

Redress for land loss

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Providing proper compensation for compulsory acquisition of land by the state is neither straightforward nor a new challenge, as national and international guidance can pull in different directions explains Liz Neate

In many low- and middle-income economies, offering replacement land rather than financial compensation has been recommended to promote the restoration of livelihoods where people depend on the land that is being acquired by compulsion. Consequently, there are a number of standards and guidance documents on the topic that set out best practice in providing resettlement land, including:

- the [World Bank operations manual on involuntary resettlement](#) ;
- the UN Food and Agriculture Organization's [Land Studies 10](#) and [Voluntary Guidelines on Tenure](#) ;
- the [Asian Development Bank Safeguard Policy Statement policy paper](#) ;
- the International Finance Corporation (IFC)'s [Performance Standards on Environmental and Social Sustainability](#) , in particular [standard 5 on land acquisition and involuntary resettlement](#) ; and
- the [European Bank for Reconstruction and Development's guidance for good practice in resettlement](#) .

What is less clear is the practical application of these principles. The terminology in these documents – ‘resettlement land’, ‘livelihood restoration’, ‘prior consent’, ‘consultation’ – is widely used, but runs the risk of being a hollow promise if not understood in practice and properly implemented. One of the greatest dangers of a detachment between policy and practice concerns legitimacy: is it adhering to the spirit of land compensation if replacement sites are badly located, of poor quality, or of uncertain tenure?

International standards of any type have to walk a tightrope, being sufficiently generic to be applicable and practicable in a range of circumstances, but nonetheless carrying sufficient weight and detail to enable implementation. In the Buseruka subcounty of Uganda, where land was acquired to develop an oil refinery, the ministry responsible for land acquisition asserted that international standards, specifically those set by the IFC and World Bank, would be followed as best practice. Some 2,900ha had been identified for an oil refinery and related infrastructure, an area that was home to around 1,200 households who held rights and interests in the land.

A resettlement action plan prepared by consultants on behalf of the government acknowledged that international standards for compulsory land acquisition go beyond the requirements of Ugandan law, which only allows for financial compensation at the market value of the site acquired and an allowance for disturbance linked to the length of notice given to vacate. The action plan recommended a flexible approach that would adhere to the standards and guidance prepared by the IFC and World Bank.

Consequently, affected households were offered the choice of financial compensation, in accordance with Ugandan law, or replacement land, as recommended by many international authorities but not explicitly provided for nationally. Although the vast majority of people opted for a financial settlement, after the area was cleared a resettlement village was provided for those opting for land compensation at Kyakaboga, near the city of Hoima, with people wishing to move taking up their new homes in 2017.

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Many of those who moved to Kyakaboga remain very dissatisfied with what was provided, however, and with the help of local civil society organisations are seeking legal recourse from the government for failing to honour promises made during the resettlement process. At a meeting in August 2018, community members raised a number of concerns about the land provided, highlighting where commitments in terms of tenure, agricultural potential and physical layout were not properly met.

Many of the households who had formerly lived on the acquired land at Buseruka had customary tenure over their land, a traditional system of governance where rights are typically undocumented and usually vested in a family or community rather than an individual. Ugandan law treats this as equivalent to freehold land under a title, although provisions for compensation are less straightforward and in need of updating.

Although not yet provided, those households who relocated have been promised freehold titles to their new land. The provision of replacement land under a different tenure system has implications for families and communities, however, as they have always managed their land under family and community rights and responsibilities rather than individual freehold title. This demonstrates that the apparently simple principles of offering land for land are actually incredibly complex.

The community has expressed concerns about the quality of the replacement land for farming and the lack of supporting infrastructure for agriculture, such as boreholes for drawing water. The replacement site was formerly grazing land, and cannot support the same crops as those the displaced people used to farm on their land. They have not been helped to find alternative crops that are more suitable, and do not consider that their livelihoods have been restored as they struggle to farm the new land.

Giving testimony at the community meeting in 2018, one man said: 'When I see my replacement land, I do not think it is the same. In terms of cultivation, I used to have 2 rain seasons. Now I can only rely on March rains. My old land was far better. Before, I could grow anything; the land was very fertile. This side, the soil is not very good and the yield is not very good. I have tried to plant the same crops I had before, but the soil quality is not enough.'

A woman commented: 'I am so worried, and not happy with the land I have been given. I used to have everything and lots of space. I could plant vegetables near the stream so they would grow even if in drought. It is very dry here.' Another man observed: 'I find the land here very different. I used to have bananas, sugar cane, fruit trees. The soil here is not good enough for bananas or sugar cane. I have to plant sesame here or cotton, so am now having to grow things to sell to buy food. I used to have streams nearby, but the nearest stream here is 2 miles away. There is only 1 borehole here, so we have to go far if it breaks. It is hard here ? even if it rains it is like a drought.'

The community is also concerned about the physical nature of the resettlement village, and considers that it resembles a refugee camp rather than their previous settlements. In particular, the houses are close together and some distance from the replacement land for cultivation, unlike the original site where houses were adjacent to agricultural land. This has led to livestock being stolen, as well as creating tension in the community as they are not used to living in such close proximity with each other.

The community did not realise the impact of these inadequacies until it was too late to choose an alternative option. The application of compensation standards that vary from those accounted for in national law complicates expectations and prospective remedies. The impact on vulnerable people is exacerbated by a lack of clear recourse: if the provision is more than the national law stipulates, who will answer a complaint that promises have not been upheld?

In principle, there is considerable potential for livelihood restoration through the provision of land rather than financial compensation, assuming sufficient time and resources are invested in ensuring that the replacement land is appropriate and will actually maintain or improve livelihoods. But the Kyakaboga example makes clear that replacement land should only be offered if land of adequate quality, location and tenure can be promptly secured to the satisfaction of those affected. Merely providing some land should not count as successful resettlement in the terms envisaged by the best practice standards.

In this instance, the Ugandan government claimed that it would adhere to specific international policies and guidelines, which require flexible and innovative approaches when displacement is essential. In reality, those criteria were not fulfilled. Replacement land was undoubtedly provided, thus arguably satisfying the requirements of the standards; but in practice, the necessary generality of international standards can leave a good deal to interpretation. Donors and funders that are looking for standards to be fulfilled must also closely scrutinise any claims that they have been achieved.

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Further information

- Related competencies include: [Cadastre and land administration](#), [Compulsory purchase and compensation](#), [Surveying and mapping](#)
- This feature is taken from the [RICS Land Journal](#) (October/November 2019)
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