



THE REPUBLIC OF UGANDA

GUIDELINES FOR COMPENSATION ASSESSMENT UNDER LAND
ACQUISITION (GCALA)

**MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT P.O. BOX 7096
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Foreword

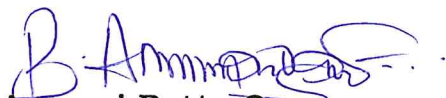
Government has developed Guidelines for Compensation Assessment under Land Acquisition (GCALA) aimed to harmonise and improve the overall practice of valuation assessment to achieve fair and adequate compensation to project affected persons in accordance with the Constitution of the Republic of Uganda, and to support the Chief Government Valuer (CGV) who is mandated to standardise proposed annual District compensation rates for approval by the district land boards country wide.

The Land Acquisition Act CAP 227 gives the Minister responsible for Lands the authority to acquire land compulsorily where the land owner or occupier is not willing to sell by agreement to authorised bodies (referred to as “acquiring authority”); and the Chief Government Valuer is the appointed Assessment Officer referred to in the Act to advise Government on the compensation amount.

Compensation following a compulsory acquisition of land is based on the principle of fairness and adequacy. This means that the PAP should be no worse off in financial terms after the acquisition than the PAP was before. It is always necessary to value land on the basis of its open market value without any increase or decrease attributable to the scheme of development which is related to the compulsory acquisition.

Synonymous to most Government projects are people aggrieved due to undervaluation, delayed compensation and ownership disputes on one hand and the acquiring authority challenged by unjustifiable compensation demands, speculative tendencies, absence of updated District compensation rates and regulations to bridge the gaps on the other hand.

On this note, I wish to thank all those who participated in the formulation process of these guidelines in particular the external stakeholders from the Ministry of Energy and Mineral Development, Ministry of Agriculture, Animal Industry and Fisheries, National Forest Authority, Joint Venture Partners (Oil and Gas) and the Institution of Surveyors of Uganda.



Amongi Betty Ongom

Hon. Minister - Ministry of Lands, Housing and Urban Development

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Acronyms:

DLB – District Land Board

CGV – Chief Government Valuer

GCALA – Guidelines for Compensation Assessment under Land Acquisition

ISU – Institution of Surveyors of Uganda

IVS – International Valuation Standards

MEMD – Ministry of Energy and Mineral Development

MLHUD – Ministry of Lands Housing and Urban Development

NFA – National Forestry Authority

PAP – Project Affected Person

RICS –Royal Institution of Chartered Surveyors

UBOS – Uganda Bureau of Statistics

1. Introduction

The existing approach to compensation assessment to people affected by compulsory acquisition of land for Government development projects has come under scrutiny by both the Project Affected Persons (PAPs) and the international development finance institutions. There are existing compensation guidelines but due to the dynamics in the real property market there has been need to develop and come up with formal and comprehensive guidelines that will address all concerns of the assessors/valuation practitioners, PAPs and other stakeholders. Which guidelines should be in conformity to the Constitution of Uganda and other subordinate laws.

It has been established that there is an absence of an exhaustive professional analysis in deriving the district compensation rates for crops and non-permanent structures. The office of the Chief Government Valuer (CGV) has drawn from its experiences from different projects being handled in the country to create guidelines that provide an overarching, common and acceptable professional approach to be followed to arrive at Fair and Adequate compensation in line with the Constitution of the Republic of Uganda. The proposed guidelines deal solely with the issue of compensation to owners and occupiers of landed property and the multiple interests thereon in cases of involuntary resettlement or compulsory land acquisition. It is recognised that the right to compensation may arise as a result of the acquisition of part or all of a person's land or a right or interest over a given property.

MLHUD is in the process of developing a National Land Acquisition, Resettlement and Rehabilitation Policy and the guidelines presented in this document shall address the development of some of the aspects of this new policy.

2. Objectives

The Philosophy behind the matter of compensation is that the local people know what the local prices really are. They are also assumed to know local costs for both labour and materials. The person affected should neither gain nor lose because of the works. As much as possible the person should be restored to his/her original position.

The objective of these guidelines is to provide a standard acceptable professional approach to be applied across Government of Uganda Projects and any other compensation related transactions countrywide.

3. Institutional Framework for Implementation;

The guidelines proposed in this document are intended for the consumption of the following entities;

a) **The Assessor;**

The assessor is provided for under Section S.6 (1) of the Land Acquisition Act Cap. 226 where the Minister of Lands is mandated to appoint an Assessment Officer¹. An assessor is construed to mean a registered valuation surveyor.

