Lessons from the promised land: a case study of 'land for land' compensation for the Buseruka Oil Refinery, Uganda.

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Land and Equity Movement in Uganda (LEMU)

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1. Introduction:

The question of how best to provide proper compensation following compulsory acquisition of land by the state is neither straightforward to answer, nor a new challenge. The principal of offering replacement land (rather than monetary compensation) where land is lost has been part of international discourse for decades. There are extensive standards and guidance documents on the topic, which describe the principles of best practice in providing resettlement land (see: World Bank (2001), FAO (2008 and 2012), ADB (2009), IFC (2012a and 2012b)), EBRD (2014)). There is limited consideration, however, of the application of these principles in practice: what they mean on the ground, whether they work, and how they can be monitored. Terminology used throughout these policy papers: 'resettlement land', 'livelihood restoration', 'prior consent', 'consultation' is widely used, but risks being a hollow promise if not understood in practice. The risk of a detachment between policy and practice is one of perceived legitimacy: is 'land for land' compensation the solution if the replacement land is badly located, of poor quality, and of uncertain tenure? Consideration must be given to the reality on the ground.

Following the discovery of oil in the Albertine Graben of Uganda in 2006, the Government of Uganda has sought to capitalise on potential economic development opportunities from oil extraction and processing. In some circumstances, this has required government acquisition of land using powers of compulsory purchase. In one such example, in the Buseruka region of Uganda, 29 square kilometres of land were identified for an oil refinery and associated infrastructure. The identified land was home to approximately 1,200 households who held various rights and interests in the land, and the Government secured the land using powers of compulsory acquisition. Affected households were offered the choice of monetary compensation (in accordance with Ugandan compulsory acquisition law), or the re-provision of land taken (recommended by many international authorities as noted above, but not explicitly provided for in Ugandan law). After some years, a resettlement village was provided at Kyakaboga, close to Hoima.

This paper considers the practical impact and efficacy of the replacement land provided for those opting for land compensation. Extensive work has already been done on the wider matter in earlier stages of the project¹, particularly on the impact of delays to the provision of replacement land. This paper will supplement that research and provide an update to reflect the position as it currently stands in 2019, following the provision in 2017 of a resettlement community for some of the affected households. Those who took financial compensation vacated the affected land in 2012, and unfortunately, there is limited data, monitoring, or means of tracing the outcomes for those households, making it impossible to draw conclusions on the impact on livelihoods for the majority of the people displaced for the project.

¹See:

Global Rights Alert (2013) Sleepless Nights: The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda's Resettlement Action Plan.

Global Rights Alert (2015) Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons who opted for land for land Compensation.

2. Approach

The paper focuses on those households that opted in 2012 to take resettlement land as compensation, in order to consider whether the 'land for land' compensation has been able to live up to the promises in policy. The paper draws in particular on dialogue undertaken with the community leaders on a site visit in August 2018 (hereafter "private conversation with community leaders, 2018"), and on an information gathering session held by with a group of approximately 60 community members on the same date (hereafter "community group testimony, 2018"). It also considers information gathered from local NGOs that have been working with the community, and reviews Government documentation published in relation to the process, to consider whether the commitments made in relation to replacement land in this case were upheld.

The structure of the paper is as follows:

- Initially to briefly report on what has happened at Buseruka in the six-year period for which discussions have taken place around land appropriation (2012 – 2018), in order to provide context and background. This includes a review of key documentation, including the Ugandan Government policy that led to the identification of the land and Buseruka, and the Resettlement Action Plan that was published to set out the approach to compulsory land acquisition.
- Secondly to consider the commitment made in the Resettlement Action Plan to adhere to the standards set out in the World Bank and IFC guidance on involuntary resettlement, and in particular to consider the differences in compensation provisions as set out in Ugandan legislation, set against the international guidelines set out above, in order to consider whether the provision at Kyakaboga is able to meet either standard. This includes commentary and testimony from members of the affected community, as gathered in August 2018.
- The paper finally goes on to reflect on the lessons that can be learned from challenges faced in the acquisition and relocation, as noted in the Buseruka case. The paper seeks in particular to draw attention to the implications for the mixed application of national law and internationally recommended good practices that go beyond the provisions set out in law. It

also considers the particular issues that face customary landowners in circumstances of compulsory acquisition.

