

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

Introduction

Following the discovery of oil in the Albertine Graben of Uganda in 2006, the Government of Uganda has sought to capitalise on potential economic development opportunities from oil extraction and processing. In some circumstances, the projects that have been proposed and developed have required government acquisition of land using powers of compulsory purchase. In the Buseruka region of Uganda, 29 square kilometres of land were identified for an oil processing plant and associated infrastructure. The land identified by the Government was then home to approximately 1,200 households with various rights and interests in the land, and compulsory acquisition was undertaken in order to secure the land for the project. Affected households were offered the choice of monetary compensation (in accordance with Ugandan compulsory acquisition law), or the re-provision of land taken (a concept recommended by many international authorities but not explicitly provided for in Ugandan law).

This paper considers the impact of the compulsory acquisition of land for the oil refinery and associated works. Extensive work has already been done on the matter in earlier stages of the project¹; this paper will supplement that research and provide an update to reflect the position as it currently stands in 2018. It is now timely to review the 'land for land' compensation approach in particular, since in 2017 the replacement land was provided by way of a resettlement community for some of the affected households.

Approach

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The paper focuses on those households that opted in 2012 to take resettlement land as compensation. Those who took financial compensation vacated the affected land in 2012. However, provision of replacement land was not made until 2017, with households moving to the replacement land from August 2017. The paper draws in particular on dialogue undertaken by the author with the community leaders on a site visit in August 2018; and on an information gathering session held by the author with a group of approximately 60 community members on the same date. It considers information gathered from local NGOs that have been working with the community, and reviews Government documentation published in relation to the process, to consider whether the commitments made to those affected were upheld.

The structure of the paper is be as follows:

1) Initially to briefly report on what has happened at Buseruka in the six-year period for which discussions have taken place around land appropriation (2012 – 2018), in order to provide context and background. This includes commentary and testimony from members of the affected community, as gathered in August 2018, as well as a review of key documentation, including the Ugandan Government policy that led to the

¹ See:

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

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

identification of the land and Buseruka, and the Resettlement Action Plan published to set out the approach to compulsory land acquisition.

2) Secondly to detail the replacement land and facilities that have been provided for some of the community members in their new settlement at Kyakaboga, and to consider the implications for the principle of 'equivalence' in land acquisition compensation. This has a particular focus on livelihoods and livelihood replacement, and considers whether 'equivalence' has been achieved. This includes commentary and testimony from members of the affected community, as gathered in August 2018.

3) Thirdly to consider the compensation provisions made for affected parties in the context of Ugandan legislation, and in the context of international policy regarding compulsorily acquired land, in order to consider whether the provision in the Buseruka case is able to meet either standard. The paper seeks to consider the implications for the mixed application of national law, and internationally recommended good practices that go beyond the provisions set out in law, as applied to these circumstances. It also consider the issues that face customary landowners in circumstances of compulsory acquisition.

The paper finally goes on to consider the lessons that can be learned from challenges faced in the acquisition and relocation, as noted in the Buseruka case. Key areas of focus will be the implications for: livelihoods, gender, vulnerable people, and customary land tenure.

Overview and context

After the 2006 discovery of reserves of oil capable of commercial extraction in the Albertine Graben, the Government of Uganda implemented the 'National Oil and Gas Policy for Uganda' in February 2008, to build more specific oil policy upon the provisions of the Energy Policy 2002. The 2008 policy recognized the existing legislation and policy governing land tenure and land use, and in recognising that land would need to be acquired for surface level development of oil-supportive infrastructure, committed to "promote the implementation of oil and gas activities in accordance with the existing laws and regulations on land ownership and use in the country" (Government of Uganda, 2008). In 2010, a British consultancy firm (Foster Wheeler) were appointed to undertake a feasibility study regarding the refinement of oil to be extracted. The study is not publically available. However, subsequent documentation has made clear that it was as a consequence of the receipt of the study that the Government of Uganda began preparations to establish a refinery, and suggests that the same report determined the size and location. It is not possible to determine whether alternatives were considered, nor whether any attempt was made to limit the extent of land to be compulsorily acquired.

Following the issue of the report, the Government of Uganda made preparations to acquire an area of 29 sq km land at Buseruka. Buseruka is a sub-county in the Hoima District in Western Uganda, close to Lake Albert, and central within the area of the Albertine Graben oil discovery. The Government appointed a consultancy to review land ownership structures in the area, and to capture what was owned by the people that had settled on the land now identified as required for refinery development. The work undertaken led to the publishing of the 'Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka Sub-County, Hoima District' ("RAP"). The document was compiled by 'Strategic Friends International, a consultancy appointed by the Government to prepare for land acquisition and relocation in anticipation of the requirement of significant government land acquisition.