The Land Acquisition Act provides for the appointment of a private valuer to be an Assessment Officer to assess and compile the valuation reports. In practice, the reports prepared by the Assessment Officer are approved and endorsed by the CGV. Valuations are conducted considering established local practices, regulations and the Ugandan laws. Therefore, the proposed valuation and compensation guidelines aim to improve the performance of an assessment officer, to achieve fair and adequate compensation in accordance with the Constitution of the Republic of Uganda and international standards.

b) **The Chief Government Valuer (CGV):**

The Office of the CGV heads the valuation division in the department of Land Administration in the Directorate of Land Management in the MoLHUD. The division is mandated to provide timely and reliable real property valuations to government.

The role of the CGV

- Heading and supervising the valuation Division, including Planning and Budgeting for the effective delivery of the valuation function
- Supervision of Government Projects
- Advising Government on the real property valuations
- Valuing property for rent by Government
- Assessing Stamp Duty
- Advising Government on Rating Properties
- Any other duties that may be assigned from time to time

¹The Land Acquisition Act defines the Assessment Officer as a Public Officer or other person appointed by the Minister to be an Assessment Officer for the purpose of this Act, either generally or in a particular case.

c) **District Land Board (DLB);**

The DLB is mandated under Section 59(e-g) of the Land Act CAP 227 to compile and maintain a list of compensation rates payable. The DLB are supposed to consult the District technical officers for their professional opinion in the areas of valuation, land, agriculture, forestry, natural resources, community development and engineering (and other domains as relevant), to provide up-to-date compensation rates of crops, trees and semi-permanent structures. Uganda's legislation provides for the determination of compensation rates for crops and non-permanent structures at district level by the DLB².

d) **Technical experts:** Technical experts input from the following ministries may be requested for by the CGV, by the Assessment Officer and by the district staff to support the determination of fair and adequate compensation for specific Developments:

- i. MAAIF – for annual and perennial crops, and fish farming infrastructure (such as ponds)
- ii. NFA – for trees
- iii. MEMD – for minerals
- iv. Ministry of Works
- v. Other relevant ministry or government agency as may be required.

4. Legal Framework

4.1 Ugandan Legal Framework in cases of Involuntary Resettlement or Compulsory Land Acquisition

Legislation in Uganda gives the Minister responsible for Lands the authority to acquire land compulsorily where the land owner or occupier is not willing to sell by agreement to authorised bodies (referred to as “acquiring authority”). In some cases, an acquiring authority may be able to satisfy their requirements by the creation of a new right over the land rather than needing to seek full ownership. For example, an authority may seek rights to carry out works to a property for the provision of services to an adjoining property rather than actually acquiring that property. The compensation approach for the acquisition of new rights over land should be the same as for the actual acquisition of land.

² Refer to Land Act, section 59 (5): The Board shall in compiling the rates for compensation consult the technical officers in the District.

The Constitution of the Republic of Uganda (1995), Article 26 provides for “Prompt payment of fair and adequate compensation, prior to taking possession or acquisition of the property” in the event of compulsory land acquisition, which is envisaged specifically for instances where the land is required for public use or interest. There are four constitutional tenure systems namely; Customary, Freehold, Mailo and Leasehold.

The Land Acquisition Act Cap. 226, provides for the appointment of an “Assessment officer” to carry out the valuation assessment. S.6 (1) provides that the assessing officer shall make an award of compensation in which his or her opinion should be allowed³.

The Land Act Cap 227 S.59 (1)(e) and (f): (e) provides for the District Land Board 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; (f) review every year the list of rates of compensation referred to in paragraph (e) of this subsection. The Land Act S.59(5) further specified that a board shall, in compiling a list of rates of compensation referred to in subsection (1)(e) and (f), consult the technical officers in the district.

The Land Act S.77 provides guidance to the district land tribunals that are established to determine disputes emanating, among others, from compensation. It provides the Land tribunal with key factors to take into account while making an award in case of a dispute, but it was noted by the taskforce that this provision is not instructive to the Assessor but may be taken into account in arriving at a fair value.

The Land Acquisition Act Cap. 226 only specifies the procedure for the acquisition of land and thus relies on the Land Act, and the general valuation practices for land and developments to determine compensation awards and more so the need for valuation guidelines.

A number of laws regulating the development of various public infrastructures also provide for guidance on compensation. For example, **The Petroleum (Exploration, Development and Production) Act 2013**, makes provision for fair and reasonable compensation for any disturbance of rights or damage done to the surface of the land where the licensee conducts their activities, including for crops, trees, buildings, etc. (Section 139).

³ The Land Acquisition Act defines the Assessment Officer as a Public Officer or other person appointed by the Minister to be an Assessment Officer for the purpose of this Act, either generally or in a particular case.

