. Also accessible at <http://budget.go.ug/budget/sites/default/files/National%20Budget%20docs/ANNUAL%20BUDGET%20PERFORMANCE%20REPORT%20FY%2020116-17.pdf> (Accessed 5/01/2019)

194 Ministry of Lands, Housing and Urban Development, 2017 at 30.

roducing the position of the Land Acquisition Act of possession before prompt, prior and adequate compensation for one's land.

3.32 The Standard Gauge Railway Compensation woes.

The Ministry of works which is overseeing the Standard Gauge Railway Project (SGR) decried delays occasioned to the project owing to compensation disputes with the PAPs. Unlike in other agencies where PAPs were negotiating (even when prolonged), in the case of SGR, the PAPs had taken the matters of their contestation of the compensation awarded to the Courts of law. Such cases include *Ochieng Lawrence Vs Attorney General & Coordinator SGR*¹⁹⁵ revolving around under valuation of the property and thereby inadequate compensation award and the hearing continues; *Apollo Jaramoji Olo Vs Attorney General & Coordinator*,¹⁹⁶ it too about inadequate compensation by SGR project-case ongoing.¹⁹⁷

3.33 Uganda National Roads Authority (UNRA) too is the other agency flagging off delayed projects arising from contest by PAPs over compensation awards as summarized below;

LOCATION OF THE LAND IN CONTENTION	CONTESTATION	DETAILS OF THE PROJECT
Kigo-Lunya	Contesting Compensation amount	Kampala Entebbe Express way. The owner [<i>Pearl Development Group Limited</i>] rejected the compensation amount approved at a total of Ug. 1,515,903,090 /=. The land is on leasehold tenure on BLB land.
Munyonyo	Contesting Compensation amount	Kampala Entebbe Expressway. The owner of the private mailo land [<i>Fredrick Kitaka</i>] rejected compensation approved by the Government Valuer at Ug. 284,300,000/=
Bukoto/KNBP	Land valuation price/Compensation contestation	Kampala Northern By Pass. Owner of the private mailo land [<i>Lwanga Edith</i>] contends that there was under valuation of the property put at Ug. 41,551,225 /=.
Land in Kyebando/ KNBP	Land Valuation price/compensation contestation	Kampala Northern Bypass. Owner of the private mailo land [<i>Katabazi Joshua</i>] contends that there was under valuation of the property put at Ug. 308,723,892 /=.
Land in Kyebando/ KNBP	Contestation is about Under valuation	Kampala Northern Bypass. Owner of the private mailo land [<i>Katabazi Joshua</i>] contends that there was under valuation of the property put at Ug. 40,872,000 /=.
Masanafu/ KNBP	Undervaluation	Kampala Northern Bypass. Owner of Kibanja [<i>Byangwamu Godfrey</i>] contends the undervaluation of the property at Ug. 3,381,000 /=.
Masanafu/ KNBP	Under valuation	Kampala Northern Bypass. Owner of Kibanja [<i>Bongole Noel</i>] contends the undervaluation of the property at Ug. 138,584,212/=.

195 HCCS 25 of 2016 at Mbale High Court.

196 SGR HCCS 24 of 2016 at Mbale High Court.

197 Ministry of Lands, Housing and Urban Development, 2017 at 30.

Namungoona	Under valuation	Kampala Northern Bypass. Owner of a leasehold from BLB [Nakayima. K. Alice] contends property under valuation at Ug. 398,568,482 /=-.
Mukono, Katosi -Nyenga	Compensation claim	Mulaje/Nkokonjeru. According to UNRA, the owner has a titled interest. A total of Ug. 244,604,425/= was approved as compensation. Records show he '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.'
Kigo-Lunya	Rejected the Compensation as inadequate	Kampala Entebbe Expressway. Owner of land on leasehold tenure from BLB was awarded Ug. 1,515,903,090 /=-

3.34 According to the Ministry of Lands, Housing and Urban Development, other delays in the past included Kaiso Tonya road which connects Hoima, Kaiso and Tonya along the eastern shores of Lake Albert passes through Kabaale Village, Buseruka sub-county, in Hoima District, where Uganda Oil Refinery is planned to be constructed in Hoima District; 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; and the acquisition of land by Uganda Electricity Distribution Company to establish the transmission power line to Kitgum district.¹⁹⁸ These delays largely occasioned by the protests from the PAPs on inequitable compensation fees for their lands, is in total contradiction with the international standards that emphasize the need for the government to 'ensure a fair valuation and prompt compensation in accordance with national law and among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination.'¹⁹⁹

3.35 It should be noted at this point that these contestations that delay infrastructure developments are not unique to Uganda alone. In countries such as Sri-lanka, massive projects such as the Upper Kotmale Hydropower Project suffered delay due to project affected persons' resistance to lack of participation in the entire process; in Thailand, the populace showed discontent to the Yadana Natural Gas Pipeline Project through wide-spread demonstrations.²⁰⁰ In Bangladesh, it was no different as affected communities protested what they argued was inadequate compensation occasioned by 'low pricing' of their property characterized by corruption leading to the delay in the Jamuna Bridge Project.²⁰¹ The above rampant chaotic scenarios lead Subash et al to brand them as offshoots of limited public participation in these processes. They contend that 'in many developing countries, top down approach is followed for policy formulation to acquire the land and public participation is not sufficiently available in the process of land acquisition and land valuation.'²⁰²

