



March 30, 2020

The Minister of Lands, Housing and Urban Development,
P.O. Box 7096,
Kampala (U).

Dear Sir/Madam,

R.E: MEMORANDUM OF CSO PROPOSALS TO FILL GAPS AND WEAKNESSES IN THE 2018 LAND ACQUISITION BILL

Introduction

The above refers

The Shared Resources, Joint Solutions (SRJS) members and our civil society organisation (CSO) partners thank you for sharing the Land Acquisition Bill of 2018 with us. Your action of sharing the bill gave us an opportunity to mobilise and empower Ugandans to participate in efforts to improve land governance and stop land injustices in our country.

The SRJS is a five-year programme being implemented in Uganda with support from the Ministry of Foreign Affairs of the Dutch Government. The SRJS programme seeks to promote International Public Goods (IPGs) such as water provisioning, food security, climate resilience and biodiversity conservation amidst threats and risks such as oil exploitation, sugarcane agribusiness and deforestation.

Through the SRJS programme and with our CSO partners, we mobilise citizens to support access rights based on access to information, public participation and access to justice for the common good. Our vision is to promote sustainable development for the wellbeing of all Ugandans through the protection of citizens' land rights and environmental conservation among others.

We appreciate that the current 2018 Land Acquisition Bill is a big step by government to address land injustices in the country by repealing and replacing the outdated Compulsory Land Acquisition Act of 1965. The above law continues to deny both citizens and government the opportunity to enjoy benefits provided for under Article 26 of the 1995 Uganda Constitution. Article 26 empowers citizens to own property and/or receive prompt, fair and adequate compensation during compulsory land acquisitions. On the other hand, the article empowers government to undertake compulsory acquisition of land in public interest upon payment of prompt, fair and adequate compensation to the affected person.

Unfortunately, the quality of the current Land Acquisition Bill of 2018 does not address the weaknesses and gaps in the Land Acquisition Act of 1965. These weaknesses and gaps include: failure to ensure access to justice especially by the poor, failure to define what is prompt, fair and adequate compensation, failure to provide for the penalisation of anyone who acquires or takes possession of private land before compensation of the affected person and others.

The main objective of our comments therefore is to make proposals that can enable government to prepare and present a good Land Acquisition Bill to parliament for enactment into law. This will ensure good land governance to promote equity and justice for both citizens and government in land ownership and compulsory land acquisitions in the country.

The table below presents gaps and weaknesses in the 2018 Land Acquisition Bill and proposals to address those gaps and weaknesses.

Comments on the 2018 Land Acquisition Bill

No.	Content of the Land Acquisition Bill 2018	Weaknesses and gaps in the Bill	Proposals to address the gaps and weaknesses in the Bill
1.	<p>Purpose of the Bill: Clause 2 of the Bill provides that the purpose of the Bill is to:</p> <p>a) Reform the law relating to</p>	<p>This provision regarding the purpose of the Bill misses one fundamental item. It fails to indicate that the main purpose of the Bill is to provide a framework for the implementation of Article 26 of the 1995 Uganda Constitution by clarifying what prompt, fair and adequate compensation in compulsory land acquisitions</p>	<p>We propose that the main purpose of the Bill should be to:</p> <ul style="list-style-type: none"> • Reform the law relating to

