HOUSING AND LAND RIGHTS NETWORK
Habitat International Coalition

Summary and Review of
Women's Dispossession from Land and Home Project Meeting

20 May 2020

In Attendance:

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Shivani Chaudhry (HLRN India)
Grace Chikumo-Mtonga (Civic Forum, Zambia)
Heather Elaydi (HLRN Cairo)
Sam Ikua (Mazingira Institute, Kenya)
Davinder Lamba (Mazingira Institute, Kenya)

Diana Lee-Smith (Mazingira Institute, Kenya)
Brian Odella (SSA: UHRNET)
Samuel Olando (Pamoja Trust, Kenya)
Steve Ouma Akoth (Pamoja Trust, Kenya)
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Diana Wachira (Pamoja Trust, Kenya)
Hilary Zhou (Zimbabwe People's Land Rights Movement)

I. Country Briefs

India Project Summary (Shivani)

In the absence of official data on evictions in the country, HLRN-India constituted a 'National Eviction and Displacement Observatory' to document and monitor the incidence of evictions across rural and urban India. Primary and secondary research conducted by HLRN revealed that in the years 2017 and 2018, central and state government authorities evicted over 460,000 people from their homes across the country, amounting to about 26 people being evicted every hour.

In this context, the current application of the EvIA Tool is in cooperation with a community facing eviction in Delhi. That site was chosen after considering several more-distant communities, but HLRN focused on a community with which it could maintain contact and, therefore, have greater efficiency and impact.

The Gadia Lohar group is a historically nomadic community that originated from Chittorgarh in the western Indian state of Rajasthan. Over the years, its members have settled in various states of India, including Delhi, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Punjab, and Uttar Pradesh. They are primarily known for their traditional livelihood of small-scale manufacturing and selling of iron tools, utensils, and other implements. In the National Capital Region of Delhi, the Gadia Lohars live in over 90 'informal settlements' one of which is the settlement in Mansarovar Park.

The community living under the flyover[1] in Mansarovar Park is one of Delhi's largest Gadia Lohar settlements, consisting of 62 families who have been living at the site since 1974, even before the flyover was constructed. Although most of the residents have been living in the area for more than 50–60 years; a few families reportedly, moved to the settlement after the East Delhi Municipal Corporation (EDMC) demolished their houses near Shyam Lal College, Shahdara in 2007.

The Mansarovar Park community, now facing eviction, has been excluded from all previous government surveys. It was necessary to start with the basics in relating to this community. No partner organizations assisted with the study. The approach to the project application was for it to be community led.

Quantifying loss of livelihood has been challenging, as most women in the community don't work outside the home in a traditional sense. It is particularly difficult to disaggregate quantitative losses for women, as the women interviewed had difficulty recollecting the value of items lost, and deferred to men of the family to assess value. Qualitative measures such as health, access to sanitation, security and privacy came out strongly in the study. The community showed strong traditional and patriarchal roles and values, which was not expected in an urban setting.

Through this project the community was assisted in forming a collective and filing a case for resettlement in the courts (currently virtual court), seeking compensation and resettlement close to their previous residence. It is a challenge to ensure the numbers they have from the study reflects all losses. All are hopeful that the court will accept the impact assessment, though in a previous example in Bangalore the entire petition was dismissed by the court. To date, nothing has been achieved through the court system, though it is hoped the collected data will lead to remedy, reparations, or at least a better outcome than the community is facing now.

Lessons:

1. everything takes longer than you think (unable to achieve everything they wanted);
2. cannot have any assumptions going into the study;
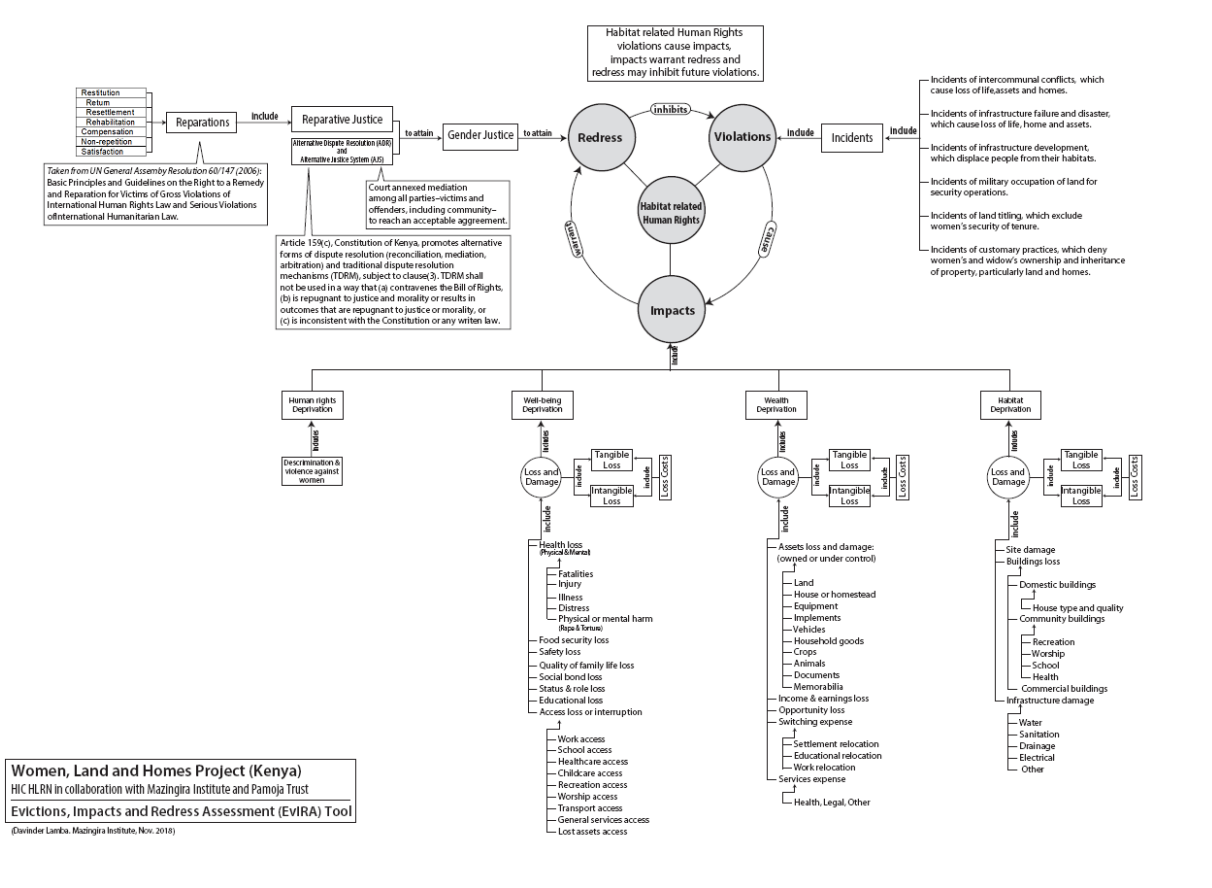3. important not to build hopes of the community too high.

Kenya Project Summary (Diana, Davinder and Sam)

Drawing on the Kenya typology of cases from the normative workshop, narrowed down to six, Mazingira and Pumoja considered two cases: 1. infrastructure development, particularly how women are affected, and 2. customary practices, which affect relationships within families and on women fundamental. Both of these were analyzed using the survey using the HLRN assessment tool in the case of the James Gichuru Road- Rironi extension (Kiambu County).

The model captures inputs into three categories of values: well-being, wealth, habitat affected in the case of a human rights violation. (This is shown in the graphic depiction of the method (shown below). It then looks at how the incident in question impacts deprivation and well-being, broken down into tangible and intangible assets. We are then able to assess when deprivation in any of the 3 categories warrants redress — as provided, for example, in the UN General Assembly resolution A/RES/60/147, and all of its elements, which form part of model.

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[1] A "viaduct" or "overpass," an elevated construction allowing roads to overlap, of "flyover" each other.

Restitution
Return
Resettlement
Rehabilitation
Compensation
Non-repetition
Satisfaction

Reparations → Include → Reparative Justice

Alternative Dispute Resolution (ADR) and Alternative Justice System (AJS)

→ to attain → Gender Justice → to attain → Redress

Taken from UN General Assembly Resolution 60/147 (2006): Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Court annexed mediation among all parties—victims and offenders, including community—to reach an acceptable aggreement.

