



Advocates Coalition for Development and Environment

## **Balancing Development and Community Livelihoods: A Framework for Land Acquisition and Resettlement in Uganda**

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**A Study of Communities Affected by Conservation in Kibaale District;  
Oil Development and Road Infrastructure in Hoima District; and Hydro  
Electric Power Development in Buikwe District of Uganda**

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**Max A. Anyuru, Russell Rhoads, Onesmus Mugenyi, Joseph Ekwenyu and Tom Balemesa**

**ACODE Policy Research Series No.75, 2016**





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Acquisition of land for development and balancing community livelihoods remains one of the major challenges confronting developing countries today. This paper offers a case for protecting public investments and minimizing the dangers of land acquisitions that distort and threaten community livelihoods. Although the paper focuses on Uganda, it offers lessons to many countries in the East African region and beyond.

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# Abbreviations

ACODE	Advocates Coalition for Development and Environment
ADB	African Development Bank
BEL	Bujagali Energy Limited
BHP	Bujagali Hydroelectric Power
CBO	Community Based Organization
CEDAW	Convention on Elimination of all forms of Discrimination against Women
CDO	Community Development Officer
CRC	Convention on the Rights of a Child
CRPWD	Convention on the Rights of Persons with Disabilities
EIA	Environment Impact Assessment
FG	Focus Group
FGD	Focus Group Discussion
GDP	Gross Domestic Product
GoU	Government of Uganda
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ID	Identity
IFC	International Finance Corporation
IMF	International Monetary Fund
KDLG	Kabarole District Local Government
KII	Key Informant Interview
LC	Local Council
MEMD	Ministry of Energy and Mineral Development
MGLSD	Ministry of Gender Labour and Social Development
NEMA	National Environment Management Authority
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Refugees
OP	Operational Procedure
OR	Oil Refinery
RAP	Resettlement Action Plan
RDC	Resident District Commissioner
RCDAP	Resettlement Community Development Action Plan
SFI	Strategic Friends International
SPSS	Statistical Package for Social Sciences
PAPs	Project-affected Persons
PPDA	Public Procurement and Disposal of Assets Authority
PWDs	Persons with Disabilities
UETCL	Uganda Electricity Transmission Company Limited
UN	United Nations
UNRA	Uganda National Roads Authority
UGX	Uganda Shillings
WB	World Bank
WTO	World Trade Organization

# Executive Summary

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Land acquisition for development projects by government, private investors and land speculators is a critical source of tensions and conflicts in many parts of Uganda. Following the discovery of commercially viable oil reserves in 2006, Uganda turned attention to extractives and oil development as a matter of national priority. Evidence of this assertion can be found in the recent 2016-17 national budget allocations, where the portion for oil development is substantial. Development of petroleum and mining sectors requires substantial capital investments, often relying on foreign-based capitalization and multinational firms to construct facilities and operate them. Several foreign companies have drilled exploratory wells in Uganda, in which estimated reserves are at 6.5 billion oil barrels. The government of Uganda has issued production licenses to several foreign oil companies. All these activities have triggered **land acquisition** by Government for purposes of infrastructure development: - in the form of roads, dams and power grids, refineries and pipelines. Land acquisition is also triggered by private investment and the development of auxiliary services. Secondly, infrastructural developments have a “multiplier effect” since they generate businesses and services, and increase inflationary pressures on services and the land market. As expected, land speculation is also on the rise.

All the demands for land in Uganda have put pressure on the security of **land tenure**. Since most land in Uganda is classified as customary, protection for land rights is weak for the majority of communities, making them vulnerable to dispossession and displacement. Conflicts abound among landowners, Government and developers. This compromises national development objectives.

At the same time, the Government, land developers and the petroleum industry are operating in a context of increased awareness and pressure to better regulate the potential business and social impacts of development. They are in search of guidance to meet high community and national expectations for a prosperous and just development, coordinating efforts to address land acquisition for development as well as protecting the interests of local communities directly impacted by development.

In addition, projects in need of massive land for their location and infrastructure development are increasingly encroaching on challenging and sensitive areas. This is true for extractives. This need for massive land, has a range of impacts on the environment and purely land-dependent communities. In the absence of a national resettlement policy which outlines a set of principles for land acquisition and resettlement, development projects may not benefit communities.

Important to note is that the extractive industry has so far coordinated the formulation of a framework to mitigate the environmental and social risks of development in Uganda. This research contributes to similar efforts. It relies on community-based evidence /

findings which show startling gaps between the aims of national legislation and how policy unfolds at the community level. This is, in spite of well-intentioned planning using RAPs as a foundation for implementation. The research concludes that implementation needs to align with the aims of national policy, and be enforced. The framework developed by ACODE is based on findings that point to weak mechanisms, inefficient processes, the absence of monitoring, and harmful engagements with project-affected communities. Our contributions to “getting the social right” has potential to assist government and industry in complementing their efforts to address policy gaps and improve the policy environment.<sup>1</sup> Research findings describe how land acquisition and resettlement unfold at the local level; how lives and livelihoods changed – often for the worse – as experienced by PAPs and those communities directly impacted. It is anticipated that the resettlement framework developed will contribute to the discussions taking place at the national level for strengthening and expediting the implementation of the National Land Policy of 2014, for development that benefits everybody.

The findings from this research vouch for the fact that it is now the time to act. In Uganda, progress seems to be underway. The Uganda National Land Policy (2014) established a path for an on-going review of all land-related laws. It is possible that there will be new approaches to land demarcation, prioritization of areas with natural resources, the easing of the process of land identification and market exchange, as well as a resettlement framework so needed for efficient and equitable development. Formulating a national resettlement policy needs to go hand-in-hand with a revised land policy as a priority in order to reduce vulnerability to potential development-related conflict. This research makes a contribution to this end, by offering guidance to government, industry and civil society. Suffice it to say that in Uganda there is a search for an approach that “balances development” and takes into account the needs of citizens, developers and industry as well as Uganda’s development priorities.

The resettlement framework proposed in this report will:

- Build mechanisms into a framework that integrates and accommodates different stakeholder interests, strengthening how policy is put into action and aligning policy with implementation
- Instil an atmosphere of “trust” into the process as a range of ‘voices’ contribute to the negotiated outcomes for the benefit of all stakeholders. Stakeholders include government ministries and authorities, industry, politicians, local governments and citizen groups, local communities and PAPs, and civil society and advocacy organizations.
- Create a flexible approach accounting for a range of contexts that trigger land acquisition for development. The flexibility is needed to accommodate the interests of key stakeholders in different contexts, offering a tool for their participation in shaping

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<sup>1</sup> The new book by Reddy, Smyth and Steyn (Intersocial Consulting) is recommended. The authors argue that sound planning and negotiation integrates “business drivers” to avoid the costs of getting development wrong (pp. 17-24). Reddy, G., Smyth, E., & Steyn, M. (2015). Land access and resettlement: a guide to best practice. Greenleaf Publishing.

the efficacy and outcomes of development.

- Provides a process to guide line ministries as custodians of citizens' resources, social welfare and the provision of services while development of extractives expands and deepens across many sectors. Decisions can be better coordinated among government ministries and governance officials so as to avoid negative impacts that compromise the objectives and operations of related political and technical units, such as the National Forestry Authority and the Ministry of Lands, Housing and Urban Development.

The ACODE framework contributes to policy alignment, implementation and outcomes,. This should generate confidence and trust across stakeholders, including local government bodies and local communities – both of which are directly impacted in the short and long terms. The mechanisms integrated into this framework should guide resettlement as a process that is open and accountable.

The research report proposes principles and mechanisms for the a national resettlement policy framework that suits Uganda, drawing from the existing national policy environment, international best practices, and lessons learned from the on-the-ground case studies making up this research. The research had the following specific objectives:

1. To conduct a 'gap analysis' in the existing policy environment and institutional framework governing the acquisition of land for development projects, and comparing the situation with international best practices;
2. To document the impacts of development projects and their implementation at the community level. Through fieldwork and case studies, we evaluated the changes to livelihoods, access to land and resources, and how communities had responded;
3. To develop a set of principles and recommendations to strengthen the acquisition and resettlement process, while protecting land tenure regimes and customary land rights, without compromising community livelihood.

To meet these objectives, the research team reviewed the regulatory tools used to ensure that social issues are adequately managed and taken into consideration. Examined too was the relevance of national policies in relation to corporate standards and international 'soft law' guidelines for development, such as the World Bank Operational Policy on resettlement, the International Finance Corporation's (IFC) Performance Standards for Land Acquisition and Involuntary Resettlement, and industry standards, such as the International Petroleum Industry Environmental and Conservation Association (IPIECA). In the research report, we demonstrate how specific approaches mitigate the impacts of land acquisition on community livelihoods, including access to land and resources and the community capacity to participate in and respond to development. In addition, with a focus on land, the research report identifies policy, legislative and administrative proposals

that strengthen land tenure regimes and customary land rights, and facilitate development projects without compromising community livelihood.

This research was carried out between March and May 2015. The five case studies on which this research report is based are: Mpokya and Rwamutonga land evictions in Kibale and Hoima; Bujagali Hydroelectric Power (BHP) project in Buikwe District; the Oil Refinery (OR) and Kaiso/Tonya Road projects in Hoima District. In this research, we utilized a set of mixed methodologies and triangulation to guarantee the quality and reliability of data and the ultimate findings. Fieldwork consisted of a household survey and interviews with the project-affected persons (five case studies), as well as key informant interviews with representatives of line ministries, local governments, Bunyoro-Kitara Kingdom officials, Bunyoro-Kitara Diocese, and representatives of Strategic Friends International and of the Oil Refinery project. We chose the five cases based on how each reflected gaps in policy and project implementation. Additional criteria for choice of data sources consisted of representing both planned government land acquisition projects and private land acquisition for auxiliary oil-related development. We chose three projects in which RAPs (Resettlement Action Plans) were put into place as part of social and environmental impact assessments and project planning and implementation.

In sum, this research report offers a deep and clear analysis of the existing relevant international and national policy and legal frameworks that strive to achieve best practices in regulating land acquisition for development and resettlement of affected persons. The findings are based on empirical evidence and rich in new findings. Overall, the findings demonstrate the overwhelming negative impacts of development on PAPs and communities. We attempted to capture the realities on the ground, particularly the weak implementation of existing laws and policies and how, over time, project -affected persons (PAPs) had lost their livelihoods. The findings show an uneven application of resettlement protocols across projects and land acquisition schemes, as well as vulnerability in the security of land and restoration of livelihoods. We also argue that a national resettlement policy would strengthen the position of customary land relative to titled private property through the stated procedures of land acquisition and resettlement.

In summary, we emphasize that land acquisition and resettlement process is as much as an outcome. While development projects trigger compensation, which may positively impact on lives and status of PAPs, our data show that the mitigation of the negative impacts requires urgent actions in formulating flexible mechanisms that integrate stakeholder needs during the process of land acquisition and resettlement, “balancing” the benefits to government, industry, and citizens.

**Strategic Recommendations:** In an effort to mitigate the pitfalls brought about by this research, the authors propose the policy recommendations necessary to deal with acquisition of land for development purposes and issues relating to compensation in all cases of involuntary resettlement. In the concluding section of this research, extensive recommendations are detailed based on empirical findings, including a detailed

Resettlement Policy framework identifying the key principles required for fair and just land acquisition and resettlement in Uganda. The six strategic recommendations are: <sup>2</sup>

1. **Strategic Recommendation #1 – Legislation:** Review existing laws and design new ones aligned with internationally accepted best practices on land acquisition and resettlement, and suited to the Ugandan context. Monitor and bridge the gaps between policy and implementation, between processes and outcomes.
2. **Strategic Recommendation #2 – Project Design and Planning:** Apply a stringent framework and procedures to assessment of the impacted regions and populations, reinforce mechanisms at all stages of the land acquisition process, and create action plans and outcome measures for the mitigation of social and environmental risks.
3. **Strategic Recommendation #3 – Informed Decision-making:** Project design and RAPs should build in consultation with stakeholders and PAPs as an on-going and transparent process.
4. **Strategic Recommendation #4 – Valuation and Compensation:** The fair valuation of land and property and timely compensation is at the core of maintaining and improving PAP livelihood. In line with national law and international best practices, prior compensation is required; PAPs need to be compensated before land acquisition begins and property destroyed or its use constrained.
5. **Strategic Recommendation #5 – Monitoring:** International best practice recommends transparency and accountability measures to independently monitor and audit the implementation of land acquisition and the resettlement process. PAPs require resources and knowledge to represent their own interests and to assess the impacts of project activities on their lives.
6. **Strategic Recommendation #6 – Land Security:** Land use and land ownership are key recommendations to ensure the security of land during development and resettlement actions. Recognize and legalize customary lands through systematic demarcation, registry and certification, providing security and protection in the face of development.

This research identified principles and mechanisms that can be integrated into a comprehensive resettlement policy framework guiding land acquisition and resettlement (Chapter 7). The strategic recommendations above address policy gaps on involuntary/ compulsory resettlement, taking into account international best practices and evidence-based inquiry. This research aims to assist government, industry and civil society in developing a robust framework that protects the value of investments as it protects the social and economic security of those directly impacted by development activities, especially land acquisition and resettlement.

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<sup>2</sup> In Chapter 7, the Strategic Recommendations are accompanied by attendant mechanisms, actions and procedures. Following this we propose a detailed policy framework outline to serve as a basis for a future Resettlement Policy.

# CHAPTER 1: INTRODUCTION AND BACKGROUND

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## 1.1 Connecting Land Acquisition, Resettlement and Policy

This research offers an analysis of the existing relevant international and national policy and legal frameworks that strive to achieve best practices in regulating land acquisition for development and resettlement of affected persons. The findings are based on empirical evidence drawn from on-the-ground case studies from a range of stakeholders. The authors attempt to capture the realities on the ground, particularly the weak implementation of existing laws and policies and how project-affected persons (PAPs) have over time lost their livelihoods. The findings show an uneven application of resettlement protocols across projects and land acquisition schemes, as well as vulnerability in land security. While development projects trigger compensation, which may positively impact on lives and status of PAPs, our data show that the mitigation of the negative impacts requires urgent actions in formulating flexible mechanisms that integrate stakeholder needs during the process of land acquisition and resettlement, “balancing” the benefits to government, industry and citizens. In this report, we emphasize that land acquisition and resettlement is a process as much as it is an outcome.

Each year, development-based land acquisition displaces tens of thousands of people globally. Land acquisitions are largely driven by increased investments on land triggered by increased global demand for energy, minerals and oil resources, food and infrastructure development.<sup>3</sup> In Uganda land acquisitions are largely triggered by infrastructure development for electricity generation and distribution, roads, mineral and petroleum development, agricultural investments, resettlement for war and environmental refugees, conservation purposes and land speculation. Some of the development projects that have led to displacement and resettlement of people include the construction of the hydroelectric power stations, like Bujagali and Karuma dams and electricity grid projects, oil production infrastructure, the construction of roads, and the creation of conservation areas.<sup>4</sup> Land acquisition may involve national governments, multinational companies, international investors, and private land speculators. No matter what form it takes, land acquisition leads to displacement of people from their ancestral lands and homes, loss of property and disruption and or total destruction of livelihoods.

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<sup>3</sup> Cotula, L., Vermeulen, S., Leonard, R. and Keeley, J., 2009, *Land Grab or Development Opportunity: Agricultural Investments and International Land Deals in Africa*, IIED/FAO/IFAD, London/Rome.

<sup>4</sup> Charles Geisler, a sociologist from Cornell University, in Africa alone efforts for the conservation of nature may lead to several forms of involuntary relocations between 900,000 and 14.4 million people in Bogumil. See also Terminski, B. *Development-Induced Displacement and Resettlement: Theoretical frameworks and current Challenge*. <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/8833/Bogumil%20Terminski,%20developmentInduced%20Displacement%20and%20Resettlement.%20Theoretical%20frameworks%20and%20current%20challenges.pdf?sequence=1>, 2012 (accessed on 08 May 2014)

Policy frameworks and mechanisms are important to guide the planning and implementation of development projects. These protect the interests of local communities by providing guidance and safeguards to mitigate the impacts of land acquisition on project-affected persons (PAPs). Safeguards include the protection of individual rights; respect for the integrity of culture and community, protection of livelihoods, and taking into consideration access to land and food security in a timely way. Furthermore, there is a particular need for safeguards to protect vulnerable populations such as women, children, persons with disability (PWDs) and the elderly.

In this light, ACODE undertook a research to analyse the existing relevant international and national policy and legal frameworks that regulate land acquisition for development projects and resettlement of affected persons. Based on field data from five case studies in Uganda, the findings identify gaps in the existing national policy in providing principles, mechanisms and procedures for the engagement of a range of stakeholders and for making transitions more effective and time-efficient. There are also gaps in the provisions that guarantee security of tenure and protection of customary land rights, hence rendering communities vulnerable to displacements.

In addition, this research finds a gap between policy and implementation; that is, what policies are supposed to do and how procedures are met on the ground. Often, this misalignment results in an uneven application of resettlement mechanisms across projects and land acquisition schemes. We particularly paid attention to outcomes impacting community livelihood. Often-times, where the resettlement process exclude community welfare, either because of trying to save time and money, “the risk of disagreements will arise later which will result in costly delays,” undermining the implementation of the project. Communities require significant capacity-building before they can meaningfully participate equitably in projects and be able to make decisions on the restoration of their livelihood. Indeed, land acquisition and restriction on land use often necessitate that people lose agricultural land and businesses, access to natural resources, and social networks.

A major aim of this research is to contribute to the national dialogue underway to develop a resettlement framework. The proposed framework offers a good guide and complements efforts by government and industry for protecting the value of development investments, mitigating social and environmental risks, and avoiding pitfalls of land acquisition and resettlement in general. In sum, a framework will facilitate the process of land acquisition and resettlement in a more systematic and accountable way - balancing the interests of national development and the rights of landowners and project-affected persons (PAPs). The research findings make a strong case for arguing the urgent need to prioritize critical risk areas pertaining to land acquisition and resettlement.



## 1.2 Research Objectives and the Conceptual Model

The goal of the research was to propose principles and mechanisms for a national resettlement policy framework suited to the Ugandan context, drawing from the existing national policies, international best practices, and lessons learned from the on-the-ground case studies. The specific objectives were:

1. To conduct a 'gap analysis' in the existing policy environment and institutional framework governing the acquisition of land for development projects, and comparing the current practices with international best practices;
2. To document the impacts of development projects at the community level;
3. To develop a set of principles and recommendations for strengthening the acquisition and resettlement processes, while protecting land tenure regimes and customary land rights.

To meet these objectives, the research team reviewed and synthesized the regulatory tools used to ensure that social issues are adequately managed and taken into consideration. We examined Ugandan policies and made comparisons with corporate standards and international 'soft law' guidelines for development, such as the World Bank Operational Policy on resettlement, the International Finance Corporation's (IFC) Performance Standards for Land Acquisition and Involuntary Resettlement, and industry standards, such as the International Petroleum Industry Environmental and Conservation Association (IPIECA). We demonstrate how specific measures are necessary to mitigate the impacts of land acquisition on community livelihood, particularly a community's capacity to participate in and respond to development. In addition, with a focus on land, the research identifies policy, legislative and administrative mechanisms that strengthen land tenure regimes, customary land rights, and community livelihood.

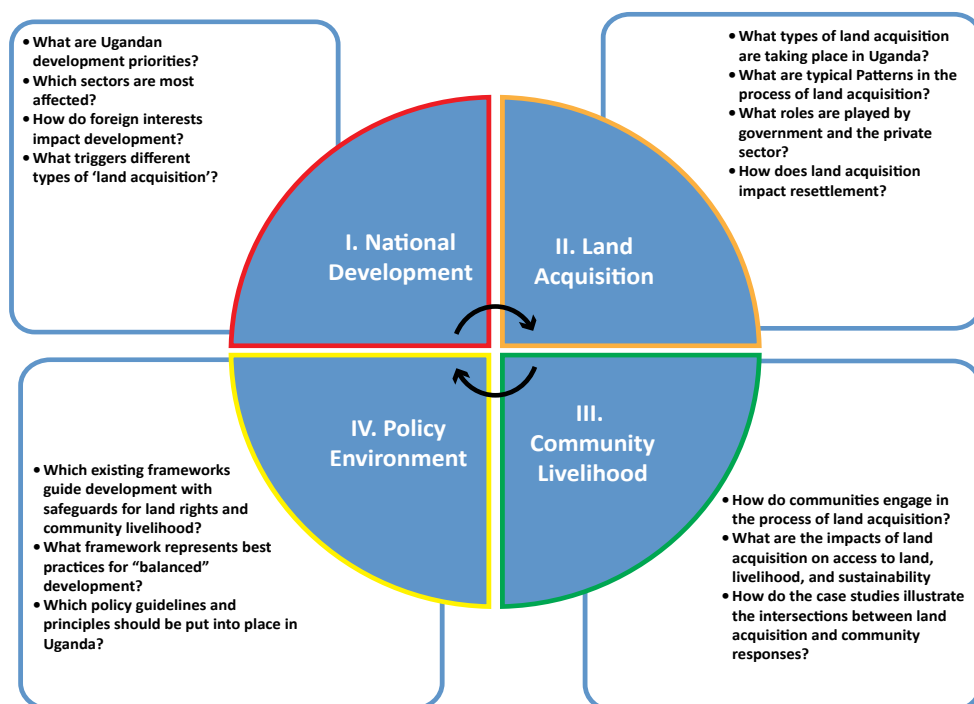
The Conceptual Model below (see Figure 1) captures the key factors comprising the dynamics of development. These factors are at the foundation of our research and are discussed in depth in the next chapter.

- Box I identifies the context of Ugandan National Development which shapes development project priorities (e.g., infrastructural), sector investment (e.g., oil and gas), and project funding from international financial institutions (e.g., The World Bank, China).
- Box II looks at the types and nature of land acquisition across the five case studies.
- Box III shows the impact of development and dislocation on actual livelihoods. The impacts are not determined primarily top-down. Rather, the process unfolds as an interaction between the community and developers who may or may not put into place varying mechanisms to safeguard the integrity of community assets and culture. Some

communities are more prepared as stakeholders than others.

- Box IV shows the policy environment and issues related to: i) mitigation of the impact of development through compensation to support land access and to sustain livelihood, ii) provision of information to the community and the agency with which to make decisions about development and participate in the process and outcomes, and iii) balancing development in ways that meet economic growth priorities while ensuring a sustainable environment for the future benefit of local communities, especially those PAPs directly affected.

**Figure 1: Conceptual Model**



This model represents a way to capture development questions and processes in Uganda. For example, national investment priorities for growth and services shape the way land is utilized for development projects (Box #1). Priorities influence a range of different projects that may trigger land acquisition in various ways (Box #2). Though Ugandans occupy these lands as homes, their livelihoods are disrupted, and many are forced to relocate (Box #3). Our findings from data collection in the field were used as evidence of how mechanisms work or do not work, comparing national and international policies and frameworks for involuntary resettlement (Box #4). We anticipate that our strategic recommendations at the end of this report will impact the future planning environment, investment patterns, and project implementation related to land acquisition and resettlement.

In sum, the authors argue that existing policy and implementation for land acquisition in Uganda is uneven and inadequate to safeguard the rights of PAPs. In Chapter 3, the literature review on resettlement protocols and frameworks demonstrates the existence of practiced mechanisms that foster a policy environment to safeguard the rights of PAPs. Our approach to ‘best practices’ focuses on identifying the ‘best principles’ for a policy environment that provides a robust framework for the development the petroleum sector, among others. We acknowledge that legislation and policy often have more to say about what needs to be done, but not much about how it should be planned and actually undertaken. Therefore, the principles of any resettlement policy should be complemented with the nuts-and-bolts and “how-to” tools as a practical guide on planning and implementing development “on the ground.”<sup>5</sup>

In this research, we recognize the importance of practices and outcomes by drawing on empirical, on-the-ground evidence as a way to inform our strategic recommendations and best principles. The empirical evidence, based on the five case studies in Uganda, reveals gaps and negative dynamics between developers, the government and PAPs. It follows therefore that mechanisms for engaging communities during the project planning and implementation (e.g., fair compensation, valuation of property, sensitization, monitoring, and grievance procedures) must be integrated into policy frameworks.

We particularly paid attention to outcomes impacting the tie between land and community livelihood. Where the resettlement process excludes community livelihood, such as to save time and money, “the risk is that disagreements will arise later which could result in costly delays,” undermining the implementation of the project. Communities require significant capacity-building before they can meaningfully participate equitably in projects and be able to make decisions on the restoration of their livelihood. Indeed, land acquisition and restriction on land use often necessitate that people lose agricultural land and businesses, access to natural resources, and social networks. The challenge is not to try and restore pre-existing standards of living; but rather the goal is to improve livelihood through intentional economic strategies (e.g., livelihood restoration) that are built into project planning and implementation. Projects should benefit communities in ways that guarantee economic opportunity and social welfare into the future.

## 1.3 Organization of the Report

This research report is organized in seven chapters. Chapter 2 describes the research methodology. Based on the above model, Chapter 3 reviews and highlights key issues as discussed across a broad array of literature on development, land acquisition and its impacts. Chapter 3 also explores the larger context of land acquisition globally and in Uganda, as a basis for developing a model of the dynamics of development projects, land acquisition and involuntary resettlement. This is followed by a review of the existing

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<sup>5</sup> The new book by Reddy, Smyth and Steyn (Intersocial Consulting) is recommended. The authors argue that sound planning and negotiation integrates “business drivers” to avoid the costs of getting development wrong (pp. 17-24). Reddy, G., Smyth, E., & Steyn, M. (2015). Land access and resettlement: a guide to best practice. Greenleaf Publishing.

policy environment and frameworks for restitution and rights related to land acquisition and resettlement (Chapter 4). The stage is set for a presentation of the case studies documenting how resettlement mechanisms impact on community livelihood. Chapter 5 briefly presents the five case studies, followed by detailed evidence and findings (Chapter 6). Finally, Chapter 7 proposes recommendations for a policy environment that integrates a rigorous set of resettlement protocols. The strategic recommendations propose a framework based on lessons learnt from the evidence of actual projects from this research. The aim is to identify principles and mechanisms that can be integrated into a comprehensive resettlement policy framework guiding land acquisition and resettlement, taking into account international best practices. These recommendations also aim to assist industry in developing robust frameworks to protect the value of investments and to mitigate the impacts of their development activities. Finally, the research should benefit government in meeting its responsibility to manage and regulate land use, and transform natural assets into sustained prosperity for all citizens.

