

THE UGANDA CONTRACTS MONITORING COALITION

A Community-Based Tool for Monitoring Legal Compliance in the Implementation of Compensation and Resettlement Programmes in Uganda



Energy and Extractives Cluster

2013

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Acronyms

ADB	African Development Bank
CRED	Civic Response on Environment and Development
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
FAO	Food and Agriculture Organization
FPIC	Free, Prior and Informed Consent
ICT	Information, Communication and Telecommunication
IFC	International Financial Corporation
LABCA	Lake Albert Bio-Diversity Conservation Alert
NAVODA	Navigators of Development
NGO	Non Governmental Organization
NLP	National Land Policy
PAP	Project Affected Persons
PEPD	Petroleum Exploration and Production Department
PROBICU	Pro-Biodiversity Conservations in Uganda
RAP	Resettlement Action Plan
UCMC	Uganda Contracts Monitoring Coalition
UIRI	Uganda Industrial Research Institute
UN	United Nations
URSSI	Uganda Road Sector Support Initiative
WB	World Bank
WBI	World Bank Institute

1.0 Introduction

Land acquisition for investment has always been a delicate affair and is even becoming more delicate in the context of rapid growth changes. The government is under pressure to meet the needs of its people such as infrastructure, industry, energy, commerce etc many of which require huge chunks of land. Often times, the government does not possess all the land it requires; as such, land acquisition is the viable option. Admittedly, land acquisition, whether voluntary or compulsory acquisition brings benefits to society including improved infrastructure, employment, market for local produce, urbanization, increased value of adjacent land etc. However, it is disruptive to persons whose land is acquired. It displaces families from their homes, farmers from their fields, and businesses from their neighborhoods. It may separate families, interfere with livelihoods, deprive communities of important religious or cultural sites, and destroy networks of social relations¹. Worse still, if the acquisition is poorly done, it may leave people homeless and landless, with no way of earning a livelihood, without access to necessary resources or community support, and with the feeling that they have suffered a grave injustice².

If, on the other hand, governments carry out land acquisition satisfactorily, they leave communities and people in equivalent situations while at the same time providing the intended benefits to society. However, this delicate balance can only be achieved with good governance, adherence to policies and rule of law.

The Uganda Contracts Monitoring Coalition has designed this tool to monitor compliance with national policies, the Constitution and other national laws and international standards and safeguards governing resettlement and compensation. The monitoring tool is intended to ensure that development projects conform to the set standards at national and international levels and that project do not infringe on people's rights and freedoms. This monitoring tool is tailored to the local people who will use it to monitor projects in their locality. The Energy and Extractive Cluster will use the monitoring results to advocate for corrective action.

1.1 Setting the scene: Why the monitoring tool and how it works

This tool is a framework for empowering the local people to monitor resettlement and compensation programmes. It empowers the community monitors with the basic information on involuntary resettlement, compensation and resettlement and the legal provisions and international best practices that are applicable to Uganda. The community monitors will use the tool to monitor compliance of government agencies and the private sector charged with implementation of resettlement programmes.

¹ FAO, 2008, Compulsorily Acquisition of Land and Compensation at p.10

² *ibid*

The tool draws from the broader monitoring framework of the Energy and Extractive Cluster, which was developed in 2012³. In that framework, it was observed that other than contracts monitoring, the cluster would also carry out compliance monitoring – to ensure compliance in the implementation of projects/programmes e.g. environmental compliance, resettlement and compensation, etc. Similar compliance tools will in future be developed to facilitate monitoring across the extractive sector value chain.

1.2 Objectives of the tool

The objective of this tool is to facilitate the monitoring of compensation and resettlement programmes in Uganda. The tool will empower the local communities to monitor compensation and resettlement programmes in their settings. The Uganda Contracts Monitoring Coalition will use the monitoring results to advocate for corrective action.

2.0 Background

The Uganda Contracts Monitoring Coalition (UCMC) is a non partisan multi-stakeholders' initiative established to promote value for money through contracts monitoring. The UCMC also conducts compliance monitoring to promote the rule of law, enhance values and standards in the discharging of public functions. It is part of a growing Africa-wide movement to promote transparency and accountability in the development and implementation of development projects. The coalition is currently conducting monitoring in seven clusters; and these are: Education, Health, Works and Transport, Water and Environment, Agriculture, Energy and Extractives and Information, Communication and Telecommunication (ICT).

The Energy and Extractive cluster of UCMC focuses on monitoring contracts and compliance in the extractive sector including the mining sub-sector, energy sub-sector and the oil and gas sub-sector. In 2012, the cluster generated a monitoring framework, which identified resettlement and compensation as one of the areas for monitoring by the Cluster. This tool identifies the monitorable parameters in the light of the governing laws and policies and international standards governing resettlement.

2.1 Methodology

This tool was developed through a participatory and consultative process. A combination of techniques including literature review, consultation with different stakeholders involved in the resettlement and compensation programmes were used. In developing the tool, the Cluster reviewed relevant documents including the Constitution, national policies and legislation. The Cluster also reviewed international standards and principles providing for resettlement and compensation including the International Finance Corporation (IFC) standards, World Bank principles, Africa Development Bank (ADB) Principles among many others.

