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

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Summary

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 land ownership, 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). Regarding the mapping land ownership system, there are four main tenure systems in Uganda; customary, mailo, leasehold and freehold, and various sub tenure systems. 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 lands 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/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 further ongoing suit where the ombudsman has intervened.

Buvuma – This research found that 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 created leaseholds in favour of OPUL. Also, legal documents together with case law indicated that free, prior informed consent was not strictly adhered to during land acquisition in Buvuma, while it was expected that lessons learned from Kalangala should have informed better implementation in Buvuma.

Differences in land tenure systems presented challenges in successfully and equitably applying the principles of free, prior and informed consent, and some were obscure, making proper land acquisition hard to manage. Awareness-raising prior to land acquisition was skewed towards potential benefits, and failed to transmit information in the right forums, formats and languages. Valuation and compensation processes leading to land acquisition were not clear, leading to high numbers of very disgruntled *bibanja* holders and licensees. 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. 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.

Introduction

The Economic Growth and Development Policy for Uganda is included in 'Vision 2040'[1], that aims at "creating a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years." Several sectors including oil and gas, tourism, minerals, ICT business, an abundant labour force, water resources, industrialization and agriculture have been earmarked as key priority and strategic areas of focus. Agriculture has been identified as one of the priority sectors for the attainment of the policy. It is estimated that it contributes up to 69% of the labour force, and 26% of the gross domestic product (GDP).[2] It is believed that these figures could even get better if the agricultural sector is transformed from being predominantly subsistence to commercial.

In that regard, the Government of Uganda through Ministry of Agriculture Animal Industry and Fisheries (MAAIF) with support from the International Fund for Agricultural Development (IFAD) is implementing the Vegetable Oil Development Project (VODP). The goal of VODP is 'To contribute to Sustainable poverty reduction in the project area'.[3] The development objective is "to increase the domestic production of vegetable oil and its by-products, thus raising rural incomes for small holder producers and ensuring the supply of vegetable oil products to Ugandan consumers and neighboring regional markets."

The VODP operated under two phases, now transforming into the National Oil Palm Project (NOPP) which is being implemented in the districts of Kalangala and Buvuma. This project requires a large land area for its implementation and therefore raises several land issues. In that respect, the goal of this research was to carry out an assessment of land ownership, and land deals undertaken as part of the oil palm project in Kalangala and Buvuma districts taking a detailed assessment of land contracts, conditions, compensation and the application of free prior and informed consent (FPIC) in decision making. Specific research objectives were to (i) describe and map the different types of land ownership, (ii) describe and map the land deals made as part of the NOPP, and (iii) collect detailed information on the land deals made and whether FPIC has been applied.

As already stated, the NOPP requires a large portion of land for its effective implementation. In Kalangala, 10,924 ha were secured for the project whilst 10,000 ha are required in Buvuma. To be able to acquire this amount of land, negotiation was needed and contracts were entered into with relevant stakeholders, especially with community members likely to be affected by the project. This process has to be done diligently and prudently taking heed of

policies, principles and laws relating to such projects. If the process of land acquisition is not well handled, the whole project could be frustrated or bear serious legal consequences for the parties involved.

Legal framework for land acquisition and related contracts

The guiding principles for land acquisition (compulsory or voluntary) stem from Article 26 of the Constitution of the Republic of Uganda, from which the following is an extract.

Protection from deprivation of property.

1. Every person has a right to own property either individually or in association with others.
2. No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied; the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and the compulsory taking of possession or acquisition of property is made under a law which makes provision for (i) prompt payment of fair and adequate compensation, prior to the taking possession or acquisition of the property; and (ii) a right of access to a court of law by any person who has an interest or right over the property.'

The effect of this provision has been tested in several cases including the case of *Uganda National Roads Authority vs. Irumba Asumani and Peter Magelah.*[4] The facts of this case are that the Government of Uganda compulsorily acquired land for upgrading the Hoima-Kaiso Tonya Road leading to oil fields in the Albertine Graben, prior to compensating land owners. The Supreme Court reaffirmed the decision of the Constitutional Court and confirmed that Section 7 of the Land Acquisition Act (Cap 226, Laws of Uganda) which allowed the government to compulsorily acquire land without prior and adequate compensation is in fact unconstitutional.

