

## THE LAND ACQUISITION BILL, 2013

### MEMORANDUM

#### **1. Object of the Bill**

The object of this Bill is to amend, replace and reform the law relating to compulsory acquisition of land in accordance with article 26 (2) and 237 (2) (a) of the Constitution; and to provide for related matters.

#### **2. Defects in the Existing law**

The current law on compulsory acquisition of land is contained in the Land Acquisition Act, Chapter 226 of the Laws of Uganda. The Act was enacted in 1965.

Due to the passage of time some aspects of the law relating to compulsory acquisition of land have become outdated and unconstitutional especially in light of article 26 (2) and 237(2)(a) of the Constitution which outline the purposes for which land can be acquired compulsorily and require the payment of fair and adequate compensation prior to the acquisition of land by Government or a local government. Whereas article 237(2)(a) now permits a local government to compulsorily acquire land the current Cap 226 does not contain a procedure on how a local government may acquire land compulsorily.

In addition, the Constitution requires that any law providing for compulsory acquisition of property should provide the persons with interests in the land, access to courts of law. Yet the Land Acquisition Act in the most part provides for the Attorney General and not the private individuals whose land is affected to refer disputes the court

#### **3. Remedies proposed to deal with the defects**

The Bill seeks to repeal and replace the Land Acquisition Act to make the law accord with the Constitution. The Bill proposes to streamline the purposes for which land can compulsorily be acquired as provided for in article 26 (2) and 237(2) (a) of the Constitution.

The Bill also proposes that a local government which wishes to acquire land in accordance with article 237(2) (a) should send a request to the Minister to initiate the acquisition in the same manner as if the land were required by Government.

In addition, the Bill requires any person determining the fair and adequate compensation payable to take into account the value of the land as determined by the chief Government valuer. The Bill also entrenches in the law, the constitutional requirement not to take possession of the land until compensation has been paid.

Finally the Bill while preserving the right of the Attorney General to refer disputes to court, also provides any person with an interest in land which is required to be acquired by the Government or local government to access court as required by article 26 of the Constitution.

*Minister of Lands, Housing and Urban Development*

## THE LAND ACQUISITION BILL, 2013

*Clause*

### PART I- PRELIMINARY

1. Interpretation.

### PART II- COMPULSORY ACQUISITION OF LAND

2. Purpose for which land may be compulsorily acquired
3. Compulsory acquisition by a local government
4. Power to enter and examine land.
5. Declaration that land is required by Government or local government.
6. Declaration relating to part of house, manufactory or other building.
7. Land to be marked and measured
8. Valuation of the land by chief Government valuer
9. Notice to persons having an interest in the land.
10. Inquiry and award.
11. Power of Minister where claim for severance is excessive.
12. Compensation

#### *Taking possession of acquired land*

13. Taking possession.
14. Enforcement of right to possession.

#### *Temporary occupation of land*

15. Temporary occupation of waste or arable land.

### PART III-WITHDRAWAL FROM ACQUISITION OR TEMPORARY OCCUPATION OF LAND

16. Withdrawal from acquisition.
17. End of temporary occupation.

### PART IV- LEGAL PROCEEDINGS

18. Appeals.
19. References to the court.
20. Rules on procedure

### PART V- MISCELLANEOUS

21. Offences and penalties.
22. Service of notices.
23. Saving of acquisition by agreement, etc.
20. Regulations.

## Schedule 1

A Bill for an Act

ENTITLED

**THE LAND ACQUISITION ACT, 2013**

**An Act to amend, replace and reform the law relating to compulsory acquisition of land in accordance with article 26 (2) and 237 (2)(a) of the Constitution; and to provide for related matters.**

BE IT ENACTED by Parliament as follows:

## PART I- PRELIMINARY

**1. Interpretation.**

In this Act, unless the context otherwise requires—

- “appointed officer” means a person appointed under section 15;
- “assessment officer” means a public officer or other person appointed by the Minister to be an assessment officer for the purposes of this Act, either generally or in a particular case;
- “currency point” has the value assigned to it in Schedule 1;
- “customary owner” means a person, family or community holding a certificate of customary ownership or owning land under customary tenure in accordance with the Land Act;
- “declaration” means a declaration made under section 5;
- “High Court” means the High Court of Uganda;
- “land commission” means the Uganda Land Commission established by article 238(1) of the Constitution;
- “Minister” means the Minister responsible for land;
- “person having an interest” in relation to any land includes all persons claiming an interest in compensation payable for or in respect of the land under this Act and all persons having an interest in an easement affecting the land;
- “registered proprietor” in relation to land means a person registered as proprietor of the land under the Registration of Titles Act;
- “Register Book” means the Register Book kept in pursuance of the Registration of Titles Act;
- “registrar” means the registrar of titles appointed under the Registration of Titles Act.