Article 159(c), Constitution of Kenya, promotes alternative forms of dispute resolution (reconciliation, mediation, arbitration) and traditional dispute resolution mechanisms (TDRM), subject to clause(3). TDRM shall not be used in a way that (a) contravenes the Bill of Rights, (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality, or (c) is inconsistent with the Constitution or any written law.

Habitat related Human Rights violations cause impacts, impacts warrant redress and redress may inhibit future violations.

Redress — (inhibits) — Violations — Include — Incidents — Include

Habitat related Human Rights

Impacts

- Incidents of intercommunal conflicts, which cause loss of life, assets and homes.
- Incidents of infrastructure failure and disaster, which cause loss of life, home and assets.
- Incidents of infrastructure development, which displace people from their habitats.
- Incidents of military occupation of land for security operations.
- Incidents of land titling, which exclude women's security of tenure.
- Incidents of customary practices, which deny women's and widow's ownership and inheritance of property, particularly land and homes.

Human rights Deprivation
Discrimination & violence against women

Well-being Deprivation
Loss and Damage / Include Tangible Loss, Intangible Loss / Include Loss Costs
- Health loss (Physical & Mental)
  - Fatalities
  - Injury
  - Illness
  - Distress
  - Physical or mental harm (Rape & Torture)
- Food security loss
- Safety loss
- Quality of family life loss
- Social bond loss
- Status & role loss
- Educational loss
- Access loss or interruption
  - Work access
  - School access
  - Healthcare access
  - Childcare access
  - Recreation access
  - Worship access
  - Transport access
  - General services access
  - Lost assets access

Wealth Deprivation
Loss and Damage / Include Tangible Loss, Intangible Loss / Include Loss Costs
- Assets loss and damage: (owned or under control)
  - Land
  - House or homestead
  - Equipment
  - Implements
  - Vehicles
  - Household goods
  - Crops
  - Animals
  - Documents
  - Memorabilia
- Income & earnings loss
- Opportunity loss
- Switching expense
  - Settlement relocation
  - Educational relocation
  - Work relocation
- Services expense
  - Health, Legal, Other

Habitat Deprivation
Loss and Damage / Include Tangible Loss, Intangible Loss / Include Loss Costs
- Site damage
- Buildings loss
  - Domestic buildings
    - House type and quality
  - Community buildings
    - Recreation
    - Worship
    - School
    - Health
  - Commercial buildings
- Infrastructure damage
  - Water
  - Sanitation
  - Drainage
  - Electrical
  - Other

Women, Land and Homes Project (Kenya)
HIC HLRN in collaboration with Mazingira Institute and Pamoja Trust
Evictions, Impacts and Redress Assessment (EvIRA) Tool
(Davinder Lamba, Mazingira Institute, Nov. 2018)

In the infrastructure case studied, the displacement has not yet occurred, but if displacement does occur in the future, the community has the data and report ready to show impacts and necessarily argue the case. The study found that the majority of women surveyed (81%) had suffered distress as the result of a previous move or eviction, especially in the case of separated, divorced and widowed women, who were disproportionately vulnerable compared to their married counterparts.

All women had been previously evicted one or more times — all as part of their birth families, and some as part of the marital family. Most experienced violence through eviction from their birth family. In determining loss pertaining to wealth, it's important to consider assets, income and documents such as land titles, because those who lack titles have less security.

Uganda Project Summary (Dorothy and Brian)

SAA: UHSNET is now linking what was learned and findings of the study to international processes (e.g., UPR and other reports of Uganda to international bodies). The project also pushed us to hold government accountable.

The case of the community at Mayanzi, Kigungu, Entebbe Municipality under involves an island community that was evicted by the Ugandan Peoples Defence Forces (UPDF), which had told them that living on the islands Makusa and Lwamunyu, where the people previously lived, was no longer safe because they were sinking. The community was moved to the mainland, and is now again under threat of eviction for "security" reasons according to the UPDF and for environmental reasons according to environmental groups.

The community is now living on rented private land, and it is hoped they will be allowed to stay. Most women initially had moved to the island for livelihood reasons, some followed their partners or spouses. They were not necessarily widowed or chased away from family homes.

Youth in the area have been changed by the eviction: since moving to the mainland there has been increased smoking, drug use and violent crime, pointing to impacts on emotional health. Through the project they have been trying to build the capacity of this vulnerable community to demand their rights and entitlements. There is a need to continue helping people recover land documentation despite recent closure of government offices.