The **Environmental Impact and Assessment Guidelines for the Energy Sector (NEMA, 2004, p86, 87, 90)** refers to the obligation to provide assistance in maintaining livelihoods through income restoration. The issue of livelihood restoration is also addressed in the National Environment Act 1995 CAP 153.

4.2 International Valuation Standards under Compulsory Land Acquisition

The development of large infrastructure projects may often entail land intake, the involuntary resettlement of affected persons and the compulsory acquisition of land. Therefore, compensation is inevitable for any Project Affected Person (PAP). It is an indispensable aspect of resettlement and must account for the full compensation for losses as a right and an entitlement. Compensation is, therefore, not merely a transactional relationship between the project developer and the PAP, it should encompass a developmental component in order to avoid impoverishment. In cases where displacement cannot be avoided by the project, the **international best practices** require that displaced persons and communities be compensated for the loss of Developments at replacement cost and other assistance be provided to help them improve or restore their standards of living and livelihoods.

International Valuation Standards (IVS) have achieved a leading position in guiding and harmonizing valuation activities around the world. The core areas of the standards are the assessment of fair market value in voluntary transactions and in financial reporting. The Core of the IVS espouses standards enshrined in the Constitution of the Republic of Uganda.

The International valuation practises in cases of involuntary resettlement or compulsory acquisition have been mainly shaped by international finance institutions standards mainly the World Bank Environmental and Social Standard 5 (2016) and the International Finance Corporation Performance Standard 5 (2012). These require for compensation to be performed at replacement cost, which is defined as the fair market value of the Developments without taking into account depreciation (or value required to enable affected communities and persons to replace lost Developments with Developments of similar value) plus all of the transaction costs. This translates into equitable value in accordance with the International Valuation Standards.

5. Key principles for compensation assessment under compulsory land acquisition:

Principle 1: Compensation following involuntary resettlement or compulsory land acquisition is based on the principle of fairness, adequacy, and prior and prompt compensation. This means that the project affected person should not be worse off in financial terms after the acquisition than he or she was before.

Principle 2: Due to the effects of the compulsory land acquisition or involuntary resettlement of the project affected person, it is necessary to value the land and affected developments on the land on the basis of its Replacement cost including other incidental costs covered by the statutory disturbance allowance.

Principle 3: Eligibility for compensation is determined by the cut-off date which shall be disclosed and documented prior to the census and valuation surveys. Notification about the cut-off date shall be well documented and disseminated throughout the project affected area. Any developments after the cut-off date shall not be compensated.

Principle 4: Affected persons shall be adequately informed and consulted on the valuation and compensation process that affects them. This shall include providing access to appropriate advice to ensure that they understand their rights, responsibilities and options during the valuation and compensation process.

Principle 5: The Minister shall appoint an assessment officer as per Section 10 (1) of the Land Acquisition Act and the land acquisition process shall be conducted as per Appendix 1. If the compensation award has not been paid within one year from the project cut-off date, the report shall be reviewed annually at 15%.

Principle 6: Based on circumstances, any compensation can be claimed under the Heads of Claim including but not limited to:

- The value of the land taken.
- The value of developments on the land taken (including but not limited to buildings, structures, crops, cultural heritage sites).
- Severance and/or injurious affection.

Principle 7: In cases where public infrastructure is acquired or affected, the implementing entity in collaboration with the line agency, shall reinstate the infrastructure where required and feasible.

Principle 8: The assessment shall identify and recognize multiple layers of rights on the affected land and property as contained in the Laws of Uganda. Affected persons with no formal legal rights to land shall be included in the assessment provided that they have established rights to property on the land taken, prior to the cut-off date. Apportionment of 60%-70% to the tenant and 30%-40% to the landlord shall be accorded where it applies.

Principle 9: In all special purpose properties, Valuers shall seek the relevant expertise to guide their assessment.

Principle 10: Grievance mechanisms; In case of contestation of the compensation award, a mediation committee shall be constituted to be chaired by the LC III-Chairperson and comprised of the Sub –county Community Development Officer, Sub-County Chief and the District Valuer who may be called upon to provide guidance. The assessor and the complainant shall attend the mediation committee meeting and the grievance shall be resolved within one (1) month from disclosure of entitlements. During the period of grievance resolution, no interest shall apply. Where the parties have failed to resolve the contestation, the aggrieved party may go to Court.

6. Valuation guidelines for Compensation Assessment under Compulsory Land Acquisition

6.1 General Valuation Methods

There are five **conventional** valuation methods which are used in Uganda to determine the market value of the asset to be compensated. These are summarized in Table 1.