# CHAPTER 2: RESEARCH DESIGN AND METHODS

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## 2.1 Research Design and Approach

The research adopted an “action research” approach featuring the integration of stakeholder perspectives into the data collection, with the aim of generating social transformation.<sup>6</sup> As a result of this research, changes are anticipated in the national policy environment affecting resettlement and development. The research also adopted a cross-sectional design - a choice influenced by the multi-site nature of the research and the need to capture representative views of all stakeholders in the time available. The unit of analysis in the research was individual PAPs in the five case studies selected.

Researchers in the team held initial discussions on the research objectives, design, case studies to be included, and the methodology. The choice of cases was informed by the initial review of literature, prior knowledge and experiences of research team members about the different cases. Discussions were also held on logistical needs of the research, human resource requirements for household data collection, and permission from respective authorities given the sensitivity around land and minerals. An introductory letter was written to inform the respective Resident District Commissioners (RDCs) and Local Council (LC) V Chairpersons about the research.

A participatory, consultative, and interactive approach was used. A range of stakeholders were interviewed, including District LC Leaders, District Technical Staff, Religious Leaders, PAPs and their leadership, and line ministries. This approach was chosen to help in the triangulation in order to come up with verified evidence-based information given the anticipated information distortions that usually come with controversial cases such as those that were investigated.

### 2.1.1 Research Approach

Our approach began with a review of international policy and institutional frameworks concerned with the dynamics of land acquisition for economic development. This policy environment provided mechanisms for safeguarding the land rights of PAPs and ensuring their continued community livelihood. A second step in our approach was to comparatively review the issues and impacts of development projects, in terms of how they integrate varying degrees of internationally established protocols to safeguard the interests of PAPs. By investigating five case studies in Uganda, this research generated empirical evidence

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<sup>6</sup> A key outcome of this approach is to problem-solve, often resulting in capacity-building and in the transformation of social structures of injustice. See Stringer, Ernest. 1999 (2007). *Action Research*, Thousand Oaks, CA: Sage, and Greenwood, D. J. and M. Levin. 2006 (2nd ed.) *Introduction to action research: Social research for social change: Social Research for Social Change*. SAGE Publications.

on the ground demonstrating how mechanisms work pertaining to land acquisition and involuntary resettlement. Our findings reveal insights on the changed livelihoods of affected communities, including access to land and land resources. By connecting a review of the policy environment to the five case studies and field data, we are in a better position to understand a) the gaps between policy and implementation, b) how land acquisition is triggered in different contexts across the region, c) the role of the government and private firms in implementing projects that impact on PAPs, and d) the perspectives of communities that are directly impacted by development dynamics.

The third step in our analysis involved development of policy proposals and recommendations. Our overall goal is to bridge the gap between existing policies and international performance standards; between policies and implementation; between mechanisms and the actual impacts as they get played out in local communities. Our recommendations for a new policy environment offer a contribution to efforts considered by government and industry, which seek to broaden the landscape of discussion in ways that address the local value of property, ethnic interactions, community responses, livelihood restoration, the needs of vulnerable social groups, and other cultural aspects. Taking into account these aspects is the key for resettlement policy and actions that will result in success.

## **2.2 Scope**

### **2.2.1 Geographical Scope**

The research was carried out in the districts of Hoima and Kibaale in Western Uganda, and Buikwe in Eastern Uganda, between March and May 2015. It involved five case studies: Mpokya and Rwamutonga land evictions IN Kibale and Hoima respectively; Bujagali Hydroelectric Power (BHP) project in Buikwe District; Oil Refinery (OR) and Kaiso/Tonya Road projects in Hoima District. Research sites included villages along the Hoima-Kaiso/Tonya road, where majority of those affected by the road project are located; Kabaale Parish and surrounding areas in Buseruka Sub County where those who were affected by the OR had relocated; and Rwamutonga village in Bugambe Sub County where communities that were evicted from the proposed oil waste management site were camped. In Kibaale District, the research was carried out in Kisita and Nalweyo sub counties where those who were evicted from Mpokya forest reserve back in 1992 were resettled. In Buikwe District, the research was carried out in Muyenga Village, Naminya Parish in Wakisi Sub County, where those who were affected by the project were resettled.

### **2.2.2 Thematic Scope and Site Criteria**

The research focused on development projects vis-a-vis land acquisition, compensation and involuntary resettlements in Uganda. While analyzing the international, national policy and legal frameworks to identify the gaps, the project used case studies to determine whether land acquisition, compensation and involuntary resettlements had been handled in compliance with international requirements and best practices, and within the national

policy and legal frameworks.

We chose the five cases based on how each reflected gaps in policy and project implementation in the area. These sites were also selected on the basis of several criteria: development type, stage of the resettlement process, and stage of compensation. Regarding development type, we wanted to represent cases in which land acquisition was triggered in different ways – to capture the experiences of resettlement across a range of infrastructure projects, both public and private. For example, the Hoima to Kaiso/Tonya road was a purely public project for the benefit of the public. Similarly, Mpokya eviction was a conservation project and therefore a public interest project. On the other hand, the oil refinery project site and the Bujagali Hydroelectric Power (BHP) project were acquired under public-private partnership arrangements. Finally, the Rwamutonga proposed oil waste management project site was a case of forceful land eviction by a private individual and possible speculator who wanted to take advantage of the development in the oil sector for his own good.

The second criterion is the stage of the development process. Mpokya dates back to twenty years ago; Bujagali largely completed the process of relocation and compensation, began in the 1990s and relocations concluded some time in 2001. The road and oil refinery are within past five years and are ongoing. However, several PAPs have been compensated while others still wait to receive their own compensation and others await resettlement. Finally, Rwamutonga represents a recent case of evictees who were displaced and are not part of any government programme to compensate or assist those PAPs affected by relocation.

The third criterion was the compensation process. We chose three projects in which RAPs (Resettlement Action Plans) were put into place as part of social and environmental impact assessments and project planning and implementation. Compensation mechanisms were built into the process of land acquisition. The three demonstrate the options chosen for compensation in money and/or land, completed compensation and compensation yet to be delivered, cases of delays and complaint resolution, often pending as legal cases in courts. In the Mpokya case, partial compensation took place many years after relocation to Kibaale District, and in 2015 the compensation process was renewed but has yet to be completed. Finally, Rwamutonga represents a case in which no compensation was either planned or awarded. However, in 2016, a court decision handed down in favour of the evictees has resulted in a subsequent court action based on an appeal for compensation and hardship restitution.

## 2.3 Sampling

Based on the criteria described above, investigations were undertaken to identify specific cases and locations for conducting fieldwork. For the Hoima to Kaiso/Tonya road, most of the affected persons were found to have relocated along the road. In their situation, only part of the land was taken by the road. Similarly, most of those affected by the oil refinery but who chose compensation had been identified to have either relocated to the

neighbouring parishes, or had remained within the refinery area, especially those who opted for resettlement.

In the case of Mpokya land eviction victims, initial investigation and literature had established that they had been resettled in the sub counties of Kisita and Nalweyo of Kibaale District; while for the Rwamutonga victims, it was established that they had relocated to the neighbouring areas. In Buikwe District, site selection was restricted to the resettlement village where a small proportion of the nearly 700 Bujagali hydroelectric power PAPs were resettled by the project/government. In this particular case, those who chose compensation could not be traced because they got scattered throughout the country. Attempts to locate a few who had relocated to the nearby villages were futile.

For individual respondents at household level, snowball sampling was used. Once the village where PAPs concentration was considered high and had been identified, researchers contacted local leaders and used snowball sampling to locate appropriate respondents. During the planning stages of the research, it was agreed that up to 60 respondents would be selected for each case research.

Key informants selection was guided by purpose sampling: how knowledgeable they were in respective projects based on their status in the society, the kind of responsibilities they held, and the extent of their involvement in the project. In the light of these considerations, the following categories of people were selected and consulted as key informants: RDCs, LC V Chairpersons, Religious leaders, Elders and Opinion leaders, LC III Chairpersons, and Community Development Officers (CDOs). Others included line ministry representatives including Ministry of Energy and Mineral Development (MEMD), Ministry of Lands, Housing and Urban Development (MLHUD) / Uganda Land Commission (ULC), and Ministry of Works and Transport (MWTC) / Uganda National Roads Authority (UNRA), and project Resettlement Action Plan (RAP) implementer and Witness NGO where applicable.

## **2.4 Data Collection**

### **2.4.1. Data Collection Methods and Tools**

Both qualitative and quantitative methods of data collection were employed. Qualitative data collection involved use of key informants interview guides and focus group discussion (FGD) guides. These guides were developed, discussed and agreed upon by the research team before they were applied. The use of qualitative method was intended to relate the perspectives and behaviours of officials and PAPs to the wider context, to derive meanings from those close to the resettlement experience, including the experiences of those who have lived the resettlement process. Finally, our approach allowed for the discovery of the unexpected and in-depth investigation of the subject.

Quantitative data collection was done using a semi-structured questionnaire, developed, discussed and agreed upon by the research team prior to the fieldwork. Questionnaires were administered at household level by research assistants at all research sites.



Quantitative method was used to verify the findings by the qualitative method – to confirm, prove, corroborate and substantiate issues established by the qualitative method. The use of both methods was deemed complementary on the basis of triangulation in the sense that they helped to maximize the strengths and minimize the limitations of each other.

## **2.4.2 Data Collection**

### **a. FGDs (FGD)**

At least one focus group discussion (FGD) was held per site and up to seven FGDs were held with the different communities in the five case studies. For the oil refinery (OR) and Mpokya eviction, two FGDs were held; while in the remainder, only one FGD was held per case. The decision to hold more than one FGD was influenced by the choices made by the PAPs and the nature of being resettled. In the case of the OR PAPs, some had chosen compensation while a section of them chose to be resettled. In the research, we wanted to capture both experiences. In the case of Mpokya evictees, they had been resettled in two different sub-counties in the same district. The research considered that the experiences were different and therefore wanted to capture their experiences in the two sub-counties.

At the planning stage, it was envisaged that an FGD would comprise between 6-15 people. However, the number of respondents who participated depended on the ease with which the PAPs were mobilized and the nature of settlement. In the case of Rwamutonga, nearly 50 people participated because it was a camp-like situation. In the case of Mpokya-Kisita, only five people participated because of the difficulty in mobilization.

All the FGDs were convened and moderated by the lead researcher, employing the language(s) used locally. After obtaining consent for the activity, questions were asked based on an informal FGD guide to address key topics and issues. Field notes were input electronically as verbatim. Other members of the team participated through interjections and by putting up follow-up and probing questions.

### **b. Key Informant Interviews (KIs):**

Up to 13 KIs were conducted with different people across the five research sites. Those interviewed included LC Chairpersons of Hoima and Kibaale districts; RDC of Hoima District; Council Representatives, Hoima District Local Government; Spokesperson of Oil Refinery, and official from CDOs, Hoima District; Bunyoro-Kitara Kingdom; Bishop, Bunyoro Kitara Diocese; and representative of Witness NGO for the BHP project. Others include: Camp Leader, Nalweyo Sub County resettlement for Mpokya victims and Chairperson LC I and Head Teacher in charge Muyenga resettled community and Nursery School.

Like with FGDs, KIs were moderated by the team leader while the team members interjected, made follow-up questions or probed depending on the circumstances. The interview topics were guided by a semi-structured question set used by the interviewers. Only some interviews were audio-taped with oral permission from the interviewee. Interview notes were taken at all interviews as verbatim as possible, typed into an iPad by a team member. All these engagements sought to establish personal experiences of the affected

people and gain an understanding from officials in positions of authority regarding the progress and challenges in implementing the relocation plans.

### **c. Household Questionnaire:**

Two sets of household questionnaires were designed to capture issues in two different scenarios. Scenario one focused on PAPs who had been compensated or resettled (majority), and scenario two where PAPs had not been resettled. The latter was specifically designed to capture issues of OR PAPs who chose resettlement but had not been resettled by the time of this research. The survey examined the following: household characteristics/ demographics of the PAPs, compensation and the resettlement process, and socio-economic (livelihoods) and socio-cultural impact of resettlement. Questionnaires were administered by research assistants to individual household heads. Research assistants had earlier been trained on the use of the tool and commissioned to pre-test the household tool. The outcome of the pre-test was discussed by the team and it was concluded that the tools were appropriate for the research to initiate.

A profile of the research population and characteristics of households is summarized as follows: The accessible research population comprised 288 respondents (households) drawn from the five cases. The majority (75%) of respondents were male. 83% of the respondents were married, 4% had separated, 8% were widowed and the remainder were single. Nearly three-fourths of the households had between 3 and 10 members. Very few had two or less. Children (below 18 years) were present in 92% of the households.

## **2.4.3. Data Management**

### **(a) Quantitative Data Management**

A data entry template was developed in Statistical Package for Social Sciences (SPSS). Completed face-to-face interview schedules were coded in cases where they had not been pre-coded, then edited and data entered in the template, cleaned, processed and analyzed. Information generated was summarized into frequencies and percentages, and in the form of tables and graphs.

### **(b) Qualitative Data Management**

Information and data recorded from FGDs and KIs was processed using the ATLAS.ti qualitative data management and analysis software. Key topics and issues were coded across the FGDs, the KIs, and qualitative responses on the household surveys. An analysis was made of the content of the responses and summarized in different categories and put into a database from which issues were picked during the write-up of the report.

A composite preliminary report of findings was written and conclusions drawn based on the objectives of the research, shared within the consultancy team for feedback and a draft report was produced, presented to ACODE and partners for validation. Comments

and feedback received from the validation exercise were integrated into revisions. The findings and conclusions were presented publically at two conferences on resettlement, and feedback duly noted in further revisions. The final report was submitted to ACODE.

## 2.5 Ethical Considerations

The research adhered to protocols identified in The ACODE Research and Publications Policy (Section 8.3.4, “Promotion of Ethical Conduct of Research,” pp.18-19). Respondents from all the sites were assured of confidentiality and anonymity. In conducting assessments of this type, confidential information frequently comes to the attention of researchers. The research team was counselled and tasked to minimize personal risk to respondents.

Although the names of FGD participants and household survey respondents were recorded, we protected identities during data entry. Therefore the database is devoid of attributes with personal identity information, including names. In the case of KIIs, official titles of those who were consulted as key informants have been retained in the report given that they are public officials and gave consent to be interviewed. We endeavoured to protect anonymity wherever possible in the process of writing this report, except in situations where people accepted to be quoted on a topic. Overall, the subjects in this research gave consent to be participants, willingly and without any coercion.

## 2.6 Limitations of the research

**Case study approach:** The research team was cognizant of the limitations of the case study approach on generalizability of the findings beyond the five cases studied. The team responded to this with triangulation with other methods, identifying particular themes of qualitative and quantitative analysis of the data generated.

**Snowball sampling:** As a recruiting technique, snowball sampling relies on the identification of known respondents by the previous respondent. In this research we vetted, hired and relied on the local research assistants who were professional in fieldwork and familiar with the specific regions where the research took place. We used other sources of data, such as observation, KIIs, FGDs and literature review to complement the household questionnaires and to put the patterns generated into larger contexts.

**Sensitive information:** The topic necessitated participants giving sensitive information especially with on-going and unresolved legal cases. This made some participants emotional in responses or non-responsive. The research team utilized probing and spent more time for such participants, and respected non-response.

**Sensitivity to the status of PAPs:** We worked with emotionally charged groups experiencing levels of distress due to involvement in the resettlement process. Hence the team had to bear with the groups by allocating more study time in those areas.

# CHAPTER 3: LAND ACQUISITION FOR DEVELOPMENT: THE CONTEXT

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The purpose of this section is to situate land acquisition and involuntary resettlement in Uganda within a broader panorama of literature and debate on the subject, through research studies, reports and other publications. This body of knowledge identifies key issues and debates on the dynamics of land acquisition for development at global, national and local levels. Indeed, the picture is a complicated one. It is the role of research - and a goal of this research - to assemble the evidence on land acquisition and view the whole picture from above and below in order to attain a fuller understanding of how the pieces fit together in Uganda. Only then can solutions to development problems and injustice be presented confidently in the form of coherent and effective policies.

As depicted in the model of development dynamics (Chapter 1, Figure 1), the Uganda context of land acquisition is situated within a dynamic of global neoliberal free-market development. One can best grasp land acquisition at the local level – on those directly affected (PAPs) – and comparing this to an examination of the intentions of development: the protocols and mechanisms for resettlement put into place as international and national practices, especially regarding large-scale infrastructural projects. In this chapter, we argue that land acquisition in Uganda is part of a global process of development that disrupts and dislocates millions of people from livelihoods, often with an uneven mix of benefits and hardship. Though economic development is a necessary part of the growth of national economies in the global South, the many communities directly affected need clear and careful attention.

## 3.1 Global and National Economic Development

Land acquisition and involuntary resettlement in Uganda cannot be viewed in isolation from the broader dynamics of globalization and free-market development. According to Scholte,<sup>7</sup> globalization is a transformation of economic and social space that occurs with the spread of trans-planetary connections between people. In this view, connections are often supra-territorial, connecting flows of goods, labor, media, and finance capital across the boundaries of regions and nation-states.<sup>8</sup> A driver of globalization, neoliberalism refers to multiple distinct phenomena, from a set of economic policies or development model to an ideology or academic paradigm.<sup>9</sup> As a set of economic reform policies, free-market liberalization involves actions that eliminate price controls, deregulate capital markets,

<sup>7</sup> Scholte, J. A. (2005). The sources of neoliberal globalization. Programme Paper Number 8. United Nations Research Institute for Social Development (UNRISD).

<sup>8</sup> Appadurai, A. (1996). Modernity at large: cultural dimensions of globalization. University of Minnesota Press.

<sup>9</sup> Boas, T. C., & Gans-Morse, J. (2009). Neoliberalism: From new liberal philosophy to anti-liberal slogan. Studies in Comparative International Development, 44(2), 137-161.

lower trade barriers, increase privatization and the role of the private sector, reducing state-owned enterprises, contributing to fiscal austerity and curtailing government subsidies.<sup>10</sup> For example, Braedley and Luxton emphasize how economies are designed to unleash and ‘liberate’ the processes of capital accumulation.<sup>11</sup> Finally, the free-market approach also refers to a development model or strategy with economic, social, and political implications.

The rules of finance for international economic engagement are established through the World Trade Organisation (WTO) and the International Monetary Fund (IMF), implemented often by the World Bank (WB) group. Once institutionalized and reinforced by a national narrative for development, a market-oriented strategy becomes the “natural” model for development. This is particularly visible in Africa with its growing appetite for land and space, adopting a development model to meet the demands of industrialization, infrastructure building, urban expansion, resource extraction and general wealth accumulation. At the same time, our view is that development strategies are structural and ideological forces that have an impact on lives, life-chances, social relations, and ways of inhabiting the world.

In developing countries, resources and assets are often “outside” the private sector – for example, land in the form of customary tenure or state-owned enterprises and services. Neoliberal development allows resources and assets to be unleashed, converted and traded in the private sector, which opens new markets for investment, primarily in the reserve of national elites and foreign interests. It is not surprising, then, that the literature is critical of radical free-market strategies in which global inequalities have risen sharply and people become marginalized, dispossessed, and disenfranchised when public resources are privatized and the rural and urban poor incorporated into market economies.<sup>12</sup>

## 3.2 The Land Acquisition Boom and Population Displacement

The connection between economic development and land acquisition in Africa – and in Uganda – can be illustrated by looking at several case studies. For example, the 2011 African Union report “Minerals and Africa’s Development” reveals that investments in the extractive sector have risen in recent years with global competition for the region’s resources. The region now has the world’s highest rates of return on investment, expected to rise to 7 per cent average growth in gross domestic product (GDP) in coming decades. According to Mbataru,<sup>13</sup> the commodity boom has resulted in a doubling of economic output in the past 15 years with six African countries now in the world’s top ten fastest

<sup>10</sup> Scholte, *ibid.* p. 24)

<sup>11</sup> Braedley, S., & Luxton, M., eds. (2010). *Neoliberalism and Everyday Life*. McGill-Queen’s Press-MQUP.

<sup>12</sup> Ganti, T. (2014). *Neoliberalism*. *Annual Review of Anthropology*, 43(1), p.92.

<sup>13</sup> Mbataru, P. (2014). Scramble for Africa threatens to leave continent starving. *The Africa Review*. February 2014. Accessed on 11 Feb 2015. <http://www.africareview.com/Special-Reports/Scramble-for-Africa-threatens-to-leave-continent-starving/-/979182/2225618/-/uii9niz/-/index.html>.

growing economies. This boom in investment by governments and investors will accelerate the rate of land transfers across the continent and the accompanying displacement and vulnerability of rural peoples. Within the context of a free-market approach described above; land acquisition is a growing and worrisome trend, often described in the literature as “land grabbing.” According to FIAN,<sup>14</sup> land grabbing is possession and/or control of a scale of land by lawful or unlawful means for commercial/industrial production, which is disproportionate in size compared to the average land holding in the region. But as Peters explains: “The fact that the land deals are all fairly new in Africa and that many of the acquired land areas are not yet in production means that the effects on access to land, food security and livelihood for rural people are not yet fully known.”<sup>15</sup>

In practice, when government and the private sector buy up large tracts of land at home and abroad, they invest in development projects including dams, mining, tourism infrastructure, special economic zones, and land for biofuels and agriculture. But land acquisition invariably displaces local populations; lands are never “idle” or “empty.” The fact that 90% of rural lands in Sub Saharan Africa are undocumented poses a formidable challenge to land security for local communities.<sup>16</sup>

In one research on land acquisition in five African countries,<sup>17</sup> the authors explain that “concepts such as ‘idle’ land often reflect an assessment of the *productivity* rather than *existence* of resource uses. These terms are often applied not to unoccupied lands, but to lands used in ways that are not perceived as “productive” by government. Low-productivity uses may still play a crucial role in local livelihood, food security strategies and land conservation. Even when forced displacements are planned and obvious, it is argued by states and the private sector that subsequent problems affecting PAPs are the necessary and unavoidable cost of measures to raise the economic level of the majority.”<sup>18</sup> Both of these examples reflect arguments and rationales for a development approach that, we argue, demands the attention to apply standards of implementation to mitigate the social and environmental risks of population displacement.

Finally, even when attention is devoted to PAPs in the form of protocols to guide development and land acquisition, the system can often go awry. This is partly due to the magnitude of finance capital funnelled into development and the sheer scale development

<sup>14</sup> FIAN (FoodFirst Information and Action Network). (2010). Annual report 2010. FAIN International, Heidelberg, Germany: FAIN. [http://www.fian.org/library/publication/detail/fian\\_annual\\_report\\_2010/](http://www.fian.org/library/publication/detail/fian_annual_report_2010/).

<sup>15</sup> Peters, P. E. (2013). Conflicts over land and threats to customary tenure in Africa. *African Affairs*, adt047, p.560.

<sup>16</sup> Byamugisha, F. F. (2013). Securing Africa’s land for shared prosperity: a program to scale-up reforms and investments. International Bank for Reconstruction and Development. Washington DC: World Bank Publications. <https://openknowledge.worldbank.org/bitstream/handle/10986/13837/780850PUB0EPI00LIC00pubdate05024013.pdf?sequence=1>. Accessed February 21, 2015.

<sup>17</sup> Cotula, L., S. Vermeulen, R. Leonard, and J. Keeley. (2009). Land grab or development opportunity?: Agricultural investment and international land deals in Africa. IIED/FAO/IFAD, London/Rome. P. 62.

<sup>18</sup> Maldonado, J. K. (2012). A New Path Forward: Researching and Reflecting on Forced Displacement and Resettlement Report on the International Resettlement Conference: Economics, Social Justice, and Ethics in Development-Caused Involuntary Migration, The Hague, 4–8 October 2010. *Journal of Refugee Studies*, fer036. Terminski, B. (2012). Environmentally-induced displacement: Theoretical frameworks and current challenges. Centre d’Etude de l’Ethnicité et des Migrations, Université de Liège, Research Paper; Terminski, B. (2013). Development-induced displacement and resettlement: Theoretical frameworks and current challenges. *Development*, 10, 101.

projects. Currently, the world is experiencing the “biggest investment boom in human history.”<sup>19</sup> It is reported that \$6-9 trillion annually (8 per cent of global GDP) are devoted to mega dollar projects across the globe, mainly involving public-private partnerships in the energy sector, including the role of the WB Group shifting to large-scale infrastructure projects.

As estimated, more than three and half million of the world's poorest people have been forced from their homes, land and jobs over the past decade by World Bank-funded projects. More than 400 of these projects were confirmed to have uprooted local people and a further 550 may have caused displacement, according to the research.<sup>20</sup> Among these, in Uganda 19 projects involved displacement between 2004 and 2013, this “represents 31% of all the World Bank-financed projects in Uganda. An estimated 55,318 people were displaced by 9 projects.”<sup>21</sup> According to the Bank's own subsequent response (released March 2015), entitled “Action Plan: Improving the Management of Safeguards and Resettlement Practices and Outcomes,” the goal will be to strengthen the safeguards on accountability, co-management with national governments and private developers, and monitoring the whereabouts and status of PAPs.<sup>22</sup>

At the same time, this research argues that a more balanced approach to development is possible. There is opportunity in Africa to take advantage of the current investment boom, leveraging abundant and highly valuable natural resources with efforts to enforce policies that reduce the risks of dispossessing poor landholders, while ensuring benefit for investors. In short, the controversy of ‘land grabs’ can be turned into development opportunities. But this will require the participation of many players including Pan-African organizations, Africa governments, the private sector, civil society and development partners, depending to a large extent on political will.<sup>23</sup> In our view, the first step for African countries is the formulation among stakeholders of a comprehensive policy reform on land acquisition and resettlement, supported by the international development community.

### 3.3 Land Acquisition in Uganda

Since the discovery of commercially viable oil reserves in 2006, Uganda has turned to extractives and oil development as a high national priority, as evidenced by the recent 2016-17 national budget allocations for oil development.<sup>24</sup> Oil and gas requires substantial

<sup>19</sup> Bretton Woods Project. (2015). The World Bank: In the vanguard of an infrastructure boom. *Bretton Woods Observer* (Winter 2015). <http://www.brettonwoodsproject.org/2015/02/world-bank-vanguard-infrastructure-boom/>. Accessed May 20, 2015.