3. Overview and context

After the 2006 discovery of reserves of oil capable of commercial extraction in the Albertine Graben, the Government of Uganda implemented the 'National Oil and Gas Policy for Uganda' in February 2008, to build more specific oil policy upon the provisions of the Energy Policy 2002. The 2008 policy recognized the existing legislation and policy governing land tenure and land use, and in recognising that land would need to be acquired for surface level development of oilsupportive infrastructure, committed to "promote the implementation of oil and gas activities in accordance with the existing laws and regulations on land ownership and use in the country" (Government of Uganda, 2008).

In 2010, a British consultancy firm (Foster Wheeler) were appointed by the Government to undertake a feasibility study regarding the refinement of oil to be extracted. The results of the study are not publically available. However, subsequent documentation has made clear that it was as a consequence of the receipt of the study report that the Government of Uganda concluded that it should build a refinery, and then began preparations so to do. It appears that the Foster Wheeler study also assisted the Government in concluding on the appropriate location for the refinery, and the extent of land needed. However, in reviewing publically available documentation, including statutory instruments made by the Parliament of Uganda, it is not possible to determine whether alternatives were considered, to determine the exact extent of land to be acquired nor whether any attempt was made to limit the extent of land to be compulsorily acquired.

Following the issue of the Foster Wheeler study, the Government of Uganda made preparations to acquire an area of 29 sq km land at Buseruka. Buseruka is a sub-county in the Hoima District in Western Uganda, close to Lake Albert, and central within the area of the Albertine Graben oil discovery. The Government appointed 'Strategic Friends International', a consultancy, to prepare for land acquisition and relocation in anticipation of the requirement of significant government land acquisition. Strategic Friends International undertook a study to review land ownership structures in the area, and tried to capture what was owned by the people occupying the area that had been identified for refinery development. The work undertaken led to the publishing of the '2012 Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka Sub-County, Hoima District' ("RAP"), which was published in the name of Uganda's Ministry of Energy and Mineral Development ("MEMD").

The introductory text to the RAP says that it has been "prepared as per relevant Ugandan Laws with reference to the resettlement policy of the World Bank guiding involuntary resettlement" (MEMD, 2012). The RAP recommends that 'land for land' compensation is offered where those affected by the project prefer to be resettled, and that where financial compensation is preferred, that 'full replacement cost' is paid. The status of the document is unclear, in that it appears to both set out recommendations, as well as having been published as an adopted strategy by the MEMD. In addition to setting out a summary of the proposed approach, the RAP sets out the results of the baseline socio-economic surveys undertaken, describes (in summary) the nature of the interests in land and special features of the land (such as graves), then sets out a compensation and resettlement strategy, with ten key principles which the MEMD undertook to be committed to, as summarised in box 1 below.

Box 1: 9 Key principles identified on pages 31 – 32 of the RAP, with a brief summary

- (i) **"Following national legislation and international standards"** (specifically the IFC's performance standard 5 and the World Bank Operational Policy 4.12)
- (ii) **"Participation of the community"** (specifically in "land verifications, valuations, settlement of disputes)
- (iii) **"Promote choice of resettlement or compensation options"** (specifically the choice between a resettlement package including replacement residential land and a house, or cash compensation)
- (iv) **"Promoting options which quickly restore livelihoods of PAPs"** (specifically, where famers are displaced and opt for relocation, agricultural land equivalent to that which they have lost will be included in the package)
- (v) "Gender sensitivity"
- (vi) "Minimising the negative effects of cash compensation"
- (vii) "**Restoration of livelihoods**" (specifically MEMD commits to assisting project affected persons in "restoring their affected livelihoods" and will "provide necessary transitional assistance as long as livelihoods are not restored to their previous level")
- (viii) **"Monitoring and evaluation"** (specifically, the implementation of the RAP will be monitored to promote transparency and accountability of implementation)
- (ix) "Mitigating the effect of negative behaviours of PAP s on host community"

The RAP states that 27 households opted for resettlement rather than cash compensation, although this number has subsequently changed and is the subject of some ongoing controversy. It is understood that provision of replacement houses has been made for 46 households at present (private conversation with community leaders, 2018). The recommendation set out in the relevant part of the RAP was that land should be identified for those opting for resettlement compensation "on a case by case basis" (MEMD, 2012, p.34) since "resettling these households in a special settlement may isolate them from the rest

of the community" (*ibid*). The same paragraph commits to the provision of "land titles to resettled houses as proof of ownership of the property and its developments" (*ibid*). The RAP goes on to describe the management of the process, the grievance management process, and approach to monitoring and evaluation.