Table 1: Standard Valuation Methods

Method	Description
Comparison method (or Market method or Direct Sales Comparison method)	The asset to be valued is compared to an asset that is similar in its physical properties or attributes and its legal status. The basis for comparison is “same for same” and is subject to allowances for situational variables. This is the most commonly used valuation method.
Contractor’s method (or Cost or Replacement method)	The basis for the valuation is the cost of replacing the affected asset. The method is normally applied to Developments that are not readily available on the market such as public hospitals, public schools, places of worship and other infrastructure used for public purposes.
Investment method (or Income method derived from the physical property)	The assessment for this method rests on the understanding that the capital value of an interest in landed property is directly related to the income or annual value derived from the land including any improvements. The valuation process involves estimating the future net income that would have been yielded from the land discounted at an appropriate rate of inflation. This is used for example for hotels, income generating property.
Profit method (or Capitalization approach)	This method of valuation considers the trade of an enterprise and its actual or estimated profits. A number of years of trading results (e.g. financial statements) are considered in order to determine a fair average and to allow for any fluctuations in trade. With gross income (turnover) as the basis for valuation,

	a deduction is made for reasonable overheads and working expenses to arrive at the net value of the enterprise. This method is similar to the investment method.
Residual method	This method is used in the valuation of development properties. The method calculates the surplus value after meeting all costs of developments including the cost of finance, and allowing for profits. This could be undeveloped land which is to be developed, or land with existing buildings which are to be refurbished or torn down and redeveloped. This is applied on parcels of land that have real development potential.

6.2 Valuation of Land

Compensation following a compulsory acquisition of land is based on the principle of fairness and adequacy. This means that the PAP should be no worse off in financial terms after the acquisition than the PAP was before. It is always necessary to value land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the compulsory acquisition.

Information about recent land transactions is obtained from the local area. This information is crosschecked with local residents. Where no evidence is available, professional judgment is used.

NB: Professional judgment is based on the nearest local Market available and relevant factors pertaining to the subject land derived to adduce an opinion of value.

6.2.1. General guidelines for land valuation

The compensation for loss of land should be determined in such a way that the PAP's economic and social future will generally be at least as favourable with the government takings as without them. In other words, the land should be compensated based on replacement value equated to the current market cost of the replacement land.

All legal land interests shall be fairly and adequately compensated.

- Land in urban areas shall be assessed on the basis of the prior acquisition market value of land of equal size and use, with similar public infrastructure facilities and services and located in the locality of the affected land. (i.e curb on any appreciation of value of the subject land arising from the project)
- Land in rural areas shall be assessed on the basis of the prior-acquisition market value of land of similar attributes in the locality of the affected land.

6.2.2. Specific guidelines for land valuation

- i) Where there is a general market demand for the land: the most common method to land valuation, is achieved through collecting and analysing data on recent sales from a willing seller to a willing buyer of a similar property (the comparable) in the locality. This best reflects the value of the subject property.
- ii) Where there is no general market demand for the land, when for example there are no sales comparables available or when it is a closed market, then the Residual or Income approach may be used.
- iii) Where permissible user rights are taken, the legal user rights are eligible for compensation taking into account the extent of limitations on a case by case basis.
- iv) There may be multiple layers of rights held by any number of rights holders. For example, a privately-owned parcel may be subject to leaseholds, rights of way for utilities or transportation, concessions, rights of traditional or other uses, rights to forest products, etc. Ownership of land, trees, buildings and other improvements may all be separately held. Each of these separate interests may represent a significant loss to its holder if the land parcel is acquired by government and the right is terminated.
Determination of compensation award should take into account each category of legal interests in the land and in developments on the land for example where there is freehold, mailo, leasehold, customary and other interest holders such as lawful and bona-fide occupants.

6.3 Valuation of minerals on the land

The Valuation of minerals shall be carried out by the CGV in consultation with the Solicitor General (SGG) and the Ministry responsible for minerals.

In the Ugandan Law, Section 3 of the Mining Act vests all rights to ownership of all minerals in, on or under any land or waters with the Government. Minerals can be classified in two categories:

- **Mineral estate of the land** includes industrial minerals which are subject to the valuation of “mineral rights” including mining licenses for commercial purposes.
- **Surface estate of the land** can include building/construction minerals present on the land such as for example sand, rock, clay, gravel and limestone (refer to definition provided in The Mining Act). These are to be valued within the basis of

market value of the land and as an opportunity cost linked to the productivity of the land.

