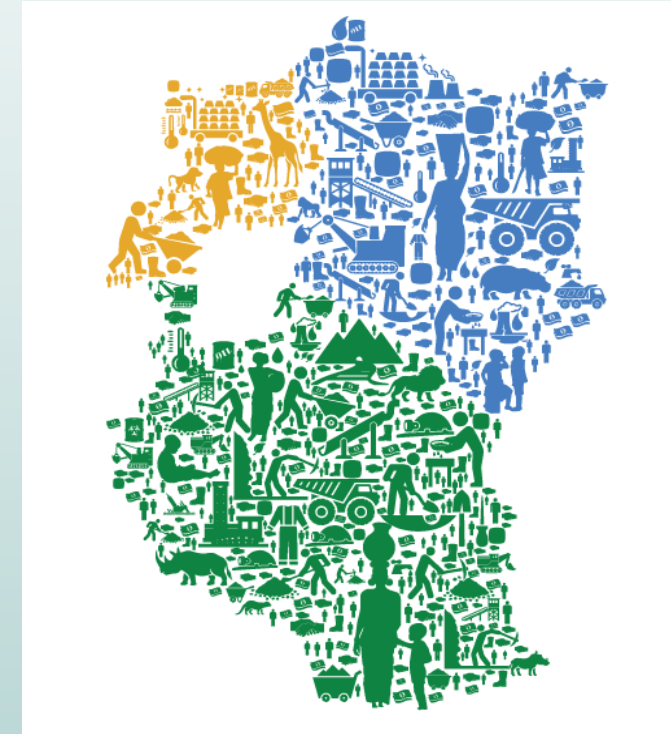


COMPULSORY LAND ACQUISITION, VALUATION AND COMPENSATION IN UGANDA: PRINCIPLES AND CHALLENGES.

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Structure of Presentation

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❖ **Case Law on valuation and compulsory acquisition**

❖ **Challenges and Recommendations**

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Legal framework for compulsory land acquisition, resettlement and compensation

- ❖ **The Constitution: Article 26: Prompt payment of fair and adequate compensation prior to taking possession or acquisition.**
- ❖ **The Land Acquisition Act read with UNRA vs Asumani & Magelah Constitutional Appeal No.2 of 2014 which nullified Section 7(1).**
- ❖ **The Land Act Cap.227 as Amended which creates district land boards that are ultimately responsible for compiling compensation lists. It also creates the non-operational Land Tribunals (Section 59(1), Section 77)**
- ❖ **The Petroleum (Exploration, Development and Production) Act 2013 which provides for fair and reasonable compensation for destruction of rights or damage to surfaces where a licensee conducts activities**



Policy Framework for resettlement and compensation

- ❑ There are policies developed by Government, some agencies especially with influence from international financial institutions (World Bank and IFC) to guide compulsory land acquisition and resettlement for infrastructure projects. While these guidelines may not have legal force, they are very critical.
- ❑ Resettlement Policy Framework for Integrated Water Resources Management and Development Project (February, 2018); a policy benchmarked on World Bank best practices for compulsory land acquisition. For use by National Water and Sewerage Corporation
- ❑ Guidelines for compensation assessment under land acquisition (June, 2017). Issued by the Ministry of Lands, Housing and Urban Development. These provide an elaborate guide on how to compute compensation in compulsory land acquisition cases.



Policies on compulsory land acquisition and compensation

- Land Acquisition and Resettlement Framework (December 2016), Issued by Ministry of Energy in collaboration with the lead JV partners in the Bunyoro region oil and gas activities (Tullow, CNOOC and TOTAL)**
- Environmental Impact and Assessment Guidelines for Energy Sector (NEMA, 2004 p.86-87,90): These emphasize an obligation to assist maintain livelihoods through income restoration**
- World Bank Environmental and Social Standards 5 (2016)**
- International Finance Corporation Performance Standards 5 (2012)**

The latter two policies and guidelines elaborately provide for recommended valuation practices to be adopted in cases of computing compensation in cases of involuntary resettlement or compulsory acquisition



Land Valuation in cases of compulsory acquisition or involuntary resettlement

- **International valuation practices in cases of compulsory acquisition or involuntary resettlement are shaped by international finance institutes that tend to underwrite/finance large scale infrastructure projects**
- **The overriding principle is that compensation must be granted at replacement cost to Project Affected Persons (PAPs).**
- **Replacement cost refers to fair market value of the development without taking into account depreciation. The sum required to replace the development/structure plus all related transaction costs.**
- **It is also called the “Equitable Value” in International Valuation Standards**



Ten Approved Principles of valuation in compulsory acquisition and involuntary resettlement cases (MLHUD)

- ❖ **PAP should not be worse off after acquisition (fair, adequate, prior and prompt)**
- ❖ **All incidental costs plus replacement cost should be factored in the disturbance allowance**
- ❖ **Cut off date of eligibility for compensation should be documented and widely disseminated in the Project Affected Area.**
- ❖ **PAPs should be availed adequate information and consulted on compensation values as well as advised on their rights during the entire process**
- ❖ **Compensation values due shall be enhanced at a rate of 15% per annum in respect of delayed payment**