As a result of Article 26 and the above case, the government tabled the highly contested Constitutional Amendment Bill 2017 to enable it to acquire land before compensation. In justifying the amendment, the Ministry of Lands, Housing and Urban Development said that ''many projects have stalled due to few individuals objecting unreasonably to the value awarded, many file cases in Court, obtain court injunctions to stop Government work in their land. This has led to Government incurring unnecessary costs being charged by contractors for the time their equipment remain idle while a resolution of dispute on compensation value is ongoing.''[5] This Bill has not yet become law, and until then, law requires that any land acquisition must be preceded by adequate and prior compensation.

The issue of aggrieved parties going to Court for redress has not been avoided in respect of VODP. There is currently a suit pending before the High Court of Mukono, filed in March 2018, by more than 205 residents of Buvuma district represented by *Yiga Godfrey and 4 others vs. The Manager Vegetable OIL Development Project (VODP2), Kalangala Oil Palm Growers Trust, Oil Palm Uganda Ltd, BIDCO (U) Ltd and The Attorney General (High Court Civil Suit No. 227 of 2018).*[6]

In this suit, the Plaintiffs made several allegations against the defendants, including fraud. They argued that the plaintiffs fraudulently undervalued their land. They also argued that the process of valuation and compensation was not transparent, and sought several remedies including the following. (i) A permanent injunction restraining defendants from further trespass, acquisition of land or disturbance of the plaintiffs' occupancy on the suit land unless duly compensated under the laws of Uganda. (ii) A declaration that the suit land rightfully belongs to them as customary occupants, lawful/bonafide occupants and that they are entitled to stay on the land and utilize it unless compensated for their market value of the said land with their full consent and permission. (iii) A declaration that the acts of the defendants of occupying the suit land without prior fair compensation of the plaintiffs' rights and interests is unconstitutional. Similarly, it was reported that in 2015, some residents of Kalangala filed a suit against Oil Palm Uganda Ltd. for restitution of their land, fair compensation and general damages.[7]

Land in Uganda is a very contentious and controversial matter that has even led to loss of lives. For example, it is reported that three people were killed during demonstrations by environmental activists and the general public to save Mabira Forest over the plan to degazette it and give several acres of it to the Mehta Group for sugar cane growing.[8] It is also reported that there are over 40 petitions before the Parliament Committee of Physical Infrastructure challenging irregular land allocation to foreign investors, or encroachers in the name of development.[9]

The principle of free, prior and informed consent

Although there is no universally accepted definition, Oxfam proposes the following. ''FPIC is the principle that indigenous peoples and local communities must be adequately informed about projects in a timely manner and given the opportunity to oppose or reject a project before operations begin. This includes participation in setting up the terms and conditions that address the economic, social and environmental impacts of all phases...''[10] The UN advises that ''FPIC processes must be free from manipulation or coercion; allow adequate time for traditional decision-making processes; facilitate the sharing of objective, accurate, and easily understandable information and ensure community agreement''[11]

This principle of FPIC emanates from international law. The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) which Uganda signed in 1987, implores States to recognize rights such as the right to self-determination, which includes the right to freely dispose of own natural wealth and resources and bars the deprivation of peoples of means of subsistence (Article 1). This convention also recognizes the right to work and the right to an adequate standard of living, adequate food, clothing, housing and the continuous improvement of living conditions and the right to take part in cultural life.

The right to self-determination is also reinforced by the UN Declaration on the Rights of Indigenous People, which although not binding, gives a persuasive position on FPIC. In the African context, the African Charter on Human and People's Rights and which Uganda is signatory to, also has similar provisions and its effects have been tested in the case of the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. Kenya*. In 2009, the African Commission of Human and People's Rights found that by forcibly removing the Endorois people from their ancestral lands around Lake Bogoria to create a game reserve, the Government of Kenya violated the Endorois' right to religion, property, natural resources, culture, and development (Articles 8, 14, 17, 21, 22); and the African Charter on Human and People's Rights noted in particular that the Endorois are "an indigenous community" and a "people," and that for "any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions."[12]