	<p>compulsory acquisition of land;</p> <p>b) Provide for expeditious compulsory acquisition of land by the government and;</p> <p>c) To provide for procedures for compulsory acquisition of land.</p>	<p>is.</p> <p>Citizens have been suffering untold land injustices in the form of unfair, inadequate and delayed compensation because of lack of the above definitions among other factors.</p> <p>The purpose of the bill should also be to provide for penalties for those who violate citizens' right to receive prompt, fair and adequate compensation when their land is compulsorily acquired by government.</p>	<p>compulsory acquisition of land;</p> <ul style="list-style-type: none"> • To enable enforcement of Article 26 of the Constitution that provides for the right to prompt, fair and adequate compensation in compulsory land acquisitions; • To provide for penalties for violation and/or abuse of the above right to prompt, fair and adequate compensation; • To provide for expeditious compulsory acquisition of land by the government and; • To provide for procedures for compulsory acquisition of land.
2.	<p>Definition for compensation:</p> <p>Clause 3 of the bill defines compensation as being cash payment, resettlement and relocation. This is limiting and will not protect citizens' including women's land rights.</p>	<p>Clause 3 of the Bill which provides that compensation means cash compensation, resettlement and relocation is a clear sign that at the moment, either government does not appreciate the causes of land acquisition challenges in the country or it is simply determined to worsen the suffering of citizens by using wide and unclear concepts.</p> <p>The Bill fails to define or describe what each compensation option, that is cash or resettlement or relocation, entails. This means that it will be left to a government agency that is acquiring land to define what compensation in the form of cash or resettlement or relocation means.</p> <p>Experience shows that when this happens, affected persons are compensated unfairly and are denied full relocation packages based on the whims of government. Women and children suffer the most when there is lack of failure</p>	<p>We propose that the following should be provided for under clause 3:</p> <p>Every affected person shall have any one of the three compensation options to choose from:</p> <ol style="list-style-type: none"> i. Cash compensation; ii. Relocation and resettlement, and; iii. Leasing. <p>Under this Bill,</p> <ul style="list-style-type: none"> • Cash compensation should

		<p>to clearly outline what each compensation package entails. This must be remedied.</p>	<p>include: the value of the land and all property on the land that is acquired; payment of a disturbance allowance and; payment for loss of social and economic benefits and other relevant considerations to restore the affected person to the original or better position prior to displacement through a livelihood restoration programme. Cash compensation should be paid within a period of not more than six months after an affected person's property has been assessed.</p> <ul style="list-style-type: none"> • Relocation and resettlement should include: buying replacement land equivalent to what was lost for each affected household on a case by case basis and with the participation and consent of the said affected person or group; payment of a disturbance allowance and; payment of the value of social and economic benefits lost and
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			<p>others that are relevant to restore the affected person or persons to the original or better position prior to displacement. This must be done in a period of not more than 12 months after an affected person's property has been assessed.</p> <ul style="list-style-type: none"> • Leasing: Where the land required for a project whose exhaustion or expiry is between 30 to 40 years, the affected person or group of persons shall have an option to lease his or her or their land to government in exchange for payment of fair, adequate and prompt monthly or yearly rent. The rent paid shall include the value of property per year, loss of social and economic benefits and others to restore the affected person to their original or better position prior to displacement.
3.	Definition of fair and adequate compensation:	Clause 3of the Bill defines the terms “fair and adequate” as any compensation assessed and awarded by the Chief Government Valuer/government in line with	We propose that the Bill should clearly define the words fair and adequate

