Understanding the Land Acquisition Bill, 2018

A simple Guide for Stakeholders

2019
Understanding the Land Acquisition Bill, 2018
A simple Guide for Stakeholders

Disclaimer:
©2019 Global Rights Alert reserves all of its rights in relation to this piece of work.

All information, advice and/or opinions in this publication are of a general nature which should be used as a guideline only. Readers are encouraged to obtain legal advice or assistance in addition to the information, advice or opinions contained in this publication.

Global Rights Alert shall not be held liable legally, or in any other way, for any incorrect and/or inaccurate information, advice or opinion contained in this publication by any reader, or interested party or stakeholder.

Whereas this booklet is a simplification of the Land Acquisition Bill, 2018, effort has been undertaken, where possible, to make as minimal changes as possible to the content and language as contained in the proposed Bill. As such, in most instances, the provisions have been used verbatim with a simplified explanation where found useful.
Preface

Land as a factor of production is of immense importance, and its basic functions in supporting human and other terrestrial ecosystems can be summarized as follows: a store of wealth for individuals, groups, or a community. Production of food, fibre, fuel or other biotic materials for human use.

The Land Act (1998) identifies the four forms of land tenure systems in Uganda which include Customary, Leasehold, Freehold and Mailo, grants all legitimate and bona fide occupants property rights; establishes land tribunals and decentralizes land administration.

Uganda has sufficient pieces of legislation to deal with compulsory land acquisition such as the 1995 Constitution of the republic of Uganda as amended that provides for the right to own property by an individual or a group by virtue of Article 26 of the same constitution.

In some cases government may propose land reforms to cater for development prospects. Such reforms alter the power structure, both economic and political, since land has always been a source of wealth, income, status and power.

In 2018, government tabled a Bill before Parliament seeking to amend Article 26 to allow for compulsory acquisition of land for expeditious public infrastructure development.

Global Rights Alert has produced this simple Guide to the Land Acquisition Bill, 2018 to provide an opportunity for citizens to understand the bill and make informed input on whether Uganda actually needs such a law or not, and what kind of safe guards are necessary to protect the rights of Ugandans, and at the same time, allow government to undertake strategic investments on land.
This Bill is intended to repeal the Land Acquisition Act of 1965, provide for compulsory acquisition of land in accordance with articles 26 and 237 of the 1995 Constitution of the Republic of Uganda, to provide for the procedure for compulsory land acquisition, to provide for compensation, resettlement and relocation, to establish the Land Acquisition Tribunal and provide for related matters. The Bill generally seeks to fill in the gaps in the current Land acquisition Act of 1965 that has since been overtaken by events over the years.

It is hoped that the publication of this simple Guide will enhance the citizenry understanding of the Land Acquisition Bill, 2018, and inform discussions around land management and governance in Uganda. The Simple Guide will further help the citizenry have a clear understanding of the proposed land acquisition, compensation, resettlement and relocation processes and the role of the Land Dispute Tribunal that is hereunder established. It is also hoped that this Simple Guide will also double as a basis for the citizens to demand for their land rights in the face of on-going and emerging development projects that all require land acquisition.

May this Simple Guide nobly serve the purpose of simplifying, guiding and deepening the citizenry understanding of the Land Acquisition Bill, 2018.

Winfred Ngabiirwe

Executive Director
About this Part:
This particular part introduces the readers to the legal understanding of the Land Acquisition Bill, 2018. It explains its purpose and objects and concludes by defining the entities for which the law was enacted.

1.0 What is the Land Acquisition Bill, 2018?
This is the proposed law to govern compulsory acquisition of land by government.

1.1 What is the purpose of the Land Acquisition Bill?
The purposes of the Act as listed in its preamble include the following;
   a) To repeal and replace the Land Acquisition Act, Cap.226;
   b) To make provision for the expeditious compulsory acquisition of land by the government in accordance with articles 26 and 237 of the Constitution;
   c) To provide for procedure for compulsory land acquisition;
   d) To provide for compensation, resettlement and relocation;
   e) To establish the Land Acquisition Tribunal and to provide for related matters.