Principles and rights enshrined in the aforementioned conventions are also recognized by the 1995 Constitution of Uganda. The National Objectives oblige the state to ensure that Ugandans enjoy decent shelter, food security, free and compulsory basic education, and to take measures to ensure every citizen can attain the highest standard of education. The 1995 Constitution further provides for the right to protection from deprivation of property, the right to education, the right to work and participate in trade union activity, the right to a clean and healthy environment (Article 40), and the right to culture (Article 37). The principles of FPIC are also set out in the Contracts Act, 2010, to the effect that ''A contract is an agreement made with the free consent of parties with capacity to contract for lawful consideration and a lawful object with the intention to be legally bound'' (Section 10). Consent is also defined as an ''Agreement of two or more persons obtained freely, upon the same thing in the same sense" (Section 2). The Contracts Act further provides that ''Consent of parties to a contract is taken to be free where is not caused by; (a) coercion; (b) undue influence, (c) fraud; (d) misrepresentation, or (e) mistake."'

In light of the above, it is clear that in terms of the legal framework, the principle of free, prior and informed consent is well enumerated and must therefore be recognized, and failure to do so can have far reaching consequences.

Methodology

Prior to fieldwork in July and August 2018, key interview informants, respondents, and specific sample areas to visit were identified. Research tools were prepared including interview guides for respective respondent groups, and media reports were reviewed. For the fieldwork, primary data was collected through focus group discussions and key informant interviews. To assess FPIC, information was gathered to answer the following questions. (i) Was the affected community given the opportunity to discuss and debate the issue involved in the land acquisition and compensation process? (ii) What were the land acquisition and compensation processes carried out in respective communities? (iii) What sources of information were available to enable decision making? (iv) Did the affected communities have access to independent professional advice on the various aspects of the project? (v) What opinions did people have on the decisions made or taken?

Fieldwork in Buvuma was carried out in July and in August in Bugala, Kalangala district. In Buvuma, focus group discussions included a total of 180 community members in five villages including Buwangwe Lunyanja (23), Bugoba (16), Kasanza (50), Lukale (18) and Kitiko (73). These comprised of men and women participating in the project, some who had been compensated and others in the process of being compensated. Key informant interviews included the District Police Commandant (DPC), Buvuma District Police, Secretary of Buvuma District Land Board, and Buvuma district local government officials including the District Production Officer, Senior Agricultural Officer, VODP focal person, and District Natural Resources Officer.

In Kalangala, focus group discussions included 73 smallholder outgrowers and community members from Lusenke village, Kalangala town council, Busanga, Kasekulo, Bujumba and Bbeta. Key informant interviews included the LCV Chairperson of Kalangala District, General Manager of Kalangala Oil Palm Out Growers' Trust (KOPGT), Land Officer of Kalangala District Land Board, District Natural Resources Officer from Kalangala district local government, Administrator of Buganda Land Board, and Chairperson of Kalangala Oil Palm Association.

Secondary research included the review of articles and websites with relevant information on the project and on FPIC, including MAAIF[13] and IFAD[14]. The IFAD report includes project objectives, highlighting it as a public-private partnership, and discusses the roles of different stakeholders. Other content reviewed included a case filed in the High Court of compensation. Buvuma compensations have been the subject of media attention including one that reported that Buvuma residents had gone to court over compensation issues including ghost beneficiaries.[15] Similarly, in Kalangala, land grabbing and compensation claims had been made in the media and court.[16]

Land acquisition

There are four main tenure systems in Uganda namely; customary, mailo, leasehold and free hold and one sub-tenure system, as well as several other forms of tenancy and occupation. The main land system in the project area is mailo ownership with associated tenancy and occupation subsystems, with more traditional customary tenure prevalent in some areas. Most land holdings are not formally registered and disputes over ownership and use are high.[17]

Kalangala

In Kalangala, the total area planted with oil palm is 10,924 ha, with 6500 ha of nucleus estate run by Oil Palm Uganda Limited (OPUL), and 4424 ha by smallholder outgrowers. According to Mr Balironda David Mukasa, General Manager KOPGT and who has also played a central role in VODP from the outset, ''When BIDCO and OPUL joined VODP, they said that for the project to be viable in Kalangala, 10,000 hectares had to be secured.'' Fortunately, 6500 ha which were part of public land under the custody of the Administration of Kalangala District Land Board were available, and that was subsequently acquired by Uganda Land Commission for creating and granting leasehold interest to Oil Palm Uganda Ltd.

