

Revisiting the notion of profit-sharing:

A bottom-up perspective on resettlement and fair compensation



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Photo: Mogalakwena platinum mine, Limpopo Province, South Africa (source: <https://www.khplant.co.za>)

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*The film can be accessed through the [LANDac Professional Learning Programme](#).

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Executive summary

Land acquisition for development projects by government, private investors and land speculators is a critical source of tensions and conflicts in many parts of Africa. However, it is often unclear to what extent project developers, investors and governments are obliged to explore alternatives or assist affected communities in reconstructing their livelihoods.

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

At the same time, the governments and land developers are operating in a context of increased national and international awareness of the socio-economic ills associated with land acquisition and are under pressure to better mitigate the negative impacts of development efforts. These actors are therefore constantly in search of guidance to meet high community and national expectations for prosperous and just development; coordinating efforts to address land acquisition for development as well as protect the interests of local communities directly impacted by development.

This research focuses on communities' perspective on fair compensation and/or resettlement in South Africa and Uganda, and how these perspectives can inform more inclusive and fair resettlement processes. More importantly, we would like to emphasize the need for governments and companies to consider alternatives to (forced) displacement, as it is not only stressed in national and international legal frameworks and guidelines, but also by our research respondents.

The legal frameworks of the two countries have their country-specific particularities, but also share some commonalities which are largely in line with international guidelines. Prompt, fair and just compensation is enshrined in the two nation's constitutions. However, there are no standardized criteria setting the scope of compensation which means that this is typically decided in local geographical or project contexts.

The findings from this research show that there are diverse opinions from different groups of people about what is considered to be fair compensation. The different groups identified within communities included landowners, infrastructure owners, tenants, men, women, among others, all of whom tended to have slightly diverging priorities and perspectives on investments, and opinions on resettlement, displacement and fair compensation.

The main findings - and also policy recommendations - from research in Uganda and South Africa on what communities affected by displacement and resettlement consider to be fair or just compensation include:

- Resettlement must only be considered as a last resort
- Benefit (or profit) sharing with affected communities should be a prerequisite for any investment
- Inclusively-designed resettlement agreements must be made with affected communities
- National, like foreign investments, must not be overlooked as substantial contributors to population displacement and resettlement

Beyond the issues mentioned above, the research outlines other important issues to ensure fair compensation and resettlement as:

- a) Consultation with all levels and groups of the affected communities including tenants, landowners, men, women, youth, people with disabilities, and other groups identified in a given context. This includes their adequate involvement in compensation-related decision-making, from crafting the settlement package to the actual resettlement process.
- b) Ample time of about one year should be given for the displaced to relocate after alternative settlements are arranged.
- c) Compensation in the form of land supplemented with financial compensation is key to ensure fair compensation.
- d) In case of physical resettlement or provision of replacement farmland, the new home or farmland should have similar or better access to public facilities as compared to the former areas.
- e) Any conditions set by the affected communities must be met prior to displacement.
- f) All land from which people have been displaced should be put to productive use.

The findings paint a picture that people prefer not to move, however, in inevitable instances, fair and just compensation must apply. Future work will focus on the dissemination of these findings to relevant stakeholders including government and the private sector, but also more actively engaging these stakeholders in discussions regarding their views on how fair compensation - in event of population resettlement - can be ensured.

1. Introduction

For many years, governments and companies conduct investments, very often in the name of development, on land that is already in use by communities. These investments include infrastructure, mining, agriculture and so forth. In many parts of the world, these large-scale land-based investments are usually marred by contentions about unfair compensation and resettlement when local people are displaced. For instance, companies and governments tend to focus on material losses such as houses, crops whereas communities not only take these into account but also intangible losses such as social ties and common resources. Internationally and nationally, there are multiple complex legal frameworks, rules and guidelines that intend to guide the complex processes of displacement and compensation but it remains unclear what would be considered fair (or at least considerate) from a community point of view. The legislations are discussed under the legislation review in the next chapter (2).

This report focuses on communities' perspective on fair compensation and/or resettlement in South Africa and Uganda and how these perspectives can inform more inclusive and fair resettlement processes and guidelines. Through in-depth interviews, we collected the experiences and perspectives of 34 respondents living in 8 communities: 6 in South Africa and 2 in Uganda. We asked respondents one main question, intended to provide information on their needs and priorities in case of forced displacement and/or resettlement and what guidelines should be followed:

Would you ever be willing to move away from your current home? If you were to be involuntarily displaced, what would you consider to be fair compensation and/or resettlement?