Going forward, it was suggested that Uganda apply the tool to a new case related to infrastructure development in Kasoli in the current phase of the project. However, it is also important to follow through with the Kigungu community toward aa adequate remedy.

Zambia Country Overview (Grace)

Zambia is predominantly rural, much of the land is under customary tenure. The customary tenure system is guided by traditional leaders, while statutory tenure is government managed. Recently the government has applied a more market-oriented land framework: the 1995 Land Act commercialised all processes concerning land access and tenure, so that those with money can buy as much land as they can afford. Globalization has also led to high demand for land for the agricultural industry.

Local elites often displace vulnerable communities, and even traditional leaders sometimes displace their own subordinates for the purpose of selling land for personal financial benefit. A high level of corruption is perceived in access to land (statutory tenure), which has become politicized. One needs to know someone in authority to gain access to land.

Zambia has made an effort in recent years to ensure women's access to land. However, no system exists to monitor the implementation or effectiveness of policy. The National Gender Policy (2014) states that 30% of land should go to women, with the remaining 70% to be divided between women and men; however, no mechanism oversees these policies' implementation. Last year on Women's Day, a Presidential directive—which is, in effect, a policy—declared that 50% of land should be given to women, but this was only a pronouncement. It does not reflect what is happening on the ground.

To obtain tenure on statutory land, one needs to show capacity to put up a structure within 90 days, a pay cheque and bank statement showing a certain amount of liquidity. Many women cannot access land, even if it becomes available to them, because of these regulations. There is a need to empower the authorities and local councils with the capacity to manage gender gaps and come up with a system to monitor implementation of the policies.

Some traditional leaders do respect that women are entitled to own land and property, but a challenge is that widows can still be kicked out. Having a policy in place is one thing; ensuring it's reflected in what is happening on the ground is another.

Proposed case: families that have been forest custodians were displaced when the government gazetted the forest lands. These families have been displaced, but also deprived of their livelihoods and source of

income, as families were placed in various provinces. Civic Forum is engaging with Zambia Development Agency, Office of the Vice President, and Disaster Management Unit to help. It was suggested that an urban slum case be considered, as single, separated, and widowed women are often found in urban areas. Urban women are the ones who have lost access to land and home (as "cultural refugees").

If government comes up with a development program, a question is what have they put in place to ensure that families being displaced will not also be dispossessed? The security of the land tenure system needs to be enhanced, particularly traditional land. Those who have a statutory land title are eligible to access credit, but not so with traditional land certificate, as these are not considered secure forms of tenure.

Both Zambia's Land Policy and Housing Policy have stalled in parliament. The Land Policy, currently a draft document, is progressive; however, due to FDI coming into country, most traditional leaders realize the monetary value of the land and want to sell.

In Zambia, all land has to be properly planned for; this is articulated in Urban and Regional Planning Act. Traditional leaders not in full agreement, and reluctant to accept the Land Policy. The Civic Forum for Housing and Habitat has created partnerships between traditional leaders and developers, aiming to create win-win situations for both parties. The Housing Policy has been finalized, according to discussion with the Ministry of Housing and Infrastructure Development. All that remains to do now is for Ministry and Cabinet to agree and adopt it.

Zimbabwe Brief

(Joseph and Heather commenting, as Hilary was not able to connect)

The experiences of women in Zimbabwe is similar to those described in Kenya and Uganda, including eviction from birth and marital homes. One interesting factor differs: During the land takeovers that occurred immediately prior to Zimbabwe's fast track land reform (FTLR) program, women were very active. However, this did not translate into easy access to secure forms of land tenure for those women. Some women did benefit, particularly single women. This resulted in those single women having more secure access, since the title was theirs, whereas, for their married counterparts, the husband's name was on the title, meaning women were still vulnerable in cases of separation, divorce, or death of spouse. We especially need to see land in Zimbabwe through historical (i.e., decolonization) lens. Policy had been that 20% of land redistributed post-1980 would go to women; the country had achieved 17% by the start of the FTLR program.