6.3.1 General guidelines for valuation of minerals on the land

- Mineral property valuations should be carried out by appropriately qualified individuals and that all relevant information should be fully disclosed.
- A geologist should be engaged to provide expert opinion in the valuation of Minerals on the request of the assessment officer/Valuer.

6.4 Valuation of structures on the land

Large infrastructure projects and government expropriations often involve the loss of structures on land. A structure is something erected or constructed as a building. The most common affected structures are buildings that are enclosed constructions with roofs, windows etc. set up for a specific use. They are either constructed as permanent or semi-permanent or temporary:

- The permanency of a structure is derived from strength of building material used, time it lasts from construction, and its level of depreciation.
- Temporary structures are constructions that are short lived, in terms of use and ability to withstand external forces such as weather (e.g. a portable shelter). Although these structures are classified as temporary, from a social perspective, any structure occupied by one or more persons for the establishment of a home is deemed a permanent home.
- For buried structures such as graves, or Developments relevant from a cultural heritage perspective (such as religious or sacred sites) these are addressed in section 6.6.

If the structures are primarily for investment or income-producing purposes, the income approach is sometimes used. However, for a variety of reasons, the preferred valuation method for structures is usually the replacement cost method. The replacement cost is most times based on the 'reproduction cost'; the cost of reconstructing an identical structure by using the same materials and design at the time of appraisal.

6.4.1. General Guidelines for Structures Valuation:

Structures should be valued at replacement cost to ensure fair and adequate compensation. It is evident from the structures present on the land in Uganda that structures are not uniform – neither in design nor in the method of construction.

A. Where the market information is available: the assessor should use the Direct Comparison Method:

$$\begin{aligned} &\text{Replacement cost of structures (comparable sale approach)} \\ &= \text{Market Value} + \text{statutory disturbance} \end{aligned}$$

Where:

- Market Value as defined in section 8
- Disturbance compensation as defined in section 6.9

To determine the market value of structures, a range of valuation factors are considered during the valuation process, these can include the following:

Table 2: Examples of Structure Valuation Factors (not exhaustive)

- | | |
|---|--|
| 1) Location in relation to urban centers. | 2) Physical Planning restrictions. |
| 3) Type and quality of materials used. | 4) Workmanship and design of buildings. |
| 5) Conditions of the buildings. | 6) Topography – possible amount of leveling required |
| 7) Location of building in relation to sources of materials and labour. | 8) Other factors to be determined on a case by case basis. |

B. Where market information is not available: to determine the replacement cost, the assessor should use the contractor's method, by way of Bill of Quantities. A fundamental principle for replacement housing is that it should provide options for improvement. The National Physical Planning Standards and Guidelines (2011) provide guidance on the use of durable materials. The determination of replacement cost of a housing structure, therefore, requires an adjustment of the bill of quantities to include items of a minimum standard of specification.

$$\begin{aligned} &\text{Replacement cost of structures (contractor's method)} \\ &= \text{Cost of construction} + \text{Statutory Disturbance allowance} \end{aligned}$$

6.4.2. Specific guidelines for valuation of structures:

A. Permanent structures:

- i.** Where the market information is available, this replacement cost is equivalent to the market value considering Section 77 of the Land Act.
- ii.** Where such market signals are absent or inadequate, the replacement cost could be derived from the Contractor's method by way of a Bill of Quantities (BoQ).

B. Semi – permanent structure: Similar to valuation of permanent structures, the valuation of semi – permanent structures should be based on replacement cost.

C. Incomplete buildings and structures: compensation for incomplete buildings and structures (as identified in the surveys at cut-off date) shall be based on assessment by an assessment officer and based on level of completion.

D. Public Structures: see section 6.4 - A.Permanent Structures.

E. Structures with a Historic/Cultural value: see section 6.6 for Valuation of Graves & Cultural heritage.

F. Buried structures/Graves: see section 6.6 for Valuation of Graves & Cultural heritage.

6.5 Valuation of crops and trees on the land

6.5.1 Guidelines for valuation of crops and trees

Valuation for crops and trees is guided by the approved annual District Compensation rates. The authenticity of these rates shall be verified by the assessor against the controlled copy in the office of the CGV. In the absence of updated compensation rates, the rates for the immediate neighboring District shall only be adopted on applied for consent from the neighboring district and on approval of the CGV.

The technical officers referred to under Section 59(5) of the Land Act shall annually (for each Financial Year) collect data on yield for each type of crops and trees, and establish a schedule or table on average yield for each locality. CGV in collaboration with MAAIF and NFA shall provide and disseminate standard template forms to facilitate data collection and compilation of the list of rates of compensation for harmonization across the Districts.