198 Ministry of Lands, Housing and Urban Development, 2017 at 38.

199 Principle 16.3

200 Subash et al, 2017 at 3.

201 Subash et al, 2017 at 3.

202 Subash et al, 2017 at 3.

3.36 But is it that all the delays in project execution have been occasioned by the rejection of the compensation by the PAPs to warrant even an amendment in Article 26 of the Constitution? Do not they, in the first instance, have a right to reject what they deem very inadequate and probably not prompt pay for their land? The annual national budget performance report-2016/2017 from the Ministry of Finance and Economic Planning provides us with some different answers to this dilemma. By default, every agency, ministry in government that doesn't absorb the funds dispersed in its vote, must explain what occasioned the non-absorption and highlighting as well the particular item for which the money was provided for that was not completed. A perusal from this report, especially focusing on the vote of the Uganda National Roads Authority reveals numerous road infrastructural project delays across the country for other reasons than the contestation of the PAPs of the compensation paid to them.

3.37 Late Submission of Land ownership documentation by the PAPs

Further evidence also attests to the fact that the delays have been an offshoot of late submission of the necessary documentation by the PAPs to facilitate the assessment, verification and subsequently payment of the compensation. Whereas this is attributable to the PAPs, it is not necessarily a delaying tactic on part of the communities. Indeed, some of them do not have the requisite documents to authenticate their interest in the land under appropriation while other, at the time of the processes of land acquisition start to pursue them such as titling.²⁰³ Some of the delayed projects due to this challenge include:²⁰⁴ Other PAPs interviewed noted that this delay is tactical for them. They reported cases where other community members submitted their titles for demarcation, for those that had only a portion of the land being affected but would only get back the title with the residual portion after 'months of frequenting the offices of UNRA asking for my title.'²⁰⁵ The inexplicable delay in return of residual titles by the receiving agencies such as UNRA causes mistrust and pushes other PAPs to be 'cautious as we watch how they shall deal with the titles of our colleagues.'²⁰⁶

203 Interview with Respondent, Hoima district, November, 2019

204 Ministry of Finance and Economic Planning, 'Annual Budget Performance Report: Financial Year 2016/17; 2018 at 370-375. Also accessible at <http://budget.go.ug/budget/sites/default/files/National%20Budget%20docs/ANNUAL%20BUDGET%20PERFORMANCE%20REPORT%20FY%2020116-17.pdf> (Accessed 5/01/2019)

205 Respondent Interview on Northern By-pass, Kalerwe, 19/01/2019

206 Respondent Interview on Northern By-pass, Kalerwe, 19/01/2019

**TABLE VII: Summary of Delayed Submission of Documentations for PAPs
PROGRAMME 0451 NATIONAL ROADS MAINTENANCE & CONSTRUCTION**

Amount of/and Sub-programme and Projected Affected (Delays in Completion)	Justification for non-absorption of the budget and therefore non-completion or advancement of the project
1. 0.391 Bn Shs SubProgramme/Project:1311 Upgrading Rukungiri-Kihihi-Ishasha/Kanungu Road	‘The amount warranted in this quarter was not fully absorbed because batches had not been presented then for payment. There are <i>delays by PAPs to present required documentation to effect payment.</i> ’
2. 0.462 Bn Shs SubProgramme/Project:1277 Kampala Northern Bypass Phase 2	‘The amount warranted in this quarter was not fully absorbed because batches had not been presented then for payment because the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons. There are <i>delays by PAPs to present required documentation to effect payment</i> and the funds were insufficient to clear any IPC.’
3. 0.673 Bn Shs SubProgramme/Project:1275 Olwiyo-Gulu-Kitgum Road	‘The quarter one warrant was not fully absorbed because amount was not sufficient to payoff IPCs that were presented and no invoices had been presented then for payment. The remaining unspent balance was insufficient to clear the IPCs and <i>the delay in submission of required documentation for payment by PAPs.</i> ’
4. 0.148 Bn Shs SubProgramme/Project:1274 Musita-Lumino Busia/Majanji Road	‘The amount warranted in this quarter was not fully absorbed because no IPCs had been presented then for payment. The amounts were not sufficient in payment of IPCs and <i>delay in submission of documentation from PAPs to effect payment.</i> ’
5. 15.324 Bn Shs SubProgramme:1277 Kampala Northern Bypass Phase 2	‘The amount warranted in this quarter was not fully absorbed because batches had not been presented then for payment because the land acquisition department is still under staffed; this has led to backlog of verification of Project Affected Persons. There are <i>delays by PAPs to present required documentation</i> to effect payment and the funds were insufficient to clear any IPC.’