## PART II- COMPULSORY ACQUISITION OF LAND

**2. Purpose for which land may be compulsorily acquired**

The Government or a local government may compulsorily acquire land—  
(a) for public use;

- (b) in the public interest;
- (c) in the interest of defence, public safety, public order, public morality or public health;
- (d) for any other purpose specified in the Constitution.

### **3. Compulsory acquisition by a local government**

(1) A local government which wishes to compulsorily acquire land under article 237 (2) (a) and section 2, shall request the Minister to take action under this Act.

(2) A request under this section shall specify the purpose for which the land is required and shall state—

- (a) the location of the land to which it relates; and
- (b) the approximate area of the land.

### **4. Power to enter and examine land.**

(1) The Minister may authorise a person to enter upon any land in order to ascertain the suitability of the land for compulsory acquisition in accordance with the Constitution and this Act.

(2) A person authorised to enter upon land under subsection (1) may—

- (a) survey the land;
- (b) dig or bore into the subsoil and remove samples; and
- (c) do any thing necessary for ascertaining the suitability of the land for compulsory acquisition.

(3) A person authorised to enter and examine land under this section shall before entering upon the land, give at least three days' notice of the authorization and proposed entry to the registered proprietor or customary owner and any person occupying the land.

(4) The Government shall pay compensation to any person who suffers damage as a result of the exercise of the powers conferred by subsection (1).

(5) A person who is aggrieved by the authority given by the Minister under this section may apply to court to review the authority.

(6) The Attorney General may refer any dispute as to the compensation payable under this section to the court.

### **5. Declaration that land is required by Government or local government.**

(1) Whenever the Minister is satisfied that any land is required by the Government or a local government for the purposes of section 2, the Minister shall, by statutory instrument, make a declaration to that effect.

(2) An instrument made under subsection (1) shall specify—

- (a) the location of the land to which it relates;
- (b) the approximate area of the land;
- (c) the purpose for which the land is required; and

- (d) if a plan of the land has been made, a place and time at which the plan may be inspected.
- (3) The Minister shall send a copy of every declaration made under this section—
- (a) to the registered proprietor or customary owner of the land specified in the declaration;
  - (b) where the registered proprietor or customary owner is not in occupation of the land, to every person occupying the land;
  - (c) to every person in respect of whom an encumbrance or instrument is registered on the certificate of title or certificate of customary ownership;
  - (d) the chief Government valuer.

## **6. Declaration relating to part of house, manufactory or other building.**

(1) Where the Minister makes a declaration which relates to a part only of a house, manufactory, or other building, the Minister shall extend the declaration to include the whole house, manufactory or building if requested to do so by the registered proprietor, customary owner or the occupier of the house, manufactory or other building.

(2) The registered proprietor, customary owner or occupier, may withdraw or modify a request under subsection (1) at any time before the assessment officer determines the compensation payable in respect of that house, manufactory or building.

(3) Any dispute as to whether any land proposed to be acquired under this Act does not form part of a house, manufactory or other building shall be referred by the Attorney General to the court.

(4) In deciding a reference made under subsection (2), the court shall consider whether the land proposed to be acquired is reasonably required for the full and unimpaired use of the house, manufactory or building.

## **7. Land to be marked and measured**

Upon publication of the declaration under this Act, the assessment officer shall cause the land to be marked out and measured and a plan of the land to be made if a plan of the land has not already been made.

## **8. Valuation of the land by chief Government valuer**

The chief Government valuer shall within fourteen days after receiving the declaration that land is required by the Government or local government, inspect and examine the land and make a report to the assessment officer determining the value of the land for the purposes of this Act.

## **9. Notice to persons having an interest in the land.**

(1) Within fourteen days after the publication of a declaration in respect of any land, the assessment officer shall by notice published in the Gazette and at least two newspapers of nationwide circulation and exhibited at convenient places on or near the land, state that the

Government intends to take possession of the land and that claims for compensation relating to all interests in the land may be made to the assessment officer.

(2) The assessment officer may, whenever he or she thinks it convenient or desirable to do so, publish and exhibit two or more notices in respect of the land, each notice relating to a separate part of the land.

(3) A notice published under subsection (1) shall give the particulars of the land to which the notice relates and shall require all persons having an interest in the land to appear personally or by agent before the assessment officer on a day and at a time and place specified in the notice in order to state—

- (a) the nature of their respective interest in the land;
- (b) the amount and particulars of their claim for compensation for the interest; and
- (c) their objections, if any, to any plan of the land made under section 7 or otherwise.

(4) The day specified under subsection (3) shall not be earlier than fifteen days and, unless the Minister otherwise directs, not later than thirty days after the publication of the notice in which it is specified.

(5) The assessment officer may require a statement made in pursuance of subsection (3) to be made in writing and signed by the party making it or his or her agent.