In addition to this report, we produced a short film that shows the experiences of several respondents. With both this report and the film, our aim is to make communities' ideas of fair compensation visible and explicit, and to share these with interested stakeholders e.g., from the government and companies who may be involved or likely to be involved in compensation initiatives.

This report will start with a brief background of the issues associated with forced displacement and fair compensation, in addition to an overview of the (inter)national rules and guidelines about resettlement and fair compensation in chapter 3. Chapter 4 will present and discuss our findings and the perspective of our respondents on resettlement and fair compensation. In chapter 5, we will draw some conclusions from our findings and present the lessons we learned throughout this research project, as well as some recommendations we have for fellow academics, practitioners and policymakers working on this subject.

2. Resettlement and fair compensation: a brief background

By Johanna Waldenberger

New development projects such as mines, dams or urban infrastructure can have significant impacts on nearby communities. Often, these projects cause displacement, resulting in the loss of livelihoods, income, social ties and cultural heritage (Randell, 2016). Particularly in the global South, poor and vulnerable communities without tenure security are susceptible to losing their land and livelihoods to these investments, which are intended to contribute to development. In these situations, it is often unclear to what extent project developers, investors and governments are obliged to explore alternatives or assist affected communities in reconstructing their livelihoods. To assist those working on the subject, this literature review summarizes the most important national and international rules and guidelines related to development induced displacement. Firstly, it provides an overview of international conventions and guidelines, followed by national compensation and resettlement guidelines in Uganda and South Africa.

2.1. Multilateral conventions

The increase in armed conflicts and civil wars in the 1990s resulted in a growing number of people who had to flee their homes, and many stayed within the borders of their country. The lack of regulations and guidelines concerning internally displaced persons led to the adoption of the *Guiding Principles of Internal Displacement* by the United Nations General Assembly in 1998, the first document that addresses assistance for the internally displaced (Terminski, 2013). While the official definition of internally displaced persons does not include those who were forced to leave their homes or places due to development projects, Principle 6 explicitly states that population displacement is prohibited if the development project does not serve public interests (UNHCR, 1998). States are therefore obliged to protect citizens against displacement, especially “indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to the land” (UNHCR, 1998, p. 5). The guiding principles are non-binding; however, they have been incorporated into the national laws and legal systems of many countries, and several international organisations have officially recognized them (Terminski, 2013).

In 2009, the African Union adopted the *Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, also known as the *Kampala Convention*, which is the first legally binding convention concerning the protection of displaced persons (Vanclay, 2017). It entered into force in 2012 and has thus far been ratified by 31 African countries, including Uganda but not yet South Africa (African Union, n.d.). Article 10 of the document headed “Displacement induced by Projects” declares that “state parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors” (African Union, 2009, p. 20). Article 12 on compensation states that affected persons shall be provided

with effective remedies and state parties must establish legal frameworks “to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards” (African Union, 2009, p. 21). There is no clear definition of what ‘fair and just compensation’ means in this context.

Article 12 refers to a handful of key international guidelines and regulations that govern resettlement and fair compensation for project-affected displaced persons (e.g. International Finance Corporation - IFC 2012, European Bank for Reconstruction and Development - EBRD 2016). The World Bank was the first institution to implement international guidelines for resettlement and compensation in 1980 (Vanclay, 2017). The current version, renamed in 2016, is the *Environmental and Social Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*. Since the World Bank lends money to governments, every time the organisation’s money is involved in a project, these guidelines apply (Vanclay, 2017). Other important guidelines stem from the FAO¹, the IFC² and the OECD³, which are essentially similar. IFC standards are the most commonly used ones, since many large corporations and industries have widely accepted these guidelines. Generally, resettlement is considered the last resort, and project developers should always contemplate alternatives that do not involve displacement first (Vanclay, 2017).

The IFC distinguishes between physical displacement – when people can no longer physically live where they were previously living - and economic displacement – when people’s livelihoods are negatively affected, whether directly or indirectly (World Bank, 2018; IFC, 2012). Livelihood does not only include economic dimensions, but also comprises “the local knowledge, capabilities/capacities, assets/capitals, material and social resources and the activities necessary to make a living” (Vanclay, 2017, p. 6). Most international guidelines do not aim for compensation that restores communities’ livelihood, but rather improves living conditions of affected persons (World Bank, 2018). Key objectives of the IFC are to “*minimize adverse social and economic impacts from land acquisition (..) by providing compensation for loss of assets at replacement cost and (..) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected*” (IFC, 2012, p. 1). According to these guidelines, customary right holders are also entitled for compensation; however, it is up to the respective state to categorize legitimate

¹ FAO (2008). Compulsory acquisition of land and compensation. Rome: Food and Agriculture Organization of the United Nations. Available from: <http://www.fao.org/3/a-i0506e.pdf>

² IFC (2012). Performance standard 5 land acquisition and involuntary resettlement. Available from: 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.