1.2 Which entities are subjects of this law?
Persons or communities whose land is to be compulsorily acquired by government are subjects of this law.
About this Part:
Part two provides a detailed understanding of the procedures for compulsory land acquisition.

2.0 What is compulsory land acquisition?
According to Food and Agricultural Organization, compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.

2.1 Under what circumstances may government compulsorily acquire land?
The Government may compulsorily acquire land;
   a) for public use or public interest;
   b) in the interest of defence;
   c) for public safety;
   d) for public order;
   e) for public morality;
   f) for public health.

2.2 What does the Bill mean by compulsory acquisition for “public use”?
Public use means use of land by the Government for the benefit of the public for infrastructure and public works including roads, railway, airport, airfield, aerodrome, power line, water pipeline, fibre cable, public institutions, schools and resettlement due to war, calamities or acts of God.
2.3 Can Government compulsorily acquire underground land?
Yes. The Government may compulsorily acquire underground land in any locality for infrastructure and public works.

2.4 How is a request for compulsory acquisition of land made?

a) A Government Ministry, Department or Agency or local government which wishes to compulsorily acquire land, shall submit a request in writing to the Minister of Lands, housing and urban development.

b) Such request shall specify the following;
• The purpose for which the land is to be acquired;
• A map indicating the location of the land to be acquired;
• Whether surface or ground land only or both surface or ground land to be acquired;
• The approximate area of the land required;
• The time frame within which the land is required;
• A plan of the land if any

c) The Minister may then authorize a professionally competent person to enter upon any land in order to ascertain the suitability of the land for compulsory acquisition in line with the law of the land.

d) A person authorized to enter upon the land may;
• survey the land;
• dig or bore into the subsoil and remove samples; and
• do anything necessary for ascertaining the suitability of the land for compulsory acquisition.

f) A person authorized to enter and examine land shall before entering upon the land, give notice of not less than seven (7) days of the authorization for entry to a registered proprietor or customary owner and any person having interest in the land.
It is worth noting that Government shall pay compensation to any person who suffers damage as a result of the exercise of the powers of the Minister.

2.5 At what point should government make payment to land owners in compulsory acquisition of land?
Government should make prompt payment of fair and adequate compensation prior to taking possession of the land. It is important to also note that such compensation should be effected within six (6) months in case of cash payment or twelve (12) months in case of resettlement or relocation as may be agreed by the project affected person from the date of disclosure of the award.

2.6 What does the Bill mean by “prompt payment of compensation”?
Prompt payment means the payment of compensation within six (6) months in case of cash payment or twelve (12) months in case of resettlement or relocation from the date of the award.

2.7 To whom shall government make payments in respect to land that has been compulsorily acquired?
Government shall make prompt payments to the registered proprietor or customary owner or any other person whose interest in the land has been ascertained by the assessment officer.

2.8 Who is an assessment officer?
An assessment officer means the Chief Government valuer, or his or her authorized officer or agent.

2.9 Are there other alternatives to cash payment for land compulsorily acquired?
The other alternatives to cash payment is Resettlement and Rehabilitation. It is however important to note that resettlement and rehabilitation can only be done on a voluntary basis. It is at the discretion of government.
2.10 At what point can government take possession of land that has been compulsorily acquired?
The Government can take possession of land compulsorily acquired immediately after payment of compensation.

2.11 What happens in the event that government has interest in only a part of a house, or other building?
In such a case, government is deemed to have an interest in the whole house or building.

2.12 Which body is responsible for handling disputes as to whether any land proposed to be acquired forms or does not form any part of a house or building?
The Land Acquisition Tribunal.
Part 3

PROCEDURE FOR WITHDRAWAL FROM ACQUISITION OR TEMPORARY OCCUPATION OF LAND

About this Part:
Part 3 gives a clear and precise understanding of the processes to be followed before government withdraws from compulsory acquisition of land.

3.0 At what point can government withdraw from compulsory acquisition of land?
Government can withdraw from compulsory acquisition at any time before the compensation is paid.
It is important to note that in the event that Government revokes a declaration or withdraws from compulsory acquisition, the Government is required to make payments to any person having interest in the land compensation for any damage suffered by the person as a result of any action already undertaken on the land.