(6) The assessment officer shall send a copy of every notice published under this section—

- (a) to the registered proprietor or customary owner of the land to which the notice relates;
- (b) where the registered proprietor or customary owner is not in occupation of the land, to every person occupying the land;
- (c) to every person in respect of whom an encumbrance or instrument is registered on the certificate of title or certificate of customary ownership.

## **10. Inquiry and award.**

(1) The assessment officer shall, on the day specified in the notice published under section 9, hold an inquiry into claims and objections made in respect of the land and shall make an award specifying—

- (a) the true area of the land;
- (b) the value attached to the land by the chief Government Valuer;
- (c) subject to section 11, the compensation which in the opinion of the assessment officer is adequate for the land; and
- (c) the apportionment of the compensation among all the persons ascertained by the assessment officer as having an interest in the land, whether or not they have appeared before him or her.

(2) For the purposes of an inquiry under this section the assessment officer shall have the same power to summon and enforce the attendance of witnesses and to compel the production of documents as is vested in a magistrate's court.

(3) Where an assessment officer makes an award under this section in respect of any land, the assessment officer shall send a copy of the award to the Minister and to any person with an interest in the land who was not present or represented when the award was made.

## **11. Power of Minister where claim for severance is excessive.**

(1) Where land is acquired in pursuance of a declaration and a person having an interest in the land makes a claim for compensation, on account of severing the land from the rest of the land owned by that person, which in the opinion of the Minister is unreasonable or excessive, the Government may acquire the severed portion of the land or the whole of the land of which the land forms a part, notwithstanding the fact that only a part of the land is required under this Act.

(2) Any dispute whether a claim for compensation under subsection (1) is or is not reasonable or excessive, shall, with the consent of the person claiming the compensation, be referred by the Attorney General to the High Court for decision.

## **12. Compensation**

(1) The Government shall promptly pay to the registered proprietor or customary owner or any other person whose interest in the land has been ascertained by the assessment officer, the fair and adequate compensation determined by the assessment officer in respect of that interest.

(2) In order to determine the fair and adequate compensation payable under this section, the assessment officer shall take into account:

- (a) the value of the land as determined by the chief Government valuer;
- (b) the market value of the land, where this is different from that of the chief Government valuer; and
- (c) the purpose for which the land is required by the Government or local government.

(3) A person aggrieved by the determination of the assessment officer may appeal to court.

(4) Where—

- (a) an appeal is lodged against a determination by the assessment officer under this section;
- (b) a person awarded compensation under this section refuses to accept the compensation; or
- (c) any other circumstance arises which renders it inexpedient, difficult or impossible to make payment in accordance with the determination of the assessment officer, payment may be made into court, on the application of the Attorney General.

*Taking possession of acquired land*

**13. Taking possession.**

(1) After the payment of compensation in accordance with this Act, the assessment officer shall take possession of the land.

(2) Where the assessment officer takes possession of land under subsection (1), the land shall immediately vest, free from all encumbrances, in the case of land required by —

- (a) Government, in the Uganda Land Commission; or
- (b) a local government, in the local government.

(3) Upon the assessment officer taking possession under this section, the estate and interest of every person having an interest in the land immediately before taking possession shall be deemed to have been converted into a claim for compensation under this Act.

(4) After taking possession, the assessment officer shall forward to the registrar or recorder a copy of the declaration relating to the land endorsed with a certificate signed by the assessment officer, which shall state that the assessment officer has taken possession of the land from the date indicated in the certificate.

(5) The registrar or recorder shall, notwithstanding any inconsistency with the Registration of Titles Act or Land Act, enter the Uganda Land Commission or the local government respectively, in the Register Book as the registered proprietor or customary owner of the land.

**14. Enforcement of right to possession.**

(1) If the assessment officer or the appointed officer is opposed or impeded in taking possession of land in pursuance of this Act, the assessment officer or appointed officer may apply *ex parte* to a magistrate grade I for relief.

(2) Where the magistrate is satisfied that the assessment officer or appointed officer, is entitled under this Act to take possession of the land to which the application relates, the magistrate shall make a declaration to that effect.

(3) A declaration made under this section shall be enforced as if it were a decree of a magistrate's court made in the exercise of its civil jurisdiction.

*Temporary occupation of land*

**15. Temporary occupation of waste or arable land.**

(1) Whenever the Minister is satisfied that the temporary occupation and use of any waste or arable land are required by the Government for purposes of this Act, the Minister may appoint a public officer or other person to procure the occupation and use of the land for a specified term, not exceeding three years from the commencement of the occupation.