At project inception, there were allegations that this public land was partially for forest reserves under the National Forestry Authority. However, these allegations were refuted by the government and BIDCO/OPUL. In fact, a suit was filed by civil society organizations challenging the degazetting of forest reserves for purposes of this oil palm development, but was dismissed with the finding that there was no proof that the forest reserves had been degazetted.[7]

Notwithstanding the above, there remains debate as to the status and true ownership of some of the land for the project. During this research, it appeared that a large area of former public land and some mailo land in Buvuma was given back to Buganda Kingdom as part of the properties returned to Buganda pursuant to a Memorandum of Understanding between the Central government and Buganda. However, according to District Land Officer, Mr Kasibante Alex, "There is a problem due to the absence of a clear map as the government has not yet surveyed and demarcated the land to identify which one belongs to government and which one was given back to Buganda Land Board.'' It was also discovered that the Buganda Land Board had started an initiative where it was registering people who were occupying land believed to having been given back to Buganda. As such, Mr Kasibante said that the district is firefighting the situation with the Buganda Land Board.

Besides public land for the nucleus estate, the rest of 4424 ha of oil palm plantations are run and managed by 1810 outgrowers. Out of the 73 respondents interviewed, 69 of them admitted that their interest stems from *mailo* land tenure, while none said they were landlords. They were *Kibanja* holders with absentee landlords. Some had in fact never met their landlords who they said are based in Kampala or Masaka. *Kibanja* holders' interests as occupants (Ntabazi versus Walusimbi High Court Civil Appeal No. 114 of 2015) are recognized under the Ugandan law and were upheld in the case of *Kassim Ssempebwa vs. Ssewaga Godfrey* (High Court Civil Appeal No. 137 of 2012) where in recognizing the interests of *bona fide* occupants, Justice Masalu Musene referred to S. 29(2) of the Land Act (Cap 227 of the Laws of Uganda) and noted the following: "S.29 (2) (a)" Bonafide Occupant means a person who before the coming in force of the Constitution – Had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more. S.29 (5) of the Land Act provides "29 (5) Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this Section shall be taken to be a bona fide occupant for purposes of this Act."

The challenge though, is that since the interests of these *kibanja* holders are not registered, verification of their interest and boundaries was an issue when implementing the project and still remains a challenge, made worse because many landlords/land owners do not even know who are the *kibanja* holders on their land. As a result, according to Mr Balironda David Mukasa of KOPGT, when *kibanja* holders tried to register and secure certificates of occupancy they were unsuccessful because landlords refused to recognize them and give consent. The issue of giving land back to the Buganda Land Board had not only affected public land occupants, but also affected some *kibanja* holders. According to Mr Balironda, ''Buganda Land Board is telling some of the oil palm outgrowers to get a lease on their land, but some occupants argue that they are *kibanja* holders who do not need to get a lease since they already claim a recognizable right to the land.''

Of the 73 people interviewed, four had acquired leases for some of their land from the District Land Board, but they had far bigger oil palm plantations (average of 26 acres, 10 ha) compared to the 69 interviewed *kibanja* holders. These four were also all employees or former employees of the Kalangala local government. Some respondents with leases also held *kibanja* interests on other land.

Kalangala also has public land containing 31 different central forest reserves under the National Forest Authority. There have been some cases of encroachment on forest reserves and other natural resources by outgrowers who planted oil palm, especially in the 200 m buffer zones. According to Ms Harriet Saawo, the District Natural Resources Officer, "People are encroaching on the buffer zone of the lake shore, and growing food and palms in the 200 m zone.''

It was highlighted during this study that because Kalangala district gave up so much of its land for the project, its development plans for amenities and utilities are now constrained, as it does not have enough land to carry out any more ambitious development projects.

Buvuma

According to the NOPP Focal Person Mr James Mugerwa, a total of 10,000 hectares is required for the oil palm project in Buvuma, with 6500 ha for the nucleus estate. Unlike in Kalangala where land for the nucleus estate was secured from the local government, in Buvuma, its private *mailo* land that is being and/or has been acquired for the nucleus estate.