<sup>20</sup> Ibid.

<sup>21</sup> International Consortium of Investigative Journalists (ICIJ). (2015). <http://www.icij.org/project/world-bank/explore-10-years-world-bank-resettlement-data>.

<sup>22</sup> World Bank Group. (2015). Action plan: improving the management of safeguards and resettlement practices and outcomes. <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/3/71481425483119932/action-plan-safeguards-resettlement.pdf>. Accessed April 3, 2015.

<sup>23</sup> Byamugisha, F. F. (2013). *Securing Africa's land for shared prosperity: a program to scale Up reforms and investments*. International Bank for Reconstruction and Development. Washington DC: World Bank Publications. <https://openknowledge.worldbank.org/bitstream/handle/10986/13837/780850PUB0EPI00LIC00pubdate05024013.pdf?sequence=1>. Accessed February 21, 2015.

<sup>24</sup> See Uganda Budget Information, Ministry of finance Planning and Economic Development, <http://budget.go.ug/budget/national->



capital investments, often relying on foreign-based capitalization and multinational firms constructing facilities and operating them. Several foreign companies have drilled exploratory wells, estimating the reserves at 6.5 billion oil barrels, and the government of Uganda has issued production licenses to several foreign oil companies. Land acquisition is triggered by government projects for infrastructure development- roads, dams and power grids; mineral exploration and development; oil production, including refineries, pipelines and waste facilities. Land acquisition is also triggered by land speculation, private investments and the development of auxiliary services; development has a “multiplier effect” generating businesses and services, and increasing inflationary pressures on services and the land market.

All these demands for land often result in an increased frequency of “crises” of displacements and resettlement. In Uganda, land has become a critical source of tensions and conflicts in many parts and regions as population grows rapidly, deforestation spreads, and development expands. Land does not have to be arable or associated with current agricultural ecologies. As Ferguson explains,<sup>25</sup> like other extractive industries, oil and gas is characterized by “enclave” development, attracting substantial investment in isolated regions of a country alighting in enclaves that are starkly disconnected from their national societies. Thus, development can be disconnected throughout a country; investment may not “trickle down,” but instead leaps over territories and peoples to limited spatial areas of extraction. While it is true that governments talk about “revenue sharing” and “local content,” in many ways communities in oil development zones are impacted widely due to costs of living, competition for land and housing, and land speculation for erecting auxiliary industries and services.<sup>26</sup>

This puts land acquisition for development projects by government, investors and land speculators at the centre of current policy for economic development and implementation, such as the Uganda Investment Authority (UIA) and the Investment Code Act (1991), which play a key role in enabling current investor access to land. Projects involving the displacement of populations include the five case studies in this report, as well as the much-discussed past and proposed projects for hydroelectricity (Isimba and Karuma dams), reforestation plantations (The New Forests Company), and palm oil agribusiness (Lake Victoria islands).<sup>27</sup>

In the mining sector, the government is in the process of reviewing the 2001 Mining Act so that investors negotiate directly with the government for access to the land and avoid

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budgets-documents

<sup>25</sup> Ferguson, J. (2006). *Global shadows: Africa in the Neoliberal World Order*. Duke University Press. P.41.

<sup>26</sup> Deininger, K., D. Byerlee, J. Lindsay, A. Norton, H. Selod, and M. Stickler. 2011. *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* Washington, DC: World Bank.

<sup>27</sup> African Business News. (2015). “Uganda’s parliament agrees on US\$1.44bn loan for Karuma dam” (April 5, 2015). <http://lankainformation.lk/2015-03-04-04-29-46/african-business-news/item/1006-uganda-s-parliament-agrees-on-us-1-44bn-loan-for-karuma-dam>; Grainger, M., & Geary, K. (2011). *The new forests company and its Uganda plantations*. Washington DC, USA: OXFAM International; van Schaik, A. & Tickell, O. (2015). UN, banks and oil palm giants feast on the stolen land of Uganda’s dispossessed. *The Ecologist* (Feb 19, 2015) [http://www.theecologist.org/News/news\\_analysis/2759987/un\\_banks\\_and\\_oil\\_palm\\_giants\\_feast\\_on\\_the\\_stolen\\_land\\_of\\_ugandas\\_dispossessed.html](http://www.theecologist.org/News/news_analysis/2759987/un_banks_and_oil_palm_giants_feast_on_the_stolen_land_of_ugandas_dispossessed.html).



negotiating with the landowners as Section 42 of the Mining Act calls for.<sup>28</sup> Directly relevant to this research, the oil and gas sector has launched many projects affecting the Lake Albert region in Uganda. Clearly, the Ugandan government is facilitating the land acquisition process for itself and for investors to promote the industry and spur economic growth. The result will be an increasing rate of land acquisition and land dealings dictating the displacement and involuntary resettlement of and by many people.

Two key factors shape the pattern of land acquisition in Uganda: land tenure patterns and land titling. All of these demands for land put pressure on the land security. Since most land in Uganda is classified as customary, protections for land rights are weak for the majority of communities, making them vulnerable to dispossession and displacement. The second factor shaping land acquisition is land titling. According to Strickler,<sup>29</sup> “inefficient (and sometimes corrupt) administration of the title registration system reportedly makes it expensive to verify land ownership, which complicates land transfers. The low overall rate of land registration (only some 20% of land is registered) and difficulties of navigating customary tenure systems on unregistered land make it difficult for investors to acquire land.”

Patterns of land tenure and titling process act as primary constraints to the establishment and growth of oil-related facilities and businesses, but land acquisition by government has been facilitated nonetheless. However, Ugandan law places limits on the ability of government to compulsorily acquire land. The Constitution (Section 26(2)(a)), the Land Act (1998) and the Land Acquisition Act Cap. 226 (1965) prohibit the government from using acquisition to promote investment. Thus, tension exists between Ugandan law and actual investment and land acquisition practices. The cases we studied in this report involve government acquisition of land for projects related to energy: hydropower, oil production, biodiversity conservation and transportation (i.e., roads). We hypothesize that these types of projects, as government sanctioned, create opportunities for various agencies to interpret the existing laws in different ways that can undermine the security of land tenure not only for investors, but also for existing owners and tenants. This insecurity in land ownership impacts those communities who inhabit the land.

### 3.4 Community Land and Livelihoods

What are the effects of this vulnerability on the livelihoods of people occupying lands that are targeted for acquisition? The literature is rich in cases of resulting food insecurity. Constraining the use of land can result in the loss of farming capacity, poor health and nutrition, poverty, a shift to wage labour, migration to urban slums, loss of a sense of belonging and community, separation from burial grounds and cultural sites, and the loss of other assets such as firewood, timber, honey, and medicinal herbs, and grazing land

<sup>28</sup> Bwesigye, D. B. (2015). Negotiate with mineral-rich land owners. (6 October 2014). Oil in Uganda. <http://www.oilinuganda.org/features/land/negotiate-with-mineral-rich-land-owners.html>. Accessed November 2014).

<sup>29</sup> Strickler, M. (2012). P. 9. Governance of large-scale land acquisitions in Uganda: The role of the Uganda Investment Authority. World Resources Institute, African Biodiversity Collaborative Group (ABCG). [http://www.abcg.org/document\\_details?document\\_id=142](http://www.abcg.org/document_details?document_id=142)

for livestock. Vulnerable groups are especially at risk such as women, children and the elderly.<sup>30</sup>

This discussion raises the importance of the need to protect community interests and livelihood during the development process. The shift in emphasis to protecting local land and natural resources is aptly stated in Oxfam's study<sup>31</sup> on land acquisition in Uganda and elsewhere: "New demands for . . . commodities on the world market have the potential to provide opportunities to local communities in areas of increasing investor interest. But at the moment, they present more of a risk than an opportunity for communities. The power balance has to shift in favour of those most affected by land deals."<sup>32</sup>

Uganda has a window of opportunity to "balance" the power of intensive development and to remedy existing and future projects. Attention must be targeted at the national level on industry, civil society and government bodies to address community concerns and grievances surrounding projects, which are increasingly framed in terms of human rights. Strengthening laws and policies for land acquisition and resettlement will improve fairness and balance in the development of national resources critical to the vision of prosperity for future Ugandans. Principles and mechanisms for this strengthening are identified in the next chapter.

In the next chapter, we turn to the laws, policies, treaties and legal frameworks at the international and national levels. Our review allows a comparison and identification of the "gaps" that need to be bridged between international and national laws, and between policy and the mechanisms of implementation.

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<sup>30</sup> Among many sources, among the ones used in this report, see: Anseeuw, Cotula, & Taylor, M. (2012); Ansoms & Cotula, Vermeulen, Leonard & Keeley. (2009); Hilhorst (2014); OHCHR. (2014); Odusola (2014); Peters (2004); Stickler (2012); Zagma (2011).

<sup>31</sup> Zagma, Bertram. (2011). Land and power: the growing scandal surrounding the new wave of investments in land. Oxfam Policy and Practice: Agriculture, Food and Land Volume 151, Oxfam briefing paper. Oxfam International.

<sup>32</sup> Ibid, p.39.

# CHAPTER 4: INTERNATIONAL AND NATIONAL FRAMEWORKS FOR LAND ACQUISITION

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In this chapter, the policy environment for land acquisition and involuntary resettlement is briefly reviewed, including the international protocols and existing policies and laws of Uganda. An important aim of this research is to examine existing legal frameworks relevant to the Ugandan context, and further recommend considerations in the development of a resettlement policy framework. In our review, one of the key findings is that a disconnect exists between legal protection of the rights of individuals to land and the attendant rights as provided for in policy and legislation on the one hand, and the actual realization of the rights in the course of implementing government development projects.

## 4.1 International Protocols and Multinational Treaties

Many protocols and treaties begin with a focus on the fundamental rights of all persons. Beyond this, many address rights tied to self-determination, the security of the person and to have access to a livelihood, food, housing, education, and health services; restitution and reparations; and corporate responsibility.

The concept of land acquisition is arguably embedded in the right to self-determination recognised under human rights law. Self-determination identifies the rights of a people to “determine their political status and pursue their economic social and cultural development”; however this development should not in any way interfere with the protected right to property.<sup>33</sup>

The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN in 1966 as part of the International Bill of Rights, commits signatories to respect rights such as the right to life, and freedoms of religion, speech, and assembly, including the right to adequate housing. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly going into effect in 1976. Among other things, the framework guarantees a person’s rights to social security, family life, and an adequate standard of living, including adequate food, clothing and housing, and the “continuous improvement of living conditions” (Article 11), as well as continued participation in cultural life.

In its general comment on “forced evictions,” the ICESCR connects these to violations of the security of the person and the right to an adequate standard of living. As defined,

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<sup>33</sup> See General Comment No. 12: Article 1 (Right to Self Determination), para. 2 (12th April 1984).

a forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (UN General Assembly, International Covenant on Economic, Social and Cultural Rights 1966); see also United Nations, OHCHR 2014). The Committee states that all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.<sup>34</sup> The importance of these rights is appreciated by the distinct and further expression in thematic covenants including the Covenant on Elimination of all Forms of Discrimination against Women (CEDAW); Covenant on the Rights of a Child (CRC), Covenant on the Rights of Persons with Disability (CRPWD).

Another influential source of protections is the Vienna World Conference on Human Rights (1993).<sup>35</sup> The framework affirms that human rights are universal, indivisible, interrelated and interdependent and therefore the reading of covenants’ rights collectively cannot be understated. This declaration by the Vienna conference is instructive; in understanding these related principles of human rights, it helps address situations involving land acquisition. These rights include but are not limited to the rights to equality before the law and protection against discrimination and privacy.

An emphasis on the principle of restitution is a right founded in the law on reparations. Restitution is one of the constituents of a reparative regime and its aim is to restore the victim of a human rights violation to, where possible, to as close a situation as the person was before victimisation.<sup>36</sup> Therefore, as a mechanism for remedy to a human rights violation, restitution is strongly embedded in international human rights law. International human rights law includes the Universal Declaration for Human Rights (UDHR),<sup>37</sup> the ICCPR,<sup>38</sup> and the ICESCR<sup>39</sup> – all recognise the right of an individual to remedy before a national and competent tribunal.<sup>40</sup>

At the African regional level, the African Charter on Human and People’s Rights (ACHPR) restates the rights and protections set out in the international human rights law framework

<sup>34</sup> Uganda ratified the ICESCR becoming a member in 1987. Progress towards the Covenant goals are periodically monitored by the UN Commission on Human Rights. In June 2015, the UN conducted an appraisal of Uganda’s track record (See Bwambale, T. [2015] UN appraises Uganda’s social and cultural rights [June 10, 2015]. The New Vision. Kampala, Uganda. <http://www.newvision.co.ug/news/669612-un-appraises-uganda-s-social-and-cultural-rights.html>.) Many NGOs working in Uganda submitted statements for the mission to consider. For example, the Global Initiative for Economic, Social and Cultural Rights said that “while the right to land was constitutionally protected, land grabbing had become a serious issue in Uganda,” with affected communities not adequately consulted or compensated for the loss of land. Especially in the oil rich districts of the Albertine region, land grabbing represents a failure to obtain prior and informed consent of the affected communities, and often results in evictions, increased land conflicts, and court actions (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16057&LangID=E#sthash.dwMnppYR.dpuf>).

<sup>35</sup> See International Covenant on Civil and Political Rights, articles 2(1), 17 and 26, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (accessed 13/02/2015).

<sup>36</sup> See United Nations Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/Res/60/147, para.19, (26th March 2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

<sup>37</sup> Universal Declaration of Human Rights available at; <http://www.un.org/en/documents/udhr/> (accessed 13/02/2015).

<sup>38</sup> International Covenant on Civil and Political Rights, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (accessed 13/02/2015).

<sup>39</sup> International Covenant on Economic and Social Cultural Rights available at <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (accessed 13/02/2015).

<sup>40</sup> See articles 7 and 8 of the UDHR; 2 (2), (3) (a) (b) and (c) of the ICCPR; 3, 4 and 5 of the ICESCR.

discussed above including the right to own and freely dispose of property or where land is needed in public interest then appropriate compensation paid. The Protocol to the ACHPR on the Rights of Women in Africa (2003/2005) specifically enumerates and enjoins states to ensure the protection of women's rights including:

- Access to justice and equal protection before the law
- Participation in the political and decision making process
- Economic and social welfare
- Food and housing security
- Inheritance
- Special protections for women, the elderly, widow's rights and women with disabilities

These protections are significant in as far as they impose on the state a paramount obligation to ensure women are protected by law and otherwise in any context including land acquisition.

Soft law instruments at the same regional level including Guiding Principles on Large Scale Land Based Investments in Africa<sup>41</sup> and Framework and Guidelines for Land Policy in Africa<sup>42</sup> provide for the respect of human rights, respect for women's rights, decisions of investment to be informed by good governance. These instruments recognise that there exist challenges in land administration and management in Africa. These challenges relate to little or no protections for the rights of women including suffering discrimination, non-participation in the decision-making processes, non-recognition of indigenous community rights over land, land tenure and security etc. Accordingly, these instruments impose obligations on the state to ensure development proceeds within a policy framework that allows for livelihoods support and protection of the rights of individuals.

The above international and regional human rights law frameworks acknowledge and provide for protection of covenant rights and where there is a violation the right to remedy is imposed. The frameworks uniquely provide for the right of a people to pursue economic, social and cultural development, on the one hand, and the right of the individual to enjoy and also freely dispose of his or her wealth and natural resources, which includes land, on the other.<sup>43</sup> The right to enjoy one's property imposes a general obligation foremost on the state to ensure its realisation consistent with the other provisions set out in the covenants.<sup>44</sup> This obligation on government entails establishing measures (legislative or otherwise) that provide for the individual's enjoyment of the said right to property, which may include security of tenancy, protection from unlawful evictions and displacements, etc.<sup>45</sup>

<sup>41</sup> See articles 7 and 8 of the UDHR; 2 (2), (3) (a) (b) and (c) of the ICCPR; 3, 4 and 5 of the ICESCR.

<sup>42</sup> The Framework and Guidelines are an initiative of the African Union, African Development Bank and United Nations Economic Commission for Africa. The Principles are a 2010 publication.

<sup>43</sup> See article 1 of the ICCPR and ICESCR.

<sup>44</sup> See General Comment No. 12: Article 1 (Right to Self Determination), para. 5 (12th April 1984).

<sup>45</sup> See General Comment No. 12: Article 1 (Right to Self Determination), para. 5 (12th April 1984).

The operational procedures of the World Bank (WB) are a case in point. Cernea describes a turning point over 30 years ago when the WB began to develop policies to safeguard the rights of those displaced by Bank-financed development projects, introducing “social analysis and appraisal” into its operational procedures (OP).<sup>46</sup> The regional development banks (including the African Development Bank), governments themselves, and other sources of financial capital for development have followed the WB lead on procedures for involuntary resettlement caused by development projects.<sup>47</sup> A notable advance is the International Finance Corporation’s (IFC) Performance Standards, especially Standard 5 on “Land Acquisition and Involuntary Resettlement.”<sup>48</sup> The WB and the IFC frameworks are primarily designed for clients of the respective institutions, but they offer unprecedented policy guidance with respect to resettlement.<sup>49</sup> These standards advocate for avoidance of or minimal displacements of individuals from lands; forced evictions; due diligence to minimise adverse social and economic impacts on communities; prior compensation; public participation and consultation; restoration of livelihoods and improved living conditions including making provision for adequate housing.

These institutions specifically require in each thematic area defined below additional standards as follows:

- **Compensation:** In every case of compensation there must be transparency, consistency in application to all persons affected. In situations where livelihoods of displaced persons are land-based or where land is collectively owned, displaced persons must be offered land-based compensation. In all cases, possession of acquired land and related assets should be taken only after compensation has been made available. Resettlement sites and moving allowances must be provided to the displaced persons in addition to compensation.
- **Community Engagement:** The developer is required to ensure there is active community participation as set out in IFC Performance Standard 1.<sup>50</sup>
- **Grievance Mechanism:** In all situations where involuntary resettlement arises there must be established a grievance handling mechanism and this mechanism must be consistent with the grievance mechanisms set out in IFC Performance Standard 1.
- **Livelihood Restoration Planning and Implementation:** There must be collection of appropriate socio-economic baseline data to identify the persons who will be displaced by a project and determine who will be eligible for compensation and assistance. There

<sup>46</sup> Cernea, M. M. (2015). Landmarks in Development. In *Making a difference?: Social assessment policy and praxis and its emergence in China*, S. Price & K. Robinson, ed., pp. 35-59. (Volume 6 of Asia-Pacific Studies: Past and Present). Berghahn Books.

<sup>47</sup> Bradlow, D. D., & Fourie, A. N. (2013). The Operational Policies of the World Bank and the International Finance Corporation. *International Organizations Law Review*, 10(1), 3-80.

<sup>48</sup> IFC. (2012). IFC Sustainability Framework. Policy and Performance Standards on Environmental and Social Sustainability. [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes)

<sup>49</sup> See Objectives of the IFC Performance Standard 5 and WB Operations Policy 4.02.

<sup>50</sup> Performance Standard 1 of the IFC deals with “Assessment and Management of Environmental Risks and Impacts.”

must also be in place established procedures necessary to monitor and evaluate the implementation of a 'Resettlement Action Plan or Livelihood Restoration Plan' and take corrective action as necessary.<sup>51</sup>

- **Resettlement Action Plan (RAP) Requirements:** In all situations of resettlement, a RAP must cover, at a minimum, the applicable requirements of the IFC Performance Standards and WB Operational Policy regardless of the number of people affected. Compensation as envisaged in the RAP must be at full replacement cost for land and other assets lost. Where people living in the project area are required to move to another location, the (to be) displaced person/s must as of right be offered choices on feasible resettlement options, including adequate replacement housing or cash compensation where appropriate. In all such cases of displacement, provision for assistance during relocation suited to the needs of each group of displaced persons must be made. New resettlement sites built for displaced persons must offer improved living conditions.

The WB and IFC framework standards discussed above evidently go beyond the legal protections set out in international legal frameworks by providing rights holders with tangible mechanisms sensitive to land acquisition and involuntary resettlement. In contrast, provisions of rights made in International Covenants and other 'soft law' guidelines do not necessarily spell out the detailed measures, mechanisms and procedures that would entail actual realisation of the rights. For example, the right to property does not specify *the detailed policy measures and operational mechanisms that would be necessary for its realisation*. Where this is not spelt out, problems will remain.<sup>52</sup>

## 4.2 Corporate Social Responsibility

Another set of relevant approaches to rights and protections on land acquisition and displacement targets businesses and firms to be more responsible in their development activities. In this view, developers and corporations themselves are in the best position to voluntarily adopt best practices that safeguard local communities while development takes place. This approach, known generally as Corporate Social Responsibility (CSR), focuses on the question of whether transnational corporations are capable of bearing international obligations for human rights, and if so, how to fulfil the responsibility.<sup>53</sup> Advocates point to a future in which the private sector plays a role as a global citizen. It is often the case

<sup>51</sup> See paragraphs 19 and 25 of the IFC Performance Standard.

<sup>52</sup> As described elsewhere, the Bank has been recently criticized as unable to monitor its own policies and actions, and assure that host-governments implement safeguards (Thompson Reuters Foundation 2015). The WB admitted in its own self audit that it could not manage or monitor the safeguards built into its funded projects regarding impacts on resettled peoples. In an audit of its "Involuntary Resettlement" program completed in mid-2014, the status of displaced people was unknown for 61 percent of sampled Bank-funded projects. The Bank reported that it had no idea how many people may have been forced off their land to its projects in developing countries, and whether these people were compensated fairly and on time. According to a research by the International Consortium of Investigative Journalists (ICIJ), more than 3 million people were physically or economically displaced by nearly 1,000 World Bank-financed projects between 2004 and 2013 (International Consortium of Investigative Journalists 2015). The resulting tensions and contradictions may lead the Bank to reverse its stance on strengthening safeguards against social and environmental impact. (World Bank Group 2015). As such, operating procedures that offer resettlement protections would be diluted.

<sup>53</sup> In addition to the ones described here, see also Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (OECD Publishing, 2011) 'Concepts and Principles' Part 1, para 4; and International Labour Organisation (ILO) Tripartite Declaration on Multinational Enterprises and Social Policy (ILO, 2006) para 6.



that the private sector can bring much-needed capital, technology and innovation, but challenges remain to translate this into development results that benefit a wide range of stakeholders.

Towards this objective, the UN Special Representative on Business and Human Rights established a new set of “Guiding Principles on Business and Human Rights.” Officially endorsed by the UN Human Rights Council in 2011, the ‘Protect, Respect and Remedy Framework’ has been instrumental in clarifying the wider debate on corporate social responsibility.<sup>54</sup> The framework rests on several pillars and identifies roles for businesses to meet their internationally recognised human rights obligations:

- Identify, prevent, and mitigate the adverse human rights impacts of their operations;
- Exercise due diligence pertaining to adverse human rights impacts that the business enterprise may cause or which may be directly linked to its operations (taking responsibility for its supply chain);
- Communicate externally how the company is addressing its human rights impacts;
- Give victims access to effective remedy.

In the event of negative impacts of development, governments and corporations are required to provide access to remedy for victims,<sup>55</sup> as required in other international covenants. Such frameworks and guidelines, taken together, bring attention to the State’s duty to ensure that businesses protect against rights abuses and promote responsible contracting between government and the private sector. Potentially, these principles can infuse global and national initiatives, whether through corporate responsibility efforts or through regulatory channels. However, the question remains on how corporations can be held accountable legally at the international level should a host-government prove unable or unwilling to address abuses?

Along similar lines, the Natural Resource Charter (2014) represents strategies governments can pursue to address social accountability as well as inclusive, sustainable growth in the extractive sector.<sup>56</sup> The Natural Resource Charter is a civil society-led initiative that provides twelve principles based on lessons learned around the world.<sup>57</sup> The principle or “precepts” most useful for this research are:

- Precept #1: Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, a clear legal framework, and competent institutions;

<sup>54</sup> United Nations, Office of the High Commissioner for Human Rights (OHCHR). (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework. UN Doc A/HRC/17/31. New York and Geneva. <http://business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights>. Accessed on Jan 22, 2015.

<sup>55</sup> Ibid.

<sup>56</sup> Natural Resource Governance Institute (2014) Natural Resource Charter. 2nd ed. <http://www.resourcegovernance.org>; <http://www.naturalresourcecharter.org>

<sup>57</sup> Natural Resource Charter, <http://naturalresourcecharter.org/>



- Precept #5 - The government should pursue opportunities for local benefits, and account for, mitigate and offset the environmental and social costs of resource extraction projects;
- Precept #11 - Companies should commit to the highest environmental, social and human rights standards, and to sustainable development;
- Precept #5 of the Natural Resources Charter is one such guiding tool that will enhance development for the government of Uganda, especially in the emerging mining and oil and gas sectors. Precept 5 encourages the government to see itself as custodian of natural resource assets, to work with local government close to communities, to pursue opportunities for local benefits and for involving local communities, and to account for and offset the environmental and social costs of resource extraction projects.

In the oil and gas sector, a noteworthy protocol on mitigating development impacts derives from the International Petroleum Industry Environmental and Conservation Association (IPIECA). The IPIECA formed a Social Responsibility Working Group (SRWG) in 2002 in order to share good practice on social responsibility issues including human rights, local content, indigenous peoples and social investment. Several guideline documents are published to promote mechanisms for sound implementation practices and solutions, including engaging stakeholders, training industry staff, working with communities, government and non-government organizations.<sup>58</sup>

Certainly, these initiatives are slowly adding the “teeth” of mandate and enforcement, and they provide valuable guidelines and checklists for development in emerging economies around the world. The trend towards corporate responsibility encourages industry and host-governments to exercise their duty to protect people from human rights abuses by others, including businesses, especially tied to land acquisition, as well as allowing local communities more effective access to remedies.

