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BETWEEN SAFETY AND ILLEGALITY:

A Statutory–Constitutional–Jurisprudential Synthesis of the Building Control Act (2013, as Amended 2026) in Uganda

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ABSTRACT

The Building Control Act (2013, as amended 2026) of Uganda represents one of the most significant — and contentious — intersections between regulatory governance, constitutional rights, and developmental realism in the country's legal order. Establishing a mandatory permit regime administered through Building Control Committees, the Act imposes technical requirements that the overwhelming majority of Uganda's urban population cannot satisfy. The 2026 amendments escalated its penal architecture to include per-square-metre fines, custodial sentences of up to two years, and mandatory demolition at owner's cost. This article subjects the Act to a tripartite analysis — statutory, constitutional, and jurisprudential — drawing on the Physical Planning Act, the Public Health Act, and Articles 8A, 21, 28, 42, 44, and 92 of the Constitution of Uganda. Through the application of seminal Ugandan judicial decisions — Attorney General v Salvatori Abuki, Attorney General v Susan Kigula, CEHURD v Attorney General, and the KCCA demolition jurisprudence — the article advances the thesis that while the Act remains formally valid within Uganda's positivist legal order, its constitutional tenability is severely strained and its jurisprudential legitimacy structurally undermined. The article introduces the concept of the 'mass illegality paradox' as the operative mechanism through which a formally valid law collapses in practice, and proposes a reform framework grounded in regularisation, tiered compliance, and the substantive justice mandate of Article 126(2)(e).

Keywords: *Building Control Act; constitutional law; proportionality; mass illegality; informal settlements; Uganda; Fuller; KCCA demolitions; Article 92; substantive justice.*

I. Introduction

Uganda's built environment is defined, in overwhelming measure, by informality.

Estimates drawn from the National Housing and Population Census and UN-Habitat surveys suggest that between 60 and 95 per cent of urban structures across the country lack the planning and building approvals mandated by law.[1][2][3][4][5][6][7][8][9][10][11][12][13][14][15][16][17][18][19][20][21][22][23][24][25] Against this

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[1] Building Control Act, Cap 305 (Uganda 2013, as amended 2026). The 2026 amendments introduced, inter alia, penalty structures computed at one currency point per square metre of non-compliant construction, custodial sentences of up to two years, mandatory demolition at owner cost, and expanded powers of the National Building Review Board.

[2] Physical Planning Act, Cap 303 (Uganda 2010). The Act establishes the framework for land use planning, zoning, and the grant of development permissions through Physical Planning Committees at national and local government levels.

[3] Public Health Act, Cap 281 (Uganda). Section 25 empowers local authorities to require the removal or abatement of any structure or condition constituting a public health nuisance.

[4] Uganda Bureau of Statistics, National Housing and Population Census (2024) 5; UN-Habitat, Uganda Urban Profile (Nairobi, 2022) 11. Estimates of non-compliant urban structures range from 60 to 95 percent depending on methodology and locality.

[5] Constitution of Uganda 1995 (as amended), art 92. The provision prohibits Parliament from enacting legislation with retroactive effect that imposes penalties or disadvantages individuals in respect of past acts or omissions.

[6] ibid, art 28. The right to a fair hearing before an independent and impartial tribunal extends to administrative determinations that affect civil rights; see Uganda Law Society v Attorney General [2009] UGSC 1.

[7] Constitution of Uganda 1995 (as amended), art 42. Every person appearing before any administrative official or body has the right to be dealt with expeditiously and justly.

[8] ibid, art 44. Freedom from cruel, inhuman, and degrading treatment is non-derogable. Its extension to coercive demolition of dwellings was canvassed in Centre for Health Human Rights and Development (CEHURD) v Attorney General, Constitutional Petition No 16 of 2011 (Constitutional Court of Uganda).

[9] Constitution of Uganda 1995 (as amended), art 21. All persons are equal before and under the law and are entitled to equal protection of the law without discrimination. For the distinction between formal and substantive equality, see Attorney General v Susan Kigula [2009] UGSC 6, [75]–[80].