The Government began clearing the land in 2013 with those paid cash compensation required to leave on receipt of payment (Global Rights Alert, 2015). Those that had opted for resettlement land were left on the remaining land until 2017 (private

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conversation with community leaders, 2018). The initial impacts on those few households remaining on the mostly vacated land have been well documented by Global Rights Alert². The resettlement land in Kyakaboga was provided for final relocation in 2017 (private conversation with community leaders, 2018).

4. Commitments by Government: International standards or National law?

The RAP acknowledged that international standards for compulsory land acquisition go beyond the requirements set out in Ugandan law. Ugandan law on compulsory land acquisition for public interests projects limits compensation for land acquired to financial compensation, for the 'market value' of the land that is acquired, and an allowance for disturbance linked to the length

of notice given to vacate. However, a number of international policies and guidelines recommend assistance be given to replace land that is taken³. The RAP acknowledged this difference and recommended a flexible approach be taken in order to be compliant with the international standards.

The application of standards of compensation that vary from those accounted for in national law presents a complex relationship, both of expectations and recourse. The RAP identified in particular documents prepared by the IFC and by the World Bank. The key principles of each of these documents are summarised below, along with a narrative on their application in the case of the Buseruka refinery. The commentary on application is based on the community and local CSO testimony collected.

i) World Bank Operational Manual OP4.12 – Involuntary resettlement: identifies safeguards to mitigate economic, social and environmental risks arising from involuntary resettlement for development projects

Key Principles	Comment on achievement at Buseruka/Kyakaboga based	
	on community and local CSO testimony	
Policy Objectives (paragraph 2)		
(a) Involuntary resettlement should be avoided where feasible, exploring all viable alternative project designs	Cannot be determined with the information available. The basis for the decision to acquire land to this extent and in this location has not been made publically available. A number of documents (including the RAP) make reference to a Government commissioned feasibility study on refinery location, which implies that the feasibility study may have considered alternatives, but this study is not a public document. The Statutory Instrument identifying the land to be acquired and granting powers of compulsory acquisition is not listed at www.ulii.co.uk. Local CSO's have reported that they have not discovered a definitive plan of the land acquired.	
(b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participated in planning and implementing resettlement programs.	It is not yet clear whether the people displaced at Buseruka will have opportunities to share in the benefits of the project, as construction has only recently commenced, however no explicit mechanisms to allow benefit sharing have been discussed with the community, and no such proposals are included in the RAP. The Community do not consider that they were meaningfully consulted on the site. It is understood that they were shown the Kyakaboga site, and given their concerns asked to see alternatives, but none were forthcoming. A similar picture was painted in respect of the nature of the housing provision, where concerns were raised on receipt of plans of the proposals, but these were neither answered, nor addressed in the delivery of the new houses (private conversation with community leaders, 2018).	

² Global Rights Alert (2013) Sleepless Nights: The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda's Resettlement Action Plan.

International Finance Corporation Guidance Note 5: Land Acquisition and Involuntary Resettlement

³See:

World Bank Operational Manual (OP 4.12) - Involuntary Resettlement

(c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.	The Community have expressed concerns about the quality of the land for farming, and the lack of supporting infrastructure (e.g. boreholes). The land is reported to be very dry. It was formerly grazing land, and the land does not support the same crops as the displaced people used to farm on their land. They have not been supported in finding alternative crops that are more suitable for the new land. The Community do not consider that their livelihoods have been restored as they struggle to farm the new land. "When we came here there were problems: no water, houses were leaking, kitchen doors were broken and things that were promised were not yet done." (Female respondent during community group testimony, 2018)	
Required measures (paragraph 6)		
(a) The resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are: (i) informed about their options and rights pertaining to resettlement; (ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and (iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project	The Community do not consider that they were meaningfully consulted on the site (they were shown the Kyakaboga site, and given their concerns asked to see alternatives, but none were forthcoming) or the nature of the housing provision (they were shown draft plans, and expressed concerns, which were not answered or addressed in the delivery). The community consider that there was an attempt to put them off opting for relocation during the SFI survey process. Although this is not verifiable, members of the community reported that they were told relocation land might be provided in far away regions of Uganda: "During sensitisation, we were told that people could be taken anywhere in Uganda, even Karamoja. So the majority of people took financial compensation to avoid that risk." (Male respondent community group testimony, 2018) In any event, a small minority opted for resettlement rather than cash compensation (less than 10%). The land for resettlement was not identified until at least two years after project affected persons were required to make their choice, meaning that the choice for land compensation could not be based on knowledge of the land itself.	
(b) If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are: (i) provided assistance (such as moving allowances) during relocation; and (ii) provided with residential housing, or housing sites, or, as required, agriculture sites for which a combination of productive potential, locational advantages, and other factor is at least equivalent to the advantages of the old site.	The resettlement land at Kyakaboga is very different in nature to the land that was acquired, in that the land for cultivation is separate from the houses, around 1 km away. When asked specifically about positive things that have arisen from the relocation and reprovision, one female respondent said: "There is nothing good that can be said. We live too close togetherThe latrines are right by the kitchen." The area is prone to cholera, partly due to proximity to Lake Albert. The proximity of latrines to the kitchens is a cause of concern for residents who consider it could pose a health risk. "When I see my replacement land, I do not think it is the same. In terms of cultivation, I used to have 2 rain seasons. Now I can only rely on March rains. My old land was far better. Before, I could grow anything; the land was very fertile. This side, the soil is not very good and the yield is not very good. I have tried to plant the same crops I had before, but the soil quality is not enough." (Male respondent during community group testimony, 2018) "I am so worried and not happy with the land I have been given. I used to have everything and lots of space. I could plant vegetables near the stream so they would grow even if in drought. It is very dry here." (Female respondent during community group testimony, 2018) "I find the land here very different. I used to have banana , sugar cane, fruit trees. The soil here is not good enough for banana or sugar cane. I have to plant sim sim here or cotton, so am now having to grow things to sell to be able to buy food. I used to have streams nearby to my land, but the nearest stream here is two miles away. There is only one borehole here, so we have to go far if it breaks. It is hard here – even if it rains it is like a drought." (Male respondent during community group testimony, 2018)	

(c) Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also include measures to ensure that displaced persons are: (i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and (ii) provided with development assistance in addition to compensation measures described in paragraph 6(A); (iii) such as land preparation, credit facilities, training, or job opportunities.	The resettled households were given food provisions to last for six months on resettlement, in recognition that the land would take some time to cultivate. The Community did not consider this sufficient, particularly given the problems identified above in cultivating the land. We were not made aware of any particular training or opportunities made available to the resettled households.
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ii) IFC Guidance Note 5: Land Acquisition and Involuntary Resettlement.

Key Principles	Comment on achievement at Buseruka/Kyakaboga based on community and local CSO testimony	
Selected Project Requirements		
(8) <u>Project Design</u> The client will consider feasible alternative project designs to avoid or minimise physical and/or economic displacement, while balancing environmental, social and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable	As set out above, it is not possible to verify the approach taken to identifying the specific land to be acquired, nor the basis for needing to acquire 29sq km.	
(9) <u>Compensation and Benefits for Displaced Persons</u> When displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods, as provided in this Performance Standard. Compensation standards will be transparent and applied consistently to all communities and persons affected by the displacement. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will, where feasible, offer the displaced land based compensation. The client will take possession of acquired land and related assets only after compensation has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation. The client will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project.	As set out above, it is not clear that livelihoods have been restored or improved. Although cash compensation is outside the scope of this paper, concerns were reported by local CSOs that financial compensation was not consistent, with those that objected being offered siginifcantly more than those that took the initial offer of compensation. The entitlement to replacement housing for those that opted for resettlement land remains a serious point of contention, and will form part of the case that the project affected people are bringing against the government in the courts. It seems that the approach taken was to provide a house to any head of household that had at least one house on the acquired land, which has led to a discrepancy in the number of buildings provided. "We were told that we would be given high quality information and that we would have the same quality of life that we had, but we are living here in misery and have less quality of life than we were used to." (Male respondent during community group testimony, 2018) "We were told that we would have the same quality of life that we had, but we are living here in misery and have less quality of life than we were used to." (Male respondent during community group testimony, 2018)	
<u>11 Grievance Mechanism</u> The client will establish a grievance mechanism consistent with Performance Standard 1 as early as possible in the project development phase. This will allow the client to receive and address specific concerns about compensation and relocation raised by a displaced persons or members of host communities in a timely fashion, including a recourse mechanism designed to resolve disputes in an impartial manner.	The 2017 Auditor General report into the land acquisition at Buseruka identified the lack of grievance mechanism and lack of monitoring and evaluation during the project to be of particular concern.	