While voluntary guidelines as found in these examples are gaining traction, wide spread adoption has a long way to go, and in cases where adopted, implementation can be uneven from case to case. That is why we argue that local communities will require partnerships with civil society (CBOs and NGOs) to rethink and transform development towards inclusive growth that respects community sustainability. At the core of this process, ‘social accountability’ constitutes the rights and duties that exist between people, government, the private sector, and civil society to establish social compacts that share development benefits in society.<sup>59</sup> For example, a balanced approach will involve coordinated roles by a range of stakeholders – all contributing to project outcomes. The Oxfam publication *Land and Power*,<sup>60</sup> describes such roles for:

- Corporations and investors: The rights of the communities affected by land acquisition

<sup>58</sup> International Petroleum Industry Environmental and Conservation Association (IPIECA). <http://www.ipieca.org/focus-area/social-responsibility>

<sup>59</sup> Khoday, K. and L. Perch. (2012). Development from below: Social accountability in natural resource management. Working Paper, International Policy Centre for Inclusive Growth, No. 91. Brazilia, Brazil. <http://www.ipc-undp.org/>.

<sup>60</sup> Zagma (2011), *ibid*, pp.39-41.

and resettlement must be respected and their grievances addressed, and those who are profiting from the international deals must help to ensure this happens. Investors should respect all existing land use rights. Those financing and sourcing from land acquisition projects, and companies further down the value chain, must use their influence to ensure that this happens.

- Governments hosting investments: The balance of power must be shifted in favour of local landholders and communities. Governments should adopt strong, internationally-applicable standards on good governance relating to land tenure and management of natural resources. Respecting and implementing all current laws and acts related to land rights is essential, as well as adopting robust mechanisms for resettlement and livelihood restoration. Governments should respect and protect all existing land use rights, and ensure that the principle of free, prior, and informed consent is followed and that women have equal rights to access and control over land.
- Citizens: The public can hold government and investors accountable through the ballot box, petitions, court actions, and working with local government.
- Civil society organizations, along with media and research institutes, can use accountability mechanisms, expose bad practices, acknowledge good practices, and help build transparency.

As evidenced in this chapter, we can witness a proliferation of international “soft law instruments” and frameworks. Much thought and energy is behind this movement to help mitigate the social and environmental risks that accompany development. Many of the frameworks examined in this chapter provide for state obligations to protect, respect and fulfil human rights and ensure the wellbeing of African people.<sup>61</sup> How does Ugandan law and policy compare?

### 4.3 Land and Ugandan Legislative Law

Uganda is one of many African countries that has made advances in the legal recognition of indigenous land rights and customary land tenure systems, recognizing that a community’s relationship to land is “more than an aggregation of individual plots but extends to land-based resources used in common, such as pastures, forests, and water. Legal protection in principle thus extends beyond cultivated or inhabited parcels.”<sup>62</sup> In practice, though, land rights are complicated by customary tenure. Nearly 70% of all land in Uganda falls under customary tenure. In fact, as documented elsewhere, non-freehold tenure systems in rural areas create ambiguities of ownership which tend to allow easier investor access to parcels of land at that point when claims to land are needed for development.<sup>63</sup> This

<sup>61</sup> These soft law instruments include; United Nations Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; United Nations Guiding Principles for Business and Human Rights; United Nations Declaration on Permanent Sovereignty over Natural Resources; amongst others.

<sup>62</sup> Deininger, et al., *ibid*, p.100.

<sup>63</sup> Ng’ombe, A., Keivani, R., Mattingly, M., & Stubbs, M. (2014). Impacts of privatization of customary land rights in Zambia: A comparative research of rural and Peri urban locations. *International Journal of Urban and Regional Research*, 38(6), 1985-2007;

parallels our research findings that the existing frameworks for land acquisition in Uganda do not guarantee security of tenure particularly regarding lands classified as customary during the process of development.<sup>64</sup>

According to the Constitution (1995) and Land Act (1998) of Uganda, land belongs to the citizens of Uganda; but this should be qualified. Historically, the earlier Land Acquisition Act (1965, Cap 226, Section 7) allowed for compulsory acquisition of land without prior payment of compensation undermining the right to property protection. The Constitution framers were cautious about lessons learnt from past regimes in which land and property was taken freely. The Constitution (Art. 26) was a corrective, restricting the powers of the central government to acquire land compulsorily. Upon this foundation, the Constitution reinforces the principle that “the land belongs to citizens.” In its National Objectives and Principles of State Policy, the Constitution provides in Principle 11 for regulation of acquisition, ownership, use, disposition of land and other property in accordance with the constitution. Accordingly, provision is made for compulsory land acquisition subject to fair, prompt and adequate compensation, which provision is further provided in the Land Act. This new conceptualization meant that apart from public land, the state must negotiate with citizens if it wants land from them for development. These provisions, however, do not go far enough in addressing best practices as outlined in the various international mechanisms discussed above.

The Land Act (1998) is the principal legislation that regulates land management in the country including providing for the realisation of the land rights as promoted, protected and respect by the Constitution. The Act significantly requires any landowner including non-citizens to use land in accordance with other existing legislation respecting to forests, mining, environment, water, wildlife and other laws.<sup>65</sup> The Act, however, is also a game-changer, developing a vibrant land market in Uganda, applied today as a basis for the adoption of a market-oriented oil development and land acquisition. The Act, then, made it much easier for land to be exchanged: private and state investments are considered legitimate, allowing the government to take occupied or customarily held land.

But protections were also added stipulating conditions for compensating both owners and tenants. The framework restates the land tenure systems and requires compensation when private land is required in public interest. It also provides for disturbance allowance as part of the compensation policy, which includes consideration of the prevailing market values, a unique feature in the computation of compensation. Section 29 of the Act recognizes the rights of lawful ownership and the “bona fide” tenants to occupy and utilize lands held by a registered owner (i.e. title holder). Accordingly, all tenants are entitled to tenure security and to the right of first refusal where the owner wishes to sell land occupied by tenants. In practice, occupants are entitled to compensation or resettlement when an investor wishes

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Peters (2013), *ibid*.

<sup>64</sup> Tripp, A. M. (2004). Women's movements, customary law, and land rights in Africa: the case of Uganda. *African Studies Quarterly*, 7(4), 1-19; Wily, L. A. (2011). The Global Land Rush: What This Means for Customary Land Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa, Brief #5 of 5. Land and Resource Initiative. Washington, DC. [rightsandresources.org](http://rightsandresources.org).

<sup>65</sup> The Land Act, Section 43. Available at [http://www.architectsuganda.org/resources/UG-Land%20Act%201998%20\(Ch%20227\).pdf](http://www.architectsuganda.org/resources/UG-Land%20Act%201998%20(Ch%20227).pdf) (accessed 22/04/2015).

to acquire the lands they occupy.

While the Land Act raised the status of customary ownership with that of freehold and leasehold, it did not resolve land insecurity. In practice, customary landowners without titles or “customary certificate” are disadvantaged in court cases. This is particularly poignant in Hoima District where the prospect of development has impacted land titling. On the one hand, local land boards are experiencing inertia, stalling the process of issuing titles as future land-use remains in flux. On the other hand, titles are granted to developers and land speculators without the knowledge of the inhabitants.<sup>66</sup> As a result, land registries do not have a system in place to issue the certificates. In courts of law, it is difficult to claim tenancy, let alone ownership, without titles or certificates. Finally, it has been pointed out that recognizing land titles and land boundary demarcation might reveal and unearth latent, unresolved land conflicts – long dormant or festering for years – but flaring up in response to the impending land acquisition engagements.<sup>67</sup> Clearly, there is a need to promote official recognition of customary ownership on par with the documentation provided for other tenure categories.

In sum, the majority of land in the country is held under customary tenure and occupied by ethnic minorities and indigenous communities. The recognition of the system of land holding by customary practices under the Constitution and the Land Act have not helped in the full enjoyment of constitutional and subsidiary legislation rights – hence the continued challenges faced by many a victim of development initiatives.

The recent Uganda National Land Policy (2014) echoes the challenges that characterize the Land Act, including provisions that government will take measures to ensure that: legislation addresses women and children’s inheritance and ownership rights; equality rights of vulnerable groups to land acquisition, ensuring (Policy Statements 66 and 74); encouraging responsible investment consistent with national laws (Policy Statement 88); protecting the security of land tenure (Policy Statement 94); aligning areas of convergence in land policy with international and regional law obligations (Policy statement 156). While this policy makes these huge strides in addressing challenges in land management and administration, a glaring gap remains especially with the question of involuntary resettlement.

The spirit behind the new policy continues a trend to recognize and legalize customary lands through systematic demarcation, registry and certification, providing security and protections in the face of development.<sup>68</sup> At the same time, the policy promotes opening

<sup>66</sup> Namagembe, L. (2015). Uganda: CSOs Cry Out On Land Titles. *The Monitor*, July 24, 2015. <http://www.monitor.co.ug/News/National/CSOs-cry-out-on-land-titles/-/688334/2804650/-/o0r1ym/-/index.html>.

<sup>67</sup> Knight, R., Adoko, J. & Eilu, T.A. (2013) *Protecting Community Lands and Resources: Evidence from Uganda*. Uganda: Namati, LEMU and IDLO. <http://www.namati.org/publications/protecting-community-lands-and-resources-evidence-from-uganda-executive-summary/>

<sup>68</sup> The Uganda National Land Policy (2014) clarifies definitions and the status of land, promotes the use of land for development, the changing status of evolution of tenure, while protecting tenure systems of use and ownership on par with private property (freehold): Sec. 4.3 “On Customary Land Tenure”: Customary does not provide security and impedes the advancement of land markets. Sec. 4.3. 40. Strategies: (i) “design and implement a land registry system to support the registration of land rights under customary tenure” (ii) confer Certificates of Title of Customary Ownership based on the customary land registry that confers rights equivalent to private property (freehold); (v) promote systematic demarcation; (vi) make an inventory of common property resources owned by communities to be managed by them. Sec. 4.3 41. (i) permit only individually owned customary land to be

up the conversion of such lands (especially those individually owned) to the open land market. In effect, it facilitates the exchange of land for development purposes. This should be a welcomed shift from the perspective of developers, supporting a “business case” to avoid the pitfalls of land acquisition in which its legality is called into question as unjust and predatory.

While the policy allows for the freeing up of land for development, it balances this by clarifying the process of restitution and compensation in cases of compulsory land acquisition, which draws attention to displacement and resettlement. Section 3.3 on The Power of Compulsory Acquisition declares the “prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of property,” recommending a strategy (3.3 12. iii) to “prescribe a uniform method for application of the power of compulsory acquisition, especially the payment of prompt, adequate and fair compensation, irrespective of tenure category.” It further prescribes the expediting of a mechanism for local and central governments to exercise this power.

We argue the urgency of implementing both of these aspects of the new land policy: land protections and a restitution process. Our research found that even well-conceived projects guided by Resettlement Action Plans (RAPs) failed to close the gap between good intentions and implementation, resulting in negative outcomes in which project affected persons (or PAPs) were disenfranchised. Aligning policy with mechanisms for implementation is at the foundation of the Uganda National Land Policy.

In summary, the key principles identified in this chapter are a roadmap for developing a comprehensive path for land acquisition, drawing upon well-established global and national frameworks that protect the rights of PAPs. We begin to see the specific mechanisms that will be most useful and feasible for change in Uganda’s land acquisition and resettlement policy. Changes in development and implementation of policy are progressive and take time to put in place, involving official debate, legislation, and operational plans (such as the RAP). The principal obligation of the State is to achieve, progressively, the full realization of rights to land, food security, and livelihood for all citizens involved in land acquisition and resettlement, according to the maximum of available resources.<sup>69</sup>

We acknowledge that the government of Uganda has taken strides towards these ends, most notably integrating the World Bank-influenced Resettlement Action Plans (RAP) into three of the projects we investigated: the oil refinery, the roads project, and the Bujagali hydroelectric power project.<sup>70</sup> Even while the RAP-based projects represent progress towards the enforcement of rights by PAPs, more needs to be done to establish a long-term solution to safeguarding land rights and the welfare of PAPs guided by a consistent and transparent government policy for resettlement.

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converted (evolved) to freehold [relevant to oil extractive region].

<sup>69</sup> United Nations, General Assembly, International Covenant on Economic, Social and Cultural Rights. (1991) [16 December 1966], United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 12 June 2015].

<sup>70</sup> Kato Tony, “Rap Implementation and Land Acquisition for Development in the Albertine Region: A Case Research of Buseruka Sub County, Kabaale Parish, Hoima District”. A paper presented at CSCO Stakeholders Dialogue, Hotel Africana, 14th February 2014.

# CHAPTER 5: CASE STUDY PROFILES

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The research is based on five case studies: Mpokya and Rwamutonga land evictions in Kibale and Hoima districts respectively; Bujagali Hydroelectric Power (BHP) project in Buikwe District; and Oil Refinery (OR) and Hoima to Kaiso/Tonya Road projects in Hoima District. The case studies were identified as land related and characterized by conflict, whereby whole communities were affected by either resettlement or political action and development and conservation informed the course of conflict. We also chose the cases based on how each reflected gaps in policy and project implementation. Additional criteria consisted of the desire to represent both planned government land acquisition projects and private land acquisition for auxiliary oil-related development. We chose three projects in which RAPs (Resettlement Action Plans) were put in place as part of social and environmental impact assessments and project planning and implementation.

The most negatively impacted persons were from the two forceful evictions. The Mpokya evictions that happened in 1992. Although PAPs had since been resettled, they had not been fully compensated. The second was the recent eviction in Rwamutonga and it was associated with negative impacts. The evicted population have been living in squalid conditions since they were evicted in the second half of 2014 with very little subsistence assistance to help them live a meaningful life. This particular group lost nearly every material possession, and even the future of their children due to lack of ability to provide for their families including providing for education, health and feeding due to loss of livelihoods.

## 5.1 Mpokya Case Study

Mpokya is one of the six parishes together with Kanyabutagi, Kyabandara, Dura, Rurama and Kyembogo that were located completely within the Kibaale forest reserve according to a research on the Kibaale Forest.<sup>71</sup> Settlements in this area can be traced to the 1940s through 1970s owing to a number of factors including severe land shortage in Kigezi as demonstrated by occupancy of 179 persons per square kilometre of arable land in comparison to national average of 75 persons.<sup>72</sup> The government implemented resettlement on organized schemes between 1947 and 1976 (e.g., Kigadi Settlement Scheme). These schemes were mostly in the former Tooro District particularly in Ruimi, Kibito, and Kasenda areas all located at the edges of the Kibaale game reserve.<sup>73</sup> Many Bakiga settlers were allowed to settle in Nyabubale pursuant to an agreement between one Mukiga Chief and the King of Tooro.<sup>74</sup> Most settlers initially found opportunities for wage employment in the

<sup>71</sup> Makerere Institute of Social Research, and Land Tenure Centre University of Wisconsin –Madison, USA “Settlement in Forest Reserves, Game Reserves, and National Parks in Uganda: A research of Social, Economic and Tenure Factors Affecting Land Use and Deforestation in Mabira Forest Reserve, Kibale Forest Reserve, and Kibale Game Reserve Corridor”, (1989) pg 13.

<sup>72</sup> Ibid, p 24

<sup>73</sup> Ibid, p 26.

<sup>74</sup> Ibid, p 27.

tea plantations.”<sup>75</sup>

Settlers are said to have been both industrious and to have grown in population. Upon filling the resettlement schemes, new settlers and second-generation households were forced to start looking for land elsewhere hence the entry into forest and game corridors.<sup>76</sup> Given their numbers, the Bakiga established their social and cultural organization to the extent that by 1976, government recognized their chiefs. These chiefs consequentially took over the land allocation duties formerly held by Batooro chiefs. Land acquisition in the area became characterized by inheritance and sale by original settlers.<sup>77</sup> The increase in population exerted pressure on the forest reserve, as well as on public infrastructure including schools, churches, clinics and weekly markets.<sup>78</sup>

As a response to the need for land, new resettlement schemes were planned. It is argued that resettlement schemes, employed by government were connected to five issues related to the economy:

- 1) The existence of potentially rich agricultural land that lagged behind in development because of low population densities;
- 2) The desire to prevent the incursion of the Tsetse fly which spreads bovine and sleeping sickness into new lands, and where it had been cleared, to prevent resurgence of flies;
- 3) Efforts at reducing population pressure through force or persuasion to areas where development would be advantageous. One example was Idi Amin’s government resettling Bakiga farmers in the 1970s from overpopulated Kigezi District in parts of Bunyoro;
- 4) The aim of providing labour for the plantations and the increase in output throughout the growers schemes manned by the settlers;
- 5) The need to resettle the people displaced by the civil wars in Uganda.<sup>79</sup>

Several actions were initiated by government to rid the forests of encroachers dating back to 1972. Between 1973 and 1988 several measures were taken to evict encroachers with little success.<sup>80</sup> A major official resettlement by the national government (Bugangaizi Resettlement Scheme) took place in 1992. The scheme was negotiated by the Member of Parliament (MP) for Bugangaizi County (who later became the Minister of Internal Affairs) and the national government. Around 5,000 Bakiga families were resettled on approximately 100 square miles in Bugangaizi County. The government in 1993 finally implemented its

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, p 23.

<sup>78</sup> Ibid, p 19.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid., p 30.



resolve to evict encroachers and settlers in forest reserves, hence the eviction of over 3,500 families from Mpokya who came to be known as the “Mpokya evictees.”

In the same year, following the enforcement of eviction from the forest reserve, the Mpokya evictees initiated an action in the High Court to recover compensation for the alleged unlawful eviction. The matter was summarily concluded by government agreeing to pay a sum of UGX 12million to each affected person. This effectively opened the door to formal (yet partial) compensation to the evictees from 2000 to 2004. Unfortunately, the first payments towards compensation of affected families by government never reached the intended 3500 beneficiaries. No disciplinary action was taken against the chairperson of the group through whom money was routed by government. In 2011, Uganda government indicated that the compensation would continue but nothing materialized. In February 2015, the print media reported that there was an exercise carried out in Kibaale District to register the names of those eligible for compensation and the same was conducted by district officials.<sup>81</sup> Up to the time of this research a number of Mpokya evictees were still waiting to receive their rightful compensation.

## 5.2 Rwamutonga Case Study

The Rwamutonga case is of a private land acquisition process geared towards a development project – a waste treatment plant in particular. The case is characterized by unlawful eviction of families on private land influenced by personal gain on the part of the persons involved and to the detriment of ordinary people.

Earliest settlements at Rwamutoga village, Katanga in Bugambe Sub County can be traced back to the late 1960s and early 1970s when a handful of settlers occupied the land and were later joined by others over the years.<sup>82</sup> On the 25<sup>th</sup> August 2014, 54 tenants previously recognized by a one Tibagawa; 148 families unlawfully included in Tibagawa's title; and 53 families unlawfully included in Bansigaraho's title resident on land measuring approximately 485 hectares in this village were violently evicted pursuant to a Court Order issued by the High Court at Masindi and arising from a consent order entered between two litigants namely Robert Bansigaraho and Joshua Tibagwa.<sup>83</sup>

Both Bansigaraho and Tibagwa obtained Certificates of Land Registration comprised in FRV 10521 Folio 6 Plot 44 Block 7 and FRV Plot 34 Block 5 of land in Kakora and Rwamutonga respectively. The former and the latter acquired an estimated 40 acres of land each through recognized legal transactions. However, both caused registration of

<sup>81</sup> Daily Monitor (UG) reports: (2015). Forest evictees storm court, by Ivan Okuda (September 15, 2015): <http://www.monitor.co.ug/News/National/Forest-evictees-storm-court/-/688334/2870252/-/la6hnc/-/index.html>; (2014). Government compensates Mpokya settlers, by D. Ayebale & F. Basime (February 18, 2014). <http://www.monitor.co.ug/News/National/Government-compensates-Mpokya-settlers/-/688334/2210356/-/viht8w/-/index.html>; (2011). Mpokya Forest evictees get paid 20 years later, by F. Mugerwa (October 25, 2011). <http://www.monitor.co.ug/News/National/-/688334/1261132/-/bhhi2dz/-/index.html>

<sup>82</sup> Civil Society Coalition on Oil and Gas in Uganda, “Rwamutonga Eviction and its Implications on Rights and Livelihoods of Peasant Communities in the Oil-rich Region of Uganda”, (Draft Report, October 2014), pg 8

<sup>83</sup> Ibid., p 14.



land in excess of what was legally theirs thereby illegally rendering 150 families that owned the other chunks of land trespassers or tenants at sufferance.<sup>84</sup>

Tibagwa then initiated two court actions against residents on land he claimed belonged to him in Civil Suit No. 01 of 2012 and Civil Suit No. 33 of 2012 at the High Court in Masindi and in which he sought Court declarations that he was the owner of 382 hectares of land on the one hand and orders against the residents to give him vacant possession.<sup>85</sup> About the same time Tibagwa initiated another legal action against Bansigaraho and the Hoima District Land Board in which he sought cancellation of the Bansigaraho's land title.<sup>86</sup>

In the midst of all these developments, Tibagwa is alleged to have received an offer from an Investor McAlister Resources Ltd; an American Company registered in Uganda desirous to establish a waste treatment plant to lease the same land and even went ahead to receive an advance payment. It is strongly contended that Tibagwa with the financial boost entered into a consent judgment with his foe Bansigaraho in which he effectively assumed ownership of the entire land contained in Bansigaraho's title and the said title was cancelled.<sup>87</sup> The said consent order was reached without due regard to the households/families that owned land illegally included in his title. Consequently, this led to the illegal eviction of all families' resident on the entire land. Neither Tibagwa nor Bansigaraho paid any compensation to the said 150 families and there has been no intervention on government's part to support the victims of the alleged illegal eviction.

By the time of this research, the case remained in litigation for over a year while families at the IDPs camp continue to struggle.<sup>88</sup> On October 22, 2015, the High Court in Masindi ruled that the eviction was unlawful and the judge awarded the evictees damages and costs of the suit.<sup>89</sup> By the time of this research, the evictees remained stranded in a temporary camp with neither compensation nor damages for wrongful eviction.

### 5.3 Hoima Kaiso – Tonya Road Case Study

The development of this road according to Uganda National Roads Authority (UNRA) was placed in the context of the country's national economic recovery and poverty eradication programmes where minerals and oil exploration are priority areas for investment. Given the oil exploration activities and the prospective oil refinery project in the area, government made a decision to provide an 'enabling investment environment' by upgrading the road

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<sup>84</sup> Ibid., p 10.

<sup>85</sup> Ibid., p 9.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Global Rights Alert. (2015). Rwamutonga evictions: Four dead, hundreds starving (May 20, 2015). <http://globalrightsalert.org/news/rwamutonga-evictions-four-dead-hundreds-starving>

<sup>89</sup> Ssekika, E. (2015) Court rules Hoima villagers were uprooted illegally. The Observer, Kampala. (November 4, 2015). <http://www.observer.ug/business/38-business/40818-court-rules-hoima-villagers-were-uprooted-illegally>.

A consultant was hired to undertake an Environmental Impact Assessment (EIA) and to develop a RAP in accordance with the requirements of the Resettlement/Land Acquisition Policy Framework provided by UNRA. Upon review the RAP was comprehensive in mechanisms and procedures, following the framework of both national law and internationally-accepted best practices. As a result the Government embarked on the process of acquiring extra land from land-owners aided by the relevant laws, the Constitution and Land Act, which require compensation for the land-owners and according to the *Statutory Instrument Number 5 of 2013, The Land Acquisition (Hoima- Kaiso -Tonya road) Instrument*<sup>91</sup>

**Figure 2: Property Loss on a Section of the Road, per the Initial UNRA Survey (from RAP Feasibility Study)**



<sup>92</sup> Uganda Human Rights Commission. (2014). p. 34. Oil in Uganda: Emerging Human Rights issues. Special Focus on Selected Districts in the Albertine Graben. UHRC, Kampala, Uganda. Based on interview findings, the UHRC report states that the road traversed the original alignment with basically realignment to suit the new design; there were affected individuals who were not identified during the pre-evaluation for compensation; houses got damaged due to heavy trucks shaking the ground or those whose access roads to their homes were blocked or whose homes were left hanging, among other conditions. [http://uhrcr.uu.gov/uhrcr/files\\_force/uhrcr\\_resources/UHRC%20Oil%20report%202014.pdf?download=1](http://uhrcr.uu.gov/uhrcr/files_force/uhrcr_resources/UHRC%20Oil%20report%202014.pdf?download=1)

respective government agencies and still await a final determination of their case.<sup>93</sup>

## 5.4 The Oil Refinery land Case Study

The oil refinery (OR) land is one that government acquired in public interest for the purposes of setting up a refinery following the discovery of commercial quantities of crude. The OR project land covers an area of 29.34 Km<sup>2</sup> and affected a total of 13 villages in Kabaale parish, Buseruka Sub County. The project also affected 1221 households and directly affected 2473 persons.<sup>94</sup> The acquisition of the land preceded a commissioning of a RAP to form the basis of compensation. The preparation, implementation and management of the RAP was handled by Strategic Friends International (SFI).

In this case study, the RAP laid out a detailed criteria for resettlement of PAPs including the payment of compensation and resettlement to alternative land for the few PAPs who chose this option; the provision of a complaints handling mechanism; the restoration of livelihoods; etc. In spite of a well formulated RAP that aspired to follow international best practice, PAPs have faced a varying number of challenges. These include: non resettlement to date and delayed housing infrastructure, public services and utilities put in place for the benefit of those who opted for non-cash compensation; exposure to insecurity for persons waiting on resettlement; delayed payment of compensation to PAPs and its effect on the value of money to restore land in the neighborhood; contested valuations and assessments of affected land and developments; exposure to livelihood risk following directives not to continue with developments upon the pronouncement of cut off dates for compensation; inequality in compensation rates applied due to negotiation; and lack of consideration for minority groups like the elderly, child-headed families and PWDs vis-a-vis the options chosen by closest family members/guardians. These challenges continue to prevail for affected PAPs.

## 5.5 Bujagali Case Study

In a bid to increase the available electricity supply, the Government of Uganda in 1999 decided to construct a new hydroelectric power dam at Bujagali, accompanied by a transmission line project (Bujagali Interconnection Project) whose aim was to link the power plant to the national grid. The construction and management was contracted to AES Nile Power (AESNP). However, after some preliminary activities, AESNP withdrew in 2003 and a local company (Bujagali Energy Ltd or BEL) was contracted in 2005 to construct the dam and the state-owned Uganda Electricity Transmission Company (UETCL) to handle the interconnection project.<sup>95</sup> Funding for the project was sourced from different financiers

<sup>93</sup> See <http://www.zegabi.com/articles/8115>

<sup>94</sup> See Oil Refinery Resettlement Action Plan.