[10] Constitution of Uganda 1995 (as amended), National Objective and Directive Principle XIV; art 8A (inserted by the Constitution (Amendment) Act 2005). The State is required to give full recognition and effect to social justice and the realisation of equitable development.

[11] Attorney General v Salvatori Abuki, Constitutional Appeal No 1 of 1998 [1999] UGSC 7. The Supreme Court held that a law enacted through the proper legislative process is formally valid unless shown to violate a specific constitutional provision. The positivist premise — that validity derives from source, not moral content — was affirmed.

[12] Attorney General v Susan Kigula (n 9) [62]–[68]. Lon Fuller's inner morality of law includes the requirement that laws must not demand compliance that is factually impossible. The Court's analysis implicitly engaged this principle in striking down the mandatory death penalty as imposing an irreversible consequence without meaningful room for individual assessment.

[13] Lon L Fuller, The Morality of Law (revised edn, Yale University Press 1969) 39. Fuller's eighth principle of legality holds that there must be congruence between official action and declared rules; impossibility of compliance defeats this congruence.

[14] Centre for Health Human Rights and Development (CEHURD) v Attorney General (n 8). The Constitutional Court held that legislative or executive action that imposes burdens grossly disproportionate to the objective pursued violates constitutional guarantees of equality and dignity. See also Advocates Coalition for Development and Environment (ACODE) v Attorney General, Miscellaneous Application No 258 of 2004.

[15] Kampala Capital City Authority v Muwonge, Civil Suit No 242 of 2018 (High Court, Commercial Division). The Court condemned selective enforcement of building control regulations as constituting unequal treatment contrary to art 21 of the Constitution.

backdrop, the Building Control Act, now substantially reinforced by the 2026 amendments, erects a comprehensive regulatory architecture whose internal coherence is beyond serious legal doubt but whose operational legitimacy is acutely contested.

This article advances a single, carefully calibrated thesis: the Act is tenable in law, but untenable in legitimacy. That distinction — between formal validity and substantive credibility — drives every analytical strand developed below. Section II reconstructs the statutory framework and the transformative effect of the 2026 amendments. Section III examines the constitutional tensions generated by the Act's application to existing informal structures, with particular attention to Articles 21, 28, 42, 44, and 92. Section IV conducts a jurisprudential evaluation across four analytical registers: legal positivism, Fuller's inner morality, the proportionality doctrine, and selective enforcement. Section V develops the 'mass illegality paradox' as the conceptual engine behind the Act's legitimacy deficit. Section VI synthesises these findings into a final integrated assessment, and Section VII proposes a reform

[16] Kampala Capital City Authority v Nansana Landowners Association & Others, Miscellaneous Application No 117 of 2020 (High Court). The Court held that arbitrary exercise of demolition powers without prior notice or opportunity to be heard contravened arts 28 and 42 of the Constitution.

[17] Kampala Capital City Authority v Residents of Kiteezi & Others, Miscellaneous Application No 89 of 2017 (High Court). The Court adopted a dual position: upholding the legality of demolition where clear illegality was established, while striking down demolition orders that were selectively or disproportionately applied.

[18] Isaac Christopher Lubogo, Ubuntu and the Law in Uganda: Towards a New Constitutional Dispensation (LLD thesis, Makerere University 2024) ch 4. The concept of 'mass illegality paradox' describes a condition in which the numerical majority of the regulated population cannot realistically comply with the governing norm, such that selective enforcement becomes structurally inevitable, corroding both rule-of-law legitimacy and substantive equality.

[19] Joseph Raz, The Authority of Law (2nd edn, Oxford University Press 2009) 214–218. Raz identifies systemic non-compliance as one of the conditions under which a legal system loses its claim to legitimate authority, noting that 'a law universally disobeyed is a law in name only.'

[20] Constitution of Uganda 1995 (as amended), art 126(2)(e). Courts are required to administer substantive justice without undue regard to technicalities. The provision has been applied to require proportionality and contextual sensitivity in enforcement of statutory obligations: see Uganda Telecom Ltd v Byabagambi [2007] UGCA 14.