Apart from the reasons for the 2000 FTLR, the ways in which the land reform was carried out and then administered have created much ambiguity about who owns what and the security of tenure. Many beneficiaries have "offer letters" or other certification of their tenure, but those instruments are not sufficient to guarantee tenure against "foreclosure" by local authorities or other corrupt practices, leaving the tenure holders, especially women, vulnerable to dispossession. The Land Commission is mandated to conduct a nation-wide land inventory and adjudicate land disputes, replacing the land courts. Meanwhile, some disputes are still adjudicated in civil courts.

Also unique to the Zimbabwe case is the context of sanctions and how the land reform as such—rather than the subsequent mismanagement—formed an argument, among others, for the USA and EU to impose sanctions on the country and the country's consequent economic instability.

Themes to Consider Going Forward

<u>Women's Health and Home</u>

- The impact of violations on women's health, including mental health, (i.e., well-being) came out clearly in all studies
- Women don't necessarily raise this issue themselves
- The analysis and subsequent advocacy need to use all authoritative references we can to draw the human rights links among habitat, wealth and well-being (For example, the HLRN COVID-19 statement cited the Housing and Health Guidelines (2018), related to the environmental and social determinants of health and built upon WHO's Health Principles of Housing (1989).

<u>Customary Practices</u>

- Traditional practices emerged as salient, but as a "case," traditional practice was too broad and pervasive to get a handle on in the context of the project's application of the quantification method. ; looked at Kenya customary practices, but survey was on infrastructure case; also included in Uganda's typology of cases.
- Pervasive, not location specific;
- Instruments developed for project (EvIA/VIAT) were genderized in Kenya, Uganda and India as well;
- The project contributes a "dual-look": inward in community, and outward (in time, by capturing foregoing violations, and addressing external duty holders);
- Multidimensional problem; important for next intervention (Kenya)
- How much advocacy and how much education is needed?
- Practices are basis of social order (which is discriminatory)
- Informal norms and sanctions are very entrenched and very patriarchal (this is the context we're working in … see below section on advocacy)
- Pattern of dispossession seen in Uganda, Kenya
- Traditional practices are historical, cultural, pervasive and persistent.

[Diana added later in an email that the project going forward in Kenya should consider also issues related to land for burial about burials in the WLH project when addressing customary practices. She observed that burials in Africa are at "the home," not in a public or communal space (or rarely so).

In Kenya, burials are perhaps the most important issue, whether women are supposed to be buried in their marital or original natal homes. (It is the latter for men). This societal norm would be basic to customarily perceived and valued "rights."

Diana raised this issue because of a current case in which a judge has stayed the burial of a woman in a place she had lived for 30 years as the employee of a man and his son (who also admitted to sexual relations with her). We should explore these norms with our respondents.

Sam observed that, culturally, if a woman has lived with a man as husband and wife, it is expected that, upon her death, she would be buried at the husband's home. This is because, once she is married, she is

considered as husband's "property" and, thus, she will forever belong to the husband's family, even in death. Only those (women and men) who do not have access to either their own or their families' land are buried in a communal space.]

COVID-19 Crisis: Opportunities and Threats

- Crisis reveals the fault-lines, the great inequalities, economic disparity, access to justice;
- Poses possible entry point for argument for human right to adequate housing as a human need, as multidimensional disparities become apparent and link adequate housing (habitat) linked to health (well-being);
- Highlights impact of lack of adequate housing – raising hope that government will take housing needs more seriously, but resources have dwindled with the state; next phase of project will be interesting to see what state has done;
- In this context we might have a better outcome, as the courts are more sympathetic to new, life-and-death arguments for adequate housing;
- All cases going forward perhaps will be heightened sense of urgency, consequences of abuses, but also remedies and strategies might be different
- Some shifts might be welcome, such as the case of Bangalore courts, which were previously regressive, but have come out with very pro-poor judgments since the pandemic; outcomes are still difficult to predict;
- Hope in housing will see more empathy and compassion from authorities, as well as faster remedy;
- We can't assume anything, but we can hope;
- Where consultations are suspended, target groups are likely to lose more; in context of COVID evictions could happen without public pressure;
- Very important to consolidate and continue work at this time, including maintain contact with the communities already surveyed.

Legal Routes, Advocacy and Redress

- Important to take the existing mechanisms in place for resolving disputes, and then transform them in line with human rights ideology and constitutional requirements .. to achieve fairness and redress;
- Uganda: currently negotiating with municipality to try to find a place for the affected community to move permanently; they have yet to get to the stage of legal action.