³ OECD (2011). OECD guidelines for multinational enterprises (2011 edition) [Internet]. Paris: Organisation for Economic Cooperation and Development. Available from: <http://mneguidelines.oecd.org/guidelines/>.

tenure rights (Ghimire, Tuladhar, & Sharma, 2017). Most guidelines mention that the lost net income and non-market values such as social, cultural, religious, spiritual and environmental values should be compensated (Ghimire, Tuladhar, & Sharma, 2017). However, there are no concrete measures or guidelines on how this should be done. The value of land is determined in accordance with the International Valuation Standards, and national standards which are based on the market value (IFC, 2012). In general, cash compensation is not seen as appropriate; rather, it is advised to provide assistance and support with land-based compensations and the resettlement process in order to improve livelihoods (World Bank, 2018). The World Bank specifies that incalculable losses, for example access to public services or fishing and forest areas, must be considered in compensation efforts and similar and culturally acceptable resources and earning opportunities must be provided (World Bank, 2018). Again, concrete ways of doing so are not presented in these guidelines. Furthermore, resettlement must always be voluntary and affected persons must be informed on time (IFC, 2012). An exception is in the case of eminent domain (or compulsory acquisition), which is a legal way in which states can acquire land and assets, even against the will of the former owners (Vanclay, 2017). This is frequently invoked by states to enable large projects which are deemed to be in the national interest or public good (Galgani, De Adelhart Toorop, Verstappen, De Groot Ruiz, & Van Maanen, 2016). However, even then, due process must be followed and fair compensation must be ensured (Vanclay, 2017). In Uganda and South Africa, these guidelines tend to be followed when the IFC or partner institutions are funding projects. Otherwise, national laws determine the compensation and displacement process.

The first global consensus concerning land governance and tenure security was achieved in 2012, when the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were unanimously adopted by the Committee of World Food Security (CFS) (Beckh, et al., 2015). These guidelines are the first ones to acknowledge land tenure as a human right and they outline normative standards for responsible land governance (Beckh, et al., 2015). They emphasize the importance of participatory, gender-inclusive, non-discriminatory, fair and transparent land governance and acknowledge the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems (FAO, 2012). Eviction should at all times be avoided, but when it is required for public purpose, the state should provide affected persons with “prompt and just compensation in the form of money and/or alternative parcels or holdings” (FAO, 2012, p. 25). The planning processes of expropriation and compensation must be transparent, in accordance with national law, and affected communities must be consulted (FAO, 2012). The VGGT does not identify how expropriated land is valued; rather, responsible parties should “develop and publicize national standards” (FAO, 2012, p. 13), which means they are subject to context-specific interpretation.

In reality, the implementation of these guidelines faces challenges, such as the lack of involvement of affected persons in the decision-making process and the confusion as to which of the official documents are applicable, since it differs depending on the financial institution and government involved (Vanclay, 2017).

In short, a variety of covenants and guidelines have been adopted over the past decades to provide rules and norms for states and other investors who engage in projects which may involve the displacement of people. Although their specifics may differ, they all have in common that displacements - voluntary or involuntary - are only considered last resort, and alternatives must have been explored first. Furthermore, 'fair and just' compensation must be provided to affected communities to not only restore but improve their living conditions.

2.2. Uganda

In Uganda, the current legal framework on land acquisition is enshrined in Articles 26 and 237 of the Constitution (Elong, Lawrence, & Acai, 2019). In contrast to most international guidelines, the Ugandan Constitution rules that compensation for land loss should restore the affected persons' original position, not improve or worsen (Ministry of Lands, Housing and Urban Development, 2017). Furthermore, "prompt, fair and adequate compensation" (Ministry of Lands, Housing and Urban Development, 2017) must be given to any project affected person prior to taking the land.

In 2017, the government proposed the Constitutional (Amendment) Bill No. 13, which would give the government the authority to acquire land and pay the compensation only after the acquisition, even when the landowners are not willing to sell (Muhindo, 2017). The public successfully opposed this Bill since it would subject communities to large-scale involuntary land acquisition by the government without appropriate compensation or resettlement (Muhindo, 2017). Ultimately, the Bill was rejected by the Parliament in 2018 (Laspnet, 2018).