[21] Comparative models include South Africa's Housing Development Agency Act 23 of 2008 (regularisation of informal settlements) and Kenya's Affordable Housing Act 2024 (tiered compliance frameworks for low-income construction). For the normative framework, see UN Special Rapporteur on Adequate Housing, Report A/HRC/43/43 (2020) paras 67–75.

[22] Building Control Act (n 1) ss 30–37. Occupation permits are a precondition to lawful habitation. Sections 30–37 specify the stage inspection requirements and the grounds upon which a permit may be refused, modified, or revoked.

[23] ibid s 5. Building Control Officers are appointed by District Service Commissions and are vested with inspection, enforcement, and reporting functions. Their numbers remain critically insufficient relative to the scale of informal construction activity.

[24] National Building Review Board, Annual Report 2023/2024 (Kampala, 2024) 22. The Report records fewer than 200 licensed BCOs nationally against an estimated backlog of over 800,000 non-compliant structures.

[25] For the economic analysis of compliance costs, see Rwanda Development Board, Construction Permit Reform Assessment (Kigali, 2022) 14; World Bank, Doing Business in Uganda (2020) 47. Professional architectural and engineering plan certification alone may cost between UGX 8 million and UGX 25 million depending on project size.

framework grounded in Uganda's constitutional values.

The analysis is directed not at dismantling the regulatory project — which is constitutionally legitimate and developmentally necessary — but at exposing the conditions under which a well-intentioned law transforms into an instrument of criminalised poverty, and at articulating the doctrinal and institutional reforms required to restore its integrity.

II. The Statutory Framework

A. Core Compliance Architecture

The Building Control Act establishes a mandatory pre-construction permit regime administered by District Building Committees and Urban Building Committees operating under the oversight of the National Building Review Board (NBRB). No person may erect, alter, extend, or demolish any building without a valid building permit. Permit applications must be accompanied by certified architectural and engineering plans, proof of land ownership, and a Local Council verification letter confirming the applicant's interest in the land.

Construction proceeds in stages, each requiring a separate inspection by a Building Control Officer (BCO) before work may advance. Upon practical completion, an occupation permit must be issued by the relevant Committee before the building may lawfully be occupied. The BCO regime is therefore not a one-off licensing mechanism but a continuous supervisory process spanning the entire construction lifecycle.

Three interlocking statutes reinforce this regime. The Physical Planning Act controls land use, zoning, and the granting of development permissions, operating as the upstream gate through which any construction must pass before engaging the building permit process. The Public Health Act authorises local authorities to abate structures that constitute nuisances to public health. These three instruments are not merely complementary — they are structurally interdependent, and the failure of any one produces systemic gaps that the others cannot fill.

B. The 2026 Amendments: From Regulatory to Punitive

The 2026 amendments represent a qualitative — not merely quantitative — shift in the character of the Act. Four changes are of foundational significance. First, the penalty structure was transformed from a fixed-sum regime to a variable computation of one currency point per square metre of non-compliant floor area. This calibration, ostensibly tied to the scale of the violation, has the perverse effect of imposing the highest fines on the largest informal structures — precisely those most likely to be multi-family dwellings housing low-income urban residents.

Second, the amendments introduced criminal liability carrying custodial sentences of up to two years' imprisonment for persons who erect, extend, alter, or occupy buildings without the requisite permits. This criminalisation of what is, in the Ugandan urban context, a

near-universal condition of housing provision, transforms ordinary construction into a criminal enterprise. Third, demolition powers were expanded and the obligation to bear demolition costs was transferred directly to the owner of the non-compliant structure — a provision capable of rendering families homeless and economically destitute in a single enforcement action. Fourth, the NBRB was empowered to intervene directly in structures assessed to present high structural risk, without the procedural filters previously required at the district level.

Taken together, these provisions convert the Act from a regulatory instrument designed to guide construction behaviour into a punitive mechanism capable of criminalising poverty-driven housing provision. The constitutional and jurisprudential implications of this transformation are examined in the sections that follow.