<p>Clause 3 of the bill defines fair and adequate compensation as compensation assessed and awarded by government in accordance with the Bill and the Valuation Act.</p>	<p>the Bill when it is enacted and the Valuation Act.</p> <p>This clause dictates that government is the only party that can define what fair and adequate compensation is. This will have implications on reining in a government that has used its dominance over poor and vulnerable people to pay unfair and inadequate compensation.</p> <p>Because of the provisions under Article 26 of the Constitution among other laws, dictating compensation by government has been illegal and affected persons had a basis to challenge such actions in courts of law.</p> <p>However, the current Bill wants to legalise the act where government will occupy the positions of both the aggressor and the judge in the same case.</p> <p>All cases of land acquisition injustices have been against government as the violator or aggressor and yet the current Bill wants to make all the actions of the same government or violator legal. This is sad and should not be allowed.</p> <p>The Bill also is against sections 59 and 60 of the 1998 Land Act that empowers Districts Land Boards (DLBs) to determine compensation rates for crops and buildings of a none-permanent nature. The independence of the DLBs is provided for under the 1998 Land Act.</p>	<p>compensation as follows:</p> <ul style="list-style-type: none"> • Fair compensation is any compensation based on the agreed value between the affected person and government. The compensation should be paid within a period not exceeding six months for cash compensation and 12 months for relocation following the assessment of the affected person(s) property. Fair compensation should include payment of a disturbance allowance. • Adequate compensation is any compensation that restores the affected person to their original or better position prior to displacement. The compensation should be based on consensus between the affected person and government. It should be paid within six months if it is cash compensation or within 12 months if it is relocation. It should include payment of a disturbance allowance. <p>Where the two parties fail to reach</p>
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			consensus, compensation shall be determined by the Land Acquisition Tribunal and/or through an appeal to the Court of Appeal. The dispute filed before the Tribunal should be heard within a period of 20 days while that filed before the Court of Appeal should be heard within 45 days. In all cases, the costs of the case shall be paid by government.
4.	Declaration that the land is needed for compulsory acquisition: Clause 8(4) provides that upon declaration by the minister, the estate and interest of every person having an interest in land immediately before declaration shall be deemed to have been converted into a claim for compensation.	Under Clause 8(4), the Bill seeks to turn land owners and all those with interests in the affected land into claimants for compensation before any compensation is paid. This is contrary to Article 26 of the Constitution which prohibits any compulsory acquisition or possession of any private land before payment of fair, adequate and prompt compensation. This clause should be deleted.	We propose that clause 8(4) be deleted. The deleted clause should be replaced with another that clearly states that upon the declaration, citizens shall retain their interest in the affected land until fair and adequate compensation is paid to the land owners. The law should provide that any person who violates the interests of the affected persons before payment of fair and adequate compensation commits a punishable offence.
5.	Government possessing citizens' land before compensation: Clause 11(8) of the bill states that where a	It is not necessary to involve courts in matters where there is no case. This clause is only intended to motivate government to create disputes among land owners so that it may pay compensation without any particular owner claiming fair and adequate compensation. In this case, government will deposit any	We propose that clause 11(8) should be adjusted to read as follows: Where there is a dispute as to the rightful owner of the land in question,

	<p>person awarded compensation refuses to accept the payment on any ground other than the amount of compensation or there is a dispute on ownership of land, dispute over who should receive the compensation or any other circumstance that makes it difficult to make the payment, the implementing officer shall instruct the Attorney General in writing to apply to High Court seeking direction of court where to deposit the unclaimed compensation amount and the government shall take possession of the land or property.</p>	<p>amount of its choice to court and by the time the dispute is resolved, the land in question will have been taken away and converted.</p>	<p>any party claiming ownership of the disputed land shall within 20 days from the date of declaration by the government file a case before the Land Acquisition Tribunal which will determine the right owner of the land. The tribunal's decision on who the rightful owner of the disputed land is shall be final.</p>
<p>6.</p>	<p>Assessment of compensation award: Clause 13(1) provides that while assessing compensation, the assessment officer shall take into account among other things the prevailing market value of the land, developments,</p>	<p>Clause 13 creates contradictions with sections 59 and 60 of the 1998 Land Act which gives powers to the DLBs to set rates for crops and buildings of a none-permanent nature. The DLBs' rates are final because the land boards are independent.</p>	<p>The Bill should provide that while assessing compensation, the assessment officer shall rely on the rates prepared by the DLBs and the open market value agreed upon by the affected persons and government.</p> <p>Any officer that deviates from the rates prepared by the DLBs commits an</p>

	improvements and activities on that land.		offence.
7.	Livelihood restoration: Clause 16 provides that government may in resettling the project-affected persons provide means of livelihoods and restore the livelihoods of the project-affected communities to a state they were in before the project.	The word “may” creates any an impression that government’s obligation to restore the affected persons to their original conditions is optional.	We propose that the word may be deleted and the clause be adjusted as follows: Government SHALL in resettling the project-affected persons provide means of livelihoods and restore the livelihoods of the project-affected communities to a state they were in before the project.
8.	Taking possession: Clause 17 provides that government shall take possession of the land immedtaely after payment of compensation in accordance with this Act.	This clause is a violation of people’s rights to the extent that it deviates from Article 26 of the Constitution.	We propose that the clause should be changed to the following: Government shall acquire and take possession of the land immidtately after payment of fair and adequate compensation in accordance with the 1995 Uganda Constitution. Upon payment of compensation in accordance with the Constitution, government shall become the rightful owner or lessee.

