

An assessment of land deals undertaken by the National Oil Palm Project in Kalangala and Buvuma districts

Land as a key resource requires utmost attention to avert conflicts, especially with large agrarian projects like oil palm development. Gaps in implementing policy and Free Prior Informed Consent (FPIC) in the oil palm establishment and expansion are resulting in unprecedented land issues.

This policy brief summarizes detailed research on land conflicts in Kalangala and Buvuma islands and recommends steps to the main players to avert them.

Recommendations

Many lessons can be learned from experiences in Kalangala and Buvuma. But to ensure mistakes are not repeated elsewhere where land acquisition is yet to begin, actions are needed by the government, donors and BIDCO.

1. Land acquisition should proceed according to both nationally and internationally recognized best practices, and land should only be acquired on a 'willing buyer' and 'willing seller' basis.
2. Free, prior and informed consent must be adhered to, follow the usual requirements of (i) adequate sensitization, (ii) valuation of willing sellers and, (iii) disclosure of values prior to final agreements being signed.
3. The government needs to establish clear and updated policies for valuation and compensation, and consider verifying these with private/independent valuers.
4. The government and others such as Buganda Land Board should undertake full land surveys prior to acquisition, and should issue certificates of occupancy to Bibanja holders.
5. Authorities including the police should be included at an early stage to reduce cases of fraud, and ensure that user-friendly grievance settlement mechanisms are put in place.
6. Adequate and balanced sensitization is required prior to acquisition, including potential negative issues and not just the intended benefits, and communities should have access to legal services and representation at the outset.

Main findings

Mapping land ownership systems – There are four main tenure systems in Uganda; customary, mailo, leasehold and freehold, and an occupancy sub tenure system amongst other forms. The main system in the project area is mailo ownership, with associated tenancy and occupation subsystems, with traditional customary tenure in some areas. Most land holdings are not formally registered and disputes over ownership and use are high.

Kalangala – At project inception there were allegations that some public land were forest reserves under the National Forestry Authority. A suit was filed by civil society organizations challenging the degazetting of reserves for oil palm but the government and BIDCO/Oil Palm Uganda Limited (OPUL) refuted this and the suit was dismissed on the grounds of there being no proof that the forest reserves had been degazetted. Bibanja holders' interests as occupants are recognized under Ugandan law and were upheld in the case of *Kassim Ssempebwa vs. Ssewaga Godfrey* where Justice Masalu Musene recognized the interests of bona fide occupants, referring to S. 29(2) of the Land Act. It was also highlighted during this study that because Kalangala district gave up so much of its land for the project, future development plans for amenities and utilities are now constrained. There is also a further ongoing suit, where the ombudsman has intervened, and this will be reported when deliberations are completed.

Buvuma – This research found that the Uganda Land Commission skipped processes in land acquisition, and compensated squatters on public land without first taking the necessary steps. Regarding private mailo land, all rights of bibanja holders (bona fide occupants) and licensees must be recognized, but the Uganda Land Commission was seen to create leaseholds in favour of OPUL. Overall, legal documents together with case law, indicated that free, prior informed consent (FPIC) was not strictly adhered to during land acquisition in Buvuma

as compared to Kalangala, whereas it was expected that lessons learned from Kalangala should have informed better implementation in Buvuma.

Summary – (i) Differences in land tenure systems presented challenges in successfully and equitably applying principles of free, prior and informed consent. Some tenure systems were obscure, making proper land acquisition hard to manage. (ii) Awareness raising leading to land acquisition and compensation were not only skewed towards potential benefits, but also failed to transmit information in the right forums, formats and languages. (iii) Discussions regarding the project were not rigorous enough, with some stakeholders missing out completely, either by commission or omission. Some of those selling land therefore only joined at the end, when almost all relevant decisions had already been made. (iv) Valuation and compensation processes leading to land acquisition were not clear, leading to high numbers of very disgruntled bibanja holders and licensees. (iv) Those involved in land sales had no access to legal representation, and therefore could not get legal advice to aid decision-making during the sale process.

Methodology

The research analyzed land ownership and land deals related to the National Oil Palm Project in Kalangala and Buvuma districts. It included a detailed assessment of different types of land ownership, description and mapping of land contracts, the conditions, compensation, and the application of free, prior and informed consent (FPIC) in decision making. Of 180 respondents, 95% were bibanja holders and others were licensees. Results should feed into proposed implementation of further land acquisitions in the new ten-year National Oil Palm Project (NOPP).

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