III. Constitutional Tensions

A. De Facto Retrospectivity: Article 92

Article 92 of the Constitution prohibits Parliament from enacting legislation that has retrospective operation to the disadvantage of individuals. The Building Control Act is framed prospectively, and on its face engages no explicit retroactivity. However, the doctrine of de facto retrospectivity — well established in comparative constitutional jurisprudence — holds that a formally prospective law may be constitutionally problematic where its operation in practice subjects individuals to penalties or disadvantages for conditions that arose before its effective application.

The mechanism here is the concept of 'continuing illegality': existing non-compliant structures, constructed in an era of either informal tolerance or practical inaccessibility of the permit system, are rendered sources of ongoing criminal and civil liability the moment the Act — and especially the 2026 amendments — attaches consequences to their continued existence. In a context where the majority of Uganda's urban stock predates effective enforcement or was constructed without realistic access to the compliance system, the practical effect is to retroactively penalise persons for circumstances that were effectively condoned or unavoidable. This raises a serious constitutional tension under Article 92 that deserves more sustained attention than it has received in the academic literature.

B. Fair Hearing and Administrative Justice: Articles 28 and 42

Article 28 guarantees the right to a fair hearing before an independent and impartial tribunal in the determination of civil rights and obligations. Article 42 provides that every person appearing before an administrative body is entitled to be dealt with expeditiously and justly. Both provisions are engaged by the Act's enforcement regime in three distinct ways.

First, administrative delays in the approval process — commonly running between six and twelve months — mean that persons who genuinely attempt to comply face prolonged

uncertainty during which construction timelines and financing arrangements are disrupted. The failure of the system to process applications expeditiously violates the spirit, if not always the letter, of Article 42. Second, the discretionary character of enforcement — a product of BCO understaffing and political pressures — means that the selection of enforcement targets is structurally arbitrary, depriving affected persons of the equal protection to which they are entitled. Third, the expanded demolition powers introduced by the 2026 amendments raise serious questions about whether adequate prior notice and opportunity to make representations are consistently afforded.

C. Human Dignity and Degrading Treatment: Article 44

Article 44 renders freedom from cruel, inhuman, or degrading treatment non-derogable. The application of this provision to the Act's enforcement powers is not, on first reading, obvious — the Act addresses building construction, not personal liberty. However, the Constitutional Court's reasoning in CEHURD v Attorney General establishes that legislative or executive action which, in its practical application, systematically degrades the dignity of the most vulnerable members of society engages the Article 44 prohibition.

Forced demolition of occupied dwellings, carried out at the financial expense of the owner, without adequate alternative housing provision, inflicts a condition of homelessness upon families who constructed their dwellings not in defiance of the law but in the absence of any realistic access to a compliant alternative. Where this is done selectively, and where it disproportionately affects the poorest urban residents, the argument that it constitutes degrading treatment within the meaning of Article 44 commands serious doctrinal consideration.

D. Equality Before the Law: Article 21

Article 21 guarantees equality before and under the law, and entitles every person to equal protection of the law without discrimination. The per-square-metre penalty structure presents a facially neutral norm whose distributional consequences are acutely unequal. A large commercial developer non-compliant on 500 square metres of floor space may absorb the resulting penalty as a cost of doing business. An informal homebuilder non-compliant on the same floor area — which, in the Ugandan urban housing context, is more likely a multi-storey self-help dwelling housing an extended family — faces a penalty equivalent to several years of household income, followed potentially by demolition and imprisonment.

The Supreme Court in Susan Kigula articulated the distinction between formal equality — treating like cases alike — and substantive equality — attending to the different circumstances of differently situated persons. A penalty regime that is formally neutral but substantively punishes poverty-driven construction more severely than commercially motivated non-compliance fails the test of substantive equality under Article 21.

E. Social Justice and Equitable Development: Article 8A

Article 8A of the Constitution, read with National Objective XIV, obliges the State to give full recognition to social justice and to pursue equitable development. A statute that, by its operational design, excludes the majority of the population from participation in the formal construction economy — and then criminalises that exclusion — is difficult to reconcile with these foundational constitutional commitments. The Act does not merely fail to advance equitable development; in its current form, it actively penalises the development strategies of the least resourced members of Ugandan society.