<p>9.</p>	<p>Land Acquisition Tribunal: Clause 23 provides that there shall be established a Tribunal to be known as the Land Acquisition Tribunal.</p> <p>The Tribunal shall consist of a Chairperson, a vice chairperson and three others appointed by the president with approval of parliament.</p>	<p>The Bill is silent as to whether the tribunal will be only a national one based at the centre or it will be one where each district shall have a tribunal. This gap should be addressed to ensure that the tribunal is accessible and reliable.</p> <p>It is also strange for the Bill to provide that the membership of the Tribunal shall include a chairperson and vice chairperson with qualifications of a judge of the High Court and at the same time provide that any one dissatisfied with the Tribunal will appeal to the High Court as the final court of appeal. This means that only one judge at the High Court will determine a case that was heard by two people with the same qualifications as his or hers. In this case, there will be no added value. If anything, it will undermine the work of the Tribunal.</p>	<p>We propose that clause 23 should provide for the following:</p> <ul style="list-style-type: none"> i. There shall be established a Tribunal to be known as a Land Acquisition Tribunal at each district. ii. All matters relating to compulsory land acquisitions shall be heard by the tribunal. iii. The tribunal at the district shall be constituted of seven members including: <ul style="list-style-type: none"> a. A chairperson at the level of a Chief Magistrate; b. A vice chairperson at the level of a Grade one magistrate; c. A representative of government from the Ministry of Lands, Housing and Urban Development; d. A representative of the civil society; e. A representative from the Inter-Religious Council of Uganda; f. A representative from the cultural institution(s) found within that area and;
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			<ul style="list-style-type: none"> g. A representative of the district council. iv. The membership of the tribunal will consist of 50% women, youth and other vulnerable groups. v. All tribunals shall receive, hear and complete any case within a period of 20 days from the date of filing. vi. Every tribunal shall have a registrar who will be the administrator and will keep the seal of the tribunal. vii. Every tribunal shall have its own seal and no document shall be considered authentic without such a seal. viii. Each tribunal shall have its offices at the district headquarters but shall hear cases at the sub-county where the acquired land is located. ix. All costs incurred by affected persons while accessing the services of the tribunal shall be paid by government. x. The tribunal shall have powers
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			<p>of a Chief Magistrate’s Court and the chairperson and vice chairperson shall be paid a salary of a chief magistrate and other allowances in line with public service provisions.</p> <p>xi. Other members shall be paid a salary of a state attorney in line with public service provisions.</p>
<p>10.</p>	<p>Appeal from the Land Acquisition Tribunal at the district to the Land Acquisition Appeals Tribunal</p> <p>The Bill does not provide for a Land Acquisition Appeals Tribunal. We propose that this is provided for.</p>	<p>The Bill should provide that in addition to the district land acquisition tribunals, there shall be a Land Acquisition Appeals Tribunal at the national level. This tribunal shall move and hear cases from the district where the acquired land is located.</p>	<p>We propose that clause 24 is added to the Bill to provide for the following:</p> <ul style="list-style-type: none"> i. There shall be established a Land Acquisition Appeals Tribunal (LAAT) at the national level. ii. The LAAT shall hear appeals from the land tribunals at the district headquarters. iii. The LAAT shall be constituted of five (5) members including: <ul style="list-style-type: none"> a. A chairperson at the level of a High Court judge; b. A vice chairperson who shall be a senior advocate representing the Uganda Law Society (ULS); c. A senior valuer representing the