The Introduction to the RAP says that it has been “prepared as per relevant Ugandan Laws with reference to the resettlement policy of the World Bank guiding involuntary resettlement”. The RAP recommends that ‘land for land’ compensation is offered where those affected by the project prefer to be resettled, and that where financial compensation is preferred, that ‘full replacement cost’ is paid. The Government began clearing the land in 2013 with those paid cash compensation required to leave. Those that had opted for resettlement land were left on the remaining land until 2017. The initial impacts on those remaining on the land have been well documented by Global Rights Alert². The resettlement land in Kyakaboga was provided for final relocation in 2017.

Commitments by Government: International standards or National law?

The RAP acknowledged that international standards for compulsory land acquisition go beyond the requirements set out in Ugandan law. Ugandan law on compulsory land acquisition for public interests projects limits compensation for land acquired to financial compensation, for the market value of the land that is acquired, and an allowance for disturbance. However, a number of international policies and guidelines recommend assistance be given to replace land that is taken³. The RAP acknowledged this difference and recommended a flexible approach be taken in order to be compliant with the international standards.

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

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

Key Principles	Comment on achievement at Buseruka/Kyakaboga based on community and local CSO testimony
Policy Objectives (paragraph 2)	
<i>(a) Involuntary resettlement should be avoided where feasible, exploring all viable alternative project designs</i>	Cannot be determined with the information available. The basis for the decision to acquire land to this extent and in this location has not been made available. A number of documents (including the RAP) make reference to a Government commissioned feasibility study on refinery location, which

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

³ See:

World Bank Operational Manual (OP 4.12) – Involuntary Resettlement

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

	<p>implies that the feasibility study may have considered alternatives, but this study is not a public document.</p> <p>The Statutory Instrument identifying the land to be acquired and granting powers of compulsory acquisition is not listed at www.ulii.co.uk. Local CSO's have reported that they have not discovered a definitive plan of the land acquired.</p>
<p><i>(b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participated in planning and implementing resettlement programs.</i></p> <p style="text-align: center; font-size: 2em; opacity: 0.5;">WORKING PAPER TO BE UPDATED</p>	<p>It is not yet clear whether the people displaced at Buseruka will have opportunities to share in the benefits of the project, as construction has only recently commenced, however no explicit mechanisms to allow benefit sharing have been discussed with the community, and no such proposals are included in the RAP.</p> <p>The Community do not consider that they were meaningfully consulted on the site (they were shown the Kyakaboga site, and given their concerns asked to see alternatives, but none were forthcoming) or the nature of the housing provision (they were shown draft plans, and expressed concerns, which were not answered nor addressed in the delivery).</p>
<p><i>(c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.</i></p>	<p>The Community have expressed concerns about the quality of the land for farming, and the lack of supporting infrastructure (e.g. boreholes). The land is reported to be very dry. It was formerly grazing land, and the land does not support the same crops as the displaced people used to farm on their land. They have not been supported in finding alternative crops that are more suitable for the new land. The Community do not consider that their livelihoods have been restored as they struggle to farm the new land.</p> <p>“When we came here there were problems: no water, houses were leaking, kitchen doors were broken and things that were promised were not yet done.” (Female respondent)</p>
<p>Required measures (paragraph 6)</p>	
<p><i>(a) The resettlement plan or resettlement</i></p>	<p>The Community do not consider that they</p>

<p><i>policy framework includes measures to ensure that the displaced persons are:</i></p> <p><i>(i) informed about their options and rights pertaining to resettlement;</i></p> <p><i>(ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and</i></p> <p><i>(iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project</i></p>	<p>were meaningfully consulted on the site (they were shown the Kyakaboga site, and given their concerns asked to see alternatives, but none were forthcoming) or the nature of the housing provision (they were shown draft plans, and expressed concerns, which were not answered or addressed in the delivery).</p> <p>The community consider that there was an attempt to put them off opting for relocation during the SFI survey process. Although this is not verifiable, members of the community reported that they were told relocation land might be provided in far away regions of Uganda: “During sensitisation, we were told that people could be taken anywhere in Uganda, even Karamoja. So the majority of people took financial compensation to avoid that risk.” (Male respondent)</p> <p>In any event, a small minority opted for resettlement rather than cash compensation (less than 10%). The land for resettlement was not identified until at least two years after project affected persons were required to make their choice, meaning that the choice for land compensation could not be based on knowledge of the land itself.</p>
<p><i>(b) If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are:</i></p> <p><i>(i) provided assistance (such as moving allowances) during relocation; and</i></p> <p><i>(ii) provided with residential housing, or housing sites, or, as required, agriculture sites for which a combination of productive potential, locational advantages, and other factor is at least equivalent to the advantages of the old site.</i></p>	<p>The resettlement land at Kyakaboga is very different in nature to the land that was acquired, in that the land for cultivation is separate from the houses, around 1 km away.</p> <p>When asked specifically about positive things that have arisen from the relocation and reprovision, one female respondent said: “There is nothing good that can be said. We live too close together... The latrines are right by the kitchen.” The area is prone to cholera, partly due to proximity to Lake Albert. The proximity of latrines to the kitchens is a cause of concern for residents who consider it could pose a health risk.</p> <p>“When I see my replacement land, I do not think it is the same. In terms of cultivation, I used to have 2 rain seasons. Now I can only rely on March rains. My old land was far better. Before, I could grow anything; the land was very fertile.</p>