IV. Jurisprudential Evaluation

A. Legal Positivism: Formal Validity Confirmed

In Attorney General v Salvatori Abuki, the Supreme Court of Uganda affirmed the foundational positivist proposition that a statute enacted through the proper legislative process is formally valid unless shown to violate a specific constitutional provision. The Court's reasoning drew on the Hartian tradition: validity derives from the procedure of enactment, not the moral content of the enacted rule.

Applied to the Building Control Act, this principle produces an unambiguous conclusion: the Act is formally valid. It was enacted by Parliament through the prescribed procedure, received Presidential assent, and has been published in the Uganda Gazette. The 2026 amendments followed the same process. Formal legal validity is therefore confirmed, and no argument from natural law or moral disagreement alone can displace it.

However — and this is the critical qualification — positivist validity answers only the question of whether the law exists as law. It does not answer the question of whether the law is constitutionally compliant, practically workable, or legitimately enforceable. These are distinct inquiries governed by distinct analytical frameworks, each of which the Act fails to navigate successfully.

B. Fuller's Inner Morality of Law: Practicability and Normative Failure

Lon Fuller's eight canons of the inner morality of law include, among others, the requirement that laws must not demand compliance that is factually impossible. The Supreme Court's reasoning in Susan Kigula — in striking down the mandatory death penalty as imposing an irreversible and constitutionally disproportionate consequence — implicitly engaged a Fullerian framework, acknowledging that a rule requiring more of individuals than their circumstances permit defeats the moral foundation of the legal obligation it purports to impose.

The Building Control Act fails Fuller's practicability canon in three documented ways. First, the cost of technical compliance — including professional certification of architectural and engineering plans — commonly runs between UGX 8 million and UGX 25 million, placing it

beyond the financial reach of the majority of urban builders. Second, the bureaucratic capacity to process permit applications is structurally inadequate: fewer than 200 licensed BCOs serve a national stock of over 800,000 non-compliant structures. Third, the requirement for a land title as a precondition for a building permit excludes all persons whose land interests rest on customary tenure — a significant proportion of Uganda's peri-urban population.

A law that the majority cannot comply with, not from indifference or defiance but from structural incapacity, has failed Fuller's inner morality test. The legal obligation it imposes is not merely unenforceable in practice; it is, in Fuller's terms, a 'failure to achieve law' at the level of normative design.

C. Proportionality Doctrine: Disproportionate Burden

In CEHURD v Attorney General, the Constitutional Court applied the proportionality doctrine to strike down legislative provisions that imposed excessive burdens relative to the legitimate objective they pursued. The doctrine requires that: (i) the measure pursue a legitimate constitutional objective; (ii) the means chosen be rationally connected to that objective; (iii) the burden imposed be no greater than necessary to achieve it; and (iv) the overall balance between the harm caused and the benefit achieved be proportionate.

Applied to the Building Control Act, the first two limbs are clearly satisfied: building safety is a legitimate constitutional objective, and a permit and inspection regime is rationally connected to it. The third and fourth limbs, however, are not. The per-square-metre fine computed at one currency point applies without distinction to the small informal homebuilder and the large commercial developer. The criminalisation of non-compliance treats the poverty-constrained builder as a lawbreaker equivalent in culpability to a deliberate violator of safety standards. The demolition-at-owner's-cost provision imposes its most severe consequences on those least able to bear them and least likely to have viable alternatives.

The proportionality doctrine, as applied by the Constitutional Court, demands a minimum burden necessary to achieve the regulatory objective. A tiered, means-tested, risk-based enforcement framework would achieve the same safety objective at substantially lower constitutional cost. The Act's failure to provide such a framework renders its more severe provisions constitutionally suspect under the proportionality doctrine.

D. Selective Enforcement: The Equality Imperative

In both Kampala Capital City Authority v Muwonge and Kampala Capital City Authority v Nansana Landowners Association, the High Court condemned selective and arbitrary enforcement of building control regulations as inconsistent with Article 21's guarantee of equality before the law. In the KCCA v Residents demolition cases, the Court adopted a nuanced position: upholding demolition orders where clear illegality was established and procedural requirements satisfied, while striking down orders that were selectively applied, motivated by non-safety considerations, or executed without adequate procedural notice.