In addition to committing to uphold these international principles, a number of relevant project specific commitments were made in the RAP. The nature of the resettlement community is of particular concern to the Community, who consider that it resembles a 'refugee camp' (private conversation with community leaders, 2018). In addition, the land and houses were provided at some distance from each other, unlike in the original land which was acquired, where houses were adjacent to agricultural land. This has led to problems of stolen livestock, as well as creating tensions within the community, who are not used to living in such close proximity. The RAP also committed to land titles being provided to the resettlement land. This has not been provided, which has led to uncertainy in the community.

5. Discussion

'Land for land' compensation is not a straightforward concept, and careful consideration must be given to what would constitute appropriate replacement land. In principle, there is good potential for livelihood restoration through the provision of land rather than cash compensation, however it must only be offered if adequate land (in respect of quality, location and tenure) can be secured. The difficulties that the Government's consultants had in finding a replacement site make this particularly apparent. The intention described in the RAP to provide case-by-case land turned out not to be practical. The land identified at Kyakaboga was presented as one option to the affected community, but when they expressed reservations, it became apparent that it was the only option. Promises made to deliver resettlement in accordance with international policy could not be fulfilled.

At Kyakaboga, although land has been provided, the Community report that they struggle to farm the same crops as previously, which raises concerns about the prospect of livelihood restoration, and reiterates that providing land is necessary but not sufficient to meet the criteria of the international guidance which encourages resettlement rather than cash compensation. The fact of providing land should not count as a successful resettlement. There is, however, potential for alternative approaches. A number of the problems arising in Kyakaboga arise from the direct provision of replacement housing. These could be addressed through more flexible alternatives, such as providing a plot of land and a budget to construct the type of accommodation preferred by a given household. Importantly, the potential for replacement land must be considered before it is offered.

Many of the households on the acquired land at Buseruka held their land under customary tenure. Ugandan law in respect of compulsory acquisition treats this land as equivalent to freehold land held under a title. However, it must be acknowledged that the provision of resettlement land is almost certain to be under a different tenure system (although as noted above, title has not vet been provided). This has implications for land that has previously been held under customary rules, for the benefit of a family or a community, will now be transferred to a different tenure system which does not replicate those rights and responsibilities. Again, this demonstrates that the apparent simplicity of 'land for land' is actually incredibly complex.

6. Conclusions and Recommendations

Further clarity is needed on the implications for attempting to follow both national law and International Policy. The Ugandan Government sought to adhere to specific international policies and guidelines, which require flexible and innovative approaches when displacement is required. The application of multiple standards risks providing perceived legitimacy, but may result in a failure to protect project affected persons. This is amplified by a lack of clear recourse: if the provision is more than the national law provides, who will answer a complaint that those promises have not been upheld? The community have a case pending in the Ugandan courts regarding promises that they consider were made during the resettlement process and then not upheld, but the outcome is awaited.

There is a need for consistent and informed advocacy for communities. CSOs have an important role to play, and need to be joined up in their approach. It is crucial that communities are not led to believe that they will receive more than they will by way of compensation, but particular attention needs to be paid to equity, justice and monitoring. In particular, this should include documenting rights before acquisition, – advice and advocacy for project-affected persons on the options available (e.g. cash or relocation), maintaining pressure on the government and its appointed agents for transparency throughout and monitoring.

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