Approved Principles

- ❖ **Compensation shall factor in and include; the value of land, developments, structures, crops, cultural sites, severance etc**
- ❖ **Where public infrastructure is acquired or affected, it must be restored by the implementing agency in collaboration with the line agency**
- ❖ **Assessment for compensation shall identify and recognise all multiple layers of rights on the affected land ranging from the land owner to licensees (lawful occupants, the so called “squatters” etc)**
- ❖ **In cases of special purpose properties, independent and professional valuers shall be appointed to carry out the valuation**
- ❖ **There should exist a grievance handling mechanism that is free of cost for resolving disputes over compensation amounts**



The 5 Standard Valuation Methods

- **Comparison Method:** Value arrived at by comparing with similar assets but subject to situational variables.
- **Contractor's Method (Replacement Method):** Value based on actual cost of replacing affected asset. Commonly used for developments that are not readily available on the market to enable a market value computation
- **Investment Method:** Value arrived at by estimating future net income and discounting it for inflation. This is used for income generating properties such as hotels, hostels etc
- **Profit Method (Capitalisation Approach):** Value computed by considering the actual or estimated profits over a period of time and then an average annual profit calculated.
- **Residual Method:** value arrived at by calculating the surplus value left after meeting all costs of development including the cost of finance



Gender component in resettlement and compensation

- **It is a recognised principle that vulnerable people among PAPs should be provided with targeted assistance during resettlement and compensation.**
- **In many cases, this includes women who are often disadvantaged by customary practices that restrict female ownership or custodianship of property (especially family land or communal land)**
- **The rights of spouses are often overlooked during compensation processes contrary to provisions of the Land Act (compulsory acquisition of matrimonial land would require that the proceeds of compensation are equally shared out by the couple.**
- **Note also that merely because the land title, in respect of titled land, is in the names of one spouse is not conclusive evidence of ownership as asserted by the Registration of Titles Act Cap.230 (Section 54), the Land Act laid out exceptions already.**



Case law on valuation and compulsory acquisition: an overview

- **The guidelines generally provide for a grievance handling mechanism that is administrative usually internal to the Project. In case it fails to satisfactorily resolve complaints of PAPs, courts of law remain the most feasible grievance handling forum as District Land Tribunals, which the Land Act had vested with powers to handle compensation disputes, are non-functional. A few cases below demonstrate that;**
- **UNRA VS IRUMBA ASUMANI & MAGELAH PETER, SC CONST. APPEAL NO.2/2014, The nullification of Section 7(1) of the Land Acquisition Act which had been used to compulsorily acquire and possess land prior to payment.**
- **BURAN CHANDMARY VS THE COLLECTOR, 1957 EACA 125 defines market value of land as price a willing vendor might expect from a willing purchaser: a willing purchaser defined as one who , thought not a speculator, is not wild or unreasonable.**
- **SHEEMA COOPERATIVE RANCHING SOCIETY & 31 OTHERS VS ATTORNEY GENERAL, HCCS 103 OF 2010; GOU held liable to compulsorily taking over ranches to resettle landless people before compensating ranch owners. Procedure for acquisition faulted.**

CASE LAW

- **LDC VS DAN WASSWA, CS 724/2003: GOU acquired, without paying the Defendant, land for LDC. Compensation in excess of one billion awarded.**

- **OLWIT & ANOTHER VS MUKONO MUNICIPAL COUNCIL, HCCS NO.63 OF 2011: Defendant held liable for destroying residual homes to construct road without having compensated owners first**
- **RIVER OLI DIVISION LOCAL GOVERNMENT VS SAKARAM ABDALLA, CIVIL APPEAL NO.18/2013: Respondent denied compensation for failing to satisfactorily prove ownership customarily. Trial Judge reviewed procedure for compulsory acquisition.**
- **UEB VS STEPHEN SANYA, CACA 1/2000: Appellant held liable for erecting HV lines in Respondent's line before compensating him.**

Challenges in resettlement and compensation

- **cases of undervaluation are prevalent**
- **Delayed payment of compensation**
- **Ownership disputes on land**
- **Unjustifiable compensation demands**

Challenges

- **Speculative tendencies**
- **Absence of updated District Compensation rates**
- **Systemic fraud in compensation**
- **Loss of land titles and other documents of ownership by agencies acquiring land or undue delay in transfer/subdivision**

Recommendations

- ❑ Need for law reform to legislate the valuation principles that remain mere guidelines at the moment**
- ❑ Establishment of strong representative committees of affected communities and persons: could be useful to give legal recognition to such committees**
- ❑ Clear mechanism for evaluating post acquisition should be mandatory to expose loopholes and close them instead of waiting for litigation**
- ❑ A special fund ought to be available to support the Judiciary to handle compensation disputes expeditiously like is done with election matters for instance. Such fund could be part of finance committed to land acquisition processes as Judiciary is understaffed and underfunded to meet, without support, the lofty goal of disposing off such matters**

Recommendations

- **Acquiring authorities should be clothed with legal status to sue and be sued so that they are susceptible to execution as opposed to Attorney General who is immune to most common forms of execution**
- **PAP funds should, by law, be on a protected escrow account till all PAPs are settled.**
- **Wider sensitization on the rights of PAPs**

For discussion

- 1. Which aspects of the law on land acquisition are in need of reform?**
- 2. How can the law protect the rights of widows and spouses during compulsory land acquisitions of matrimonial land/principal residential holdings?**
- 3. How can a win-win situation be achieved between PAPs on one hand and the need to have timely execution of infrastructure projects on the other hand?**
- 4. What are the most effective means of curbing speculative tendencies that tend to affect PAPs who generally lack information about upcoming projects till they are affected?**