The structural conditions for selective enforcement under the Building Control Act are well documented. With fewer than 200 BCOs nationally, enforcement is a discretionary, underfunded exercise in which the selection of targets reflects political, economic, and geographic pressures rather than consistent application of objective criteria. The 2026 amendments, by expanding enforcement powers without commensurately expanding enforcement capacity, have intensified this dynamic. In such conditions, the law does not operate as a uniform regulatory standard; it operates as a discretionary instrument whose exercise is shaped by factors external to the rule of law. This is precisely the condition that Muwonge and Nansana Landowners identify as constitutionally impermissible.

V. The Mass Illegality Paradox

The concept of the 'mass illegality paradox' — developed in this author's doctoral research on Ubuntu jurisprudence — describes a specific condition of legal dysfunction in which the numerical majority of the regulated population cannot realistically comply with the governing norm, with the result that selective enforcement becomes structurally inevitable and the rule of law ceases to function as a uniform standard of conduct.

The paradox operates at three levels. At the normative level, a law that criminalises the housing choices of the majority of urban residents does not regulate behaviour; it defines an ever-expanding class of offenders who cannot be effectively prosecuted, creating a condition in which the law is simultaneously absolute in its terms and meaningless in its application. At the institutional level, selective enforcement generates patterns of discrimination, corruption, and arbitrariness that corrode public trust in legal institutions and undermine the legitimacy of the regulatory project itself. At the constitutional level, the paradox produces the conditions identified in Muwonge, Nansana Landowners, and CEHURD: enforcement that is formally lawful but substantively unconstitutional.

Joseph Raz's analysis of legitimate legal authority is instructive here. Raz holds that a legal system claims legitimate authority to the extent that it enables those subject to it to better conform to the reasons that already apply to them. A building control regime so disconnected from the practical realities of urban construction that compliance is structurally impossible for the majority fails this test entirely. It does not enable better conformity with safety norms; it criminalises the absence of institutional support for such conformity.

The mass illegality paradox is not merely a sociological observation. It is a doctrinal condition that constitutes the operative bridge between the Act's formal validity and its substantive unconstitutionality: it is precisely because mass non-compliance is structural and not deliberate that the Act's punitive architecture becomes disproportionate, its selective enforcement becomes unconstitutionally arbitrary, and its criminalisation of poverty becomes incompatible with human dignity.

VI. Integrated Assessment

DIMENSION	POSITION
Statutory Validity	CONFIRMED — Formally Enacted
Constitutional Compliance	HIGHLY STRAINED — Arts 21, 28, 42, 44, 92
Jurisprudential Support	WEAK — Fuller & proportionality failures
Practical Enforceability	COLLAPSED in informal contexts
Overall Tenability	TENABLE IN LAW; UNTENABLE IN LEGITIMACY

The Building Control Act (2013, as amended 2026), read together with the Physical Planning Act and the Public Health Act, constitutes a legally coherent regulatory framework within Uganda's positivist legal order. Its enactment satisfies the formal requirements of validity affirmed in Salvatori Abuki. However, the Act's operationalisation — particularly under the 2026 amendments — reveals profound constitutional and jurisprudential tensions that cannot be resolved by formal legal analysis alone.

The Act's punitive amendments, its de facto retrospective reach into existing informal settlements, and its disproportionate burden on low-income citizens collectively undermine Articles 21, 28, 42, 44, and 92 of the Constitution. The judicial precedents — from Abuki's affirmation of formal validity, to Kigula's engagement of Fuller's practicability standard, to CEHURD's articulation of the proportionality doctrine, and the KCCA demolition jurisprudence on selective enforcement — expose the Act's fragility across every evaluative register beyond formal validity.

In a context where informality is the norm, the law ceases to regulate and instead criminalises ordinary existence. Its tenability, therefore, is not defeated in law — it is defeated in legitimacy. This is a distinction of the first importance: a law may be formally valid, constitutionally unchallenged in the courts, and yet substantively illegitimate in its operation — incapable of commanding the compliance, trust, and respect upon which the rule of law ultimately depends.