Perceptions of Men

- In Uganda case, men felt left out; entire community in dire poverty and in need; had to add interviews with men: what is their perception on women being dispossessed? Can they articulate the issues that women are facing in their community?
- Important to capture perception of men
- Should we develop a comparative position? Consider administering similar questions to men?

<u>Autonomy and Social Bonds</u>

- As in the previous DRCongo application of the tool, people have responded more to the concept of (material and nonmaterial) "values" than a commodity approach ("assets"), because it is understood to encompasses such assets as the environment and social standing;

- Values, for women, are not necessarily progressive (in the sense that they're not in favour of women's well-being, habitat or control of own wealth); sometimes they are linked to a traditional understanding of family, tribe and custom and privilege men;

- Women tend not to consider self-interest first in their values; rather they put their children's interests first;

- Loss of social bonds is an intangible loss, but difficult to quantify in numerical or monetary terms;

- The right of girls and women to inherit land and home is in question; sometimes women and girls believe they don't have this right (though this is rare);

- The value of autonomy as a human need (similar to human dignity) is not necessarily considered a value or need among all women (reference to the treatment of autonomy in Doyle and Gough's *A Theory of Human Need*);

- We need to interrogate our assumptions about what a value is to be protected and increased in a case of redress.

Prospects for This Year

India:
- Finalize current study, including quantification of values (despite challenges);
- Not possible to conduct another field assessment for at least 4–5 months given the COVID crisis and need for distancing;
- India's VNR is being reviewed this year at HLPF, which is likely to be virtual
- Human Rights Committee is looking at India this August, though India has not submitted a report to the Committee since 2001; civil society has submitted a list of issues; evictions did not get in; however, security of tenure for women in mentioned;
- Mid-term UPR: developing consolidated report of several human rights organizations; not enough space to push specific findings of the project, but issue of women's rights and disproportionate forced evictions will be raised.

Kenya:
- Align to international human rights reporting;
- Local target: influence Kenya Highway Authority through its key lenders, including the EU;
- Help affected women organize in a collective way;
- Produce an academic paper: discourse itself is a problem, within disciplines of engineering, infrastructure;
- Steve Ouma received a research grant from University of Manchester, will look at conversation among various urban professionals (architects, planners, land economists, anthropologists, sociologists, painters, etc.) for a re-imagining the urban; would like to link that conversation with this project

material; see: Propulsions: Thomas Asher; Steve Ouma Akoth, "Mobility in Southern Urbanism," *Comparative Studies of South Asia, Africa and the Middle East* , Vol. 40, Issue 1 (May 2020): 66–72;

- Further advocacy including a pragmatic campaign that looks at the problem in a multidimensional way;
- With the prospect of social change, develop system model or system conceptual framework of the campaign on problematic of traditional practices (this in particular can be done through the COVID-19 crisis, as it is conceptual work); possibly use Sen's underlined capabilities framework, or others to show the possibilities of equal rights;
- Only one respondent said that the situation should not change, but was an exceptional position of a women afraid of patriarchy;
- Use project report in current national civil society consultations being held following Kenya's UPR review that took place in February.

Uganda:
- Continue with current case and follow-up somewhat on the new case (Kasoli);
- There is a need for legal aid for the affected community;
- Look at legal framework for sanitation and hygiene: lake levels where the community has resettled are rising, which brings sanitation challenges; municipality should address this (partnership has already been established);
- Resettling community and capping further eviction: SSA: UHSNET has an MoU with the Ministry of Lands, Housing & Urban Development is part of a coalition pushing for national eviction guidelines (Uganda to date has none), which could provide basis for redress for this community;
- Kasoli: start by engaging small-gauge railroad (SGR) and Ministry of Works to see their side of the story, while interrogating community narratives (e.g., compensation has been given to some people, but different people are facing eviction);
- Land Acquisition and Resettlement Policy: same coalition that is pushing for eviction guidelines is looking at this new policy that the government is currently developing; information gathered through this project, including the findings of Kenya and India, can make a difference; SSA has MoU with the Ministry to submit recommendations of policies and have them heard at parliament level;
- UPR: Uganda did not report last year, but we continue to discuss and develop a report, which will be disseminated at national consultations to start in July 2020 (will follow process);
- We are regularly informed of other processes and will act/participate as they come along, when relevant.