(2) The appointed officer shall—

- (a) give notice in writing to any persons having an interest in the land of the purpose and term for which the land is required and of the date on which the term is to commence; and
- (b) pay to those persons for the occupation and use of that land for that term, for the materials, if any, to be taken from the land and for the standing crops on the land, if any, fair and adequate compensation, in a gross sum of money or by monthly or other periodical payments, as may be agreed in writing between the appointed officer and the persons.

(3) Any dispute as to the compensation payable under subsection (2) shall be referred by the Attorney General to the court.

(4) The High Court may order compensation payable under subsection (2) to be paid into court on such conditions as it thinks appropriate if it is satisfied on the application of the Attorney General that the appointed officer cannot trace the person to whom the compensation is due or is for other good cause unable to make payment of the compensation.

(5) The appointed officer may enter and take possession of the land after payment of the compensation in accordance with subsection (2) or (4).

### PART III-WITHDRAWAL FROM ACQUISITION OR TEMPORARY OCCUPATION OF LAND

#### **16. Withdrawal from acquisition.**

(1) The Minister may revoke a declaration made under this Act at any time before the assessment officer takes possession of the land.

(2) Where the Minister revokes a declaration under this section, the Government shall pay to any persons having an interest in the land compensation for any damage suffered by them as a result of any action already taken under this Act in respect of the acquisition.

(3) The Attorney General may refer any dispute as to the compensation payable under this section to the court.

#### **17. End of temporary occupation.**

(1) When the temporary occupation of any land comes to an end in accordance with this Act, the Government shall withdraw from the land and—

- (a) shall pay compensation to any person having an interest in the land for any damage done to the land during the occupation, other than damage for which compensation has already been paid; or
- (b) may, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the occupation and if all the persons having an interest in the land so require, proceed to acquire the land under this Act as if it were required permanently under this Act.

(2) Subsection (1) (b) shall not apply where land occupied under section 15 has become permanently unfit to be used for the purpose for which it was used immediately before the occupation by reason only of the fact that stone, murrum or other building or road-making material has been taken from an area which is less than 4 percent of its total area.

(3) The Attorney General may refer any dispute as to the compensation payable under this section to the court.

#### PART IV- LEGAL PROCEEDINGS

### **18. Appeals.**

(1) A person aggrieved by a decision, determination or award of the assessment officer or appointed officer may appeal to court.

(2) A person aggrieved by a declaration, determination or authorization given by the Minister may appeal to court.

(3) Notwithstanding the fact that the Attorney General may make a reference to court, a person having an interest in any land under this Act, may appeal to court against—

- (a) the total amount of any compensation determined or awarded under this Act;
- (b) the apportionment of the compensation;
- (c) any failure or refusal of the assessment officer or appointed officer to include the person in the apportionment or determination for compensation.

### **19. References to the court.**

(1) Where the Attorney General is empowered by this Act to refer a dispute relating to any land to the court —

- (a) the reference shall be made by motion to the magistrate's court established in the area in which the land is situated; and
- (b) any party to the proceedings on the motion who is aggrieved by the court's decision may appeal against the decision to the High Court.

(2) A magistrate's court shall have jurisdiction to decide a reference made under subsection (1) notwithstanding any law limiting the court's jurisdiction in relation to the value of the subject matter in dispute.

### **20. Rules on procedure**

(1) The Chief Justice may, by statutory instrument, make rules of court for the purposes of appeals, applications and references under this Act.

(2) Until rules are made under this section, the practice and procedure to be followed on appeals, applications and references under this Act shall be regulated as nearly as may be—

- (a) in the case of appeals, by the provisions of the Civil Procedure Rules regulating appeals from magistrates courts; and

- (b) in the case of applications and references, by the provisions of the Civil Procedure Rules regulating applications to the court by motion.

## PART V- MISCELLANEOUS

### **21. Offences and penalties.**

Any person who—

- (a) wilfully obstructs any public officer or other person in the exercise of a power or the performance of a duty conferred or imposed by this Act;
- (b) wilfully fills up, destroys, damages or displaces any trench or mark made under section 4,

commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or to imprisonment not exceeding twelve months or to both.

### **22. Service of notices.**

Without prejudice to any other method of service, any notice, declaration or similar document required to be served for the 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.

### **23. Saving of acquisition by agreement, etc.**

(1) Subject to subsection (2), nothing in this Act shall prevent the Government or a local government from entering into an agreement with a person having an interest in land by which—

- (a) that person's interest in land is acquired by the Government or local government; or
- (b) that person's claim to compensation for land under this Act is settled by the grant of other land.

(2) Government or a local government shall not compulsorily acquire any land without promptly paying fair and adequate compensation for the land prior to taking possession of the land.

### **20. Regulations.**

The Minister may, by statutory instrument, make regulations for the assessment and payment of compensation under this Act and generally giving full effect to the provisions and purposes of this Act.

## SCHEDULE 1

## Currency Point

One currency point is equivalent to twenty thousand shillings