In cases of involuntary resettlement or compulsory acquisition, annual crops (such as beans, maize and other cereals) are usually excluded from the valuation on the basis that sufficient notice is given to farmers to allow them to harvest before land take can be operationalized.

Intercropping refers to growing more than one crop in the same land area in rows of definite proportion and pattern. . In an intercropping situation, the main crop is spaced less densely (increase in spacing distance) to allow the secondary crop to grow in between. This means that the number of plants per acre (for example) will be reduced to allow the second crop space to grow. Therefore, to determine the distribution of compensation for the two crops, the following options may be adopted by the assessor;

- Physical crop count in smaller land holdings where it is feasible,
- Taking the dominant crops
- Taking percentage coverage of the different crops in the holding

6.6 Valuation of graves and cultural heritage

As stated in the principles, the asset is valued on the basis of fair value without consideration of the decrease or increase in value due to reasons that led to the acquisition. The special value to the owner in most cases is excluded. Indeed, there is no formal guidance on the assessment of “cultural” or “sacred” value for the Developments. If cultural heritage or sacred sites cannot be avoided, the most appropriate compensation approach should be the replacement method.

6.6.1. Guidelines for valuation of graves and cultural heritage

The approved district compensation rates for the graves shall be applied.

On cultural and relocation costs the assessor should be able to guide the affected PAP on a justifiable package to take into consideration the social and cultural norms as required.

6.7 Valuation of businesses and loss of income

Under the Land Acquisition Act Cap.226 it is recognised that the land acquisition process can affect business and lead to loss of income. Claims of business loss shall be packaged by the assessor and brought to the office of the CGV on a case by case basis to check its merit.

Losses of income for affected persons and businesses should take into account net daily/monthly profit for the following cases:

- loss of profits of non-farm business verified by an assessment of visible stocks and activities.
- loss of rental income verified by evidence of a rental agreement or rental payments and filed rental tax returns or property rates where applicable shall be used as a benchmark.
- Loss of employment income verified by proof of an employment agreement or salary payments.

6.8 Severance and Injurious Affection

The assessment of the value lost due to injurious affection and severance would have to be undertaken and included in the compensation.

Severance; occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it virtually useless and therefore less valuable.

Injurious Affection: Injurious affection is the depreciation in value of the property as a result of the proposed construction and use of the land acquired by the acquiring authority for the scheme and its treatment should be as provided for in the Common Law. Claims arising from injurious affection under Common Law may include lack of access to homes, amenities, means and sources of livelihood, drainage, privacy, noise and compatibility of existing land use among others. It is the impact of the whole of the proposed scheme that is to be considered not just the effect on the area acquired from the land owner.

Accommodation Works: Accommodation works comprise anything which is carried out or paid for by the acquiring authority, usually situated on the retained land, in order to reduce the claim for severance, injurious affection and/or disturbance. Examples are fences, ditches, gates, cattle grids, holding pens, new water supplies and new bridge or underpass crossings. In the case of crossings, the acquiring authority frequently retains ownership of the infrastructure and is responsible for ongoing maintenance. As a result, such crossings are more correctly described as part of the scheme works. It is normal practice for acquiring authorities to suggest and discuss the provision of such works where it is cost effective because compensation otherwise payable is reduced as a result of the works.

Such cases shall be considered under the guidance of the CGV.

6.9 Salvage of materials:

Salvage of materials should be evaluated on a case-by-case basis at the discretion of the acquiring authority. Here enclosed are general guidelines to be considered:

- A.** If the structure is occupied by the property owner, and if it is agreeable with the acquiring authority, the property owner may be given the opportunity to salvage materials within the notice period to vacate prior to demolition.
- B.** If the structure is occupied by a tenant (different from the property owner and evidenced by a rental agreement / rental payments), and if it is agreeable with the acquiring authority, the property owner may be given the opportunity to salvage only after expiration of the notice to vacate delivered to the tenants, and prior to demolition as planned by the acquiring authority.
- C.** If the salvage of materials has not taken place within the allowed period of time, the acquiring authority shall proceed with the clearance of the land and any related property acquired and shall ensure the management of the resulting waste in accordance with the environmental laws and regulations.

6.10 Managing speculative developments

Land speculation and encroachment are significant risks for any resettlement program and require a multi-pronged management plan as they can cause significant problems in resettlement and can hinder the opportunities for those who are rightfully entitled to compensation. After gazettement, the Ministry shall issue a freeze by writing to the Commissioner Land Registration to caveat the land that is titled and further inform the relevant local authorities where acquisition is taking place and the project affected persons to halt further transactions and new developments on the land.