3.39 Intra-family and other land disputes

The other delays have been occasioned as offshoots of intra-family land disputes with different factions of one family conflicting over ownership of the property, that is a subject matter of compulsory requisition by government agencies-in this context, UNRA. One of the most prominent of such cases was *Prince Kalemera H. Kimera v The Kabaka of Buganda & Buganda Land Board*.²⁰⁷ The Applicant, Prince Kalemera, a Buganda Royal Prince Kalemera sued Kabaka of Buganda and the Buganda Land Board seeking a temporary injunction restraining them and/or their agents from further pressing any interest, rights, responsibilities in

207 (MISC. APPLICATION NO. 1086 OF 2017) [2017] UGHCLD 10 (10 August 2017); Also accessible at <https://ulii.org/ug/judgment/hc-land-division-uganda/2017/10> (Accessed on 1/1/2019)

and /or ownership of land that he contended belonged to the estate of the late H.H. Sir Daudi Chwa II until a main suit he had lodged before court vide High Court Family Division MA No. 278 of 2015 arising out of O/S No.09 of 2014 on the same land.²⁰⁸

- 3.39** Prince Kalemera also sought a temporary injunction restraining the Kabaka and Buganda Land Board from receiving any payment from UNRA in relation to the suit property situate in Masajja which was subject of compensation since it had been compulsorily acquired to facilitate the construction of the Kampala – Jinja Expressway and Kampala Southern Bypass Project. The Kabaka and Buganda Land Board contended that the former was the duly registered proprietor of the land comprised in Kyadondo, Masajja, Block 273 Plots 87, 99, 110 and 38, having been so vested in him by virtue of the *Traditional Rulers (Restitutions of Assets and Properties) Act Cap. 247*, and is managed by the latter and as such was the Project Affected Person (PAP) by the Kampala – Jinja Expressway and Kampala Southern Bypass project. He was willing and ready to receive the assessed compensation from UNRA for him to deliver vacant possession of the aforementioned land to pave way for the construction sought.
- 3.40** The Kabaka and Buganda Land Board further maintained that issuance of the temporary injunction to the applicant was not only going to jeopardize the rights of the registered proprietor but would also ‘...cause inordinate delay to the said Government projects because the 1st Respondent will not hand over possession of the suit land unless and until fair and adequate compensation is paid for it and duly received.’ Indeed, UNRA had written to the Deputy Attorney General registering concern over the likely inconvenience to be caused if the matter was not disposed off in time in a letter dated 05/04/2017. The letter was attached as part of the proceeding documents.
- 3.41** The Court allowed the application and granted an order of temporary injunction restraining the Kabaka and Buganda Land Board or their agents/servants or persons claiming under them, from acquiring compensation payment from UNRA in respect of the Kampala – Jinja Expressway Project in respect of land originally registered under FC 18454 Block 273 Kyadondo, pending the determination of the head suit in *HCCS No. 535 of 2017* or until court otherwise orders.²⁰⁹

208 He further contended that he is a lineal descendant to the late H.H Sir Daudi Chwa II, and a 2nd degree beneficiary to his estate. That he is a holder of Letters of Administration for the estate of the late Prince Henry Harold Kagolo Kimeru, his biological father and a biological son to the late H.H Sir Daudi Chwa II, and that as such his father was a 1st degree beneficiary in the estate of the late H.H Sir Daudi Chwa II whose estate has not yet been wholly administered.

209 The Kampala–Jinja Expressway forms part of the Northern trade corridor from Mombasa in Kenya through Kigali in Rwanda. It serves as a trade link to the sea for land locked countries of Uganda, Rwanda and DRC. This Project comprises two key components- the first of a 77km road of the Kampala–Jinja mainline (KJE) Expressway of 4+4 lanes for the first 32km, and then 2+2 lanes for the remaining 42km with a design speed of up to 120kph. The second component is the Kampala Southern Bypass (KSB) – designed as an 18km Urban Expressway of 2+2 Lanes with design speed up to 100kph. This is slated to start at Butabika, on the Eastern outskirts of Kampala, and here it shall connect with the new Kampala- Jinja mainline Expressway and connect in Munyonyo.

3.42 This effectively halted the continuation of the process of compulsory land acquisition of the land to pave way for the project by UNRA. In such a scenario, the registered proprietor was not contesting the amount of compensation or anything related thereto. It is clearly a third party but within the family whose actions of the legal suit cause the halting of the process. Essentially that would mean, UNRA has to wait until the Court makes a decision on who is the rightful owner of the suit property, who then becomes the lawful beneficiary of the compensation from UNRA with authority to pass good title. If the litigation is to go on without any amicable settlement, then that means UNRA project must wait for the exhaustion of the legal process to its end by either of the contending parties.

3.43 In this particular case, UNRA found a way to circumvent this stalemate providing a precedent that could later be used in such cases. UNRA went back to Court and had the temporary injunction order stopping them from making payments to the Kabaka and Buganda Land Board varied. The Court allowed for the payments to go on but only to the equitable interest holders (Bibanja holders) to pave way for the Compensation processes as they await the final court judgement on the matter. The land was host to 1181 Bibanja holders, who by all means had to be compensated regardless of the finally declared owner of the land.²¹⁰ In addition to the above, it should be noted that UNRA was actually circumventing one of the other big hurdles for quick resolution of such disputes-that is, the delay in the judiciary in delivering of judgements. This delay of deciding cases is reflective of the institutional incapacitations, earlier mentioned, that the Judiciary is grappling with having nothing to do with the PAPs at all. These include lack of sufficient man power and generally judiciary facilitation to create the necessary aids to quick unfettered disposal of cases.