<sup>95</sup> Independent Review Panel, "Compliance Report on the Bujagali Hydro Power and Interconnection Projects" (June 20, 2008), pg 17.

The withdrawal by AESNP is attributed to sustained campaigns by environmentalists and civil society organizations which

including the African Development Bank (ADB), African Development Fund (ADF), Japan Bank for International Cooperation (JBIC), the Government of Uganda (GoU), and the World Bank.<sup>96</sup>

A total estimate of “13,760 individuals (3,190 households)” were affected by both projects and lost some assets. Up to 953 individuals (205 households) were physically displaced, losing their domiciles.”<sup>97</sup> According to the independent review panel, “approximately 8,700 people (about 1,288 households) had either been resettled or had lost assets for which they were entitled to compensation. Neither all these people nor all of the affected villages have received all the compensation that they were promised by AESNP”.<sup>98</sup>

Notwithstanding BEL taking up the implementation of the Resettlement Action Plan, the PAPs resettled at Naminya complained of lack of a full range of cash crops, and losing a diversified economy – including fishing and market trading – that they previously enjoyed. Other community members complained about security of tenure, given the delay in processing of title, promised infrastructure like primary school, community and health centre amongst other things that AESNP had undertaken to provide<sup>99</sup>. These were inconsistent with the ADB policy on resettlement.

Regarding the interconnection project, principles for compensation and resettlement were defined by UETCL to include compliance with “Ugandan legal standards,” the IFC Performance Standard 5; and the World Bank OP 4.12. Other standards would include full replacement value, promotion of resettlement as opposed to cash compensation, provision of agricultural land, gender sensitivity, livelihood restoration, consultation and information sharing with PAPs.<sup>100</sup> The RCDAP also laid out a detailed consideration of the eligibility criteria, entitlements and resettlement packages.<sup>101</sup>

In this research, we recognize the importance of practices and outcomes by drawing on empirical, on-the-ground evidence as a way to inform our strategic recommendations and best principles. In the next chapter, the research findings are presented.

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campaigns had the effect of forcing the WB and IFC to withdraw their financial support towards the project.

<sup>96</sup> Ibid., p 18.

<sup>97</sup> Ibid., p 24

<sup>98</sup> Ibid.

<sup>99</sup> Ibid., 25

<sup>100</sup> See “Bujagali Interconnection Project – Resettlement and Community Development Action Plan” (December 2006) p 68

<sup>101</sup> Ibid., p 69.

# CHAPTER 6: DISCUSSION OF THE FINDINGS

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## Introduction: How Implementation Mechanisms Affected Communities

By investigating five case studies in Uganda, this research generated empirical evidence demonstrating how mechanisms work pertaining to land acquisition and involuntary resettlement. Our findings reveal insights on the changed livelihoods of affected communities, including access to land and land resources. By connecting a review of the policy environment to the five case studies and field data, we are in a better position to understand the mechanisms required for engaging communities during project planning and implementation. In this chapter, we present the findings from research objective #2. The findings are organized around the principles and mechanisms of the resettlement process that most impacted the PAP population. The discussion compares the case study data for each of the principles.

### 6.1 Stakeholder Consultations

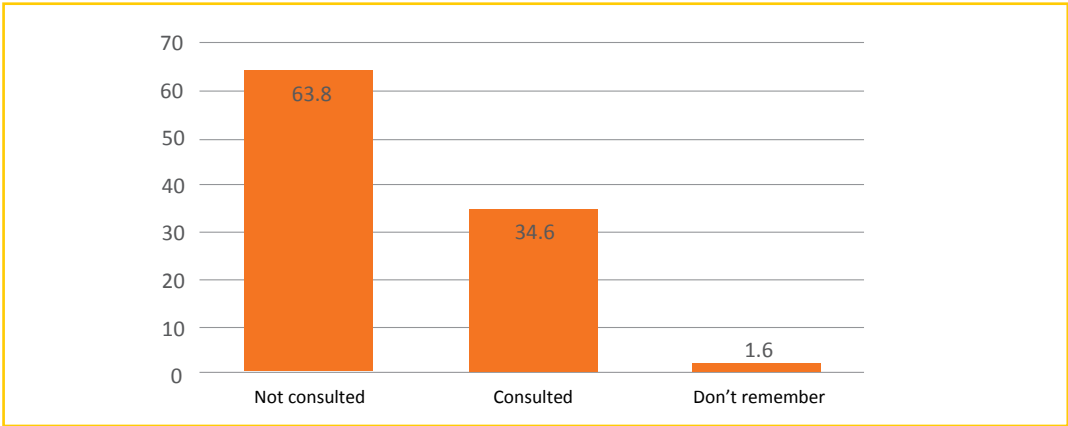
Ideally, land acquisition for development purposes should entail thorough consultation with the population that are likely to be impacted on by the development. These include those who are to be directly affected and other stakeholders who may be indirectly affected such as Local Government officials, environmental groups, cultural institutions and the civil society, among others. Given this, the research set out to establish whether the PAPs were consulted. Respondents were asked individually and in FGDs whether any consultations were carried out before and during project implementation. The research revealed that consultations with PAPs were carried out in the three development projects with RAPs, namely: BHP, OR and the Hoima to Kaiso/Tonya Road. However, the level of consultations varied from one project to another.

Out of the 257 people affected by the BHP project who responded to the question on whether consultations were done, the majority (64%) reported that they were not consulted. Only 35% said their views were sought. It was clear that there had not been any consultations of PAPs in Mpokya and Rwamutonga land evictions.

While consultations were carried out only at the initial stages of the Hoima-Kaiso-Tonya road and oil refinery projects, BHP consultations reportedly went on throughout the course of the project according to an FGD with the PAPs. Consultation was thorough and PAPs were able to contribute to the process in a big way. However, PAPs of the OR and the road

project revealed that consultations were largely limited to the Local Council officials, and that in most cases, PAPs only came to know about the project when the aerial survey was being done as in the case of the of the OR and when the surveyors were plotting areas where the road would pass in the case of the road project.

**Figure 3: Consultations with PAPs**



In the case of the OR, shortly after the aerial survey, a team of people accompanied by labourers, LC officials, and armed policemen began slashing whatever was in the way of their demarcation surveying, covering the boundaries of 29 square kilometres of land where the oil refinery project was to be located. For those who owned land that fell on the boundary, the demarcation process left in its wake piles of crops and other valuables that were removed and, as alleged, never valued and compensated. In addition, the boundary making survey split homes, gardens and land owned by individuals.

As reported in household surveys and FGDs, only a few consultation meetings were done with the PAPs, accompanied by an alleged aerial survey done for the Oil Refinery land. The MEMD strongly disputed this, insisting that the survey was done in the traditional manner and that boundary opening was done by people from within the community that were hired to do so. In the light of the above findings, while efforts were made to consult the PAPs as required by the law and international best practices, the amount of consultations done for the OR was inadequate given that the site in question comprised 13 villages within a total land area of 29 square kilometres. The survey team needed more time and resources to reach every stakeholder within the area, preferably with consultations organized for every village. In the light of this, the authors are of the view that for future projects, RAPs should be designed in such a way that consultation is in-built and taken as an on-going process such as was the case with BHP.

**Inclusiveness of the Consultations Processes**

Findings show that the inclusiveness of the consultation processes varied. According to the BHP RCDAP, consultations were organised for all categories of stakeholders, including

the national and local governments, NEMA, related ministries, the Uganda Electricity Board, and with household for purposes of census and socio-economic survey, which allowed for information on the project to be disseminated to all the potentially affected persons. The research also learnt that consultations involved the Ministry of Gender, Labour and Social Development and Civil Society, according to the Witness NGO.

In contrast, most of the institutions outside the national government were involved in the consultation process in a very limited way in the case of Hoima to Kaiso/Tonya road and the OR projects. Although this was disputed by MEMD, no consultations are documented for the community development department at both district and sub county levels, and neither were they involved in the implementation of the RAP. During interviews, local government officials suggested that a key strategy in the consultation process should have been to empower the community leaders and local government in order to build their capacity to disseminate accurate information to their populations. For example, one layer already in place consisted of the parish chiefs and the district councils. Similarly, discussions with the Bunyoro-Kitara kingdom officials and district Local Council officials revealed that no consultations were made with their respective institutions, particularly sub-regional and district levels. They noted that if any consultation were done, it was carried out with no knowledge of the leadership of their respective institutions. On the contrary, MEMD indicated that all the institutions were consulted and that they had evidence that representatives and officials from the Department of Community Development, the Hoima District Land Board, and the Minister in charge of Gender and Social Development of Bunyoro-Kitara Kingdom participated in the consultation processes.

Though arguable, the challenges related to consultation could have been minimized if the project had developed a public consultation strategy and disseminated it to the stakeholders to mobilize the community, prepare them to ask pertinent questions, and help them make informed choices. This hypothetical position was arrived at based on discussions held with the communities affected by the two projects, which reflected a willingness of the community to give support to the project had the consultations been intensive, all-inclusive and well-coordinated. Clearly, there is evidence of a better way to design consultations, such as those implemented by the BHP, which was reportedly informed by the intensive and sustained consultation.

In the light of the above, we conclude that the consultation mechanism, as a key development intervention, is likely to affect the lives and livelihoods of a community in significant ways. Consultations need to be a two-way street, undertaken intensively to capture issues, how to address them and who should be involved in decision-making. The consultation process should seek to understand the socio-economic and cultural behaviours of the population to be affected and to give people capacity, such as stakeholder mapping, in order to identify the roles that are likely to be played by the different stakeholders during the RAP implementation process.

## 6.2 Stakeholder Sensitization

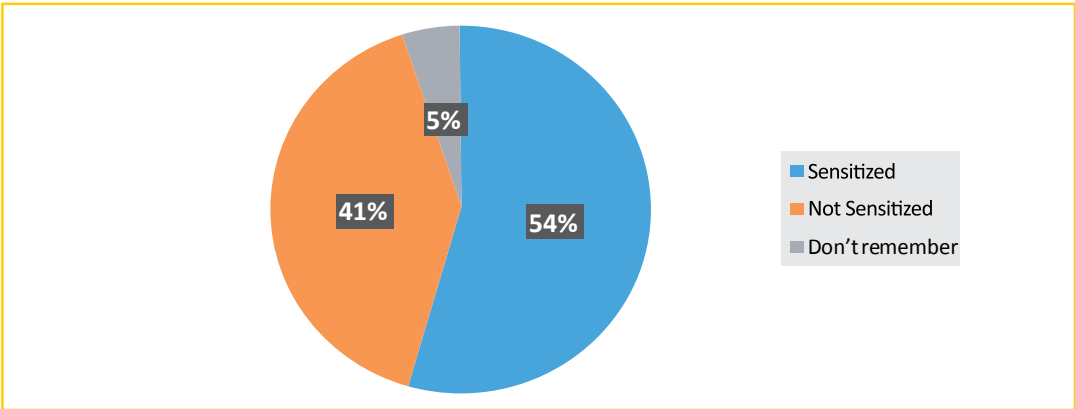
Sensitization is considered a key component of any land acquisition process for many reasons. The mechanism provides information on future actions, providing alternatives for the development project, and helping PAPs select the best options along a timeline of events. Sensitization prepares PAPs psychologically for the changes likely to come to them as individuals, families, groups and communities. It helps PAPs understand the benefits that will accrue to them directly and indirectly and also to the larger local community. Sensitization also makes the project acceptable and generates local “ownership” and support, and it helps in building consensus among groups of people. Most importantly, sensitization can clear misconceptions through its transparency process.

Given the importance of the projects and the misconceptions around them, our research asked questions to evaluate the role played by sensitization in each case research. Information on how sensitization sessions took place; how often they were carried out: and the adequacy of the sensitization was explored.

Out of those who reported that they were consulted, only 54% said they were sensitized; 41% said they were not sensitized: and only 5% could not remember whether they were sensitized. All the BHP PAPs said they were sensitized, whereas a majority of those who were not sensitized were from the Hoima to Kaiso/Tonya Road and OR projects.

For those 55% who claimed to have been sensitized, when asked what they were sensitized about, the vast majority (92%) had been sensitized on “the benefits of the project”; and only 30% said they were sensitized on the Law relating land acquisition (Land Act). About a half reported sensitization on their land rights and on the process of land acquisition. Nearly all stated that they had been sensitized about compensation of project affected persons.

**Figure 4: Sensitization of PAPs**

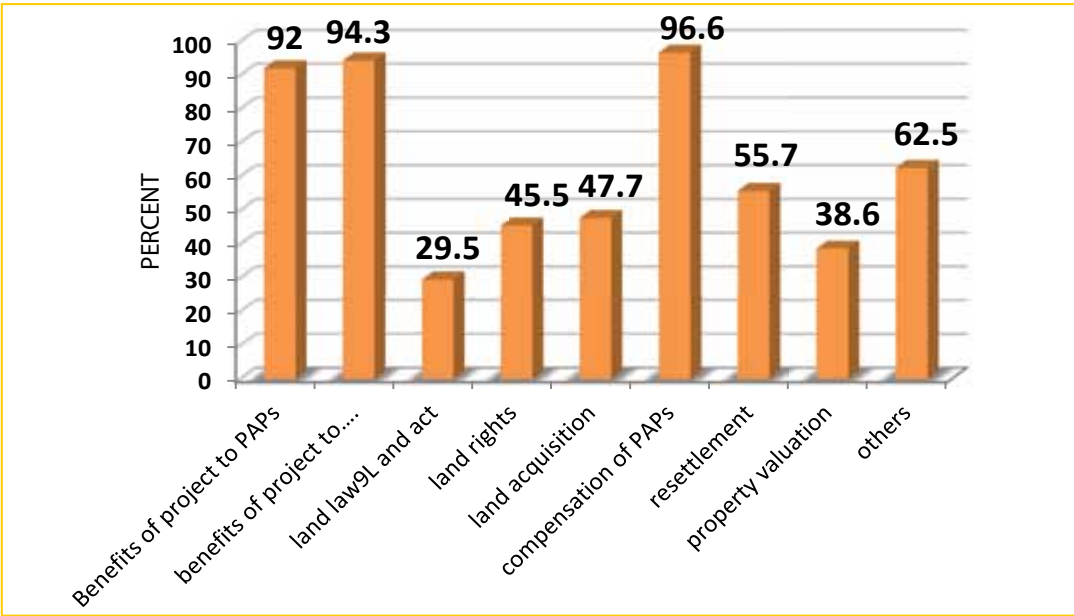


Finally, only 39% said that they were sensitized about valuation of property. As can be



seen in Figure 5 above, emphasis was put on sensitization of the PAPs on the benefits of the project and little was directed towards sensitization on matters that concerned their rights as provided by the law, and on the valuation of property. It is not clear if this was a strategy deliberately designed to minimize perceived negative consequences that would come with an informed community on land law and by extension their land rights. However, it is important to note here that all the BHP PAPs reported that they were sensitized on their land rights, the Land Act, and land acquisition process.

**Figure 5 Topics Covered During Sensitization**

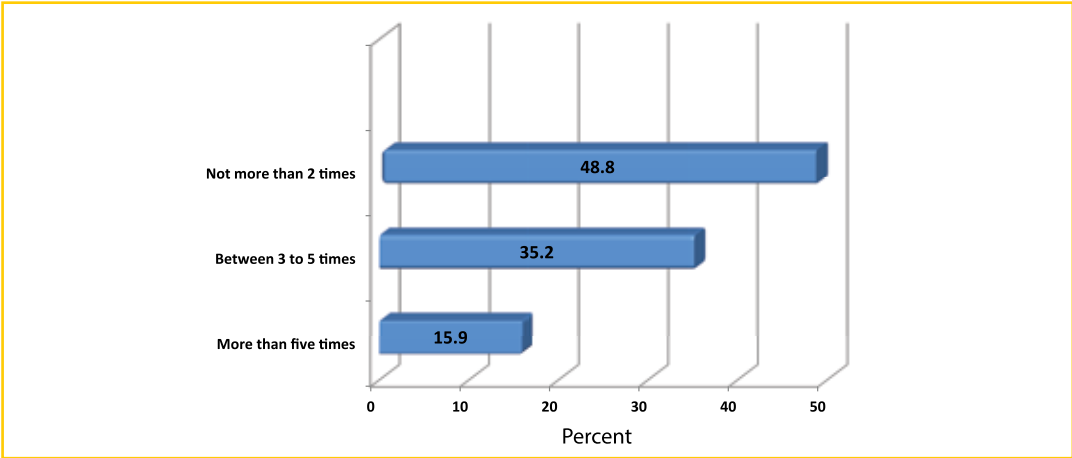


**Perceptions**

Nearly half of the respondents (45%) reported that they were not sensitized about the relocation/resettlement of the PAPs. Even at the BHP site, where PAPs said sensitization was an inbuilt and continuous process, survey comments recommended that the project needed to do a better job of “consulting with PAPs about the relocation place and site” . . . “Let people participate in the site selection and services,” and “Get [PAPs] together to tour the site, and create a sense of unity and community.”

When asked about the number of times they were sensitized, 16% indicated that they were sensitized not more than two times, 35% between three and five times, and 49% reported more than five times. As with consultation, all the BHP PAPs indicated that they were more than five times. Overall, sensitization was viewed as inadequate for 4 out of 10 respondents. Another 54% reported that it was somewhat adequate. Only 8% said it was not adequate at all.

**Figure 6 Number of Sensitization Events Undertaken**



Two-thirds (68%) of those who said the sensitization was adequate/somewhat adequate reported that they started planning on relocation. Some said they consulted their family members, and about one quarter said they consulted their friends. Only 13% said they tried to mobilize other PAPs. Overall, there was limited resistance and organised response by the PAPs towards the projects. This is important as PAPs earlier reported being receptive to the project.

## 6.3 Compensation

### a. *Compensation and Dispossession*

Compensation is at the core of development when property use is compromised or land and assets are dispossessed from their owners. This research examined the compensation process for the three development projects and the Mpokya eviction.

In Mpokya case, the eviction represented a historical case that happened before the more recent laws had established compensation protocols. Mpokya dates to 1992 when the evictees were resettled and promised compensation for the losses they suffered during the eviction process. According to FGDs conducted during the research, each family had been promised a compensation of up to UGX 12 million shillings in lieu of the loss of property and inconveniences caused to them by the earlier eviction, in addition to the five acre pieces of land that were allocated to each family resettled in Kisita and Nalweyo sub counties in Kibaale district. However, total cash compensation made available to each family since 2004 was UGX 800,000/=, with promises that the remainder would be paid later. However, the research team was informed that the compensation process was marred with misappropriation/embezzlement. One of the former leaders of the group had allegedly fled to Mbarara with the compensation money that had been provided by government. This was followed by a directive from the Ugandan President that the perpetrator should be prosecuted if deemed to have diverted the money for his personal use.

Meanwhile, during data collecting, we learnt that a beneficiary verification exercise for the Mpokya evictees had just been concluded in February-March 2015. Our field team met the LC V Chairman of Kibaale District who intimated that they were in the final stages of compiling a list that was due for submission to relevant authorities in Kampala as a final stage towards completion of compensation process. At the same time, several individuals who took part in the FGDs claimed to be unaware of the verification exercise and were at the time unregistered. A number of those met during the research expressed concern that the flat rate compensation would not account for the variation in amounts of property possessed by different families, and that such variations are impossible to account for during a sudden and violent eviction, without proper assessments. It is hoped that with this recent process, the case of Mpokya victims will finally come to an end.<sup>102</sup>

## **b. Compensation Options**

This research established that in the case of BHP project, PAPs had two main options, namely: 1) resettlement in an officially gazetted place with a house modelled on a UN Habitat design and other social amenities such as electricity and water connected to the promises. This option also involved restoration of an equivalent of land acreage owned prior to the project; 2) the alternate package consisted of cash compensation for the value of land, crops and other plants of value. In some cases building materials, payment for labour worth UGX one million, and transport for a PAP relocating within a 50 kilometre radius from the project site was provided.

In the first option, the research established that up to 35 houses were constructed, each on an acre piece of land in a village named Muyenga located in Naminya Parish, Wakisi Sub County, Mukono District (now Buikwe District). The value of each of these houses was estimated at UGX 6 million inclusive of labour and materials. Thirty-three of the 35 houses were eventually inhabited by the PAPs. (One was converted into a school.) The resettled PAPs were compensated an equivalent of land acreage owned prior to the project, within the vicinity of the resettlement village. By the time of this research, only twenty-five still remained in the resettlement village. The rest were reported to have sold off their houses and had moved elsewhere.

Similarly, in the case of the OR project, PAPs had two options, resettlement and cash compensation for land. Cash compensation was paid for developments on the land including houses, crops, fruit and other trees. For PAP's who opted for resettlement, each household was entitled to the same land acreage owned previously in addition to being entitled to a fully constructed house serviced by access roads, water, electricity etc. At the time of this research, none of those who opted for resettlement had been resettled, even after three years of waiting. However, those who opted for cash compensation were either already compensated and had relocated to the neighbouring parishes or elsewhere, or were waiting for compensation in cases where adjustments were made on the valuation. Some were waiting on court actions in circumstances where they were dissatisfied with

<sup>102</sup> The research was unable to discover whether final compensation will take into consideration inflation factor, as the value worth of UGX 12 million is no longer the same as it was in 1992 when the decision was made.

their property valuation outcomes.

The study researchers were informed that the very small number of people who chose the land-for-land resettlement option over full monetary compensation was reportedly a result of the wrongful information given to PAPs by those responsible for administering the compensation process, Strategic Friends International (SFI) – a private, third party firm. In registering PAP choices, many from the focus group, recalled that they were threatened to take cash option lest they would be taken to Karamoja if they opted for resettlement – far from their families and where a livelihood was allegedly difficult to sustain. This revelation emerged as well in the household interviews.

However, SFI disputed the validity of this information, arguing that initially only twenty-seven people out of over 2000 affected by the project had opted for resettlement. With more clarification sixty-six changed from cash compensation to resettlement raising the total number of those who opted for resettlement to ninety-three. Whatever it may be, development projects that are likely to affect a significant number of people directly should be adequately planned, with transparent and accurate information communicated to PAPs, to accommodate the different options that people are likely to make.

In the case of the Hoima/ Kaiso - Tonya Road project, each PAP household had only a single option: monetary compensation based on the value of land and property assets. The presumption of the project implementers appears to have been that only part of an owner's land would be affected by the road project, and thus there was no need to offer a resettlement option for the dislocated households. On the contrary, however, the study findings established that some PAPs had to relocate elsewhere because most of the land they owned was taken up by the road project. This situation is described in depth below.

### ***c. Compensation Outcomes***

The research was interested in understanding whether PAPs knew the laws governing compulsory land acquisition and compensation. Out of the 151 household heads that responded to the question, only one-third reported that they had knowledge of the laws while the rest said they did not know the law prior to the coming in of the project. This research argues that the situation of the PAPs in understanding the law was little helped by the limited effort made by the project implementers to consult with local officials and to sensitize the PAPs on laws related to land acquisition and the rights therein.

Respondents were also asked whether their views were sought about the form of compensation they wanted, with six in ten responding in the affirmative, while the rest said their views were not sought. This question was specifically targeted at those who claimed that they were compensated. All the BHP PAPs said that their views were sought and that they received what they preferred. While nearly three-fourths (71%) of the respondents preferred monetary compensation only, 21% were in favour of money, land and housing, and only a few preferred money and housing. Overall, most PAPs preferred monetary compensation for the following reasons: they wanted to make their own choices on investments such as acquiring land suited to their farming ambitions or to invest in

businesses; and they needed money to “settle debts.”

When asked whether they were actually compensated, only two-thirds reported that they received compensation. The uncompensated one-third comprised a significant number of people. As explained before, the most affected were the Mpokya victims whose compensation had been dragging on since 1992, and some of the OR PAPs whose compensation had taken up to 4 years as at the time of this research, many of whom had gone to court to seek redress.

Of those who said they got their compensation, a quarter stated that they got what they preferred, with 63% complaining that they never got what they deserved, and others (12%) indicating that they received only a partial payment of what they were initially promised. Overall, this means that three-quarters of the PAPs did not receive what they preferred and deserved. The research established that “not getting what one preferred” refers to monetary expectations from the valued property and the assessment process.

#### **d. Assessment and Valuation**

For all the three developments where land was acquired, assessment and valuation of property was carried out. Except in the case of BHP, the research learned that property assessment and valuation lacked the rigour and comprehensiveness with which it was expected to be done, in addition to lacking mechanisms for checks and balances. Allegations of under-assessed and undervalued properties were not uncommon among the PAPs. Some of the allegations related to underassessment and valuation of property include:

- Under-assessed property – not all property possessed was valued;
- Declaration of more property for other PAPs than their actual amounts they owned;
- Details of property not included during the assessment (age, size, etc.);
- Part of property, especially land, left out of the assessment;
- Lower value given to property, especially dwellings.

Ideally, the rate of compensation for lost assets should be calculated at full replacement cost which is the market value of the assets in addition to transaction costs<sup>103</sup>. Replacement cost is the actual cost to replace an item or structure at its pre-loss condition. However, the use of District-established valuation rates may not be the “market value” of the item, which will then provide resources differing from the “actual cash value.” While it is perhaps unavoidable that this or that asset will be undervalued or that under-assessment might take place, we recommend that *the total replacement package must be at or above a pre-existing level of property possession, so that the restoration of one’s livelihood can be reestablished.*

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<sup>103</sup> International Finance Corporation (IFC). (2012). PS5.

Based on disagreements with the values and valuation process in the OR case, the research learnt that some PAPs refused to sign and opted to go to court. According to MEMD and SFI, there are sixteen such cases in court that are yet to be addressed and that they (MEMD and SFI) are waiting for the court verdict to guide their actions. Interesting though, the research established that most of those who chose to go to court did not know how far their case had gone. Nevertheless a number of observers agreed with the PAPs on issues related to property valuation.