Under Ugandan law, compensation entails the value of the land, the value of developments on this land (for example cultural heritage sites, crops, buildings) and injuries that occurred due to resettlement. Monthly and daily income losses of affected persons due to the loss of rental income, employment income or profits of non-farm business must be taken into account, when affected persons can provide proof for their losses (Ministry of Lands, Housing and Urban Development, 2017). The value of land is assessed with the use of established local practices and regulations according to the Ugandan law. The District Board holds a list of compensation rates for crops, trees, semi-permanent structures, and other calculable objects. The law also gives affected persons without legal rights to the land entitlement to compensation. Furthermore, a grievance mechanism is installed, which mediates any contestation concerning the land acquisition (Ministry of Lands, Housing and Urban Development, 2017).

2.3. South Africa

In South Africa, unrightful land acquisition is a legacy from the apartheid system, which forced thousands of people and communities to leave their land without appropriate compensation or resettlement plans (De Vet, 2012). Since the end of apartheid, several policies and frameworks that govern resettlement, redistribution and compensation have been introduced, which all prohibit expropriation without compensation (Boshoff, Sihlobo, & Ntombela, 2018). One of them is the Constitution of the Republic of South Africa (1996), which states that persons “whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices” (The Republic of South Africa, 1996, p. 10) have the right to receive legal tenure or ‘comparable redress’. The Expropriation Act no. 63 of 1975 authorizes the expropriation of land with compensation by any minister (The Republic of South Africa, 1975). Other laws, such as the Local government Municipal Systems Act (2000) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (1998) generally do not permit forceful evictions from land, and compensation must be granted to displaced people (Department of Mineral Resources, 2019).

A proposed Land Reform to replace the Expropriation Act no.63 of 1975 has been unsuccessful so far, but it is currently discussed in Parliament for the third time since 2008 (Merten, 2021). The New Expropriation Bill of 2020, which is currently discussed in Parliament and is expected to be adopted soon, together with an amendment of section 25 of the Constitution, will for the first time allow expropriation without compensation under certain circumstances (Republic of South Africa, 2020). Expropriation without compensation is then constitutional if the land is needed for public interest, if it does not harm the economy or the agricultural sector and if the process of expropriation is performed sustainably (Boshoff, Sihlobo, & Ntombela, 2018). This has sparked criticism, since there have been occasions where the government collaborated with private companies, falsely claiming that the land is going to be used for public interests (Merten, 2021).

When compensation is required, the various South African legal frameworks require timely, fair and adequate compensation to those affected, prior to the land acquisition (Department of Mineral Resources, 2019). Stakeholders are to be consulted on time, and resettlement and compensation must “enhance and improve affected communities’ livelihoods such as housing, schools, health facilities and recreational facilities” (Department of Mineral Resources, 2019, p. 13). Cultural resources must be taken into account, and “relocation of households and communities should preserve existing social networks, livelihoods, and maintain community and household cohesion” (Department of Mineral Resources, 2019, p. 15). There are no standardized determination criteria for a sufficient compensation due to resettlement; rather, local context should be considered and an independent Valuer, together with the community, sets appropriate compensation values. Full replacement costs must be paid for lost assets, such

as agriculture and grazing land, land in urban areas and household and public structures, which is determined according to the market value (Department of Mineral Resources, 2019).

2.4. Concluding remarks

To conclude, the legal frameworks of the two countries have their country-specific particularities, but also share some commonalities which are largely in line with international guidelines. Prompt, fair and just compensation is enshrined in the two nations' constitutions, but there are no standardized criteria setting the scope of compensation, which means this is typically decided in the local context. Usually, compensation must happen before the acquisition of land, but there have been attempts to change the laws in both Uganda and South Africa. This was met with strong public opposition, which delayed the Amendment in South Africa for several years and even stopped it in Uganda. Informal land tenure is acknowledged in Ugandan and South African law, as most people do not possess legal land rights and are thus particularly vulnerable to displacement. Ugandan and South African law prioritizes compensation in the form of resettlement assistance and property.

A noticeable difference in the Ugandan framework is that compensation is not meant to enhance affected communities' livelihoods, rather to restore previous living conditions. This is different to most international guidelines and other national frameworks concerning compensation.

Overall, a trend of countries slowly opening up their legal frameworks to allow more investments and land expropriation for large development projects, such as South Africa's New Expropriation Bill of 2020, is observable. This trend has major implications for those living/working on and benefitting from the land, whose livelihoods and future depends on reliable and fair compensation mechanisms executed by the government. Proponents of looser legal frameworks for land expropriation argue that it is necessary for speeding up the development process by decreasing bureaucratic hurdles and therefore achieve economically beneficial outcomes for the wider public (Sihlobo & Kapuya, 2018). However, civil society organisations and residents are protesting these moves, since they are the ones affected by it and will ultimately lose their land. It is feared that expropriation without or with inappropriate compensation can lead to food insecurity, the loss of livelihoods and social and cultural ties (Palmer, 2020).