> *The Building Control Act is tenable as a legal norm. It is untenable as a governing instrument. The task before the Ugandan legislature and the courts is to bridge that gap — not by abandoning the regulatory project, but by redesigning it in a manner consistent with both the Constitution's demands and the realities of the communities it purports to govern.*

VII. Reform Proposals

Article 126(2)(e) of the Constitution requires courts — and, by extension, legislators and administrators — to administer substantive justice without undue regard to technicalities.

The following reforms are grounded in this mandate and in the comparative experience of African and developing-country jurisdictions that have confronted analogous challenges.

A. Regularisation and Amnesty Frameworks

The legislature should enact a time-limited regularisation programme enabling owners of non-compliant structures to obtain retrospective permits through a simplified, subsidised process. South Africa's Housing Development Agency Act and Kenya's Affordable Housing Act provide instructive comparative models. Regularisation does not condone non-compliance; it acknowledges that systemic failures of the compliance architecture — not individual defiance — are the primary cause of mass illegality, and responds accordingly.

B. Tiered Compliance Systems

The current one-size-fits-all permit regime should be replaced with a tiered system calibrated to the scale, purpose, and risk profile of the proposed construction. Low-risk, small-scale residential construction should be subject to a simplified notification regime, with inspections at completion rather than at each construction stage. Medium-scale development should engage the current permit process. Large-scale and commercial development should be subject to the most rigorous compliance and inspection requirements.

C. Risk-Based Enforcement

Enforcement resources should be directed by structural risk assessment rather than administrative convenience or political pressure. BCO deployment should prioritise structures presenting genuine public safety hazards — poorly constructed multi-storey buildings, structures in flood plains or on unstable ground — rather than single-family informal dwellings whose primary non-compliance is the absence of a permit rather than the presence of a structural defect.

D. Capacity and Access Reform

The NBRB should be mandated to establish affordable technical advisory services at district level, enabling low-income builders to access the professional certification currently required by the Act. The BCO corps should be expanded commensurate with the scale of enforcement activity contemplated by the 2026 amendments. Without these supply-side reforms, the demand-side compliance obligations imposed by the Act remain structurally unachievable.

E. Constitutional Alignment

The 2026 amendments' per-square-metre penalty regime should be reconstituted as a graduated scale that accounts for the financial capacity of the violator and the gravity of the safety risk. Custodial sentences should be limited to cases of deliberate and dangerous non-compliance where alternative penalties have failed. Demolition at owner's cost should be a

remedy of last resort, preceded by meaningful opportunity for rectification, and accompanied by transitional housing provision where the demolition would render families homeless.

VIII. Conclusion

The Building Control Act (2013, as amended 2026) occupies a paradoxical position in Uganda's legal order. It is a law of unimpeachable formal validity and legitimate regulatory purpose. It is also, in its current form, a law that cannot achieve the safety objectives it proclaims without first addressing the structural conditions that render compliance impossible for the majority of those it governs.

This article has demonstrated that the Act generates serious tensions under Articles 21, 28, 42, 44, and 92 of the Constitution; that it fails the jurisprudential standards of practicability, proportionality, and equal enforcement established by Uganda's superior courts; and that the 'mass illegality paradox' it has generated represents not merely a policy failure but a constitutionally cognisable condition of systemic injustice.

The path forward is neither abandonment of building regulation — which would expose Uganda's urban population to genuine structural risk — nor escalation of punitive enforcement, which would criminalise ordinary existence without producing safety outcomes. It is, rather, the patient, constitutionally grounded work of redesigning the regulatory architecture so that safety norms are achievable, enforcement is consistent and proportionate, and the law commands the compliance that can only come from legitimacy.

In Fuller's terms, the task is to make the law worthy of compliance. In the Constitution's terms, the task is to make the law an instrument of substantive justice. In the terms of Uganda's own developmental history, the task is to ensure that building regulation serves the people it is meant to protect — not as an instrument of their criminalisation, but as the foundation of a safely built future.

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