One local government official observed thus:

*“Those who valued the property knew what they were doing. People’s property is undervalued. Many people were not on-site at their property when the valuations were done, so the process left people out. By including them, people could at least know what was being counted as property and see how the process worked. As it was, many thought they were being taken advantage of.”*

In addition, the PAPs alleged that that there were “ghost” property owners that appeared on the list of those whose property was valued even when such “individuals” were unknown to the local community. They reported that this could have been a strategy by those who conducted the assessment and valuation to make extra money. Similar to allegations of ghost PAPs, it was alleged that individual PAPs with “means” were able to influence the assessment and valuation of property. Some of the assessors were reported to have been compromised, and as such, inflated the amount of land and property of people who were able to pay them. It was alleged that in one case, a PAP was assessed and valued at about UGX 600 million with the view that when he was finally compensated, the person who favoured him would be given a share.

### **Voices from the Community**

- *“Government should declare rates of property and seek owner’s approval on payment, and should compensate property that is valued by the people.”*
- *“The overall valuation process was poor. We did not know how much land would be taken, how they accounted for our property, and how they arrived at the amounts. At some point we just learned that they were giving us some amount, which seemed too low.*
- *“I grew so many things, oranges, mangoes, coffee, pineapples, and permanent crops. But the assessment did not count those, many were missing from the list in the assessment, which I noticed at the time of signing. I said to them, you come and see for yourself; the man disagreed, and I refused to sign.”*
- *“We heard about the amounts they were going to give for land, but we were not told on how they came up with the final compensation.”*

The research was not able to independently verify these allegations of ghost PAPs. However, when MEMD and SFI were consulted, they argued that it was impossible to include ghost PAPs as the amount of land compensated would be more than the 29 square kilometres

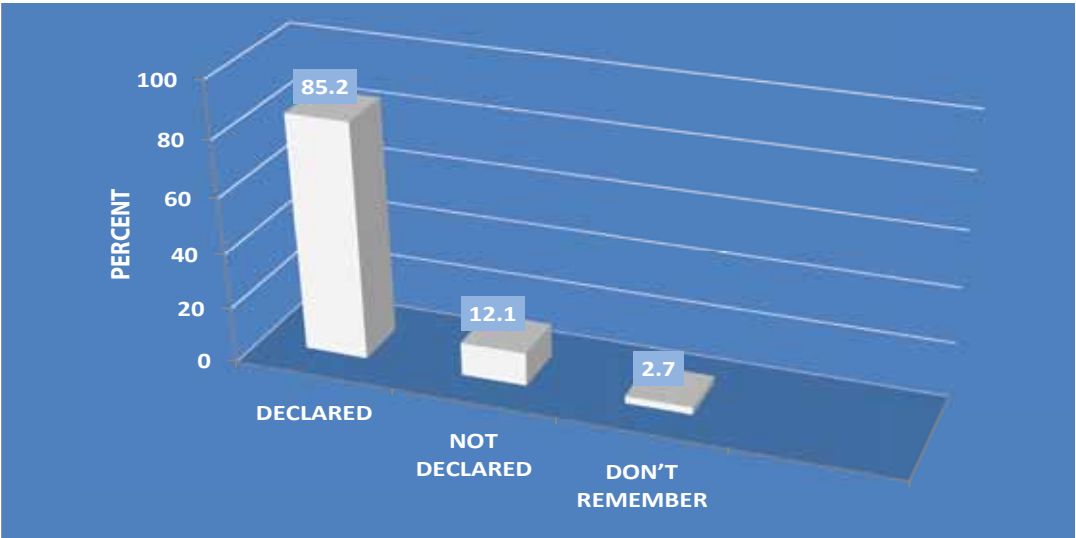
and as such would be easily detected. Secondly, they noted that such allegations were brought before the line Minister and none of those who made the allegations could point out the ghost beneficiaries. They noted that investigations by the police found the allegations to be baseless. However, in the case of Hoima to Kaiso-Tonya road, the ongoing commission of inquiry instituted by UNRA confirmed that compensation was made to PAPs who never existed and that the length of the road was less than what had been compensated by more than 10%, suggesting that government could have lost nearly UGX 30 billion (approximately US\$12 million) in addition to the what was spent to pay non-existent PAPs. It is the view of the authors that a similar inquiry be carried out for the OR project to establish the validity or lack of the claims of existence of ghosts and over declaration of amount of land as alleged by the PAPs.

The authors are concerned that these kinds of allegations could easily be avoided with the establishment of mechanisms for checks and balances in the compensation and resettlement processes of all public interest projects. Such mechanisms do not only ensure accountability for compensation as resources financed by taxpayers’ money but also builds confidence of the affected community.

**e. Declaration of Values and PAP Satisfaction**

In accordance with the Land Acquisition Act, the law in sections 6(4) and 13 requires that once assessment and valuation of property are completed, declaration is made to the individual PAP so that they may consider whether to accept or reject what is declared to them. The research was interested in finding out whether declaration was done as required by law and the perception of PAPs on the declaration.

**Figure 7: Declaration of Values**

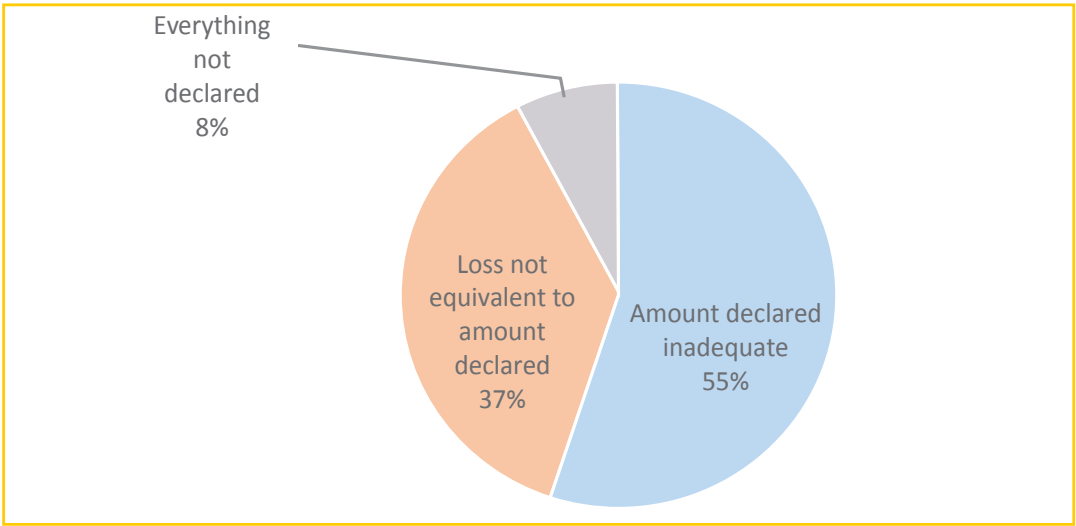




When asked whether declaration of the values of the assessed properties was made to them as individual PAP's, 85% answered in the affirmative; 12% said they had not; and 3% said they couldn't remember. All respondents from BHP project reported that declaration was done, while those from Mpokya said they were instead informed of the amount they would get which was the same across the board but no individual declarations were made.

The research was also interested in establishing the level of satisfaction with the compensation process. Findings show that nearly three-quarters of the respondents were not satisfied with the compensation process. Three reasons were given for the dissatisfaction: 55% argued the amounts declared were inadequate, 37% said that the amount declared was not equivalent to what they would lose, while 8% were of the view that the amount declared was not for everything that was valued.

**Figure 8: Reasons for Dissatisfaction with Compensation Process**



These allegations were corroborated during FGDs where PAPs not only expressed their dissatisfaction with the whole compensation process but also the valuation exercise itself, which they claimed was flawed. It was noted in regard to the road project that more land than had been agreed upon with the PAPs was taken; in some cases the shaping, levelling, and compacting of the road caused damage to housing and exposed some households to disaster in the event of heavy rains. In either case, not everything of value was compensated and replaced.

The findings also show that although mapping of the road was done twice, compensation made was based on the initial demarcation and valuation. PAPs argued that when the initial mapping was done, they were made to sign valuation documents that included land and other items that were to be taken up by the road project. This was exacerbated by changes in the surveys of affected lands and poor implementation. According to opinions expressed at the FGDs, PAPs based their economic decisions on the amount of their



lands that remained after the first UNRA survey, upon which compensation amounts were based. However, a second survey by MAPCON, the private consulting firm, expanded the affected lands in many cases, and the actual physical activity of the road construction along with the established road reserve extended property losses, even removing structures that PAPs expected to remain after the original survey. According to one woman:

*“Only one of two houses will be affected, they told me, so they evaluated one house for compensation. But when construction began three houses were taken down. They only compensated me for a grass house, but later during the construction, two iron sheet roofed houses were taken.”*

This story is typical of the impact of the second survey extending the boundaries of the road, and therefore property loss. It destroyed a lot of property that the community thought would be left behind as their assets, and a number were forced to leave, losing their homes and gardens with not enough property on which to survive. As a consequence, some people were left landless or had most of their land taken up which rendered them unable to derive a livelihood from the diminished pieces of land remaining.

This is a good example of how changes in implementation “mid-stream” make earlier decisions made by PAPs turn out to be poor decisions. *Clearly, this case supports the argument that people need to be compensated before land acquisition begins and property destroyed.*

As in the road project case, in which many landowners had gone to court due to the loss of additional properties and disputed valuation, similar claims were echoed by respondents from the Oil Refinery project. PAPs noted that the process was fraught with lack of transparency, inequality in treatment and apportioning value to land, omissions in and non-valuation of properties, non-itemized rates and properties for compensation. When asked whether they sought redress

since they were not satisfied with the compensation process, 62% said they did and 38% respondents said they did not. Ten per cent of those who said they sought redress reported that adjustments were made, 8% said nothing was done, and an astounding 82 % of those who were dissatisfied said they chose to go to court.

This position was reflected during the FGDs in the Hoima to Kaiso – Tonya Road project, where many respondents said that the dissatisfaction with compensation had compelled them to go to court. According to FGD participants, they experienced arbitrary management of complaints by those who were responsible for the process. They were of the view that

### **Voices from the Community**

*When a PAP complained, the officials made the complaint directionless. Every official one took their complaints to would refer you to another officer or office. For example, some people were referred to Hoima while others were told to go to Kampala. Many of us gave up because we did not know anybody there besides lacking capacity to do so. We ended up taking what was not worth what we lost.”*

PAP, FGD Kabaale, Buseruka, Hoima

information was deliberately withheld on the right to complain and options and vehicles with which to carry out the complaint so that “*when they [PAPs] are unaware of options for redress, they then complicate and delay the process.*”

During an interview, one district councillor emphasized the absence of follow-up and communication:

*“I would recommend that local leaders are involved from the start. We started getting involved when complaints started to emerge.. We were forced to mitigate the problems between the community and the government. Local leaders volunteered to be the link, because people could not articulate the complaints, and there was no one to turn to. The government said that it was the RDC who should receive complaints, and that those would be communicated to the centre, but process does not work if no follow-up happens. There is only silence and people’s needs are not meet.”*

Overall, whether due to withholding of information, the absence of a clear complaint mechanism, nonresponse and failure of a grievance protocol, PAPs had little recourse except to secure the services of a lawyer. To the date of this research, many PAPs remained uncompensated in the case of OR and Hoima to Kaiso/Tonya road projects. As noted earlier, the more cases that end up in courts, the more costly and time-consuming the compensation process will become.

## **f. The “Wrong” Rates**

In the oil refinery case, perceptions show a general dissatisfaction with the whole assessment and valuation that was attributed to the “manner” in which SFI handled the whole process. During the research we learnt that the rates schedule used in Hoima, was “borrowed” from Kiboga, a neighbouring district. The rates seemed to have been lower than what they expected. This could, understandably because of the spiralling cost of living in Hoima. Other than the cost of living, speculation pushed up the price of property, especially on the land market, such that by the time payments were made, the amounts PAPs received could only buy less land than they owned previously. The research findings review a pattern in which the majority of the PAPs own less land than they did before the project. Other reasons, for perceived poor compensation would be mismanagement of the finances. The surge in property price had a direct effect. This was exacerbated by the delay in compensation, which brought down the value worth of the money due to inflation.

During consultations with the district leaders, the research was informed that Hoima District had no official rates set by the Land Board. Even at the time of the research, efforts were yet to be made to have Hoima District rates established. This is in spite of the fact that the district is part of the Albertine region master plan marked for mega infrastructure development. The execution of the master plan will inevitably result in many more people getting affected by land acquisition and the need for current rate setting. In the light of this, the research recommends that Hoima District and indeed all the districts in Uganda should as a matter of priority come up with rates to take care of the needs for compensation that will come with development projects, given that the whole of Uganda is not considered a

planning area.

### **g. *Monitoring Conflict of Interest***

The research also learnt that SFI, a private consulting company, was engaged by MEMD to undertake the three core assignments in the OR land acquisition process. They did the initial socio-economic baseline that informed that RAP, and they developed and implemented the RAP. The research learnt that there was no independent mechanism in place to ensure that the entire process was transparent and done in an accountable manner.

To many observers, given the sensitivity of the project and for purposes of promoting transparency, it is advisable to engage more than one company to execute the different components of the process. To others, a mechanism for checks and balances such as independent monitoring would have sufficed in the event that there were no other companies to handle the other components. However, according to MEMD the decision to continue with SFI was done in the interest of time and was cleared by the PPDA. They noted that it was going to be costly in terms of time to procure service providers for the three components of the project. This research argues that the roles played by SFI go against the spirit of elimination of conflict of interest in the conduct of public affairs, and it is possible the perceived lack of fairness on the part of SFI could have been minimised had different entities been involved.

## **6.4 Impact of Delayed Compensation on the PAPs**

From delayed compensation, two issues come out prominently. One is the gradual loss in value worth of the amount of financial compensation, especially with the runaway inflation and competition for resources that the country experiences. Second is the disruption and impoverishment that occurred as PAPs transitioned economically during relocation and compensation exercises. Both affected the ability of families to sustain their livelihoods.

Aside from Rwamutonga and the old case of Mpokya, delays in compensation occurred at both the OR and Hoima to Kaiso/Tonya road projects. Only the BHP PAPs were promptly compensated and resettled. While Mpokya case had dragged on since 1992, compensation for the OR and Hoima to Kaiso/Tonya road projects started nearly one and a half years later. Even at the time of this research, a number of PAPs from the two projects reported that they had not been compensated.

Delayed compensation was reported to have significantly affected the PAPs' livelihoods. Most people indicated that delayed compensation affected their purchasing power. By the time they received their compensation, the amount of property they could buy with the money was far below the amount of property compensated. The analysis of the amount of land owned by those who relocated showed that it had significantly reduced. A hike in the price of land spiked as a result of a property scramble in the vicinity of the projects, and indeed in the whole of Hoima District due to by speculation that the oil industry bought.

Therefore a delay in compensation reduced the value worth of the resources that the PAPs received.

In the light of the above, the authors are of the view that once a development project is conceived, enough preparations should be made to effect compensation as soon as valuation is completed. This will help minimize the effect on inflation but also to minimize the inconveniences that the PAPs go through as demonstrated in the discussion above. However, where delays are inevitable, then compensation should take into account inflation and inconveniences caused. For example, many of those interviewed recommended that as valuation rates change, their property loss and compensation amounts should be reassessed as time passes, and a penalty fee imposed on government for the delays, perhaps in the form of a monetary allowance made to PAPs for hardship, inflation, food security, etc.

Delayed compensation meant failing to meet domestic needs and loss of business especially for those who depended on house rentals as their major source of income, as reported at the FGD. Secondly, many PAPs who relocated found themselves in debts as a result of borrowing to meet family needs in anticipation of paying back with the compensation money. This was the case when PAPs were told to stop production at the refinery location, forced to buy food when their source of livelihood - their gardens - were left unattended and “spoiled.”

As most of the PAPs depended on agriculture and were engaged in farming activities, delayed compensation - combined with relocation - impacted food security. According to interviewees, “digging” provisions a family with a wide variety of seasonal and permanent crops. The income gained from farming also helps build houses, purchase materials for businesses, and support the education of their children. An active agricultural economy is a source of support for viable local trading centres. Finally, delays impact women and children in especially detrimental ways. For example, one woman explained her situation:

*“Digging is a good source of life. But I was a victim of the land taken. Women are responsible for putting food on the table, so we do these things [farming, savings groups, etc.]. Groups also provide sharing communal labour, so we can get the digging done. These activities help us send our children to school. For some of the market crops, we could get a money income, but today that is different. . . . children would no longer go to markets and earn money for school fees and supplies.”*

As the research found, the PAPs were expected to vacate the site soon after compensation, hence limiting time availed to them to vacate. Most respondents (121) said that the time availed to them was inadequate and only 72 indicated that it was adequate. Most of the latter category were from the Hoima to Kaiso-Tonya Road project, most likely because the road was central for all the developments in the area and needed to be initiated.

Findings also indicate that delays in compensation continued for years. In the case of Mpokya, victims were resettled in May 1992 and at the time of this research (23 years after), their monetary compensation had not been completed, with a handful of individuals

receiving less than 10% of the court-mandated amount. In the case of the road project, while valuation was done in 2011, compensation continued for three years after and others still have not received any compensation.

In the refinery case, nearly 90% of those who inhabited the 29 square kilometre site opted for compensation and left after they had been paid. The remaining PAPs opted for resettlement and ideally would have to remain on the site up to the time they would be resettled. While some of them have moved out with family in the region, some have remained within the site facing many challenges (see Box).

### **Challenges**

In the OR case, PAPs choosing land-for-land resettlement were forced to continue life at the site, even though most people had abandoned their homes. They face many challenges due to delayed resettlement, among them:

- Ninety per cent of the area was reclaimed by the wilderness and the remaining PAPs were exposed to insecurity and threats to life by wild animals.
- Herdsmen invaded the area and grazed their animals in the remaining PAPs' gardens reportedly on the pretext that the land was now public land and "empty." PAPs clashed with herdsmen to drive them away.
- PAPs lack social services such as schools and health facilities.

Other challenges include loss of social capital/network. Those who remain are surrounded by empty villages and face both economic and social isolation. As the story below illustrates, one coping mechanism is to move out of the place and become renters or squatters within the neighbourhood. For survival, many of them are either working and exchanging their labour for food or cash on which they subsist or have rented small pieces of land where they grow food crops to enable them meet their food needs as they wait for resettlement.

One man's story illustrates the problems:

*Kenneth is single and at the time of the eviction he was living with his family. His family left, and he escorted them away. When he came back he found that people stole parts of his family's house, the poles and thatch roof. Now he cannot live there alone and instead lives with his father's friend. He still uses his land to dig, but does not live on it. Because of that, he cannot protect the land and his work; cows come and destroy his gardens.*

For those who have moved out of the area and have the remains of loved ones buried on the refinery land, it was noted in the FGD that none of these was ever relocated to where people have resettled. As a matter of fact, those who opted for resettlement or those who have been forced to vacate the area by reason of the insecurity, struggle with the "guilt" that comes with the feeling that they have abandoned their dead. Some people were reported to suffer traumatization because of this state of affairs, and others were reportedly haunted by the spirits.

In sum, based on the evidence of this research, the authors are of the view that projects must adhere to a planned timeframe for execution of the resettlement. This view is highlighted especially on behalf of PAPs whose rhythm of life depends on agriculture.

Delays impact PAPs' livelihoods, education of children, and subject them to untold suffering. Compensation should be paid before resettlement and/or the disruption of livelihood. Accordingly time frames for compensation and resettlement must be clearly defined in advance and communicated to PAPs through sensitization activities. In fact, once timeframes have been defined for a particular activity then a period of three months should not be exceeded because when this time frame is exceeded PAPs opting for cash compensation will be subjected to unfair prices when considering land restoration. It is therefore important that government or any other private person involved in involuntary resettlement secures funds in advance to ensure that proper preparations and PAPs are not subjected to injustices.

Finally, even at the BHP relocation site, delays were experienced in putting into place the service infrastructure, especially during the initial years. In addition, the resettlement site involved a shift in economy, from a river-based, mixed farming-fishing community with active markets to a distant site isolated socially and economically, with a poor transportation network. In addition, we learned that those who had more than one acre of land would not get all their land in one place. The rest of the land was given elsewhere not in close proximity to their new houses, as people would have preferred. While the service infrastructure was eventually put into place, it is not surprising that many of the PAPs moved away from the relocation site. As one person's remarks during an interview capture this dynamic:

*"Acknowledge the fact that people were born in a place; their entire life is lived in the same place. Moving from such a place disconnects us from the life we have known. Proper compensation to cater for this loss should be considered so that people move comfortably."*

## **6.5 Livelihood Challenges Faced by Relocated PAPs**

As described above, delays deepen the vulnerability of PAPs to economic impoverishment by removing the assets that underlie the productive infrastructure in their lives. The sudden eviction and loss of property experienced by the Rwamutonga villagers is the starkest example of loss of economic and social infrastructure. Unlike the other four cases, the Rwamutonga eviction involved private parties and an on-going conflict over ownership of land. Based on interviews and the focus group, the evictees had gone to court twice in the face of periodic threats to their land ownership. They had obtained injunctions against potential evictions. However, the execution of the 2014 eviction was carried out under a court order that was meant for eviction on a smaller piece of land whose owner had sold off his interest to the person who owns the bigger piece of land which most of the evictees inhabited. During our fieldwork, the evictees at the focus group talked about demands for future compensation for lost property, homes, gardens and other possessions. Should their argument prove successful, it is likely that the neighbour/investor who evicted them would be held accountable. All the same, the evictees expressed their opinion that the government owes them something for allowing - for assisting, they believe - a private



owner to violate their human rights and leave them abandoned without the means to survive.

At the time of this report, the Rwamutonga evictees won a court case declaring the illegality of the eviction, followed by their own suit requesting restitution in the amount of billions of UGX for compensation and hardship suffered. In addition, the Rwamutonga victims are aware of the experiences of those who were displaced by the Kabaale OR, who were part of a compensation process for oil development-related land acquisition. Why were we not treated equally, they ask?

In the case of Mpokya, the research was informed that twice the evictees sent delegations to Kampala to negotiate with the authorities and each time they met the central government authorities, they were promised not to be evicted. However, the eviction threat was finally executed at the district level, following an ultimatum by the KDLG that gave the residents 30 days to quit the forest reserve or be forcefully evicted. Based on assurances they received from Kampala, the evictees played down the threats, and were surprised not only by the eviction, but by its brutality. The Mpokya evictees were “chased away” and dispersed, left in “limbo” for several months before the courts mandated their relocation to Kibaale District. Even so, they arrived empty-handed and, though assisted with food relief by NGOs and local politicians, it took time to develop new gardens and even more time to enjoy the fruits of their labour, as well as to expand other economic activities.

The evictions at Mpokya and Rwamutonga were reported to have been carried out with maximum force available to the security forces. In both cases, victims reported that not only were their houses and crops destroyed and their property looted by those enforcing the orders, but instances of rape were reported at Mpokya. In the case of Rwamutonga, it was alleged that an elderly couple was

### **Voices from the Community: Rwamutonga**

*“We need to legalize our status. We are Ugandans not Congolese, so stop using this as an excuse to deny us our land and even assistance.”*

*“They accuse us of being Congolese so they can deny helping us.”*

*“We are Ugandans not Congolese; why is the government calling us non-citizens?”*

*“The government should evaluate our land and compensate us if they are interested in it, not chasing us away like non-Ugandans.”*

*“The government should compensate us for losses and resettle us in the nearby areas and provide us with titles.”*

*“I want government to help us poor people acquire land titles cheaply since we cannot afford the high costs of land registration now.”*

*“I want government to investigate why one rich man can own the whole village.”*

*“Government should balance the rights of poor and rich, not just take side of the rich.”*

*“Rich people are using their resources to suffocate poor ones – like taking away their land.”*

burnt in their hut in the course of eviction; however, little was reported about the incidence. Anecdotal information gathered during the research suggests that behind the eviction there were people highly connected to the state who seem to have been stalling relief actions that would assist the victims of Rwamutonga. The research was informed that the Minister of Internal Affairs (MIA) had directed that relief be provided to the victims when he was invited by the civil society for a dialogue on the operations of the civil society actors in Hoima District. However, by the time of the field research, none had been delivered to the victims yet.

For the victims in the two cases, the only good things that happened to them were relief from NGOs such as ActionAid International and the Red Cross (Rwamutonga and Mpokya respectively), and support for legal representation by civil society in the case of Rwamutonga. The Rwamutonga victims also reported that they were provided with some relief by the office of the LC V Chairman. They expressed appreciation of the support that was rendered to them by the neighbouring community in terms of providing them with temporary accommodation and food in the initial stages of their eviction.

In sum, violent evictions such as found at Mpokya and Rwamutonga can be avoided through the consultation and sensitization process. The evidence indicates that all land acquisition processes that follow the law tend to attract little resistance in comparison to when the law is pushed aside. However, where the law is applied, it must be followed to the letter and all commitments legally made, otherwise mistrust, suffering and resistance can easily be provoked.

In the Hoima to Kaiso/Tonya Road case, while most people were not relocated, the impacts of the road construction changed access to properties and businesses; for example many complained that the drainage ditch in the road reserve isolated them and their businesses. On the other hand, many people used the compensation money to start small businesses, pay for school, cancel debts, or simply exhausted the money on petty items. Similar dynamics affected those from the OR case. And even with compensation of land, it takes a period of time to regain a footing and stability, especially in the farming.