3. Community views on fair compensation and resettlement

In this section, we present findings from field research in Uganda and South Africa. The two countries geographically located in different parts of the African continent; Uganda in the East and South Africa in the South present an interesting opportunity to examine how community views on fair compensation and resettlement may relate or differ across regions. In Uganda, the research team visited two communities namely: Bwaise and Pabo town and interacted with a total of 23 residents. Bwaise is an informal urban settlement where the residents have previously been displaced due to the construction of a drainage channel, a government-initiated solution to frequent flooding in the area. Residents were currently also facing displacement by nationally-based private infrastructure investments which are quickly expanding into the area. Pabo town is a rural community which hosts persons previously displaced due to an armed insurgency in Northern Uganda. The town is also slowly urbanizing, and residents are facing displacement due to both government and private investments.

In South Africa, we visited eight communities and interacted with a total of 11 residents. The residents hail from rural communities of Masehlaneng, Motlhotlo, Ga-Komape, Ga-Matlou, Tolwe farm, Ga-Moleele, Letsokwane and Jane Furse. The participants comprised 5 men and 6 women living in communal areas, Communal Property Associations (CPA) and a private commercial farm. A communal area refers to a rural area under custodianship of traditional leaders in the former Bantustan areas, whereas a CPA refers to a structure formed to hold the land on behalf of the group that acquired land through the government's land reform programme. Ga-Matlou residents are currently in possession of a notification to be resettled to make way for the mining operation taking place soon. This village falls within the Mokopane town, a home of several mining companies, including Anglo Platinum and Ivan Plats. Tolwe farm is an area predominantly owned by private individuals and entities that largely specialize in crop enterprises, livestock and game farming. Residents are vulnerable to evictions due to frequent change in land use and job losses forcing the farm workers/dwellers off the farm.

Our research showed that there are diverse opinions from different groups of people about what is considered to be fair compensation. The different groups identified within communities included landowners, infrastructure owners, tenants, men, women, among others, all of whom tended to have slightly diverging priorities and perspectives on investments, and opinions on resettlement, displacement and fair compensation. However, what they do have in common is that most of their livelihoods depend on the land on which they live. Findings from discussions with our respondents in Uganda and South Africa are presented below and are organized according to the main issues identified across both countries.

Resettlement must only be considered as a last resort

Although international and many national guidelines emphasize that resettlement should only be conducted as a last resort, and the affected should be fully compensated in case it happens, many respondents from the visited communities had previously been repeatedly displaced and often with no or incomplete compensation or resettlement. In Uganda, for instance, the interviewees from Bwaise had been displaced several times due to the construction of urban-renewal infrastructure like drainage channels. However, given the informality of their tenure, many had not been compensated or assisted with resettlement. Moreover, they were still facing displacement due to more infrastructure projects by both government and private developers. Similar instances of repeated displacement were found in Pabo town.

In South Africa people living on farms, largely private commercial farms and communal land dwellers are vulnerable to evictions due to their insecurity of tenure. Legally, the aforementioned communities should be protected by several key legislation including: The Extension of Security of Tenure Act of 1997, Interim Protection of Informal Land Right Act of 1996, and Prevention of Illegal Eviction from Unlawful Occupation Act of 1998. However, in practice, these legislation are loosely enforced and have been unable to prevent forced population displacement. Some interviewees, for instance a 75-year-old female from Drinklein Farm in the Capricorn District of Limpopo province reported to have been repeatedly and forcefully displaced from her land without compensation or resettlement. The interviewee gave specific examples of these instances of forced displacement. First, in 1966, she and her family were unlawfully evicted by the Apartheid regime which favoured the white over the black population. Second, in 2002, she was displaced from her husband's farm. In 2020, at the time of the interview, she was threatened with displacement from the land where she had relocated. The interviewee recounted that these experiences always led to a disruption in her social and economic conditions which negatively affected her to date.

Interviewees from both countries stressed the challenges and losses that tend to accompany displacement and resettlement, and posited that these processes need to be avoided whenever possible.



Figure 1: Data collection in Pabo, Uganda.

