



## 26 REASONS WHY BILL TO AMEND ARTICLE 26 OF THE CONSTITUTION MUST BE REJECTED

On July 13, 2017, the Deputy Attorney General, Hon. Mwesigwa Rukutana, tabled before parliament the Constitution (Amendment) Bill No. 13 of 2017 to amend Article 26 of the Uganda Constitution. The Bill purportedly seeks to “to resolve the current problem of delayed implementation of Government infrastructure and investment projects due to disputes arising out of the compulsory land acquisition process[es].”

Specifically, it makes provisions for the following:

- (a)** To enable government, or a local government to deposit with court, compensation awarded by the Government for any property declared for compulsory acquisition;
- (b)** To empower the government or local government to take possession of the declared property upon depositing the compensation awarded for the property with court, pending determination by the court of the disputed compensation awarded to the property owner or person having an interest in or right over the property and;
- (d)** To empower Parliament to prescribe, by law, the time within which disputes arising out of compensation shall be resolved.

On July 19, 2017, AFIEGO and partners from five districts in the Albertine Graben met in Hoima district and discussed the amendment and its implications. Below, AFIEGO, a public policy research and advocacy registered non-governmental organisation whose main objective is to influence energy policies to work for Ugandan citizens, gives you 26 reasons why parliament should reject the amendment to Article 26 of the 1995 Uganda Constitution (as amended).

1. The proposed amendment violates citizens' right against property deprivation until payment of fair and adequate compensation as is enshrined in Article 26 (1) of the 1995 Uganda Constitution.
2. The proposed amendment is irrelevant because the same Article 26 already empowers” government and/or a local government to compulsorily acquire any private property/land as long as that property is required for “public use, or in the interest of defense, public safety, public order, public morality or public health.” It only requires government to pay prompt, fair and adequate compensation. Once the prompt payment of fair and adequate compensation is made, no one can stop government from exercising compulsory powers of acquisition.
3. The proposed amendment is therefore in bad faith and is intended to shield government from her own obligation of paying citizens prompt, fair and adequate compensation in compulsory land acquisitions.
4. Moreover, if successful, the amendment will force citizens to accept unfair compensation or force them to undertake unaffordable litigation. In effect, if effected, the Bill will legalise injustices against vulnerable citizens.
5. Further, if the amendment is effected, it will disempower property/land owners from challenging government's decisions on compulsory acquisitions because of high court costs among other factors even when such decisions are unjust and unfair. The amendment will introduce dictatorship in compensation processes against citizens.

6. More so, the proposed amendment should be rejected because its effect is to stop affected land owners from challenging government's decisions on acquisition and/or possession even where acquisition is not for public use. To this extent, it contravenes Article 50 of the 1995 Uganda Constitution which empowers any aggrieved person to have access to courts for redress against any infringements or threats against human rights.
7. The proposed amendment also contravenes Article 24 of the Constitution because it seeks to deprive citizens of their survival and this should be construed as torture, cruel, inhuman and degrading treatment which Article 24 provides against. How does government expect a person or household whose land has been taken before payment of compensation to survive? Remember, over 80 percent of Ugandans survive/subsist on land.
8. The amendment is also against Article 128 of the Constitution as it seeks to empower the executive to involve courts in matters that are not before it yet. Where the land owner opts to go to court, the same courts will be required to adjudicate the matter. Remember, decisions of possession and acquisition by government are not decisions before court until someone files a case and, as such, government should not be allowed to involve courts in such matters that will create mistrust and suspicion in the public.
9. Further, since 1965, government has failed to put in place regulations for the assessment and payment of compensation as required by Section 20 of the Land Acquisition Act of 1965. If these regulations were in place, they would provide guidance on what is prompt, fair, adequate and prior compensation. To this extent, justifications being raised by government that disputes over compensation by land owners and others delay government projects would not suffice. It is therefore unfortunate that a government that has failed to do first things first is the one trying to amend the Constitution to shield itself from its incompetence.
10. The proposed amendment, if effected, will render the Bamugemereire-led Land Commission of Inquiry irrelevant despite the fact that billions of tax payers' money is being spent on the Commission. The Commission was instituted by the President to analyse the challenges of land governance in the country and is expected to make recommendations advising government on how to provide long-lasting solutions to land problems in the country. Why doesn't government want to wait for the commission's report and thereafter make appropriate decisions based on evidence including whether or not to amend the Constitution, if necessary? Government should not be allowed to waste our taxes on parallel and uncoordinated processes.
11. The Bill is also pre-mature because for years, government has been promising the country a Constitutional Review process where experts would collect views from citizens across the country and based on those views, advise government on the required constitutional reforms for peace, harmony and development. Let government constitute the Constitutional Review Commission rather than amending the Constitution in piecemeal. Parliament should not allow and accept fictitious emergencies which will not address the problem but increase injustice against the citizens.
12. The Bill wants to force property/land owners to accept every decision of the Chief Government Valuer (CGV) or use the CGV's decisions on compensation as basis to deprive citizens of their property. Yet in the recent case of the Kampala-Entebbe Expressway, Uganda National Roads Authority (UNRA) rejected the CGV's value for a stone quarry. If a government department can reject as unfair a decision of another government office, why should Parliament amend the Constitution to allow government dictate compensation against project-affected people?