3.44 The absentee land lords' phenomena

The process of compulsory acquisition of land has also been negatively affected by the litany of absentee land lords on lands that government agencies want to acquire. Of the grossly affected agencies is UNRA. In its Kampala-Jinja Expressway (KJE), UNRA sought to undertake identification and compensation of Project Affected Persons (PAPs) and Expropriation of Certificates of Title for the project KJE. Normally, when these PAPs are identified, a Verification exercise is undertaken to aid in payment of compensation to the rightful claimants of the land. When land lords are absent, not only is it difficult to pay them their compensation, this also extends to the occupants on the land-bibanja holders who can only access compensation for their plots if they have proof of consent from their land landlords. According to UNRA, under the Kampala-Jinja Expressway (KJE), there were over 32 plots of land that had not been cleared due to the absentee Landlord phenomena.²¹¹ In another project, there are over 108 absentee

210 Uganda National Roads Authority, 'PRESS RELEASE: We Have Not Sued The Kabaka of Buganda,' 2nd/2/2018. Accessible at <https://www.unra.go.ug/en/notices/UNRA-NOTICES-02>. (Accessed on 1/1/2019)

211 Uganda National Roads Authority, 'Updating of the Resettlement Action Plan for the Kampala-Jinja Expressway (PPP) Project,' Accessible at <https://www.unra.go.ug/en/notices/UNRA-NOTICES-07>. (Accessed on 1/1/2019)

land lords within the demarcated regions of Gulu- Atiak –Nimule road Section which is also due for construction.²¹²

3.45 Late disbursement of compensation to the PAPs

Other delays have been occasioned by issues relating to delayed disbursement of compensation to PAPs to pave way for their delivering vacant possession of the land. These delays in compensation have also been registered in Tororo where more than 2,000 residents-PAPs affected by the Standard Gauge Railway (SGR) project passing via Tororo Municipality sought to petition the Executive owing to this delay. The land acquisition and attendant compensation process had taken close to three years without the promised assessed compensation.²¹³ The PAPs also, as has been elsewhere, complained of under valuation while in some cases, there was no valuation at all by the SGR team yet in other instances, the assessment was undertaken in absence of the PAPs. Allegations of ghost PAPs were also highlighted on the list of persons to be compensation. The government attributed this delay to delay in funds disbursement. The delayed compensations emasculates the PAPs' right to an effective remedy, particularly, the constitutionally guaranteed requirement for prompt payment of fair and adequate compensation before actual possession. The Uganda Human Rights Commission has documented this dilemma at least in relation to the PAPs in the Kabaale area.

DELAYS AND UNPAID COMPENSATION

...there were allegations of delayed payment of compensations of PAPs by MEMD, Uganda National Roads Authority (UNRA) or the responsible oil companies. In view of this, residents were irked by the long time that had passed after valuation without getting their compensation and yet the process did not factor in inflation and the depreciation of the shilling.

Specifically, the valuation exercise in the refinery area ended in June 2012, yet the signing of the compensation agreement was done a year later. Moreover, the compensation agreements were silent on any exact date when payments would be effected. Residents said the compensation rates used in the exercise were for FY 2010/2011 and therefore could not be realistic for compensations likely to be effected in FY 2013/2014. In another instance, residents that were affected by oil exploration in Buliisa district complained of delayed compensation for their crops that had been destroyed during the seismic surveys, while some others had never been compensated at all.'

These projects had delayed due to lack of timely compensation of land owners with many contesting the valuation process and compensation rate opting for court processes that prolonged the time of dispute resolution.²¹⁴ The PAPs' rejection of the

212 Uganda National Roads Authority, 'Compensation of Project Affected Persons (PAPS) And Expropriation of The Certificates of Title for the Road Reserve along the Gulu-Atiak-Nimule Road,' Accessible at <https://www.unra.go.ug/en/notices/UNRA-NOTICES-08> . (Accessed on 1/1/2019).

213 Joseph Omollo, 'Locals petition Museveni over delayed compensation,' The Daily Monitor, 24th/04/2019. Accessible at <https://www.monitor.co.ug/News/National/Locals-petition-Museveni-delayed-compensation-SGR-project/688334-4495336-58ys3w/index.html> (Accessed on 1/01/2019).

214 See Stephen Wandera, 'Donors Threaten to Withdraw Shs234 Billion for Power Project.' The Daily Monitor, 29th/05/2017. Accessible at <https://allafrica.com/stories/201705290072.html> (Accessed on 01/01/2019)

compensation offered by the government means that the agencies in demand of this land cannot therefore enter possession to hand it over to contractors to commence their works despite the fact that in many of these cases, at this time, contracts have been signed with these contractors and are running.