3.1 What is Temporary occupation of land and when does it happen?
This happens when a minister is satisfied that the temporary occupation and use of any waste or arable land are required by government for public use, the Minister may appoint a public officer or other person to procure the occupation and use of the land for a specific term, not exceeding three years from the commencement of the occupation.

3.2 What procedures should the government follow when temporary occupation of land comes to an end?
When the temporary occupation of any land that was occupied comes to end, government shall withdraw from the land and shall pay any compensation for any person having an interest in the land in accordance with Land Act for any damages done to the land during the occupation other than the damage for which compensation has already been paid.
About Part
Part 4 establishes the Land Acquisition Tribunal and explains the process through which compensation disputes will be settled.

There shall be established a Land Acquisition Tribunal responsible for overall compensation dispute settlement.

4.0 What does the Land Acquisition Tribunal consist of?
The Tribunal shall consist of a chairperson, a vice chairperson and three (3) other members, appointed by the President with the approval of Parliament.

4.1 What is the qualification of the Chairperson and Vice Chairperson of the Land Acquisition Tribunal?
The chairperson and vice chairperson shall be persons who qualify to be appointed Judges of the High Court.

4.2 What is the composition of the members of the Land Acquisition Tribunal?
The members of the Tribunal shall comprise of-
   a) A registered valuation surveyor;
   b) A registered quantity surveyor;
   c) A registered land surveyor.

4.3 What are the qualifications for members of the Land Acquisition Tribunal?
The member should be;
   a) Of sound mind;
   b) Of high moral character and proven integrity.
4.4 Can a person holding office as a member of parliament or a local government council be a member of the Land Acquisition Tribunal?
No. In the event that a person holding office as a Member of Parliament or a member of a local government council gets appointed to the Land Acquisition Tribunal, he/she shall step down from that office upon appointment as a member of the Tribunal.

4.5 For how long can one serve as a member of the Tribunal?
Members of the Tribunal can hold office for a period of five (5) years and can be eligible for reappointment for one further term. Please note that a member of the Tribunal may resign from office in writing addressed to the President.

4.6 How can a member of the Land Acquisition Tribunal be removed from office?
A member of the Tribunal may be removed from office by the President only for the following reasons-
- Inability to perform the functions of his or her office arising from infirmity of body or mind;
- Misbehaviour or misconduct;
- Incompetence;
- Conviction of an offence involving moral turpitude; or
- If the person has been declared bankrupt.

4.7 What matters can the Land Acquisition Tribunal handle?
The Tribunal can handle any matters or disputes relating to the amount of compensation awarded by the Government for land to be acquired and related matters.

4.8 What can a person dissatisfied with the amount of compensation awarded by the government do?
Such person may file a claim against the award to the registry of the Tribunal. Please note that such claim can only be filed upon payment of such fees as may be prescribed by the Minister by Regulations.
4.9 Within how long should a person dissatisfied with the amount of compensation awarded by the government file his claim to the registry of the Tribunal?
Such person should file his claim within fourteen (14) days.

4.10 Within how long should the Tribunal hear and determine claims filed against compensation awards in the registry?
The Tribunal should hear and determine such claims within thirty (30) days from the date of filing the claim and after satisfying itself, make an appropriate order or decision.

4.11 What are the powers of the Land Acquisition Tribunal?
For the purpose of a proceeding before a Tribunal, the Tribunal has the following powers-
   a) power to take evidence on oath;
   b) power to proceed in the absence of a party who has had reasonable notice of the proceeding;
   c) power to adjourn the proceeding only on reasonable ground.

4.12 Who is responsible for managing the administrative affairs of the Land Acquisition Tribunal?
The Chairperson of the Tribunal is responsible for managing the administrative affairs of the Tribunal assisted by the Registrar of the Tribunal and such officers and employees as may be necessary for the efficient discharge of the functions of the Tribunal.

4.14 Who is responsible for receiving claims filed with the Land Acquisition Tribunal?
The Registrar of the Tribunal shall be responsible for receiving claims filed with the Tribunal.

4.15 What shall be the qualification for the Registrar of the Tribunal?
The Registrar shall be a person qualified to be appointed a Registrar of the High Court.
4.16 What are the powers of the Registrar of the Tribunal?
The Registrar of the Tribunal shall have powers to do all things necessary to be done for the purpose of assisting the Chairperson of the Tribunal.