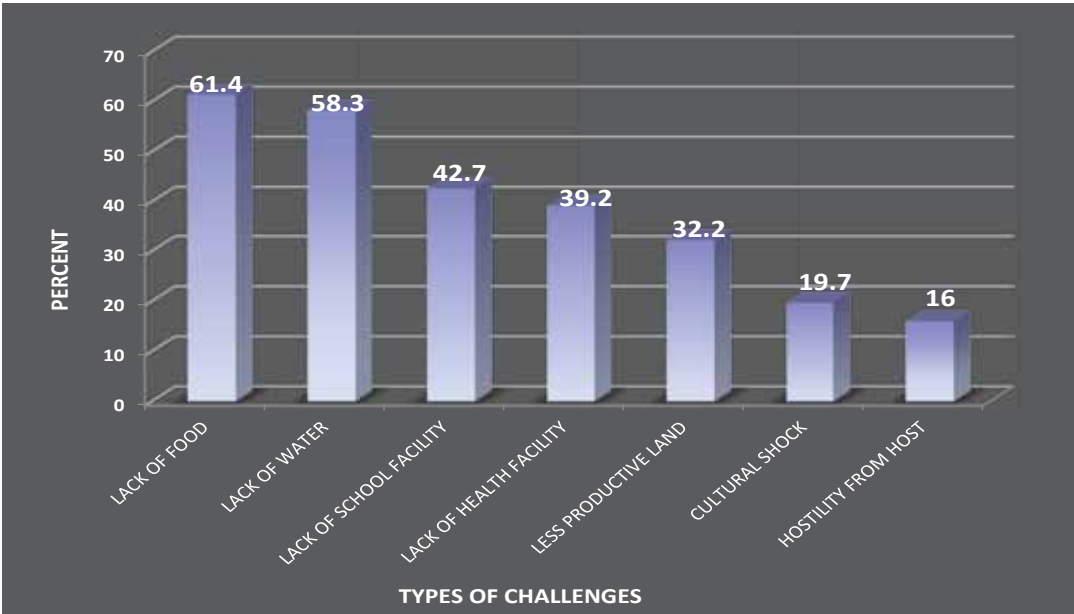
The key issues in all these cases are 1) the loss of productive resources, 2) having to survive on insufficient amounts of money to replace income, economic loss, and 3) an absence of livelihood restoration programmes and projects to assist PAPs. Even when those productive assets and resources are renewed (e.g., when finally fully compensated), PAPs are faced with “starting from scratch” and the time it takes for enterprises to yield products and income. In the meantime, during this period of living in limbo, PAPs and their families, especially women and children, end up suffering.

Across the five case studies, the PAPs were facing varying types of challenges, reflecting their economic and social circumstances. Of the 288 respondents who were interviewed, 6 in 10 indicated that they lacked food and water. Forty-three per cent reported lack of school facilities, 39% lack of health facility, a third claimed poor/less productive land where they were relocated, while 20% experienced cultural shock. Others told stories of hostility they faced from the host communities where they relocated. For example, those who were



resettled under the BHP CDRAP complained that theft by people from the neighbourhood was their major challenge. Many of them claimed to have lost poultry and other livestock that as part of the resettlement restoration package for income generation.

**Figure 9: Challenges Faced by PAPs**



## 6.6 PAP Coping Strategies

The research established that PAPs adopted different coping strategies depending on their circumstances. For those who were forcefully evicted in the case of Rwamutonga and Mpokya, they depended on relief from NGOs and support from the community. Whilst the Mpokya group has since settled and are self-sufficient and running lives like in most rural Ugandans, given the long period of time that they have spent where they were resettled, the Rwamutonga community were found to be in a dire situation since their eviction in August 2014. Having lost entire farming livelihoods, most had to resort to casual labour in the neighbourhood of their settlement, often exchanging labour for food or money to meet their food and income needs.

For those who were compensated, as in the case of the OR, most PAPs reported that they depended on food from the market in the short term, and this had a significant impact on their economic situation as it dwindled their savings. Amongst respondents waiting for resettlement, some had moved to the nearest trading centres where they rented or became squatters. Most reported exchanging labour for food supplies and cash. Some also indicated they reverted to renting pieces of land from others to carry out cultivation for food production.

For social services such as water, education and health, all respondents reported that they coped by travelling long distances in order to access drinking water, and some from open sources with questionable levels of sanitation. The research also established that children either had to travel long distances to access schools, while some dropped out as a coping strategy. In the case of health, the research was informed that a number of people had resorted to traditional methods of treatment, or when the situation was life-threatening patients were taken long distances to access services, often via poor access roads.

A closer look at the problem of hostility from host community illustrates the difficulty of anticipating problems with integration and assimilation upon relocation. In the Mpokya case, the eviction victims resettled in Kibaale were welcomed initially, but later as their populations and political influence grew, they faced threats of being evicted again by the indigenous people. In order to cope, the Mpokya resettlers sought integration through attendance of church services, participation in funeral activities, being part of self-help groups, as well as strategic participation in local politics.

The Bujagali PAPs who were resettled in Naminya parish faced hostility allegedly because the host community were envious that they had gotten a lot of money. Some of the hostility was manifest in the form of widespread theft by people from the host and neighbouring communities, astronomical prices of goods and services, etc. A coping strategy was to report hostility to local authorities or pay local council people bribes/inducements when seeking assistance.

In the case of the oil refinery, PAPs who relocated to neighbouring parishes/villages adopted coping strategies focused on mediating astronomical prices and costs of living, finding ways to be integrated into the National ID registration processes, and confronting livestock encroachment and theft by the host communities.

**Table 1: Summary of Coping Strategies**

Challenge	Most affected PAPs	Coping strategy
Problem of food	All PAPs	<p>Reliance on food aid from NGOs in the case of Mpokya and Rwamutonga, in the initial stages by Mpokya victims and still being a strategy by Rwamutonga victims</p> <p>Exchanging labour for food in the case of Rwamutonga and a section of PAPs from OR</p> <p>Buying from the market in the initial stages of relocation in the case of those who were compensated</p>
Problem of water	PAPs from Rwamutonga, and OR	Travel long distances to access safe water or use available but unclean water from open water sources
Problem of health	PAPs from OR	Resorting to use of traditional means of treatment, travelling long distance to access health, accessing private health providers, relying on pharmacies

Challenge	Most affected PAPs	Coping strategy
Problem of lack of schools	PAPs from OR and Bujagali	Children travel long distances or drop out of school Starting a makeshift school within the resettlement villages
Problem of less productive land	PAPs from OR who chose compensation, and Bujagali	Renting/buying productive land from nearby places; selling land (Bujagali)
Problem of cultural shock	Mpokya eviction victims and Rwamutonga	Integration with the host community; community unity and resistance to deal with trauma and isolation
Problem of Insecurity and Robberies	Bujagali and OR PAPs	Keeping guard all night to protect small investments in the form of chicken and cattle at Naminya resettlement village.  Vacating homes to live in trading centres; taking the risks of staying in the homes and confronting herdsmen and wild animals at Kabaale.

## 6.7 Unfulfilled Promises

In total, 106 out of the 288 indicated that promises were made by government, private consulting firms and the investors. Three-fourths said they were promised schools, 68% indicated that they were promised roads, 60% health facilities, 42% livelihoods support, 39% food assistance, and 43% said they were promised that they would be resettled. Overall, most of the PAPs were of the view that either the promises were partially fulfilled or not fulfilled at all. In the case of Bujagali, the research was informed that some of the promises were fulfilled after a protracted struggle with the AESNP successor company BEL. The success was attributed to the advocacy efforts of the National Association of Professional Environmentalists (NAPE). For example, the CDRAP that the researchers saw indicated that each household would be connected to the national grid and provided with water; however, this promise was not fulfilled. What PAPs claim is that electricity and the water supply sources were extended to the resettlement village but they were expected to meet the cost of connection, which many have not done due to the expense that they cannot afford. They were also promised food for at least six months, but they allege that this was not fulfilled.

Overall, respondents were of the view that there was insufficient feedback and follow through on the developments of the promises that were made. These PAPs recognised feedback from the implementing organizations as very important to their situation. The research argues that failure to provide feedback to PAPs has a lot of consequences: lack of trust for government which in future may affect affected people's cooperation with government in future projects; creating anxiety and frustration among the community, and distorting socio-economic and cultural organization of the affected people which may

have long-term negative consequences on their lives. Promises of health, education, roads and water service delivery are the basics that any community should have and denial for whatever reason tantamounts to abuse of the rights of affected people.

## 6.8 Life after Compensation

The research was also interested in knowing whether some people's conditions deteriorated after receiving compensation. About one fifth of the PAPs said they knew someone whose status had deteriorated as a result of land acquisition and compensation. For those who said they knew people whose condition had deteriorated, the reasons advanced were as follows:

- There was gross mismanagement of compensation money by those whose conditions had deteriorated. Some of those whose conditions deteriorated were noted to have spent most of their money on alcohol and less productive activities including taking more women for wives, gambling and acquisition of assets that were less productive such as cars, music systems, etc.
- There were poor business choices made by some individuals. Under this category, the business choices led to unprofitability and or total collapse of the household economy. Many highlighted a lack of business education for the PAPs. In one case, a PAP was reported to have used his compensation package to construct a commercial building and forgot to restore farming land. When he completed the building there were no tenants to rent the premises.
- In some cases, the PAPs' deteriorating status was affected by an inability to buy productive lands. During delays in timely payment compensation the ensuing development had driven up prices of land in the region of the development project. Therefore, it became almost impossible for PAPs to restore the same acreage of land they previously owned. Other factors impacting on inability to buy land include poor valuation of property, which informs the decision by some PAPs to seek legal redress from Courts of law. With little or delayed compensation, especially among PAPs who did not own much property, they were unable to sustain their livelihoods.

In the light of the above, the research recommends comprehensive socio-economic, socio cultural and lifestyle studies of affected people in order to develop "restoration" packages that respond to the needs so as to minimize negative project impacts especially on the livelihoods of the affected people. Experience and practice elsewhere offers an array of 'tools' such as agricultural support, livestock packages (BHP project), small animal/chicken production, market gardening, business training, and coop and micro-financing organizations, especially for women's groups.<sup>104</sup>

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<sup>104</sup> For examples of programmes, see Chapter 16, Reddy, Smyth, & Steyn, M. (2015). Land access and resettlement: a guide to best practice. Greenleaf Publishing.

## 6.9 Cultural Property Management

Of the total number of people who responded to questions of culture, 87% indicated that cultural issues were addressed, such as cultural assets related to graves, shrines, and spiritual places. Cultural issues were elaborately addressed under the Bujagali project, which included support to facilitate relocation of graves, fees for traditional priests, goats and chicken, compensation for shrines and facilitation of their relocation, and performances of traditional ceremonies to appease the spirits.

In the cases of the other projects, such as the oil refinery, compensation was limited to graves only. Respondents at the OR observed that the challenge they faced stemmed from the sum of UGX200,000/= paid in compensation to remove the remains of the dead per grave. This money was said to be insufficient to allow for the removal of the remains and the accompanying ritual ceremonies characterizing the transfer of the graveyard. For those who had already abandoned their homes and relocated elsewhere, leaving graves behind for lack of compensation became problematic as time passed. Many people expressed worry that delays would affect their ability to relocate the grave markings as their former villages turned into a complete wilderness or were changed through redevelopment projects.

Another significant omission that the PAPs identified in all the projects included failure to address matters of faith. Places of worship including churches and mosques were allegedly not part of compensation packages. When asked whether the lack of provision of places of worship had any impact on them, two-thirds responded in the affirmative. (See Box: Issues)

Other impacts included a deep anxiety over separation from deceased family members, especially ancestors—a sense of loss and guilt, as well as a vulnerability to health - psychological and physical.

The feeling of betrayal of the dead was revealed in that most people could not afford to relocate the graves despite that fact that they were paid. Most respondents said they felt like they had sold their dead for a pittance. Those who were able to transfer the graves said exhuming dead bodies filled them with trauma and grief. It not only traumatized them but it had the effect of permanently disconnecting them and the deceased from the ancestral home.

### ***Issues - Loss of Faith by Communities***

The loss of access to familiar churches and mosques was not only spiritual but also social and economic. Spiritually, most people could not go to the places of worship to renew their faith as many times as they would have wanted. Socially, people who typically prayed together as a community were disconnected and isolated from each other. On the other hand, one coping strategy involved congregations collecting contribution towards construction of new places of worship notwithstanding the fact that their economic situation was still dire. Some respondents said they decided to avoid going to temporary places of worship altogether to avoid making contributions.

Loss of livelihoods for those who depended on the business of running shrines was also reported. In one case, a family lost their fishing livelihood because, as they claimed, when they performed certain rituals at the shrine, the fish catch would increase. Thus the destruction of the shrine had disabled them from the profitable fishing trade. Additionally, by means of the shrine, it was claimed, people were able to treat certain diseases, which they easily identified and prescribed for those who were sick. It also meant loss of income from spiritual healing.

## 6.10 Housing

The research wanted to gather information on whether the PAPs owned the houses they lived in before they were relocated. Out of the 255 respondents who responded to the question about house ownership, an overwhelming majority (95%) said they owned them prior to being dislocated. The majority said they owned houses made of mud and wattle and grass thatch, while 40% said their houses were temporary (mud and wattle but had corrugated iron sheets on the roof). Only 13% had semi-permanent structures (brick walls, corrugated iron sheets roof but without cemented a floors. Ten per cent owned permanent buildings (brick wall, cemented floor, and corrugated iron sheets on the roof). When asked whether they owned the houses they lived in now, three-fourths (77%) said they did, suggesting a decline of 18% in the number of people who owned houses they lived in before the project.

In comparison, PAPs owned better houses at now than they did before they were displaced. This is probably due, we think, to the compensation they got from the various projects. It is important to note that of the 38% respondents who said they lived in permanent structures, a majority were Bujagali PAPs whose resettlement package included a permanent structure. Others were from Kabaale, and the rest were from Mpokya.

Had the resettlement process for the OR PAPs been completed, this number would be higher. Anecdotal information suggests that the government will construct only 46 houses for the 93 households affected by the OR that chose relocation to Kyakaboga village. The government plans to organize the settlement houses in a pool, which contradicts the original RAP agreement. According to society stakeholders, the plan was to build a house adjacent to farmland, not to locate farmland away from the housing settlement. The African Institute for Energy Governance (AFIEGO), a civil society keen on the rights of people affected by oil activities in Uganda has accusing government of contradicting the 2012 RAP for persons affected by the OR project in Hoima District.<sup>105</sup>

Improvement in the housing conditions of the PAPs was in fact one of the most visible positive outcomes of the projects. However, it is important to note that improved house ownership was determined by the amount of land owned and not out of the general compensation that was given to the affected people. In FGDs and informal engagements

<sup>105</sup> Uganda Radio Network, May 12, 2015, by Frederick Kivabulaya, "Government Accused of Violating Oil Refinery Resettlement Action Plan."

with the PAPs, most of those who claimed they had improved housing (permanent structures) were those who owned larger pieces of land in the OR; otherwise for the majority whose landholding was small, the little they received was used for acquiring replacement land and not for improving the quality of their houses they owned. This is because the amounts of compensation given for the lowest category was insufficient for such improvements. Some of respondents claimed they were compensated for as little as UGX40,000/= (roughly US\$13).

## 6.11 Land Ownership and Livelihoods

### • Land Ownership

Nearly all of the respondents (94%) reported that they owned the land where they were displaced and only 6% respondents indicated that they were squatters. Of the 271 who said they owned the land, 91% said they had no titles to the land. In this research we were interested in how land ownership had changed from pre-project status to the PAPs current situation. By comparison, PAPs owned less land now than before they were displaced. Of those who claimed they owned land before the resettlement project, over two-thirds of them had at least 6 acres. Nearly a third of these (30%) indicated that they owned from 6-10 acres, with 10% owning more than twenty acres. On the other hand, only 22% said they owned two acres or less. These data indicate that the PAPs relied on land as an important resource and basis of food security.

However, in their present situation the number of PAPs owning at least 6 acres of land was cut by 50% - now only 31% owned that much land. The number of PAPs with two or less acres expanded to 26%. While previously, nearly one-quarter indicated that they owned 16 or more acres, currently the number has dwindled to only a single PAP!

As the research data confirm, PAPs own less land now than they owned before they were displaced. This partly re-enforces the conclusion that late compensation conspired with increases in land market prices in the area due to speculation, denying PAPs a fair bargain and a degree of equivalency on the amount of land they could purchase. As can be seen above, the percentage of those owning smaller pieces of land now has increased as compared to the situation prior to the involuntary resettlement.

When asked about ownership of title for the land where they relocated, only one fourth (26) stated that they are in possession of a land title. Clearly, the number of households with land titles has increased from the pre-resettlement status. However, the vast majority (86%) still do not, continuing the pattern of vulnerability to land insecurity. Of those who said they had titles to the land they owned, most (88%) were those tied to the BHP project. In the other case studies, the situation remains the same because there has not been a deliberate effort by government to resettle the PAPs as was done under the BHP. As has been noted herein, the resettlement of PAPs for the oil refinery is still pending, but is expected to involve a 500-acre site at Kyakabooga village (Buseruka sub county), already



purchased by the MEMD and in the site preparation process by the MLHUD. According to the government, “a model nucleated rural settlement” will consist of titled lands.<sup>106</sup>

Documentation of land ownership was one of the key recommendations that emerged during discussions with the oil refinery PAPs at Kabaake, and Mpokya evictees who were resettled in Kisita and Nalweyo sub-counties of Kibaale District. While gaining a land title was one of the promises made to those to be resettled from the OR site, having a title was seen as the only way in which the Bakiga that have been resettled in Kisita and Nalweyo would get their security of tenure. Most of them expressed fear that without land titles, their ownership of the land was likely to be contested in the future and they were bound to suffer a similar fate like they suffered while in Mpokya. Their concerns were heightened by threats reportedly being issued by the host community who they said continuously threatened to evict them and called them migrants (*Bafuruki*), and while some referred to them as “Congolese.”

This research recommends that future resettlement planning should as a matter of necessity include provisions to protect land, agriculture and livelihood continuation. The implementation of National Land Policy must be expedited to meet the spirit behind the law, which intends to protect customary land through the mechanisms of systematic demarcation, registry and certification.<sup>107</sup> This protection balances other provisions in the law aiming to “evolve” customary lands into the land market. In effect, we will witness more land exchanged for development purposes, and with it more compulsory land acquisitions. Any mechanism for land exchange must enforce the restitution and compensation provisions in the law: “the prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of property,” as echoed in the Constitution and the Land Act.

## • Livelihoods

Turning to impacts on livelihoods, research established that farming was the major source of livelihood for most of the PAPs prior to the development projects. Out of the 288 households interviewed, 84% indicated that the major source of livelihood after displacement was farming, 7% said petty business, 3% stated fishing, and other occupations. Outside of farming, employment included produce dealing and marketing, selling local brew, tailoring, motorcycle passenger service, among others. After displacement, only 44% said their major source of livelihood was farming and 11% said they were doing petty business. Many responded that they are now supported by relatives. As can be seen above, there was a significant 40% decline in farming as the main source of livelihood for most PAPs. This is partly because some of the PAPs have not yet fully settled down, but also because the PAPs have taken up petty business while others were doing casual labour as a source of livelihood. The decline in farming also explains the decline in the number of people

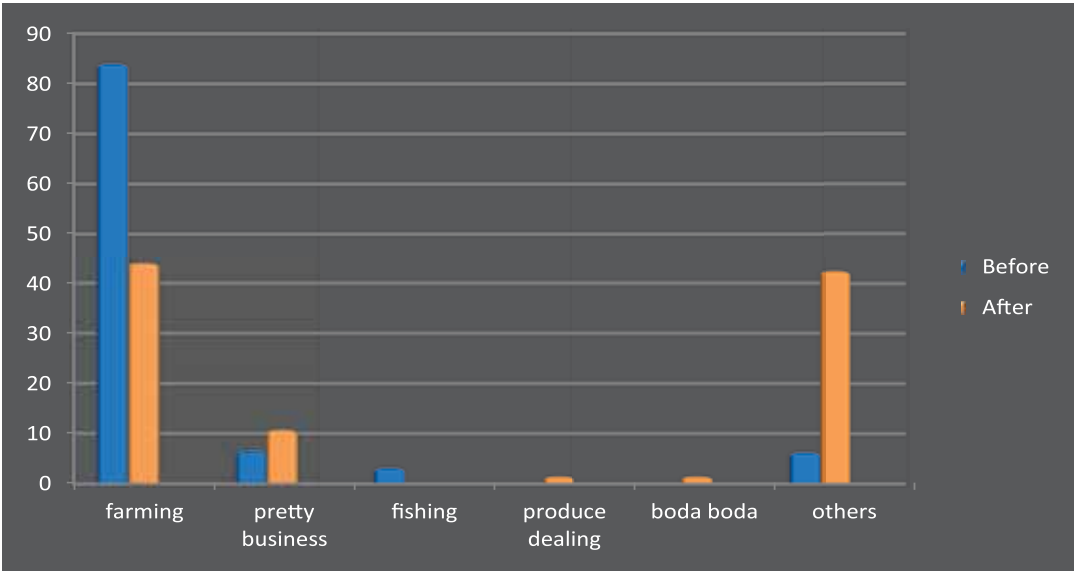
<sup>106</sup> See Oil Uganda, Jan 6, 2015.

<sup>107</sup> See the following sections of the Uganda National Land Policy (2014): Sec. 4.3 “On Customary Land Tenure”: Customary does not provide security and impedes the advancement of land markets; Sec. 4.3. 40. (i) “design and implement a land registry system to support the registration of land rights under customary tenure” (ii) confer Certificates of Title of Customary Ownership based on the customary land registry that confers rights equivalent to private property (freehold); (v) promote systematic demarcation; (vi) make an inventory of common property resources owned by communities to be managed by them.



marketing produce. In contrast, we documented a surge in the number of people involved in petty business, partly the result of the income ‘boom’ from the compensation money.

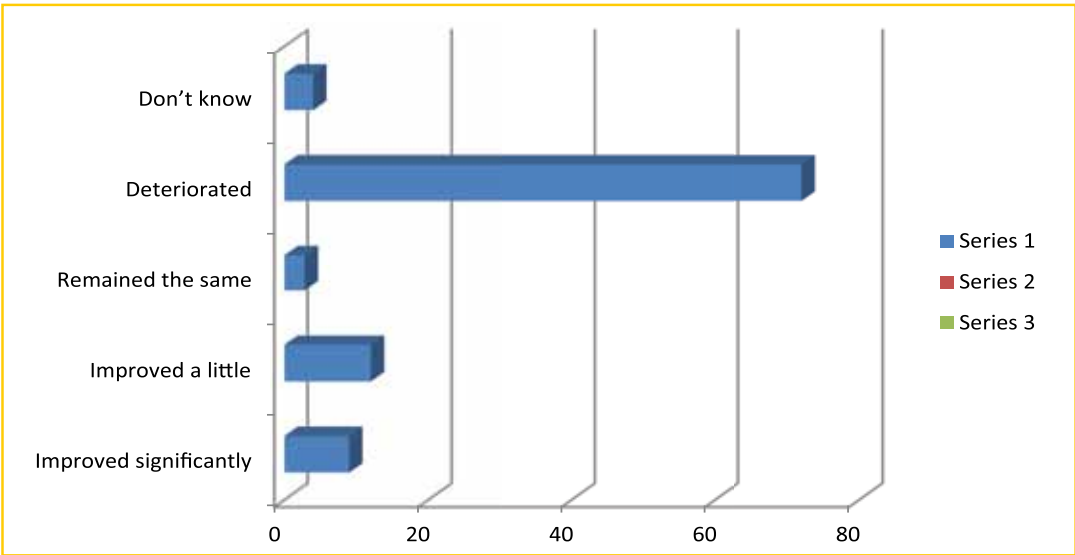
**Figure 10: Status of Livelihoods Before and After Displacement**



Finally, the research established that the PAPs whose livelihoods were most affected were those who were resettled under the BHP project. From a very fertile area which supported several types of crops in a mixed economy with fishing, petty business and trading, the BHP PAPs were resettled on marginal lands in isolation from established services and trading centres. According to testimony, few were able to support productive subsistence agriculture, and fishing activities were lost from their livelihoods as the resettlement land at Naminya parish is located far away from the Nile.

When asked whether their income had increased, of the 261 who responded to the question, 11% were of the view that their income had significantly increased, 13% indicated that it had improved a little, and 3% that income levels had remained the same. However, seven in ten respondents (71%) confirmed that incomes had deteriorated. These respondents attributed it to the valuation, compensation and resettlement processes. In this report, we have already documented many of the weaker mechanisms evidenced at the level of implementation across the five case studies. As noted above, in the case of Bujagali, the PAPs said the land was full of stones and was not as productive as the land they were displaced from by the project. They noted that previously they had different sources of income other than farming, which included fishing, which provided almost daily a source of income and food security. Some of those from the oil refinery indicated that the land they bought was of poor quality or smaller in size, and production levels could not sustain a family. But as expected, the majority of those impacted by diminished income came from the 256 households at Rwamutonga.

**Figure 11: Income Levels After Displacement**



When asked about changes in the quality of life in their new location in comparison to the one they left, 16% said their quality of life had improved and 4% said it had remained the same. Similar to the drop in income, 74% confirmed that their quality of life had deteriorated. Decline in quality of life was attributed to decline in income as a result of loss of livelihoods, and to separation from relatives and social networks.

**• Areas for Improvement in Future Resettlement Interventions**

The research established that the PAPs went through a number of bad experiences. Out of the 288 respondents that were interviewed, 41% said they did not like the eviction process, 42% said they lost property, 24% said they suffered from separation from their social networks, and 34% said it disrupted their livelihoods. A third complained about the valuations and the level of compensation they were given, and 21% disliked the way government and third-party private firms responded to their circumstances. Others took issue with the roles leaders and politicians played. Many expressed deep concern about the education of their children.

The above findings of this research demonstrate the overwhelming negative impacts on PAPs and communities at the level of implementation. Projects trigger a range of land acquisition contexts. Laws and policies need to guide the adoption of principles and mechanisms suited to each case at the level of implementation. A robust action plan that provides checks and balances on how the mechanisms are applied will positively impact on lives and status of PAPs, and mitigate such negative consequences as documented in the evidence of the five case studies. For these reasons, it is urgent that a policy framework to guide government, industry and civil society in processes of land acquisition be developed and put in place.

# CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS

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## 7.1 Conclusions

This research has showed that land acquisition for development purposes is often captured in the language of “compulsory acquisition of land or public interest” under international and domestic legal frameworks. These legal frameworks protect the right of the individual to own property but also provide an exception where land is required in public interest for development purposes including construction of infrastructure. In all such situations, the owner of land is entitled to either monetary or physical compensation (which includes relocation and cash compensation for developments on the land) prior to being involuntarily resettled.

The research has concluded that the process of involuntary resettlement triggers attendant rights of a property owner such as information, consultation, participation, etc. which are not specifically provided for in the domestic legal frameworks but through practice have come to be recognised internationally and are now recommended because they complement the written rules and foster the protection of PAPs’ livelihoods and property rights in the course of involuntary resettlement.

