



GOVERNMENT POLICY ON RESETTLEMENT AND COMPENSATION WITH REGARD TO THE EXTRACTIVE INDUSTRY IN UGANDA

BY

Bigiira Johnson
Senior Registrar of Titles

Ministry of Lands, Housing & Urban Development

**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



THE CANADIAN
BAR ASSOCIATION



Global Affairs
Canada Affaires mondiales
Canada



LAW SOCIETY OF KENYA



Tanganyika
Law Society



UGANDA LAW SOCIETY

Structure of Presentation

1. Introduction
2. Why land is required in the extractive industry
3. Legal, institutional and policy framework
4. The land acquisition process (recommended)
5. Basis of assessment and what is assessed
6. The role of the CGV in Compulsory Acquisition
7. And the duty of the acquiring authority/entity
8. Challenges being faced in the process of land acquisition
9. Initiatives to improve the process of land acquisition



Introduction

This paper aims at addressing the government policy on resettlement and compensation.

Modalities of compensation (Land acquisition processes) Land Acquisition is defined as *a process through which the Government acquires land (private) for public use or interest.*

Land acquisition takes into account the following:-

- a) The taking of private property (land)
- b) By Government
- c) For Public use/interest
- d) With just compensation



Why land acquisition is required

Exploration and Development of Oil and Gas in Uganda is in the Albertine Graben which is onshore and land is required for the following purposes:-

Upstream sector – Temporary occupation of land for well pads, access roads, lay down areas for storage facilities, camps, etc. the land is supposed to be restored thereafter. (for seismic studies)



Why land acquisition Cont'd

Upstream sector – Permanent Acquisition of land for well pads, access roads, lay down areas for storage facilities, camps, central processing facilities (CPF) and crude oil transportation where commercially viable results are achieved.

Midstream sector - Permanent Acquisition of land for refinery, product evacuation pipelines, waste management facilities, future petrochemical industry, refinery staff quarters, crude oil and product storage facilities among others



Why land acquisition Cont'd

Downstream sector - Permanent Acquisition of land for petrol stations, storage facilities, product pipelines and gas processing plants and re-gasification facilities.

This calls for a well established legislation and policy guideline on how the land requirements should be addressed not withstanding the interests of the affected persons; (PAPs)



Legal, Institutional and Policy Guidelines

The Constitution under Article 237(1) vests all land in the citizens of Uganda. However, under Article 237(1) (a), the Government or Local Government may acquire land in the public interest.

The following are examples of the legal instruments that guide how Land acquired for public use.

The Constitution of the Republic of Uganda 1995

Land Act CAP 227, 1998 (as amended in 2010)

The Land Acquisition Act CAP 226, 1965

The Mining Act, 2003: Section 82



Legal, Institutional and Policy Guidelines Cont'd

The Registration of Titles Act Cap 230, 1924

The Survey Act CAP 232, 1939

The Surveyors Registration Act Cap 275, 1974

The Access to Roads Act Cap 350, 1969

The Local Governments Act Cap 243, 1997 (as amended)

The Physical Planning Act 2010



The land acquisition process

This section describes the general preliminary procedures to be undertaken in the land acquisition process:

Reconnaissance surveys – Community consultation involved.

Identification and demarcation of the land to be acquired – location and size - Community involved.

Declaring an area a planning zone by the Minister.



The process cont'd

Notification of the land owner(s) of the intended acquisition.

Identification and verification of ownership.

Valuation to ascertain the replacement cost/value .

Disclosure, arbitration, compensation and resettlement.

Detailed cadastre surveys carried out and titling by Uganda Land Commission.

The basis of assessment and what is assessed

Category of claims	Basis of assessment
Owners – Land	Cash compensation based upon market value of unimproved land + disturbance allowance (15% or 30%) See Land Act sec.77(2)
Tenants – Land	Entitled to compensation based upon the amount of rights they hold upon land + disturbance allowance (15% or 30%) See Land Act sec.77(2)
Lisencee – Land	Not entitled to compensation for land, entitled to compensation for crops + disturbance allowance (15% or 30%) See Land Act sec.77(2)
Owners – “Non Permanent” Buildings	Cash compensation based on replacement cost per sqm. established at District level + disturbance allowance (15% or 30%) See Land Act sec.77(2)

The basis cont'd

Category of claims	Basis of assessment
Owners – “Permanent” Buildings	Cash compensation; Valuation by Valuer based on recommendation in the Land Act Sec.77 (1b) + disturbance allowance (15% or 30%) See Land Act sec.77 (2). Valuation is based on depreciated market value or replacement cost.
Perennial Crops and Trees	Cash compensation based upon District rates + disturbance allowance (15% or 30%) See Land Act sec.77 (2). No compensation is awarded if 6 month notice is given to allow people to harvest their annual crops. Cash compensation for annual crops that are

The basis cont'd

Category of claims	Basis of assessment
Business Income	Usually no compensation is awarded. The 6 month notice is supposed to allow people to re-establish their business. However special claims may be looked into on a case by case basis.
Protected Areas (National Parks, Wildlife Reserves And Forest Reserves)	The protected areas are owned by Government and normally they do not require compensation unless they are licenced to private developers where just compensation for damages is deemed mandatory. This is common with licencees of national forests and game reserves. Permission to access these areas should be sought from the relevant controlling authorities.