FIGURE IV: Summary of PAPs' Oriented CLA Delays

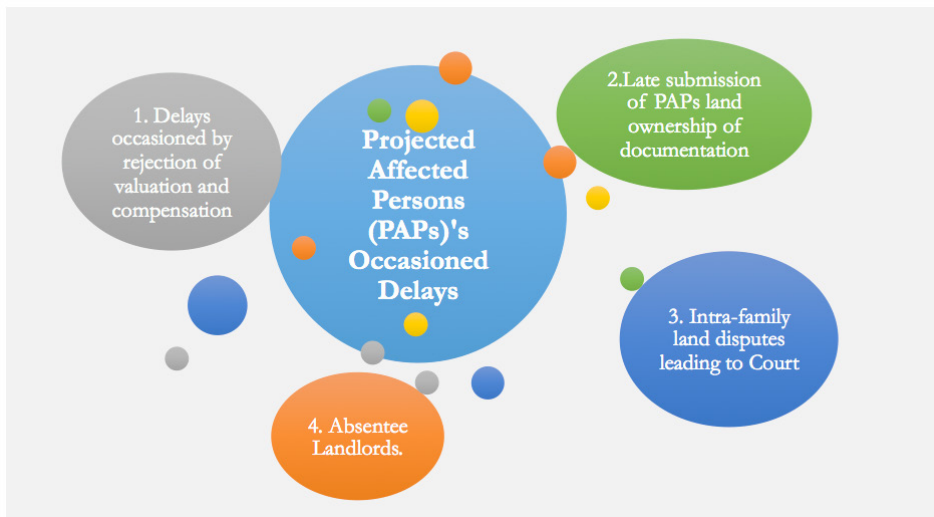
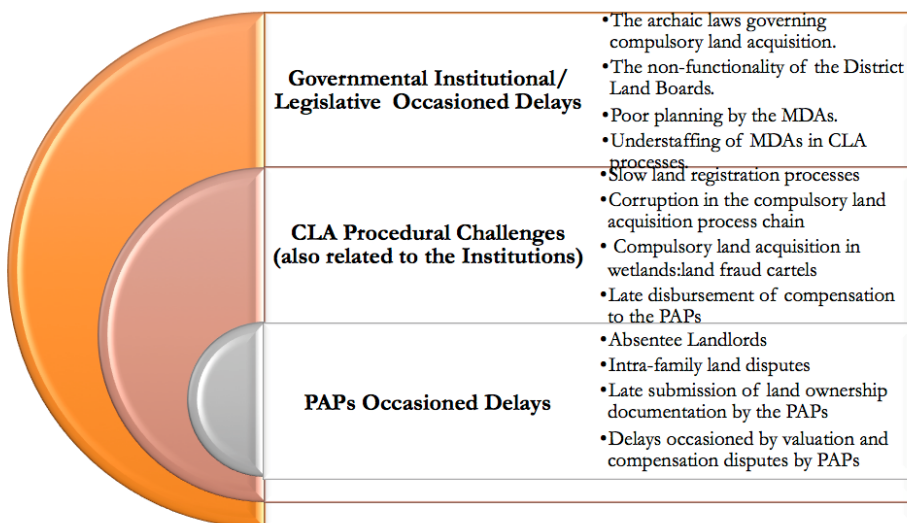


Figure V: Summary of the Causes of Delayed CLA and Subsequently Infrastructural Development Stagnation



4

Study Conclusions and Recommenda- tions

STUDY CONCLUSIONS AND RECOMMENDATIONS

The study conclusions are **THAT**:

4.1 The challenges that continue to siege compulsory land acquisition can be categorized into three groups namely:

- a) The first category are challenges incarnate in the legal framework governing compulsory land acquisition;
- b) The second category entails challenges brought about by the stakeholders within the process of compulsory land acquisition. These are mainly government entities both at the central and local government level. These include the office of the chief government valuer, the district land tribunals, and the land registry among others, all with unique models of executing their mandate which many a times have contributed to the delay of some processes incarnate within the compulsory land acquisition chain;
- c) The last category are challenges arising from the processes themselves-executing them and the concerned PAPs affected.

A combination of these challenges creates a blockade to impactful implementation of the projects for which land is sought in a timely manner.

4.2 Archaic Land Acquisition Act 1965;

Uganda's domestic legal framework as it stands now is *fair* in as far as the Constitution and other subsidiary legislations such as the Water Act e.t.c. guaranteeing the right to property, providing for procedural rights such as right to be heard, to appeal and prompt, prior and fair compensation before state compulsorily taking possession of one's property. The fairly progressive general land administration, management and adjudication framework that houses compulsory land acquisition mentioned earlier is undermined by the archaic Land Acquisition Act 1965 which is not in tandem with the contemporary developments on land acquisition. The processes laid down in the land acquisition Act (in particular sections 2, 6 and 14) have been criticized as redundant, outdated and lengthy yet the same procedures could be reduced further without necessarily putting the rights of PAPs in harm's way. This is further escalated by the ambiguities of terminologies used such as 'Public interest, purpose' in the Constitution which are susceptible to abuse. For now, these generalized provisions are left to Courts to interpret.