Fair compensation and resettlement

If resettlement must occur for instance because the proposed project will improve the livelihoods of the affected communities and beyond, the respondents gave suggestions about several factors to take into account in order to ensure fair compensation and/or resettlement.

a) Benefit (or profit) sharing should be a prerequisite for any investment

A strongly emphasized factor from the interviews is the importance of long-term benefit- or profit-sharing between the displacing project and the affected communities. Often, projects prefer to compensate the displaced populations, whether financially or in kind, in the short term. However, respondents argued that such an arrangement is usually unable to cover the costs and losses incurred from displacement, and is inadequate to reconstruct or improve their livelihoods. With long-term benefit-sharing, respondents posited that the development project would be able to enable proper livelihood reconstruction, and may even positively influence the development of the affected and future generations. During the discussions, it was unclear how such an arrangement would be organised. Such an arrangement can especially be difficult to organise in the context of often-changing investors. Therefore, future research can examine the work that has so far been done on this topic, and also more concretely explore how benefit/profit-sharing between investments and local communities can be concretely organised.

b) Inclusively-designed resettlement agreements must be made

Irrespective of the displacement/resettlement arrangements made, agreements (written where possible) must be made between the government, investors and the community (or groups or individuals depending on what is contextually-appropriate) in the most inclusive way

possible. This includes terms such as: place and time given to resettle and the options for various affected people (e.g. options for tenants in addition to landowners, the only ones who are often consulted), compensation for tangible and non-tangible losses, among others. Interviewees noted that at times, only the project retains copies of any agreements made. Therefore, they are unable to contest project activities when it becomes necessary. Inclusively-made written agreements with each party retaining a copy were therefore seen as a possible solution to this recurring challenge. Also, rather than representation through local leaders or selected groups of people, several respondents preferred to be involved on an individual level. This can be challenging where multiple people are affected. Therefore, discussions with the affected communities on how to be fairly represented need to be held. Finally, interviewees stressed that resettlement agreements must be negotiated at a reasonable tempo to allow the affected communities to seek advice elsewhere, including legal advice (see short film made in conjunction with this report).



Figure 2: interview in Pabo, Uganda

c) National investments must not be overlooked

A lot of attention is given to large-scale displacement, particularly that induced by foreign investments. In our research, it was evident that many people are also displaced by smaller, national (private) investors and national governments. Tenants of state-owned land parcels, farm residents and people living in communal areas were particularly affected by such displacement. A respondent from Pabo town in Uganda put it as follows: “It is the government that does it, they [the displacers] don’t come from out” (Personal communication, Pabo). These are investments that are often overlooked, but are abundant on the ground. Additionally, national frameworks and guidelines tend to not make a difference between displacement induced by national or international investors. Therefore, as researchers, government

agencies, and other stakeholders think about fair compensation and resettlement, attention must also be paid to communities displaced due to nationally-based investments.

d) Other factors to consider

Beyond the issues mentioned above, the respondents mentioned the following to also be important in ensuring fair compensation and resettlement:

- Consultation with all levels and groups of the affected communities including tenants, landowners, men, women, youth, people with disabilities, and other groups identified in a given context. compensation for forfeiture of rights to land. For instance, in South Africa, the Extension Security of Tenure Act of 1997 gives provisions for occupiers (farm residents and communal land dwellers) rights to property on the land owned by someone else, either by the state or private owner in regulation of displacement and resettlement.
- Adequate time between consultation about displacement and the actual displacement/resettlement should be allowed and agreed upon between the displacing project and the affected communities. From the interviews, especially from Uganda, an average of about a year was frequently mentioned (See short film made in conjunction with this report).
- Compensation by the displacing actor(s) in the form of land supplemented with financial compensation was preferred as compared to only or majority financial compensation. This finding is unsurprising considering the large community dependence on land in the two countries, also as highlighted in the literature in Chapter 3 above. For the materials compensated financially, respondents emphasized the importance of detailed surveys prior to compensation to ensure that each asset is compensated. For instance, in the case of farm fields with trees, compensation should be done per tree, rather than per size of land occupied.
- In the case of physical resettlement or provision of replacement farmland, the new home or farmland should have similar or better access to public facilities as compared to the former areas. Interviewees suggested that this would mitigate increased costs in accessing public services, and would thus ease resettlement.
- Any conditions set by the affected communities must be met prior to displacement and/or resettlement to prevent recurring stories of community discontent due to unmet promises from displacing investments.
- Finally, land from which people have been displaced should be put to good use and following the end of the project, rehabilitated for different land use to which the previously displaced communities can also take part, where possible.

4. Conclusion and ways forward

The different types of investment projects that purport displacement and expropriate the rights of the affected communities must adequately compensate those affected, taking into account prolonged impacts on community livelihoods. This could address the community outcry that their rights are not adequately compensated when they have to move. The findings paint a picture that people prefer not to move, however, in inevitable instances, fair and just compensation must apply. This includes adequate involvement of affected communities in decision-making from crafting the settlement package to the actual resettlement process. More importantly, we would like to again emphasize the need for governments and companies to consider alternatives to (forced) displacement, as it is not only stressed in (international) legal frameworks and guidelines, but also by our respondents

The government (including both local and national) and investors need to constantly inform, consult and solicit the consent of the communities throughout the project, aligned to progressive international guidelines such as the Free, Prior, and Informed Consent (FPIC). Also, the involved stakeholders need to check community perceptions on these currently popular international guidelines to ensure that they align with and represent their interests. With adequate involvement of affected communities in decision-making - from crafting the settlement package to the actual resettlement process, potential tension between the state and its constituency during implementation of large-scale investment projects could be curbed.