According to Mr Silver Wasswa, Secretary Buvuma District Land Board, 1000 acres (405 ha) of public land had been identified by NOPP, and NOPP even started a process of compensating occupants of this land. However, owing to the fact that NOPP had not followed the due process, acquisition of public land by the Uganda Land Commission is only now being regularized. At the time of the field study, this process had not ended, so whether or not public land has been acquired for the nucleus estate was still unclear.

According to Mr Silver Wasswa, Secretary of Buvuma District Land Board, the proper process requires the interested party to fulfil the following. (i) In the Application, demonstrate that you are a dwelling resident of the area where the land is situated and the application must be picked from your area of residence. (ii) The Application is picked from the Area Land Committee which is conversant with the particulars of the land. (iii) Subsequently, the Committee will inspect the land and investigate from the applicant the intended use of the land. (iv) If satisfied with

the appropriateness of the Application, then they will prepare a report and send it to the District Land Board. (v) The District Land Board then interviews that Applicant, goes on the ground and exercises its discretion whether to grant the lease or not. (vi) Once the District Land Board approves then they set the terms and conditions for the use of the land including compensating any squatters on the land.

However, it is said that the Uganda Land Commission skipped this process in Buvuma and went ahead to compensate squatters on public land without first taking any of the steps spelt out above. In respect to private *mailo* land, as discussed earlier, all other rights must be recognized regarding *kibanja* holders (bona fide occupants) and licensees. Of the 180 respondents, 95% were *kibanja* holders and others were licensees. All land being acquired is vested in the Uganda Land Commission, which is creating leasehold interests in favour of OPUL.

The evolution of NOPP and whether FPIC was applied

The IFAD National Oil Palm Project Final Report Design (5 November 2017)[14] was reviewed, along with IFAD project supervision reports and the IFAD website, which highlighted the contractual obligations and rights of the parties involved. Also included were accounts by key informants, especially the KOPGT General Manager, Balironda David Mukasa, who noted that land deals had a protracted history starting back with the sample growing of oil palm in 1994. In 1996, the government advertised for an investor to grow oil palm and Madhvani group won the Bid. However, the project did not kick off as planned and subsequently the group dropped out. It is at this point that BIDCO Kenya which had also submitted an original bid, expressed further interest in the project and was taken on by the government, culminating in a public-private partnership between the Government of Uganda, BIDCO and IFAD.

By the time Madhvani pulled out in 1998, the government had already secured the 3000 ha and created leasehold interest in its favour. Accordingly, Madhvani's lease interest had to be cancelled. Although BIDCO was interested in the project, it did not have any experience in oil palm plantation management, so it co-opted the renown Wilmer International company, and together they created Oil Palm Uganda Ltd with 10% of the shares being reserved for outgrowers. BIDCO asked for 10,000 ha to make the project viable. At that point, it became necessary to secure funding for the project and IFAD became the financing partner. The land deals made as part of VODP all stem from the overarching public private partnership agreement under which the project was implemented. Under this, the government, IFAD, OPUL and smallholder farmers all have a role to play in the establishment of oil palm plantations, mills and refineries in the project areas.

The government had the responsibility of providing land to OPUL for a nucleus estate in Kalangala, and still has this responsibility in Buvuma. The government availed funds for start-up loans to smallholder farmers with flexible payment conditions, to buy seedlings, fertilizers, inputs, etc., and to transport fresh fruit bunches to the mill. Outgrowers in Kalangala are repaying loans through their umbrella body KOPGT. The government also has the duty of maintaining and improving infrastructure in the project areas.

This proposal was met with resistance from the EU, World Bank, etc. but notwithstanding objections from international bodies, the Parliament of Uganda allowed the degazettement of Forest Reserves. However, afraid of the backlash from environmentalists and the public generally, it is said that BIDCO objected to this degazettement and threatened to pull out, leading the government to backtrack, and to subsequently secure land that was not part of any forest reserves.

According to Mr Balironda, the Prime Minister established a land acquisition task force, with the mandate of looking for land and negotiating with willing sellers. He added that Kalangala was undeveloped and its population was small, it had absentee landlords and a few squatters who cut timber, made charcoal, fished or did petty trading. People were given the option of selling or leasing their land, but most opted to sell. This made it easier for the project to get land, at a cost at that time of UGX 80,000-100,000 per acre (US$55-70/ha). The task force then started negotiations and bought land, with about 3000 acres purchased under the terms that proprietary interest reverted to outgrowers after 3.5 years of the project, but also that the areas were substantially reduced by applying the 200 m coastal buffer zone.