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	<p>This side, the soil is not very good and the yield is not very good. I have tried to plant the same crops I had before, but the soil quality is not enough.” (Male respondent)</p> <p>“I am so worried and not happy with the land I have been given. I used to have everything and lots of space. I could plant vegetables near the stream so they would grow even if in drought. It is very dry here.” (Female respondent)</p> <p>“I find the land here very different. I used to have banana, sugar cane, fruit trees. The soil here is not good enough for banana or sugar cane. I have to plant sim sim here or cotton, so am now having to grow things to sell to be able to buy food. I used to have streams nearby to my land, but the nearest stream here is two miles away. There is only one borehole here, so we have to go far if it breaks. It is hard here – even if it rains it is like a drought.” (Male respondent)</p>
<p>WORKING PAPER - TO BE UPDATED</p> <p><i>(c) Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also include measures to ensure that displaced persons are:</i></p> <p><i>(i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and</i></p> <p><i>(ii) provided with development assistance in addition to compensation measures described in paragraph 6(A);</i></p> <p><i>(iii) such as land preparation, credit facilities, training, or job opportunities.</i></p>	<p>The resettled households were given food provisions to last for six months on resettlement, in recognition that the land would take some time to cultivate. The Community did not consider this sufficient, particularly given the problems identified above in cultivating the land.</p> <p>We were not made aware of any particular training or opportunities made available to the resettled households.</p>

ii) IFC Guidance Note 5: Land Acquisition and Involuntary Resettlement

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

<p><u>11 Grievance Mechanism</u></p> <p>The client will establish a grievance mechanism consistent with Performance Standard 1 as early as possible in the project development phase. This will allow the client to receive and address specific concerns about compensation and relocation raised by a displaced persons or members of host communities in a timely fashion, including a recourse mechanism designed to resolve disputes in an impartial manner.</p>	<p>The 2017 Auditor General report into the land acquisition at Buseruka identified the lack of grievance mechanism and lack of monitoring and evaluation during the project to be of particular concern.</p>
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In addition to committing to uphold these international principles, a number of relevant project specific commitments were made in the RAP. Of particular note, the RAP recommended that resettlement land be identified on a case by case basis to construct houses and provide land for farming. This was explained on the basis that resettlements in special settlements may isolate them from the rest of the community. The nature of the resettlement community is of particular concern to the Community, who consider that it resembles a refugee camp. In addition, the land and houses were provided separately, unlike in the original land which was acquired. This has led to problems of stolen livestock, as well as creating tensions within the community, who are not used to living in such close proximity.

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Conclusions/recommendations

'Land for land' compensation is not a straightforward concept, and careful consideration must be given to what would constitute appropriate replacement land. In principle, there is good potential for livelihood restoration, however 1 acre of land that cannot be cultivated not the same as 1 acre of good quality land. At Kyakaboga, the Community report they struggle to farm the same crops as previously. Merely giving land for land not sufficient, and should not afford a project the legitimacy suggested by claimed adherence to international standards. There is, however, potential for innovative approaches. Many of the problems arising in Kyakaboga arise from the direct provision of replacement housing. These could be addressed through more flexible alternatives, such as providing a plot of land and a budget to construct the type of accommodation preferred by a given household.

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

There is a need for consistent and informed advocacy for communities. CSOs have an important role to play, and need to be joined up in their approach. It is crucial that communities are not led to believe that they will receive more than they will by way of

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compensation, but particular attention needs to be paid to equity, justice and monitoring. In particular, this should include documenting rights before acquisition, – advice and advocacy for project-affected persons on the options available (e.g. cash or relocation), maintaining pressure on the government and its appointed agents for transparency throughout and monitoring.

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References

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Government of Uganda (2008) National Oil and Gas Policy for Uganda

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