A central aspect to the control of land speculation and encroachment is the establishment of a **development moratorium area and associated cut-off date**, as well as the strict monitoring and enforcement of the development moratorium. The cut-off date is to limit eligibility to genuinely affected people and preclude an influx of people into the project area. Persons occupying the project area after the cut-off date (so-called encroachers) shall not be eligible for compensation and/or resettlement assistance. Similarly, fixed Developments (such as built structures, annual and perennial crops, fruit trees, and woodlots) established after the cut-off date shall not be compensated.

Other recommendations to monitor and enforce the development moratorium:

- Prior to the establishment of the cut-off date (or development moratorium), it is recommended to undertake an **aerial survey** (using a drone) to obtain aerial imagery (photographs, satellite imagery and video data) to support subsequent surveys and provide proof of the state of development of the project area.
- **Rapid asset inventory, marking of structures:** the asset survey should start with a rapid numbering and marking/tagging of all structures using spray paint, and

record ownership details to ascertain what Developments are in the project area and which may be eligible for compensation.

- **Demarcate the required project area**, using clearly identified erected markers and geo-reference these in the presence of local authorities and representatives from the stakeholder committees.
- **Establish a strong and representative committee** of affected communities and affected persons, and work with this committee to further discourage land speculation and encroachment and to establish temporary restriction zones. While access into a restriction zone is not necessarily controlled, certain activities are prohibited or restricted within it, typically including entry of new households, expansion beyond agreed limits of fields and construction of new residential structures.

7. Definitions

A Land Tribunal; under Section 77 of the Land Act shall be interpreted to refer to a Court of competent jurisdiction.

Acquiring Authority: The acquiring authority manages the land acquisition process for public purposes. It involves a Governmental Authority, or a Government owned corporation or authorised bodies mandated to act on behalf of Government. The powers of the acquiring authorities to acquire land are described in legislation specific to those authorities. The process for acquiring the land, however, is provided in the Land Act and the Land Acquisition Act and subsequent regulations.

Compensation: According to the Oxford living dictionary, compensation is something, typically money, awarded to someone in recognition of loss, suffering, or injury.

Compulsory Displacement and Resettlement: partial or total physical displacement, economic displacement, and resettlement of legitimate landholders compelled as a result of project development when the legitimate landholder does not have the genuine right or ability to refuse displacement and resettlement.

Contractor Damage – Third Party Liability: The general principle in law is that contractors working for the acquiring authority are responsible for damage they cause which is not a necessary and unavoidable consequence of the works. In such cases the contractor has a responsibility to pay compensation for losses incurred and additional costs sustained. Landowners and land users are responsible for pursuing the contractor direct rather than going through the acquiring authority. Typical examples are dust from the works blowing on to crops, damage to services in the holdings causing temporary loss of supply and silt flowing into watercourses and ponds.

Project Cut-off Date: Designated date of completion of the census and Developments inventory of persons affected by the Project. Persons occupying the project area after the project cut-off date shall not be eligible for compensation and /or resettlement assistance. Similarly, fixed Developments established after proper disclosure of the date of completion of the Developments inventory shall not be compensated. For avoidance of doubt, the project cut-off date is NOT the same as a declaration or notice under the Land Acquisition Act.

Developments: refer to any properties such as structures, crops and trees on the land.

Equivalent re-instatement value: if the asset to be acquired is one for which there is no general market or demand, it is not possible to arrive at the value by adopting the market value approach. In these circumstances, it may be appropriate to assess compensation on the basis of how much it would cost to reinstate the facility elsewhere.

Equitable value (formerly called fair value): Equitable value is a broader concept than market value. Although in many cases the price that is fair between two parties will equate to that obtainable in the market, there will be cases where the assessment of

fair value will involve taking into account matters that have to be disregarded in the assessment of market value. Equitable value is determined by the assessor.

Replacement cost: is defined as a method of valuation yielding compensation sufficient to replace Developments, plus necessary transaction costs associated with development replacement. The replacement cost does not consider depreciation. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive Developments, or the undepreciated value of replacement material and labour for construction of structures or other fixed Developments, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost must at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety. Transaction costs include administrative charges, registration or title fees, reasonable moving expenses, and any similar costs imposed on affected persons. Replacement cost translates into fair value or equitable value in accordance with IVS and the Constitution of the Republic of Uganda.

Goodwill: defined in the IVS as any future economic benefit arising from a business, an interest in a business or from the use of a group of Developments which is not separable.

Investment Property: Generally, any property purchased with the primary intention of retaining it and enjoying the total return, i.e. income and/or capital growth, over the life of the interest acquired.