4.3 Lack of a comprehensive policy on valuation and compensation in Compulsory Land Acquisition;

Uganda does not have a clear policy on valuation and compensation during compulsory acquisition. Until June, 2018 when the Ministry of Lands and Urban Development launched the Guidelines for Compensation Assessment under Land Acquisition (GCALA), the Chief Government Valuer was using scattered pieces of provisions in different laws to undertake valuation and compensation advisory services to the government. With the advent of the guidelines, it remains

to be seen if there will be transparency, fairness, clear and consistent bases in the valuation and compensation processes during compulsory land acquisition. The aforementioned guidelines in some instances provide for reliance on the compensation rates to be compiled by the District Land Boards (DLBs) yet the DLBs are not financially capacitated enough to undertake this enormous task. As such, in the affected districts, there has been clashes between DLBs and CGV over the approval of the compensation rates where they are available with the PAPs being the end cheated group.

4.4 The challenge of handling Resettlement of PAPs;

Even when the national laws and project policy documents may follow internationally renowned best practices in compulsory acquisition, there remain practical challenges of execution of the document aspirations especially in handling resettlement as an option in compensation as the case study of Buseruka in Hoima has depicted. The model of compensation being used in Uganda even with the advent of the compensation guidelines issued in 2017, does not ably provide for Livelihood restoration in calculating values for compensation. The same model is still challenged in relation to arriving at acceptable, reasonable apportionment of value in situations of multiplicity of interests on land being appropriated i.e. private mailo hosting bibanja, hosting community easements among others.

4.5 There is also the general practice of continued application of a blanket disturbance allowance of 15% or 30% across all the PAPs without at times investigating the peculiar circumstances of particular communities or individuals and the extent of their livelihood distortion. The situation has not helped by the lack of proper document keeping by the PAPs. Most of the negotiations are thus undertaken in absence of documentary evidence of one's interest in the particular piece of land always attracting disagreements.

4.6 Lack of time limits in approval of valuation reports;

In practice, there is no stipulated time in law nor practice for approval of Valuation Reports and indeed compensation rates compiled by the District Land Board (DLB) by Chief Government Valuer hence explaining the delayed processes of compensation. This delayed compensation to PAPs cuts across almost all areas hosting major projects in Uganda right from the Buliisa Oil exploration, Omuka Exploration Pad Area, Nebbi district among others. Generally, these delayed payments of compensation for PAPs in various projects leads some PAPs to seek court redress which at times results into delay of the projects as Court process takes longer.

4.7 Understaffing and under funding of institutions;

In the same vein, the institutions in the process of compulsory land acquisition are all challenged with understaffing and underfunding thereby leading to the slowing of the processes or opting to hire external services which too come with their own challenges. Offices of the CGV, District Land Boards including the Ministry of Lands as the line ministry lack the necessary manpower to execute some of the critical tasks within the chain of compulsory land acquisition. In

similar dimension, there is archaic cadastral data coupled with deferments in provision of cadastral Sheets and survey data from the relevant government entities yet these are the pillars of the processes of assessment.

4.8 Lack of coordination amongst MDAs concerned with compulsory land acquisition;

There is further limited coordination between the government institutions responsible for the various processes of compulsory land acquisition. This sets off delays in various aspects for example in obtaining of search statements and mutation consents from the land registries to facilitate the next processes. The absence of updated district compensation rates has also been central to causing delays in project implementation since the compensation cannot go ahead to allow the PAPs vacate their land to pave way for project commencement.

4.9 Breach of the right to prompt, fair and adequate compensation payment;

The right to prompt, fair and adequate compensation payment as enshrined in the Constitutions has faced challenges owing to the inadequacy of funds normally are released late for compensation thereby occasioning delays. This is further catalyzed by the rejection by the PAPs over the amounts of compensation that are normally assessed and paid out. This goes back to the root cause, at least in the recent past, of absence of guidance on market rates and a uniform standard of national valuation Standards to facilitate fair and equitable assessment of one's property and later adequate compensation. There is still no law establishing the Office of the Chief Government Valuer, a predicament that has been further complicated by the absence of guidelines to direct the workings of the CGV and the attendant processes of compulsory land acquisition. Coupled with that are the lengthy processes of land acquisition characterized by land disputes that spill over to litigation in Courts of law result into overall project delays with cost overruns not anticipated which in turn increases the cost of under taking infrastructural developments.

4.10 Good laws betrayed by corrupt practices of government agents and agencies;

Despite some of the progressive provisions within some of the aforementioned laws, the practice remains one of the biggest challenges towards implementing the good parts of the law. As has been shown, even when the laws provide for adequate compensation, there is evidence of convenience in the office of the CGV to rip off government funds through over pricing/valuation of land resulting into 'over compensation'. In the same vein, owing to loopholes in the law-for example absence of compensation rates at the district to the process and corruption, there is evidence of losses accruing to communities arising from under valuation and thus meagre compensation both in cash and resettlement packages for their land. The other manifest challenge confronting compulsory land acquisition and its attendant processes of compensation is the multiple tenure systems in the country namely private mailo, leasehold, freehold & customary. All the aforementioned have their peculiar characteristics on how they are governed which all in diverse ways affects land acquisition. From the foregoing findings and analysis, the study recommends the following;

a) Legislative Reform (Article 26 (2) of the Constitution of Uganda);