Emphasis on Profit-sharing not widely advocated for but necessary because compensation alone is sufficient for restoring the income and livelihood of those displaced, and (2) resources to supplement compensation with additional financing are not available.

Compensation levels must be increased; Without any doubt, compensation for expropriated land and assets is economically justified, legally obligatory, and indispensable. But it is not capable of achieving what it is assumed to achieve: livelihood restoration and improvement. It leaves a financial gap, unfilled by other financing sources. Compensation must be restructured and increased. While compensation remains indispensable, its levels, calculation, and delivery must be radically restructured and improved.

Resettlement assistance should be provided to people who are physically displaced by projects or developments which should include transportation, food, shelter, and social services that are provided to affected people during their relocation. Assistance may also include cash allowances that compensate affected people for the inconvenience associated with resettlement and defray the expenses of a transition to a new locale, such as moving expenses and lost workdays.

Resettlement should also take into account the difference between urban and rural resettlements (see short film). Resettlement in urban areas as in the case of Bwaise in Kampala results in both physical and economic displacement affecting housing, employment, and enterprises. Whereby the major challenge associated with urban resettlement involves restoration of wage-based or enterprise-based livelihoods that are often tied to location (such as proximity to jobs, customers, and markets). Resettlement sites should be selected to maintain the proximity of affected people to established sources of employment and income and to maintain neighbourhoods' networks. While displacement of people in rural areas as in the case of Pabo in Uganda and Limpopo in South African typically results from a project's acquisition of farmland, pasture, or grazing land or the obstruction of access to natural resources on which affected populations rely for livelihoods (for example, forest products, wildlife, and farmland). Major challenges associated with rural resettlement include requirements for restoring income based on land or resources; and the need to avoid compromising the social and cultural continuity of affected communities, disturbance of livelihoods and survival strategies, including those host communities to which displaced populations may be resettled.

In conclusion, proper consultation with affected parties can increase the effectiveness and reduce the costs of responsible parties. Proper consultations also mean proper identification of affected persons which is more than simple cadastral surveys or inventories of affected assets but also identifying all people affected by the project and all adverse impacts on their livelihoods associated with the project's land acquisition. An agreed process ensuring an active involvement of the affected communities from the inception of the project to the exit stage needs to be put in place. This would ensure transparency and avoid unnecessary tension between the parties involved. Typical effects include breakup of communities and social support networks; loss of dwellings, farm buildings, and other structures (wells, boreholes, irrigation works, and fencing), agricultural land, trees, and standing crops; impeded or lost access to community resources such as water sources, pasture, forest and woodland, medicinal plants, game animals, or fisheries; loss of business; loss of access to public infrastructure or services; and reduced income resulting from these losses.

Therefore, consultation with officials of local government, community leaders, and other representatives of the affected population is essential to gaining a comprehensive understanding of the types and degrees of adverse project effects. The project developer or investors must discuss plans for a census and registration program with local leaders and representatives of community-based organizations. Census and asset inventory enumerators may be the first project-related personnel that affected people will encounter.

Information exchange is key, the free flow of information between project developers or investors and stakeholders is essential to promoting effective public consultation and

participation and to achieving the objectives of resettlement planning. Keeping affected people fully informed of their rights and responsibilities is crucial. To achieve this objective, information must be made accessible and understandable. Information should be translated into local dialects and indigenous languages and broadcast through media that are accessible to literate and nonliterate individuals alike (radio, television, mobile video broadcasting, public notice board, newspapers, leaflets and flyers, town crier, and door-to-door canvassing). Special efforts should be made to reach vulnerable groups lacking access to public media and information exchange.

Because of discrimination, women and members of other vulnerable groups may find it difficult to defend their interests in a public forum. Therefore, it is important for project management, the agencies responsible for resettlement or compensation planning and implementation, and other relevant stakeholders to employ women and members of other vulnerable groups. These staff members can undertake outreach efforts, such as focus group consultation, to learn the concerns of vulnerable groups and convey them to resettlement planners and project managers.