Market Value: the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion. In Uganda especially in the rural areas it may not be possible for markets to provide reliable information about prices of land. Therefore the 'market value' of the land should not be just the market value of the expropriated land but the market value of equal productive land.

When dealing with land for which there is a general market or demand, the compensation value is based on the market value of the land. Market value is commonly defined as the 'amount that the land might be expected to realise if sold in the open market by a willing seller to a willing buyer'⁴. The market value standard is mainly adopted because it's an objective gauge for assessing the value of the land. In assessing the open market value of the land, the current land owner is assumed to be a willing seller. However, it is assumed that the land owner would only be willing to sell at the best price which he or she could reasonably achieve in the open market. This open market value may be based on the existing use of the property.

⁴ADB, 2007. Capacity Building for Resettlement Risk Management report, 5

In circumstances when dealing with unusual or specialized land for which there is no general market, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property.

Micro Enterprise: defined by the Ugandan Bureau of Statistics as an enterprise employing maximum 5 people and has total Developments of maximum Ugandan Shillings 10 million.

Partial Physical Displacement: legitimate landholder retains beneficial use and possession of some of their land and associated resources and Developments, but is removed from the remainder. For example, a farmer may be physically displaced from part of their farmland due to a large-scale agricultural concession and road construction, but retain use and possession of some of the original farmland or their dwelling.

Potential Development Value: When considering the potential development value of a property, the Valuer may assume that permission would be granted for particular uses of the land. Broadly the planning permissions which may be assumed are as follows:

- Any existing and documented permission granted by Planning Authorities for development on the property.
- Any permitted development that is documented by Planning Authorities, which has not yet been implemented.
- Any development that is documented by Planning Authorities which would be in accordance with an allocation in a physical development plan.
- Any increase in the value of property which is attributable to a use of the property which is unlawful may not be taken into account.
- A use which is unlawful is one which could be subject to planning enforcement proceedings. Therefore, if the property is used for a purpose which requires, but does not have, physical planning permission, no account can be taken of any increase in value attributable to that use if it could be terminated through enforcement proceedings.

Special Purpose Property: A special purpose property is a facility that is not easily converted to other uses, and where the business operation is integrally tied to the real property value and to the physical location.

Statutory Disturbance Allowance: Means a one-off lump sum payment to compensate for the general upheaval and incidental expenses associated with involuntary resettlement or acquisition of property induced to a project affected person. These may include but not limited to; transport costs and removal expenses.

Total Physical Displacement: legitimate landholder’s complete loss of land, resources, shelter, or other land-based Developments.

Valuation Date: means the effective date of the Valuation, which may be different from the Report Date or from the cut-off date for the data used in the Valuation.

8. References:

- IVS 105: (2016) Valuation Approaches and Methods, London UK.
- Land Acquisition Act 1965
- Land Act CAP 227 (with amended in 2004 and 2010)
- Land Acquisition and Resettlement Framework, 2016
- NEMA (2004), EIA Regulation for the Energy Sector
- Office of the Deputy Prime Minister (2004) Compulsory Purchase and Compensation, Compulsory Purchase Procedure; Department for communities and Local Government; Eland House London
- RICS guidance note, 2011, 2nd ed , Valuation of rural property
- The Land Acquisition Act Cap. 226 (1965)
- The Land Act Cap. 226 (1998),
- The Mining Act, 2003
- The Petroleum (Exploration and Production) Act Cap 150 (2013)

APPENDIX 1

COMPULSORY LAND ACQUISITION PROCEDURE

- 1) Identification of the need for land.
- 2) Declaration of the area as a planning zone by a Gazette Notice.
- 3) Consultation and sensitization of the affected community- commencement of inspection is communicated.
- 4) Inspection of land, developments, crops/trees and a census of all of the affected persons is conducted by the appointed assessor.5) After each individual has been assessed, he/she signs and retains a copy of the assessment form. Any new developments on the land after the assessment date shall not be considered for compensation.
- 6) Declaration of the completion date of the inspection as the overall Project Cut-Off Date. New persons occupying the project area after the cut-off date shall not be eligible for compensation and /or resettlement assistance.
- 7) The assessor prepares a draft valuation report that is submitted to the CGV for review. The period from assessment to submission of draft valuation shall not exceed 6 months.
- 8) The draft valuation report is reviewed and comments are made.
- 9) The assessor amends the draft valuation report and submits a final valuation report for approval.
- 10) The approved valuation report is handed over to the acquiring entity for disclosure of entitlements.
- 11) Arbitration, compensation and resettlement. The period from final report approval to payment of compensation awards shall not exceed 6 months.
- 12) Titling by Uganda Land Commission.