Around 2005, BIDCO started importing seedlings and the outgrower scheme began. For a *kibanja* holder to become an outgrower, they had to present a certificate of occupancy as security to get a loan, with the process

managed at district level. A land officer was recruited to help with issuing certificates of occupancy and to sensitize kibanja holders on their relevance. However, this became a challenge as some landlords did not want to grow oil palm on their land and so refused to give the *kibanja* holder any proof of right of occupancy. In the end, this requirement was scrapped, and *kibanja* holders then starting to grow oil palm without the consent of landlords.

An intermediary agency was appointed to reduce government bureaucracy in giving loans. A consultant was appointed by IFAD and proposed the establishment of KOPGT to manage outgrowers for the interests of all stakeholders. When land was converted to oil palm, many squatters moved to landing sites and fishing villages, but some of these areas were part of land given to OPUL, posing a relocation challenge for the squatters. In respect of land deals in Buvuma, as most land is being acquired from private individuals, this has resulted in issues to be discussed under regarding FPIC. As in Kalangala, it is expected that the government and IFAD will provide financial support to farmers by way through loans.

Kalangala

A difference in attitude and reaction was observed between people from Kalangala and those from Buvuma. Respondents in Kalangala were not as disgruntled as those of Buvuma, perhaps due to the passage of time, and their complaints were more related to the actual implementation of the project as opposed to its inception. Respondents noted that as most landlords were absentees, many did not even know that the project was going on and were not involved in any debate or discussion. However, eventually when they learnt of developments, a few became involved and some clashed with *kibanja* holders. One respondent said that her landlord did not want her to grow oil palm on the land, and another said that the landlord demanded a share of the proceeds from oil palm. In one village, a landowner was killed by squatters on his land for attempting to harvest oil palm fruits grown by an occupant on his land. These examples demonstrate that landlords did not have sufficient information to enable them make effective and constructive decisions and that their interests were disregarded when the need for a certificate of occupancy was waived as a requirement for outgrowers. Accordingly, it is concluded that more than 80% of landlords did not have free, prior and informed consent.

Regarding *kibanja* holders who became outgrowers, all said that they were involved in discussions at a community level, and in sensitization programmes about the project. However, all of them stated that these discussions focused only on the project benefits, and that decisions were made based on excitement. There are issues that were not well discussed, explained or understood by outgrowers, as one respondent said. "They did not sensitize people well, they raised people's expectations and people committed all their land for oil palm. As a result, there is now a threat of food insecurity."

All respondents without exception complained about the pricing formula. They said that the price offered did not take in account the value of other products derived from the land, and is based only on fresh fruit bunches as a raw material, which they found very unfair. One respondent added that ''people were not educated about the pricing formula and it is too complex for the ordinary illiterate farmer to understand.'' Such negative sentiments about the pricing formula will likely affect the farmers' involvement. Many outgrowers do not appear prepared to carry on with the project without government involvement, and many requested that the government postpones its decision to withdraw its active participation in the project. Furthermore, all respondents confirmed that they had no access to independent legal or professional advice to enable them make informed decisions. This challenge continues, and many farmers noted that access to independent legal advice would help them to defend their rights, but also assist them to resolve disputes arising from the project, even between other outgrowers.

Other issues that respondents complained of included the high price of fertilizers, the monopoly of OPUL for supplying all inputs, and that the government is withdrawing financial support this year. All outgrowers also said they had a detailed contract spelling out the terms and conditions of the transaction. Under the Tripartite Agreement, outgrowers have 10% of OPUL's shares, but many do not understand or appreciate how these help them. Respondents added that their representatives have never been invited or attended any OPUL shareholder meetings. In conclusion, although no respondent said they regret joining the project due to the financial benefits, it cannot be concluded that FPIC was absolutely obtained, with only a few aspects of FPIC being applied prior to implementation of the project.

Buvuma

In the compensation process in Buvuma, three interests in land were recognized, i.e. the registered proprietor, the tenant (*kibanja* holder), and the licensee (persons merely cultivating the land). Of the 180 people interviewed through focus group discussion, only two said they were happy and content with the process. As in Kalangala, it is apparent that sensitizations focused on project benefits rather than giving holistic and comprehensive information on project impacts, and accordingly, participant decisions were skewed.