## 7.2 Recommendations

In an effort to mitigate the pitfalls evidenced in this research, the authors propose policy measures necessary to deal with acquisition of land for development purposes and issues relating to compensation in all cases of involuntary resettlement. Drawing on empirical evidence of PAPs impacted by compulsory land acquisition, we propose “Strategic Recommendations” and attendant actions to be taken in the formulation of a future national Resettlement Policy. Such a policy framework should take into consideration the following critical issues.

- Build mechanisms into a framework that integrates and accommodates different stakeholder interests, strengthening how policy is put into action by aligning policy with implementation,
- Instil an atmosphere of “trust” into the process as a range of ‘voices’ contributes to the negotiated outcomes for the benefit of all stakeholders. Stakeholders include government ministries and authorities, industry, politicians, local governance and citizens’ groups, local communities and PAPs, and civil society and advocacy organizations.

- Create a flexible approach accounting for a range of contexts that trigger land acquisition for development. The flexibility is needed to accommodate the interests of key stakeholders in different contexts, offering a tool for their participation in shaping the efficacy and outcomes of development.
- Provides a process to guide line ministries as custodians of citizens' resources, social welfare and the provision of services while development of extractives expands and deepens across many sectors. Decisions can be better coordinated among government ministries and governance officials so as to avoid negatively impacts that compromise the objectives and operations of related political and technical units, such as the National Forestry Authority and the Ministry of Lands, Housing and Urban Development.

### **7.2.1 Strategic Recommendation #1 – *Legislation***

Review existing laws and design new ones aligned with internationally accepted best practices on land acquisition and resettlement, and suited to the Ugandan context. Monitor and bridge the gaps between policy and implementation, between processes and outcomes.

#### **Actions:**

- Respect and promote national and international human rights. This should be prioritized for every development intervention.
- Conduct on-going reviews of existing legislative and policy frameworks pertaining to land acquisition and compensation with a view to bringing them into conformity with international best practices and frameworks
- Identify gaps and weak mechanisms of implementation by reviewing feasibility studies and RAPs, audits and monitoring reports from each project, and the types, frequency and substance of allegations of court actions brought by PAPs and their representatives.
- Expedite strategies and mechanisms that impose a strict adherence to policies and laws set up by the Land Policy to protect the security of land during the development process.

### **7.2.2 Strategic Recommendation #2 - *Project Design and Planning***

Apply a stringent framework and procedures to the assessment of the impacted region and populations, reinforce mechanisms at all stages of the land acquisition process, and create action plans and outcome measures for the mitigation of social and environmental risks.

**Actions:**

- For each type of land acquisition, require an Environment Impact Assessment (EIA) consistent with national and international law prior to every development project in order to establish the potential negative impacts and social risks. The outcome of the EIA, with emphasis on impact (positive and negative) should be shared to enable informed decision making by the PAPs.
- Avoid displacement of communities from their ancestral land for purposes of development by just finding alternative land elsewhere. International best practice recommends putting in place resettlement options that assist communities to better their lives. Where displacement cannot be avoided, then displacement must be done in a manner that maximises benefits that accrue to those affected by the development, whether by cash compensation or physical resettlement of PAPs. Whatever the options, development should put in place mechanisms for protecting the most vulnerable.
- Preserve the cultural identity of the PAPs. Consistent with international practice, where historical and cultural artefacts exist, as a policy measure, these areas should be avoided and alternative locations identified for a development project.
- A Resettlement Action Plan (RAP) and a Livelihood Restoration Plan must be developed.
- Require the gathering of socio-economic and socio-cultural information from the potential PAPs to facilitate a better understanding of the project area and affected population. This is consistent with international best practice that emphasizes planning and resettlement options especially where people are likely to be physically or economically displaced.

### **7.2.3 Strategic Recommendation #3 – *Informed Decision-making***

Project design and RAPs should build in consultation with stakeholders and PAPs as an on-going and transparent process.

**Actions:**

- Laws and policies – constitutional and legal entitlements and protections – should be shared with stakeholders and those in affected communities as a way to promote stakeholder buy-in, capacity-building, transparency and accountability.
- Information and sensitization on land rights, compulsory land acquisition and resettlement laws need to be shared with PAPs throughout the development process.
- Align sensitization and consultation with international best practice that produces an informed involuntary resettlement community. It is a basic right to have information on a project, potential impacts of such a project and mitigating measures that will be put in place according to the international best practices.

- Create an enabling environment for community members to participate in all involuntary resettlement matters. A comprehensive inbuilt consultation process with PAPs is vital especially where entire livelihoods are likely to be destroyed and/or distorted. Consultations allow PAPs and other stakeholders to ask tough questions and make informed decisions.
- Capacitate communities to negotiate with developers and other stakeholders. This high priority is consistent with international best practice that recommends negotiation with individual landowners in all cases of involuntary resettlement. This empowers land owners as rights holders to freely interact with government officials and make offers and counter offers, thereby appreciating the project and reaching agreements that will limit conflicts in the future.
- Strictly adhere to timeframes for execution of commitments made for voluntary resettlement. These must be clearly defined in advance and communicated to PAPs through sensitization activities.

## **7.2.4 Strategic Recommendation #4 - *Valuation and Compensation***

The fair valuation of land and property and timely compensation is at the core of maintaining and improving PAP livelihood. In line with national law and international best practices, prior compensation is required; PAPs need to be compensated before land acquisition begins and property destroyed or its use constrained.

### **Actions:**

- All districts will update and make current valuation rates for replacement of land and property. The total “replacement package” must be at or above a pre-existing level of property possession, so that the restoration of one’s livelihood can be re-established.
- Prior compensation is required; compensation should be paid before resettlement and/or the disruption of livelihood. Enough preparations should be made to effect compensation as soon as valuation is completed. Once timeframes have been defined for a particular activity then a period of three months should not be exceeded because after the period, PAPs opting for cash compensation will be subjected to unfair prices when considering land restoration. Where delays are inevitable, then compensation should take into account inflation and inconveniences caused by affording PAPs hardship allowances.
- Identify the categories of beneficiaries as well as the respective interests each holds. While there may be several people resident on land needed for a particular development, not all of them will have the same interests and rights. Accordingly, those with legal rights to land are entitled to full replacement of the land and compensation for assets and other developments prior to displacement. Those with non-legal interests in the land are entitled in accordance with existing land law to their due compensation prior to displacement.

## 7.2.5 Strategic Recommendation #5 – *Monitoring*

International best practice recommends transparency and accountability measures to independently monitor and audit the implementation of land acquisition and the resettlement process. PAPs require resources and knowledge to represent their own interests and to assess the impacts of project activities on their lives.

- Put in place effective independent monitoring and auditing mechanisms consistent with a transparent and accountable resettlement process. These will reduce conflict of interests and to provide the checks and balances of third-party firms that are contracted to implement PAP management. An independent NGO witness shall be brought on board to coordinate with developers on the monitoring of resettlement activities.
- Entitle PAPs to qualified and experienced lawyers in human rights and involuntary resettlement. This should be a right of every PAP and should be provided through a mechanism that does not transfer costs to those targeted for displacement.
- Institute an effective administrative complaints-handling mechanism. A grievance mechanism must be simple for the users to appreciate and the PAPs must be sensitized about its operative mechanism.

## 7.2.6 Strategic Recommendation #6 – *Land Security*

Land use and land ownership are key recommendations to ensure the security of land during development and resettlement actions.

### **Actions:**

- Reform land rights and protections to take into consideration customary land statuses. We see an urgent need for consistency in process and mechanisms of establishing land “ownership” across a range of acquisitions.
- Recognize and legalize customary lands through systematic demarcation, registry and certification, providing security and protections in the face of development. Expedite the implementation of the National Land Policy by encouraging the land certification process, building the capacity of District Land Boards to facilitate certification, thereby helping to reduce vulnerability to dispossession.
- A Livelihood Restoration Plan must be developed, along with economic strategies, programmes and packages to re-establish PAP economic security. Put into place mechanisms to improve and restore community livelihoods through the proper transfer of land and compensation. The restoration of livelihood should include provision of alternative sources of livelihoods to mitigate negative impact of relocation to places where pre-existing economies cannot be attained.

This research identifies principles and mechanisms that can be integrated into a



comprehensive resettlement policy framework guiding land acquisition and resettlement. The strategic recommendations above address policy gaps on involuntary/compulsory resettlement, taking into account international best practices and evidence-based inquiry. This research aims to assist government and the industry in developing a robust framework that protects the value of investments as well as the social and economic security of those directly impacted by development activities. Finally, the research should be able to help Uganda in meeting its responsibility to manage and regulate land use, and transforms natural assets into sustained prosperity for all citizens.

## **7.3 Proposed Policy Framework**

The following proposed policy framework builds on our strategic recommendations and serves as a guide to formulating principles and mechanisms to address land acquisition and involuntary resettlement.

### **7.3.1 Policy Objective: Documenting Socio -Economic and Demography Information of a Target Project Community**

Community settlements in any place in the country will often be characterized by a number of characteristics including; ethnic composition; minority groups and their composition; sources of livelihoods and alternatives available; population size and distribution by gender, age, workforce; public and social amenities and their distribution; cultural practices; and land ownership patterns and distribution.

Consistent with international best practice, this information must be collected to understand the project area and affected population to inform planning and resettlement options especially where people are likely to be physically or economically displaced. In the former, a Resettlement Action Plan (RAP) and in the latter a Livelihood Restoration Plan must be developed. The collection of this data must be done through undertaking actual visits to every household in the project-affected area. The number of persons affected is inconsequential.

The findings must be shared with the same community for them to verify and confirm the data. This is consistent with the right to information under the Access to Information Act.

### **7.3.2 Policy Objective: Laws in Place to address Rights and Legal Matters Arising from Resettlement**

Owing to the fact that involuntary resettlement occasions displacement from land and negative impact on livelihoods, it is imperative to identify the necessary laws that come in play as a result of a development project. The laws cover wide areas including rights to acquire land in public interest (principle of eminent domain); land and security of tenure in resettlement; economic, social and cultural issues and protections as recognised by law. The relevant legal frameworks must be identified and shared with the affected communities,

to ensure sufficient information able to trigger necessary action in the event of abuse.

With respect to the existing legal frameworks and their failure to offer the needed protection to PAPs, it might be useful to develop guidelines that give effect to existing legal and policy frameworks and by so doing limit the negative impacts on PAPs.

### **7.3.3 Policy Objective: An Environment-sensitive Project**

Development projects requiring massive chunks of land often impact on the environment in various ways dependent on the particular project. Consistent with international and national law, every development project should prior to being undertaken be informed by an Environment Impact Assessment (EIA) exercise to establish the potential negative impacts.

The results of an EIA should be communicated to the community through outreach mechanisms. This information is useful in informing the public about the potential impacts about the project so that informed decisions about resettlement may be undertaken including whether to stay in the neighbourhood of the project or to move further away. The firm implementing the project should ensure that the consultant who is retained to undertake the EIA is made available to engage with communities to allow for effective discussions on positive and negative impacts of the project.

### **7.3.4 Policy Objective: Respect, Protection and Promotion of International and National Human Rights**

Land acquisition as a process triggers and impacts on several individual rights as set out in international, regional and national policy and legal frameworks. Accordingly, the rights of individuals ought to be spelled out as a measure of informing PAPs about their constitutional and legal entitlements and protections in development projects.

These rights include: Equality under the law; Equality of treatment and protection from discrimination; Freedom to freely dispose of their property; Freedom from torture; Protection from arbitral deprivation of property; Fair, prompt and adequate compensation including related rights like disturbance allowance; Appeal the valuer's assessment to the High Court within the stipulated time; Life; Water; Healthy environment; Education; Practice ones trade and or profession; Freedom of movement; Safety; Children rights; Women rights; Persons with disability rights, etc.

Notwithstanding the recognition and constitutional protection of rights, PAPs of development projects related to involuntary resettlement have been put in a place where the rights to life have been threatened owing to the lack of sources of energy for cooking; clean water; health; education etc. The spelling out of these rights therefore serves two purposes namely:

- a) Enabling government to ensure PAPs are in a position to enjoy the same rights post resettlement,

- b) In ensuring that PAPs who opt for resettlement by government can demand for the respect and enforcement of these rights in the new place of resettlement.

### **7.3.5 Policy Objective: Access to Legal Services by Project Affected Persons**

Access to legal counsel is one important tenet of access to justice in a country governed by rule of law. Many a community member in Uganda cannot afford services of counsel and therefore are bound to suffer injustices owing to this hindrance. As a measure of ensuring that rights of PAPs are effectively considered during the several processes of involuntary resettlement, a minimum of two independent lawyers for the communities must be retained for the entire duration of the project from the commencement to conclusion.

The lawyers must have qualifications in human rights or have experience in human rights work on the one hand and must have been involved in involuntary resettlement issues through working with PAPs or through research and publications on issues of involuntary resettlement. The lawyers should be retained at a professional fee with provisions to allow for effective periodic travel and attendance to PAPs.

The lawyers' role would include: Advising PAPs on their rights in resettlement process; raising the concerns of PAPs as they arise from the various processes with the implementing firm; Where relevant, conduct awareness raising for PAPs; Representing PAPs during the complaints handling process; etc.

The lawyers appointed to handle PAPs issues should be required to develop a work plan of engaging with communities to ensure proper and effective engagement with their clients.

Where PAPs are unhappy with the lawyers for legitimate reasons, then a proper procedure for appointing others should be put in place.

### **7.3.6 Policy Objective: Communities Capacitated to Negotiate in Situations of Involuntary Resettlement**

International best practice recommends negotiation with individual land owners in all cases of involuntary resettlement. This is paramount as it empowers land owners as rights holders to freely interact with government officials and make offers and counter offers thereby appreciating the project and reaching agreements that will limit conflicts in the future.

Negotiation when clearly spelled out is also important because it offers PAPs with remedial options. Past experiences have shown that the approach adopted by government agencies during involuntary resettlement has been one tending to negotiation; yet characterized by compulsory land acquisition and therefore disenfranchising PAPs of their rights to appeal to the High Court when not in agreement with the valuation of their properties.

Negotiation can only be successful if characterized by empowering PAPs with the rights framework above through outreach and sensitization as discussed below.

### **7.3.7 Policy Objective: An adequately Informed Involuntary Resettlement Community**

It is a basic right to have information on a project, potential impacts of such a project and mitigating measures that will be put in place according to the WB. The lack of such information could breed conflict amongst the affected communities. PAPs, therefore, need to be sensitized continuously on a number of issues including the following:

Negotiation; Why their land and not any other was chosen; Demarcation and survey of the boundaries of the intended project area including time frames for doing so; The intended project and its benefits to the Ugandan public; Resettlement options available to the PAPs including compensation rates and process of assessment and valuation of properties; Demographic data; Rights framework; Complaints mechanism; Consultations on housing designs for resettlement; Witness NGO; Transparency mechanisms; Accountability mechanisms; Restoration of livelihood programmes; etc.

Sensitization and outreach may take several forms. Community meetings, household meetings, public dialogues, FM radio presentations could all be employed to provide as much information and various issues as outlined above.

The success of outreach and sensitization programmes depends on several other factors, which include and are not limited to;

- (i) Engaging with district technical and political local leaderships in conceptualization and implementation of a project as opposed to merely engaging individual leaders at the implementation stage. The prior engagement of technical and political leaders serves to prepare the population and the district leaders during actual implementation.
- (ii) CDOs in the sensitization phase. This is necessary because CDOs are more experienced in working with communities and communicating to the same communities. It is appreciated that often-times an independent company is contracted to implement the RAP. This in itself does not bar the contracted company to work with the CDO through facilitating her participation in the sensitization exercise. This can be effectively provided in the contract of such a company.
- (iii) Engaging with community leaderships. These leaderships may be formed pursuant to the project or where trusted community leaderships exist then these may be engaged. The purpose of engaging community leaderships is to ensure that PAPs' issues can be raised continuously and through sensitization and outreach addressed.

### 7.3.8 Objective: Enabling Environment for Community Members to consult and Participate in the process of Involuntary Resettlement

Consultations with PAPs of an intended project are vital especially where entire livelihoods are likely to be destroyed and or distorted. Consultations may relate to:

- (i) Options for resettlement.
- (ii) In case of non-cash resettlement the designs for housing.
- (iii) Minority groups including elderly, children, women, persons with disability rights issues such as whether they individually have family they wish to relocate with etc.
- (iv) Skilled and non-skilled labour as may be required during the project implementation.
- (v) Proper implementation and resettlement in an organized and planned environment.
- (vi) Local leaderships participation in the conceptualization and implementation of the project, etc.

Consultations therefore allow for participation of PAPs in decision making processes that impact on their living and livelihood. Both consultations and participation of PAPs inform planning decisions and promote ownership of decisions through effective engagement of all stakeholders.

### 7.3.9 Objective: Resettlement Options that Assist Communities to Better Their Lives

Consistent with international best practice, displacement of communities from their ancestral land for purposes of development should be avoided and alternative land found elsewhere. Where displacement cannot be avoided, then it must be done in accordance with the proposals herein and existing law.

Whilst several options may be available and even defined in situations of involuntary resettlement, the most prominent and viable are cash compensation and resettlement.

**Cash compensation:** This option is often the most preferred consistent with the right of the individuals to freely dispose of their property and to pursue their own economic development. For some beneficiaries, however, it is responsible for society ills like prostitution; unwarranted expenditures on developmental issues; family breakdown; destroyed livelihoods; school drop-outs etc. as a result of a sudden windfall of income previously never received on the one hand and the lack of proper sensitization on management and utilization of compensation sums.

Consistent with international best practice and experience and as a policy measure, this cash compensation should be considered the last option for any household to benefit from as discussed under resettlement further below. The exception, however, is where in the

case of land a small fraction of the asset is affected by the development project. Perhaps another exception that may be allowed here is where a PAP household can demonstrate having other land-based assets elsewhere and where the family's livelihood is secure and protected.

The taking of land-based assets should be done only after full compensation has been effected. The purpose of this policy measure would be to avoid loss of shelter, assets, access to assets, income and means of livelihood.

In the event that cash compensation should be maintained as an option at equal arm's length with resettlement because of the need to respect the preference of PAP's for cash compensation, then strategies in which "the provision of land would adversely affect the sustainability of a park or protected area, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost." The inadequacy of land must be sufficiently demonstrated.

Cash compensation for developments on land should be protected in accordance with existing law.

**Resettlement:** According to the Land Policy, all land in Uganda is a planning area. Given this policy position, in all situations of involuntary resettlement land for resettlement of PAPs must be made available in advance and properly planned with housing and serviced by access roads, electricity including street lighting, water, kindergarten, primary and secondary schools, health centres, police stations/posts, religious facilities, community centres etc prior to implementation of the project.

The UIA investment land at Namanve, Jinja road, provides good precedent for infrastructure provision like roads, water and electricity.

Resettlement whether physical or economic in which assets are lost or not should attract responses and as discussed herein there should be assistance rendered to victims and appropriate compensation during the transition and prior to actual relocation. The existence of well-planned settlements will not only discourage cash compensations but will also:

- (i) Reduce land fragmentation and conflicts.
- (ii) Increase security of land tenure.
- (iii) Decrease public expenditure on health considering there will be reduced exposure to ill and unhealthy environments.
- (iv) Living in well-planned environments for children.
- (v) Well serviced settlements and with easy response to emergencies.

Where a household has in excess of one acre, then the excess land for agricultural development must be restored although this may be provided outside the settlement area

but should be accessible.

Additionally, the resettled communities may develop conflicts with host communities due to increased pressure on use of land and therefore in addition to helping PAP's to integrate socially and economically, measures should be in place to address conflicts to avoid a backlash amongst the communities.

### **7.3.10 Policy Objective: Protection and Management of Cultural Property**

Every ethnic community in Uganda has culture and the right to culture is protected. The right to culture is very much connected to land and, therefore, in situations of involuntary resettlement, it is crucial to appreciate the cultural patterns and accordingly bear these in mind.

Consistent with international practice, where historical and cultural artefacts exist, as a policy measure these areas should be avoided and alternative locations identified for a development project.

In the case of the resettlement option involving land for land compensation, measures must be taken to ensure that households that are resettled are enabled to enjoy and celebrate their cultural rights from evacuation to post resettlement.

### **7.3.11 Policy Objective: Transparency, Accountability and Zero tolerance for Conflict of Interest built into the Involuntary Resettlement Processes**

Consistent with international and national policy, PAPs must be provided with information on several issues on the one hand and mechanisms for transparency put in place on the other. The information and mechanisms could include:

- (i) The intended project and how much land will be affected.
- (ii) Compensation rates for land and other developments on the land.
- (iii) Where rates are not uniform explanation on what informs the variance.
- (iv) Display of list of affected persons/households and engaging the community to identify any ghost names.
- (v) The firm developing the RAP should not be the same implementing it and either firm must set up offices with a minimum of two competent and qualified staff in resettlement at the district.
- (vi) Furnished with all relevant documentation related to the resettlement process.

Transparency therefore is an over-arching requirement when dealing with PAPs in involuntary resettlement. Compensation must be consistently applied to all persons and



communities affected. Accountability mechanisms are essential for ensuring that there is value for money and corrupt tendencies are cut out. These mechanisms may include:

- (i) Sharing information on PAPs affected by the intended project.
- (ii) Sharing information on rates applied to various items eligible for compensation

### **7.3.12 Policy Objective: Timely Execution of Resettlement Processes to the Rightful Beneficiaries**

Whilst there may be several people resident on land needed for a particular development, not all of them will have the same interests and rights. Accordingly, the categories of beneficiaries must be identified as well as the respective interests each holds. Those with legal rights to land are entitled to full replacement of the land and compensation for other developments. Those with non-legal interests in the land are entitled in accordance with existing land law to their due compensation.

Eligibility for benefit is also linked to the cut-off time-lines. Persons who come after the eligibility period will normally not be entitled to any benefits. Time frames for execution of the resettlement process are thus very critical to communities. Delays impact on PAPs' livelihoods, education of children, and subject them to untold suffering. Accordingly, time frames for compensation and resettlement must be clearly defined in advance and communicated to PAPs through sensitization activities.

Once time frames have been defined for a particular activity then a reasonable period of three months should not be exceeded before benefits are paid out respectively because when this time frame is exceeded PAPs opting for cash compensation will be subjected to unfair market practices as may be occasioned by speculation or inflation in the local economy.

It is therefore important that government or any other private person involved in involuntary resettlement secures funds in advance to ensure that proper preparations are made and PAPs are not subjected to injustices.

### **7.3.13 Policy Objective: An Independent Resettlement Action Plan Monitoring Mechanism**

International best practice recommends as a transparency measure an independent and competent NGO knowledgeable about land and human right rights issues should be brought on board to monitor the implementation of the resettlement process.

The NGO must be furnished with all relevant literature and documentation pertaining to the involuntary resettlement; must be invited to all public meetings with PAPs; must document every activity and prepare a report respectively. The NGO must communicate its mandate to PAPs so they can appreciate the interventions that will be made; and the occasions of interventions.

The Witness NGO should have in its team persons with knowledge of and experience in:

- (i) Human rights
- (ii) Environmental issues
- (iii) Social and cultural issues of the community
- (iv) The witness organization also serves to complement the mechanism of Counsel for PAPs.

### **7.3.14 Policy Objective: An Effective Administrative Complaints Handling Mechanism**

Land acquisition for development projects are often characterized by disputes of varying nature. In accordance with international and national mechanisms providing for redress in the event of disputes arising, it is recommended that a complaints mechanism should be put in place to entertain grievances from PAPs at the local implementation level.

A complaints mechanism must be simple for the users to appreciate and the PAPs must be sensitized about its operative mechanism. The mechanism should be alive to needs for accessible and inexpensive judicial recourse and or traditional dispute handling mechanisms.

Typically, the firm implementing the RAP will be responsible for setting up the complaints mechanism. To encourage transparency in the process, the mechanism may be constituted as a quasi-judicial body of seven people characterized by gender sensitivity.

The composition may be as follows:

- (i) Two women of repute in the community from the different project-affected villages.
- (ii) Two men of repute in the community from the different project-affected villages.
- (iii) An NGO representative.
- (iv) A representative from the implementing firm.
- (v) A person with disability.

The complaints mechanism may follow the following pattern:

- (i) The complainant delivers a hand-written statement through counsel for PAPs in English to the offices of the implementing firm.
- (ii) The resolution of a complaint should be done within 3 days
- (iii) The first level of handling of the complaint will be by the implementing firm's appointed complaint's manager. Where the complainant is not satisfied with the decision of the complaint's manager, the same shall be recorded and the complaints

manager will prepare a record of the proceedings and forward it to the 7-member independent complaints panel.

- (iv) The complainant will be entitled to a copy of the proceedings.
- (v) The hearing of the dissatisfaction shall be done within 7 days in public at a gazetted place and upon notification to the complainant and the public accordingly.
- (vi) Where the PAP is dissatisfied with the decision of the 7-member independent panel, a copy of the decision will be availed to the PAP through Counsel and the PAP advised to appeal to the Court as applicable.

### **7.3.15 Policy Objective: Community Livelihoods Protected, Improved and Restored**

PAPs of involuntary resettlement must have their livelihoods protected, restored and, even more importantly, improved so that they are better than they experienced before. The objective of such a policy measure would be to mitigate the adverse effects of being removed from their former lands.

Given that resettlement is the priority recommended option in situations of involuntary resettlement, programmes for livelihood restoration must be established to assist PAPs to return quickly to their lives and are not threatened by hunger, malnutrition and other health effects and loss of life. Accordingly, the following measures could be undertaken:

- I. Sensitize PAPs on intended livelihood support programmes.
- II. Sensitize PAPs on better farming methods including using experts to provide demonstrative skills.
- III. Encourage the formation of groups to promote standardization of crops and products.
- IV. Where feasible provide better farm implements like tractors to ensure full utilization of lands while encouraging responsible usage and servicing of the machines.
- V. Transitional support to all displaced persons.

### **7.3.16 Policy Objective: A Successfully Executed Involuntary Resettlement Process**

Monitoring and evaluation is an internationally and nationally recommended practice. It serves to ensure that what is undertaken to be done within a specified time for a particular community is effectively and promptly done within the specified time frames and is delivered in the terms undertaken. To this end, as a policy measure, monitoring and evaluation of every specific activity in the value chain of involuntary resettlement must be undertaken by the various stakeholders. The implementing firm, the witness NGO, Counsel for PAPs and any other established mechanism must allow access of information.

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