References

- African Union. (2009). African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Kampala: African Union.
- African Union. (n.d.). *Status List*. Retrieved from African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention): <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>
- Beckh, C., Gärtner, E., Windfuhr, M., Munro-Faure, P., Weigelt, J., & Müller, A. (2015). Taking stock after three years of adoption: Experiences and strategies for implementation and monitoring of the UN Voluntary Guidelines on Tenure (VGGT). *International Soil and Water Conservation Research* 3, 324-328.
- Boshoff, T., Sihlobo, W., & Ntombela, S. (2018). *Redistribution of agricultural land: Expropriation without compensation debate*. Retrieved from https://agbiz.co.za/uploads/AgbizNews18/Expropriation_Without_Compensation_debate.pdf
- De Vet, C. (2012). The Application of International Resettlement Policy in African Villagization Projects. *Human Organization* Vol. 71, No. 4, 395-406.
- Department of Mineral Resources. (2019). Publication of the Mine Community Resettlement Guidelines, 2019 for Public Comment. Republic of South Africa.
- EBRD. (2016). *Resettlement guidance and good practice*. London: European Bank for Reconstruction and Development .
- Elong, S., Lawrence, M., & Acai, J. (2019). Assessment of the Challenges and Effects of Delays in Compulsory Land Acquisition on the Performance of Road Construction Projects in Uganda. *International Journal of Scientific & Engineering Research, Volume 10, Issue 9*, 1409-1426.
- FAO. (2012). Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome: Food and Agriculture Organization of the United Nations.
- Galgani, P., De Adelhart Toorop, R., Verstappen, L., De Groot Ruiz, A., & Van Maanen, E. (2016). *Towards a protocol on fair compensation in cases of legitimate land tenure changes. Input document for a participatory process*. Amsterdam: True Price and University of Groningen.
- Ghimire, S., Tuladhar, A., & Sharma, R. S. (2017). Governance in Land Acquisition and Compensation for Infrastructure Development. *American Journal of Civil Engineering. Vol. 5, No. 3*, 169-178.
- IFC. (2012, January 1). *Performance Standard 5 Land Acquisition and Involuntary Resettlement*. Retrieved from IFC: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5
- Laspnet. (2018, September 07). *Land actors applaud legal and parliamentary's rejection of constitutional amendment no 13 of 2017*. Retrieved from News Feed: <https://www.laspnet.org/blog/505-land-actors-applaud-legal-and-parliamentary-s-rejection-of-constitutional-amendment-no-13-of-2017>
- Merten, M. (2021, March 25). *The politics of expropriation without compensation – when rhetoric and reality clash rhetoric and reality clash*. Retrieved from Daily Maverick : <https://www.dailymaverick.co.za/article/2021-03-25-the-politics-of-expropriation-without-compensation-when-rhetoric-and-reality-clash/>
- Ministry of Lands, Housing and Urban Development. (2017). *Guidelines for Compensation Assessment Under Land Acquisition*. Kampala: The Republic of Uganda.
- Muhindo, J. (2017). Compulsory Land Acquisition in Uganda: An Analysis of The Proposed Amendment of Article 26 Of the Constitution. Kampala : ACODE Policy Briefing Paper Series No.47.

Palmer, T. G. (2020, May 11). *SA Must Look at the Many Horrific Results of Land Expropriation Without Compensation*. Retrieved from CATO Institute : <https://www.cato.org/commentary/sa-must-look-many-horrific-results-land-expropriation-without-compensation>

Randell, H. (2016). The short-term impacts of development-induced displacement on wealth and subjective well-being in the Brazilian Amazon. *World Development Vol. 87*, 385–400.

Republic of South Africa. (2020). *Expropriation Bill*. Retrieved from Bills currently in Parliament: <https://www.parliament.gov.za/bill/2293351>

Sihlobo, W., & Kapuya, T. (2018, July). *Why land 'expropriation without compensation' is a bad idea* . Retrieved from Viewpoints No. 2 : <https://media.africaportal.org/documents/Viewpoints-Land-Report.pdf>

Terminski, B. (2013). Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges . *Geneva*, 1-215.

The Republic of South Africa. (1975). *Expropriation Act No. 63 of 1997* .

The Republic of South Africa. (1996). *The Constitution of the Republic of South Africa*.

UNHCR. (1998). *Guiding Principles on Internal Displacement* . Geneva : United Nations.

Vanclay, F. (2017). Project-induced displacement and resettlement: from impoverishment risks to an opportunity for development? *Impact Assessment and Project Appraisal*, 35:1, 3-21.

World Bank. (2018). *Environmental and Social Standards (ESS)*. Retrieved from Land Acquisition, Restrictions on Land Use and Involuntary Resettlement: <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards#ess5>