Need for legislative reform, in particular to define the central terms that justify compulsory land acquisition for conceptual clarity. These terms as used in Article 26 (2) of the Constitution include 'public interest,' 'public order,' 'public safety' and 'timely,' 'adequate,' 'fair and prompt.' Such amendments would rely or purpose to consolidate the progressive inroads that have been made by the Court of law in their quest to define these terminologies. This recommendation is fronted without prejudice to the Court judgements that have defined these terms but rather with the recognition of these efforts as scattered and case by case decided.

b) Amendment of the Land Acquisition Act 1965;

There is need to amend the Land Acquisition Act 1965 to bring it into conformity with the Constitution of the Republic of Uganda as a way of operationalizing the Supreme Court decision in *Uganda National Roads Authority vs. Irumba Asumani & Peter Magelah*.²¹⁵ The amendment of the Land Acquisition Act Cap 226 should aim at prescribing for prompt, adequate and fair compensation prior to compulsory acquisition by Government.

c) Enactment of Regulations to governance Assessment and Payment of compensation;

The Minister of Lands and Urban development should enact the regulations to govern assessment and payment of compensation under the Land Acquisition Act as stipulated in Section 20 of the same. These regulations should provide for a reasonable, equitable formula on how to determine what is fair, adequate and prompt compensation and also provide for a time frame within which a PAP should receive compensation for his/her property after the date of assessment. The regulations should additionally create standing compensation tribunals in all districts and sub-counties that host these projects to guarantee accessibility to inexpensive justice to PAPs. The regulations could also offer further directive on the meaningful participation of women and vulnerable groups in host communities in compulsory land acquisition processes especially compensation.

215 This recommendation is in consonance with the government aspiration under the National Land Policy Implementation Work/Framework Plan, 2015 which priorities the need to 'Amend laws as necessary to circumscribe the power of the State to exercise compulsory land acquisition, ensuring a sensible approach to defining public purposes and to ensuring timely and just compensation.' See Ministry of Lands, Housing and Urban Development, 'The Uganda National Land Policy Implementation Action Plan-2015/16 - 2018/19,' March 2015, at 27.

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d) Capacity Building for the District Land Boards on their obligations and limitations;

Capacitate the District Land Boards through increased funding and training of members of the Board to ensure the timely appraisal of District compensation rates which are key for expedient compensation assessment for Project Affected People at the district level;

e) Establishment of A Standard Data Base for Land Market Information;

Need to cultivate and sustain a standard database for land market information that can be used by the various government MDAs that may want to appropriate land. This could curb the corruption revolving around over and under valuation of properties of PAPs since each MDA undertakes and determines its own generated land market information.

f) Rejuvenation of the District Land Tribunals and Area Land Committees;

Rejuvenate the functionality of the District land tribunals and Area land committees through increased funding and capacity building to boost their potential role at the local government in the expeditious resolution of land disputes on government appropriated land so as to forestall stalemate of government projects. Their functionality shall also contribute to reduction of the case backlog related to land disputes in the mainstream formal Courts of law.

g) Reformation of the Land Registry to Enhance Expeditious land conveyancing;

Reform of the Land registry to ensure that titling of land is done expeditiously to allow government agencies proceed with the necessary compensation of PAPs which is mostly dependent on title transfers both within individuals but also for MDAs acquiring the land.

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h) Establishment of an Escrow Account;

Consider the possibility of establishing an Escrow account managed by the Courts of law in cases involving land disputes. This should ONLY be in cases where the land condensation is inter-family or individual disputes around ownership of the land under State appropriation and not around compensation rate. In this case, government use

of the land can proceed as the conflicting parties settle the matter in Court. Whoever the Court declares the rightful owner is entitled to the already agreed upon compensation.

i) Establishment of a Special/Restricted Single Vote for Land Acquisition;

Consider the possibility of creating a special/restricted single vote for land acquisition in the national budget, run and managed in a central pool to counter corruption manifest in agency/ministry/department run votes.

j) Gazettement of All Projects Requiring Land Appropriation;

There is need for the Government to periodically gazette all its projects that shall require land appropriation before commencement of the actual exercise of the acquisition. This is in line with the governance principle of providing all citizens with the necessary information as a directive of Article 41 of the Constitution and in line with the Access to information Act to enhance transparency.

k) Development of a Comprehensive Communication Strategy;

There is need for the development and adoption of a comprehensive communication strategy that brings together all the MDAs that shall have a role to perform during the implementation of a particular project prior to land acquisition. In this way, misinformation and deliberate concealment of information by some agencies to the detriment of the public generally and PAPs specially shall be mitigated.

l) Enact the Administration of Judiciary Bill and National Legal Law;

This is necessary to generally empower the Judiciary but more specially to establish financial independence of the Judiciary which is key in delivering its mandate of expeditious adjudication of cases. The money spent in setting up ad hoc units, desks and departments in various sectors of the government should be re-channeled to the judiciary to fill up the over 400 vacancies at Magisterial level to function effectively and efficiently. The Ad hoc units should be disbanded forthwith to close up the multiplicity of power centers handling land matters breeding confusion and wastage of resources. Additionally, there is need to fast track the passing of the National Legal Aid law to ensure increased access to legal services by the poor, vulnerable and marginalized persons.