The first group to be compensated by government were registered *mailo* landowners. From this research, there were no complaints from this group, and like the situation in Kalangala, most of these are absentees. Having not actively utilized their land, these landlords cared more about the financial benefits to them, rather than project impacts on other occupants of the land. In fact, prior to selling their interests, landlords did not consult the kibanja holders at all for their opinion or consent.

Although many respondents were positive about the project being brought to Buvuma, many *kibanja* holders and licensees were disgruntled. Those with land rights said they were not given any contracts that spelled out the terms and conditions of compensation, given only small chits that merely indicated the size of the land and the valuation amount. There were no other contractual documents that detailed the terms and conditions of the acquisition process. Five main reasons were cited for the disgruntlement. Firstly, *bibanja* holders and licensees alleged that there was no proper sensitization on the process of surveying, valuation and compensation. On the other hand, NOPP and local government officials said that numerous sensitization programmes were carried out using radio programmes and other media. Thus, although sensitization was done, it was clearly not effective in enabling the participants to appreciate all of the relevant issues.

It was also alleged that land areas held by *kibanja* holders and licensees was under declared by surveyors. One respondent said, for example, that "they measured my land to be 3.75 acres, but only considered 0.5 acres for my compensation.'' This may have arisen for a number of reasons. Many tenants are not known to the landlord and cannot confirm the size of their land, depending on circumstantial evidence from neighbours or local administrative structures. They do not have accurate measurements of their land, use rudimental methods to estimate the size, and boundary demarcation is not always clear. Others claim portions of land in forest reserves or part of public land. Most are illiterate and lack knowledge or appreciation of the technical surveying processes. Some also participate in what is known locally as 'betting', the practice of using anticipated payments as security to borrow money. It is also the practice of *bibanja* holders to allow an extra person to put in a claim of ownership in respect of a portion of their land. This has become a challenge because the added person may sometimes be given a higher compensation than the *kibanja* holder, leading to further disputes. In other cases, if the third party is not compensated, they may also complain, yet they have no legally recognized right to the land.

Furthermore, there were many allegations of undervaluation and low compensation. This complaint stems from perceptions that there was under declaration of the size of land by surveyors and also that people do not understand the valuation criteria used. Buvuma district does not as yet have its own valuation list, and it is unclear to many what was used as a basis for compensation. Believing that they were cheated, many have refused to vacate the land despite having been compensated, and some have petitioned court for redress. Another resounding complaint for many was delayed compensation. On average, the entire process of surveying, valuation and compensation takes two years and many tenants reported that until recently, upon surveying and valuation, they would be told to vacate the land notwithstanding the fact that they had not yet received compensation.

Overall, the legal documents discussed together with case law indicated that free, prior informed consent was not strictly adhered to in the acquisition of land in Buvuma, and less so as compared to Kalangala. Yet, it could have been expected that lessons learned from Kalangala should have informed better implementation in Buvuma.

Conclusions

The intentions of NOPP may be noble. However, it is important that the implementation of such projects gives due consideration to FPIC, and the social and economic rights of people likely to be affected. Failure to adhere to set standards and regulations can have far reaching consequences, on the project, communities involved, and Uganda at large. It could also lead to social conflicts, so precautions are needed.

1. Differences in the land tenure systems presented challenges in successfully and equitably applying the principles of free, prior and informed consent. Some tenure systems were obscure, making proper land acquisition hard to manage.
2. Awareness raising leading to the acquisition of land and compensation were not only skewed towards potential benefits, but it also failed to transmit information in the right forums, formats and language.
3. Valuation and compensation processes leading to land acquisition were not clear, leading to high numbers of very disgruntled kibanja holders and licensees.
4. 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.
5. Discussions regarding the project were not rigorous enough, with some stakeholders missing out completely. This was either by commission or omission, and thereby some of those selling land only joined at the end when almost all the relevant decisions had been made.

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. 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.
2. The government needs to establish clear and updated policies for valuation and compensation, and consider verifying these with private/independent valuers.
3. 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.
4. 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.
5. Land acquisition should proceed according to both nationally and internationally recognized best practices, and land should be acquired only on a 'willing buyer' and 'willing seller' basis.
6. 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.

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