- 13.** While the Bill allows government to take over private property even when there is a dispute over compensation, it does not allow the property/land owner the luxury to stop the acquisition until payment of compensation. Instead, the affected person's only option is going to court where he or she has no control on when the case will be determined.
- 14.** In effect, the Bill will render all those disputing compensation landless as they pursue the legal process. Yet government knows that land cases in Uganda can take many years to be decided by court. Article 26 should be protected because it protects citizens' property rights while at the same time empowering government to go to court for determination of compensation in cases of disputes. Once court makes a decision, the land owner has no option but to accept the compensation awarded. It is at this point that government can deposit the compensation awarded in court and rightly evict the owner. This is the best law and therefore, no one should amend it.
- 15.** If the Bill is effected in its current form, it will make government reluctant to perform her duties of ensuring that institutions and officers of government such as District Land Boards (DLBs), Recorders at sub counties, Area Land Committees and others are financially empowered and skilled to deliver effective services to citizens. To date, these institutions exist as formalities at the expense of citizens' rights.
- 16.** More so, the Bill among others calls upon Parliament to make laws prescribing the timeframe within which courts should determine compensation disputes. Yet, under Section 20 of the 1965 Land Acquisition Act, Parliament already empowered government to make regulations for the assessment and payment of compensation. What is therefore required is for government to make the regulations as mandated under Section 20 in which regulations it should prescribe the required timeframes.
- 17.** If effected, the Bill will enable government to continue defaulting on her obligation to implement and enforce the Land Act which provides for Land Tribunals at districts. Unlike traditional courts which remain outside the reach of the majority of citizens due to geographical, financial and procedural challenges, tribunals would be relatively easier for the poor including women to defend their land rights in cases of disputes. Any constitutional land reform that does not seek to enable citizens to access affordable and reliable justice but rather force them to submit to institutions that are out of their reach should be rejected.
- 18.** It is also unfortunate that the Bill is being brought at a time when thousands of communities across the country including the over 7,000 people in the Kabaale-Hoima refinery area have been forced out of their land before compensation or forced to accept unfair and inadequate compensation contrary to Article 26 of the Constitution. For over five years now, over 100 refinery-affected families who have never opposed the refinery project are still waiting to be compensated/relocated. Amidst this level of injustice, government wants Parliament to give her more powers to dictate the amount of compensation or force those who dispute the compensation to go to court well knowing that majority of citizens cannot afford court processes.
- 19.** The amendment is also being brought at a time when major infrastructural projects for the oil sector including the East African Crude Export Pipeline (EACOP), the finished petroleum products' pipeline, pipelines from oil wells to the oil refinery, an oil refinery, well pads, central processing facilities and airports among others are going to be developed. The amendments could therefore constitute a trick by government to acquire land for this infrastructure without compensating the affected people. When this happens, the oil curse will commence in our country.
- 20.** Government should leave the Constitution and instead fight corruption where government institutions illegally issue land titles in forest reserves, parks and game reserves, wetlands and sell off government land because of corruption.

It is corruption that makes government officials including valuers connive with the rich to inflate compensation values while the poor get displaced and are made to suffer silently. The Bill does not address corruption and injustice against the poor and the vulnerable including women who cannot afford court but only seeks to help rich and government perpetuate injustice.

21. Further, the Bill does not address the remedies for those who opt for relocation but disagree with the terms of relocation. In effect, the Bill reduces compensation to only cash.
22. If effected, project-affected people will continue to suffer grave injustice of delayed compensation, unfair and inadequate compensation which in turn cause other injustices such as family breakdowns, collapsing of health and education services, food insecurity, water crises and others.
23. In addition, if effected, the Bill will indirectly and illegally affect many other provisions of the same Constitution including Article 237 of the 1995 Uganda Constitution (as amended) which clearly states that land in Uganda belongs to the citizens. This should not be allowed by Parliament. Further, through tampering with Article 237, the doctrine of public trust will be abolished. This will have grave impacts on biodiversity and therefore tourism.
24. What should be done? Instead of amending Article 26 as proposed by government, Parliament should investigate the number of cases where in violation of Article 26 of the Constitution, government has deprived communities of their property and either failed to pay or forced people to take unfair and inadequate compensation or delayed for years to make compensation. Any proposal for constitutional reforms should be to strengthen the protection of citizens' property/land rights but not to take away the safeguards that are being violated by government.
25. Parliament should also use her oversight powers to compel the Minister of Lands to put in place regulations for the assessment and payment of compensation as she is mandated to under Section 20 of the 1965 Land Acquisition Act. These regulations should define what prompt, fair and adequate compensation is. They should also define the timeframe within which fair and adequate compensation should be paid to project-affected persons to prevent disputes arising from low or delayed compensation.
26. We also call upon every Ugandan and all friends of Uganda to defend Ugandans' right to prompt, fair and adequate compensation prior to acquisition and/or possession as provided for under Article 26 of the Constitution of Uganda (as amended). To our Members of Parliament, this is the time to declare whether you are with the people or against them.

**Thank you  
For God and My Country**

*Kamugisha*

**Dickens Kamugisha,  
Chief Executive Officer**