The role of the CGV in the process

All government entities are required by law to compensate Project Affected Persons (PAPs) based on valuation report authenticated by the Chief Government Valuer (CGV).

2. However, following the emergency of public – private partnership in public infrastructural developments in Uganda, the role of CGV's office has in most cases been limited to supervision of Private Consultant Valuers engaged to do the valuation on behalf of government.

3. CGV's office is not involved in the procurement of the consultancy.

What the Supervision entails

1. The specific Terms of Reference (ToR) given to the Consultant
2. The existing legal and institutional requirements
3. The approved methodology
4. Best professional practice

Procedure for Compensation Valuation Assessment

1. Consultant should obtain a well developed **ToR** for his/her engagement.
2. The entity to **officially request the CGV** for Supervision of the Consultant.
3. Arrangement be made for a joint **reconnaissance Survey**.
4. Consultant to develop a **methodology** for approval by the CGV.

Procedure Cont'...

5. Arrangement be made for **Sensitization** of all stake holders especially the PAPs. (how they will be assessed, rights and obligations)
6. A Registered Land Surveyor be engaged to produce a **strip map/cadastral print** of the affected areas showing names of land owners, acreages, zones, chainages, etc.
7. **Field assessment** by the Valuation team based on the approved methodology is followed.

Procedure Cont'...

8. **Data compilation and analysis** based on the approved methodology.
9. Production and submission of **1st Draft Report** to the CGV for perusal.
10. Arrangement be made for a **joint mop up exercise** prior to production of the final report.
11. **Final Report for approval** be submitted in triplicate.

Presentation of Final Valuation Report

- ❖ This is based on the acceptable minimum standard for mass valuation reporting as follows:-

Section A: Preamble for the Consultant Valuer

- i. Cover page (fully referenced and addressed)
- ii. Table of Contents
- iii. Instructions
- iv. ToR (specific to valuation assessment)

Presentation Cont'...

- v. Location of project
- vi. Review of legal and institutional framework
- vii. Review of other standards e.g. IMF, WB, ADB, etc.
- viii. Approach to the assignment (Methodology)
- ix. Assumptions made
- x. Limiting conditions
- xi. Complaints redress mechanisms
- xii. Remarks
- xi. Certificate of value
- xii. Signature, name and stamp of the Valuer.

Presentation Cont'd

Section B: Valuation Matrix (Detail of Assessment)

Section C: Photographs and/or District Rates used.

Section D: Strip Map/Cadaastre – this must be a separate copy with its corresponding cover page. Surveyor's preamble should include instruction, ToR, methodology, signature, name and stamp of the Surveyor. The strip map must contain all the required information consonant to professional practice. All the pages must bear the stamp or initials of the signatory.

Challenges being faced in the land acquisition process

No clear procedure/guideline on how land needed for temporary occupation must be handled. Sec 72 of the Land Act provides for *Rights of officials to encamp private land*. (3) The Government shall pay promptly—

(a) **a reasonable fee to the owner or occupier of the land for every day that the land is encamped upon under this section**, and any such fee shall include payment for any produce or other things taken from the land with the permission of the owner or occupier;

(b) for all damage caused to the land or anything attached to or forming part of the land or any moveable property on the land or anything wrongly taken away from the land by the actions of any person encamped upon the land under this section.

Challenges cont'

The challenge with the latter is that neither Government nor the Oil company is sure of how long the occupation shall take.

The Mining Act together with the Oil and Gas Laws recommend compensation for **disturbance to surface right** without defining what it means. As a result, assessment is being limited to developments on land; with the assumption that the Guideline being developed by the CGV will give a clear approach on how cases of temporary occupation should be handled.

Challenges cont'd

The CGV is placed at the fore front in handling disputes arising out of land acquisition but there is no attempt from either Government or the Oil companies to empower the office to be able to address those problems.

The office is under staffed and is poorly facilitated.

The uncontrolled level of speculation in land and property values in the Graben.

The high influx of people (speculators) into the area.

Recommendations

Scholarships should be offered to empower the staff in the CGV's office to properly handle challenges envisaged in land acquisition and compensation for Oil and Gas Sector.

The Oil companies are advised to have on-call Valuers to handle urgent compensation needs. The Valuers should however follow the procedure explained in this presentation.

Proper planning must be done to ensure compatibility of land uses.

There should be coordinated infrastructural development in the Graben. (esp. roads, electricity and water)

Initiatives being undertaken

A draft guideline on approaches to Land Acquisition in the Graben is being prepared.

The CGV has recommended that all the oil companies should have on-call Valuers to handle urgent valuation matters.

For the mean time, assessment for temporary occupation is being made for improvements on land only. The land aspect is left pending the guideline.

Conclusion

The National Oil and Gas Policy recognises that the different phases of petroleum operations will require varying durations for land access.

Where acquisitions of surface rights require compensation, the acquisition shall be carried out in accordance with the provisions in the Petroleum Act and the related legal and institutional framework.

I THANK YOU