m) Special Tribunal/Division for Compulsory Acquisition Land Disputes;

Establish a specialized quasi or judicial mechanism for in the form of a Tribunal specializing in handling disputes and complaints in compulsory land acquisition expeditiously so that the government infrastructural developments are not stalled in the event of prolonged litigation.

n) Capacity Building for Personnel in the Compulsory Land Acquisition Chain;

The Government needs to initiate capacity building and strengthening programmes for the various personnel in the various government agencies, central and local government levels that handle land acquisition to enhance professionalism and their knowledge base on effective and efficient execution of this aspect. The capacity building would also aim at enhancing the expertise of these personnel with a Human Rights Based Approach (HRBA) to compulsory land acquisition especially during compensation and settlement stages

o) Development and Dissemination of Sensitization Programmes on the Importance of Infrastructural Developments to elicit public support;

There is need to develop and dissemination sensitization programmes aimed at the public generally and more especially those in regions hosting massive infrastructural development programmes on the importance of these projects and how they relate to the improvement of their lives.

p) Development and Operationalization of an Inter-Sectoral Coordination and Cooperation Framework During Compulsory Land Acquisition;

There is need for development and operationalization of an inter-sectoral coordination and cooperation framework between the various MDAs across the board to help in the restoration of the livelihoods of the PAPs specifically but also in the general compulsory acquisition processes;

q) Develop and Dissemination A Financial Literacy Programme for PAPs;

The inter-sectoral consortium of MDAs and CSOs dealing land rights and mores so compulsory land acquisition should design and disseminate through sensitization financial literacy programmes for the PAPs so that they can effectively and efficiently manage their compensation monies to avoid its abuse which has in the past, as the study has shown, created destitute.

r) Equip the IGG office to counter Corruption in CLA processes;

Facilitate the Office of the Inspector General of Government (I.G.G) to adequately investigate, and prosecute the corrupt agents in the different MDAs in the chain of compulsory acquisition of land.

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FOOTNOTES

- 1 Nakayi, 2016 at 16.
- 2 An Act to establish a Uganda Posts and Telecommunications Corporation and for other purposes connected therewith.
- 3 An Act to provide for the establishment of the Uganda Railways Corporation; to provide for its objects and functions; to provide for its board of directors and the composition and functions of the board; to provide for the finances of the corporation and its legal rights and obligations in relation to other persons; to provide for the employees of the corporation; to provide for various offences in relation to the functions and property of the corporation; to dissolve the existing Uganda Railways Corporation and to transfer to the corporation its property, assets, rights, obligations and liabilities, and for other purposes connected with or incidental to the foregoing.
- 4 An Act to provide for the restructuring of the communications industry in Uganda by establishing the Uganda Communications.
- 5 An Act to provide for the use, protection and management of water resources and supply; to provide for the constitution of water and sewerage authorities; and to facilitate the devolution of water supply and sewerage undertakings. Commencement: 7 April, 1997 (except for division 5 of Part II).
- 6 An Act to provide for the establishment of the Electricity Regulatory Authority; to provide for its functions, powers and administration; to provide for the generation, transmission, distribution, sale and use of electricity; to provide for the licensing and control of activities in the electricity sector; to provide for plant and equipment and for matters relating to safety; to liberalize and introduce competition in the electricity sector;... to provide for a successor company to the Uganda Electricity Board and for connected purposes.
- 7 An Act to provide for the preservation and protection of historical monuments and objects of archaeological, paleontological, ethnographical and traditional interest and for other matters connected therewith. Commencement: 15 May, 1968

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10	Ms. Christine Joy	Greater North Parliamentary Forum
11	Mr. Emmanuel Opio	M&E Consultant
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13	Mr. David Serpa	TIU
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16	Mr. Mulindawa Godfrey	Buganda Land Board
17	Mr. Bwogi Nathan	State House Land Department
18	Mr. Maghelah Peter	Chapter Four Uganda
19	Mr. Gerald Padde	TI- Uganda
20	Mr. Frank Otema	FARAJA Africa
21	Mr. Obwola Samuel	Human Rights Focus
22	Ms. Ndagire Immaculate	SEATINI-Uganda
23	Ms. Kyarisiima Jeanne	CRED
24	Mr. Innocent Kayizi	LANDNET
25	Ms. Nakamya Shakira	Nansana Municipality
26	Mr. Bwiire Moses	PEERU
27	Ms. Algressia Akwi	Uganda Land Alliance
28	Ms. Hamma Namugga	Uganda Law Society
29	Ms. Goreth Ayebale	Justice Centres Uganda
30	Mr. Godfrey Kalulu	Platform for Labour Action
31	Mr. Oming David	ESAFF Ug
32	Ms. Rebecca Akello	Action- Alliance
33	Ms. Brenda Namirembe	ActionAid Uganda
34	Mr. Javie Ssozi	TRAC FM
35	Ms. Stella Rose Akuti	LANDNET
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37	Mr. Kimurahebwa John Mary	PILAC
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