			<p>institute of valuers;</p> <p>d. The remaining three positions shall be taken by two senior citizens aged above 55 years from the affected district and another from the Inter-Religious Council of Uganda.</p> <p>iv. The LAAT shall have powers of the High Court and its members will be remunerated as High Court officers in line with the public service provisions.</p> <p>v. Any matter before the LAAT shall be heard and completed within 30 days from the date of filing.</p>
11.	Appeals from the Land Acquisition Appeals Tribunal	The Bill should provide that appeals from the LAAT shall be filed before the Court of Appeal as the final court regarding matters of compulsory land acquisition.	<p>We propose that a clause providing for the following be added to the Bill:</p> <p>i. Anyone dissatisfied with the decision of the LAAT shall appeal to the Court of Appeal.</p> <p>ii. The Court of Appeal shall hear and complete any matter before it within 45 days from the date of filing.</p>
12.	Regulations: Clause 38 of the Bill provides that the minister may by statutory instrument make regulations for better	Clause 38 fails to carry the necessary force that would ensure effective implementation and compliance to the Bill when it is enacted. Regulations are important for any law to be effectively implemented and complied with. Unfortunately, the current Bill provides that the minister may make regulations.	<p>We propose the following:</p> <p>i. Clause 38 should provide that any required regulations shall be formulated and operationalized within</p>

	<p>carrying into effect the purposes and intentions of the Act.</p>	<p>This is similar to section 20 of the 1965 Land Acquisition Act. Because of the weakness of the section, the minister has failed to put in place regulations over 55 years after the 1965 Land Acquisition Act was put in place. As such, citizens continue to suffer untold injustice relating to compulsory land acquisition.</p>	<p>a period of 12 months/one year from the date when this Act comes into force.</p> <p>ii. Any regulations made under this Act shall be presented by the minister to parliament for approval. Parliament shall make a decision approving or rejecting the said regulations within ten days of presentation of the regulations before it.</p> <p>iii. After one year of operation, this Act shall cease to be enforceable in the absence of the required regulations.</p>
<p>11.</p>	<p>Acquisition and possession of protected areas and land held by government in trust for the citizens</p>	<p>At the moment, the Bill misses one key land governance aspect. This aspect is the protection of protected areas and resources that are held in trust by government for citizens such as national parks, game reserves, forests, wetlands, lakes, rivers, mountains and others. Under the 1965 Land Acquisition Act, government has continued to treat and use protected areas as if citizens have no rights over them whatsoever.</p> <p>The current Bill needs to address and stop the degradation of protected areas. It must clearly provide the procedures for their protection and acquisition.</p>	<p>We propose that clause 39 is added to the Bill and that it provides for the following:</p> <p>i. Any acquisition and change of any protected area or resource held in trust for the citizens by government under Article 237 of the 1995 Uganda Constitution must be through an Act of Parliament.</p> <p>ii. The local communities from where the land is located must be consulted and their views documented and presented to parliament by</p>

			<p>government.</p> <p>iii. An Environmental and Social Impact Assessment (ESIA) study must be conducted presenting different social and economic options for the said land, showing clearly with statistics how the selected option is the best compared to the rest of the options.</p> <p>iv. Any citizen has a right to go to court to challenge the acquisition of any protected area and no action shall proceed and/or be commenced until the said case is concluded.</p>
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Thank you,

Signatories:

1. Africa Institute for Energy Governance (AFIEGO)
2. Environmental Conservation Trust (ECOTRUST)
3. World Voices Uganda (WVU)
4. Oil Refinery Residents Association (ORRA)
5. Centre for Constitutional Governance (CCG)
6. Twimukye Womens Organisation
7. Graffen Organisation –Butimba

8. Youth Action for Environment -Kiryandongo
9. Center for Energy Governance
10. African Initiative on Food security and Environment
11. Kasese Citizens Coalition to Safeguard Biodiversity
12. Katwe Sanitation and Clean Energy Women's Club
13. Greenwatch Uganda
14. Coalition on Climate Change (CCC)
15. Citizens' Concern Africa (CICOA)
16. South Western Institute for Policy (SOWIPA)

CC:

- Speaker of Parliament
- The Chairperson, Natural Resources Committee of Parliament
- The Chairperson, Uganda Human Rights Commission
- Minister of Energy and Mineral Development
- Minister of Water and Environment
- The Executive Director, National Environmental Management Authority
- The Executive Director, National Forestry Authority
- The Executive Director, Uganda Wildlife Authority
- Bunyoro Kingdom