4.17 Who shall make the rules of procedure to be applied by the Tribunal?
The Chief Justice shall make the rules of procedure to be applied by the Tribunal.
It is important to note that such rules of procedure shall be made by statutory instrument.

4.18 To which court can a person who is not satisfied with the decision or award of the Tribunal appeal?
A person dissatisfied with the decision or award of the Tribunal shall appeal to the High Court.
It is worth noting that the decision of the High Court in such a case is final.

4.19 What is the procedure of appeal in the event that one is not satisfied with the decision or award of the Tribunal?
The procedure of appeal is as follows;

a) A party to a proceeding before the Tribunal who is dissatisfied with the decision of the Tribunal, may within fourteen (14) days after being notified of the decision or award of the Tribunal, lodge a notice of appeal with the Registrar of the High Court, and the party so appealing shall serve a notice of appeal on the other party to the proceedings before the Tribunal.

b) The High Court shall hear and determine the appeal within forty five (45) days from the date of lodging the notice of appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision or award of the Tribunal or an order remitting the
dispute to the Tribunal for reconsideration.

It is important to note that the High Court Judge determining the appeal from the Tribunal, may require the technical assistance of both the Government valuer and private valuer in arriving at his or her decision or award for any item, part of the item or the whole compensation award in dispute.

4.20 Can members and staff of the Tribunal be held personally liable for acts or omission done or omitted to be done in the exercise of their duties under the Act?

No. Members and staff of the Tribunal cannot be held personally liable for acts or omission done or omitted to be done in good faith in the exercise of their duties under this law.
Part 5

OFFENCES AND PENALTIES

Part 5 provides for offences and penalties in respect to land acquisition and goes on to explain the mode of service for notices, declarations and other documents under the Land Acquisition Bill, 2018.

5.0 Under what circumstances can a person be deemed to have committed an offence under the Land Acquisition Bill of 2018?
A person is deemed to have committed an offence under the Land Acquisition Bill under the following circumstances-

a) When a person wilfully obstructs any public officer or other person in the exercise of a power or performance of a duty conferred on him under the Bill;

b) When a person wilfully fills up, destroys, damages or displaces any trench or mark made in respect to land declared for compulsory acquisition.

5.1 What are the potential penalties for breach of the law above?
Any person who commits the offences above will be liable on conviction to a fine not exceeding twenty four (24) currency points or to imprisonment not exceeding twelve (120 months or both.
Please note that one currency point is an equivalent of twenty thousand Uganda shillings (20,000/=).

5.2 What is the mode of service for notices, declarations or other documents under the Land Acquisition Bill?
Without prejudice to any other method of service, any notice, declaration or similar document required to be served for purposes
of this Act may be served by post or, if it relates to land or premises and it is not practicable after using due diligence to serve it on the person on whom it should be served, by delivering it to some person on the land or premises to which it relates or, if there is no person on the land or premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the land or premises.

5.3 What document shall be in place to ensure the purpose and intention of the Land Acquisition Bill 2018 are properly effected?

Regulations shall be in place to ensure the purpose and intention of the Act are properly effected.

Please note that the Minister may be statutory instrument, make these Regulations and such Regulations will provide for-

a) Procedure for assessment of compensation;
b) The assessment and payment of compensations provided for under this law;
c) inquiry and issue of award by the assessment officer; and
d) Any other matter incidental thereto for the better and effective implementation of this law.
In a nutshell, the Land Acquisition Bill, 2018;

• Seeks to amend the Land Acquisition Act of 1965 as opposed to the earlier proposal that it amends Article 26 of the 1995 Constitution of the Republic of Uganda;

• Introduces the Land Dispute Tribunal that will be responsible for settling valuation disputes arising from persons whose land has been valued by the chief government valuer before compulsorily taking over such land;

• Outlaws government from taking over disputed land for government projects before resolving the valuation or compensation dispute. This means that the government can only take over possession of the disputed land after the Land Dispute Tribunal and the High Court have handled the dispute.
Understanding the Land Acquisition Bill, 2018

A Simple Guide for Stakeholders