³ In 2012, the Energy and Extractives cluster developed framework that defines the monitoring approach and the different aspects that the cluster could monitor. These include environmental management, livelihoods, resettlement and compensation among others

The Energy and Extractives cluster sought to produce a simple, easy to use tool that can be utilized by the local people themselves. This tool is self sufficient in terms of highlighting the legal obligation and its ingredients on the basis of which the monitoring questions are crafted.

A meeting was organized where the Petroleum Exploration and Production Department in the Ministry of Energy and Mineral Development (PEPD) provided comments on the draft tool. The PEPD is taking the lead in the implementation of most development projects relating to oil and gas including the construction of a refinery in Uganda.

The draft tool was pre-tested in the proposed refinery area in Buseruka sub county, Hoima district. The pre-testing helped in obtaining the local people's perceptions on the draft tool, which helped in focusing and simplifying the tool.

This tool has been agreed upon by the Energy and Extractive Cluster and has been shared with the Uganda Contracts Monitoring Coalition.

3.0 The Monitoring tool

3.1 Why monitor resettlement and compensation

Land acquisition has been one of the most controversial subjects in land relations in Uganda. Land acquisition, compensation and resettlement are founded in the Constitution, which is the supreme law and in legislation. As a general rule, government has the power to acquire land and this can be done through mutual negotiations. Where the negotiations fail, the law gives government the power to acquire land compulsorily. The victim of the acquisition can either be compensated or resettled or both.

Land acquisition is premised on the understanding that the public good overrides private interests. In that sense, private interests in land can be sacrificed at the altar of public interests of security, health, etc. Article 26 of the Constitution outlines the conditions for compulsory acquisition and these are:

- (a) 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
- (b) 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 of 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 property.

Unfortunately, since the Constitution was enacted in 1995, parliament has not revised the substantive law – the Land Acquisition Act Cap 226. This law was enacted in 1965, thirty years before the coming

into force of the Constitution. Many of its provisions are inconsistent with the Constitution and the Land Act of 1998.

There is in place a multiplicity of international instruments, standards and best practices that substantiate the law. These include international law instruments like the International Covenant on Economic Social and Cultural Rights, The United Nations Principles and Standards, Standards developed by Multi-lateral financial institutions like the World Bank and the African Development Bank which provide to not only governments but also private sector entities implementing compensation and resettlement programmes. Some of the above cited instruments are authoritative and can be cited in their own right, while the others are best practices which are merely persuasive.

The government is expected to domesticate its international commitments and best practices into a single legislation and there is already an attempt to this through the Land Acquisition (Amendment Bill), 2013.

In the absence of a robust and consolidated national law, this compliance monitoring tool draws from the patchwork of existing frameworks particularly the Constitution, legislation, international instruments, standards and best practices.

3.2 Summary of cited frameworks

As it has already been mentioned above, the Energy and Extractives Cluster reviewed a number of frameworks at national and international levels. These include:

National Instruments

Instrument	Application	Date of commencement
The National Oil and Gas Policy for Uganda	Policy guidance	February, 2008
National Land Policy	Policy guidance	February, 2013
The Constitution of the Republic of Uganda, 1995 (As amended)	Legally binding	October, 1995
The Land Act, Cap 227 (As amended)	Legally binding	July 1998
The Land Acquisition Act, Cap 226	Legally binding (in as far as it is in line with the Constitution)	July 1965
The Petroleum, Exploration, Development and Production Act, 2013	Legally binding	April, 2013

International instruments

Instrument	Application	Date of application
International Covenant on Economic, Social and Cultural Rights	Applicable to Uganda	The covenant came into force in 1966 and was ratified by

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		Uganda in 1987
The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement – Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; A/HRC/4/18	Applicable to Uganda (Uganda is a member of the UN as of December 1962)	
The Food and Agriculture Organization (FAO) Guidelines on Compulsory Acquisition of Land and Compensation	Applicable to FAO members (Uganda is a member as of November 1963)	2008
The International Finance Corporation (IFC) Performance Standards – In particular, IFC Performance Standard 5	Applicable to clients of the IFC (companies)	January, 2012
The World Bank Operations Manual (Applicable to governments) – In particular, Operational Policy 4.12	Clients of the World Bank (governments)	December, 2001
The African Development Bank (ADB) Involuntary Resettlement Policy	ADB Clients	November, 2003
The Equator Principles	Member financial institutions (There include Barclays, Citi, etc)	June, 2006

4.0 Monitoring Themes

This tool is organized around a set of monitoring themes. The themes reflect the underlying legal principles governing compulsory acquisition. The tool addresses the legal parameters for which compliance is required in each of the themes. In total, ten themes have been identified:

- (i) Access to relevant and timely information and consultation with the affected communities
- (ii) Preference for negotiated settlements
- (iii) Requirement for restitution of rights
- (iv) Compensation values and guidelines
- (v) Compensation should be fair, adequate and prior to the appropriation of the property
- (vi) Compensation should be made to all persons with interest in the land and special consideration should be made for disadvantaged groups
- (vii) Resettlement as a form of compensation
- (viii) The Resettlement Action Plan to be properly developed and implemented
- (ix) Transparency, equitability and benefit sharing
- (x) Grievance mechanisms

4.1 Access to relevant and timely information and consultation of the affected communities

The law generally provides for the right of access to information. Article 41 of the Constitution of Uganda provides for the "right of access to information in the possession of the state or any other organ or agency of the state...". The Access to information Act, 2005 substantiates the Constitutional provision and re-affirms the right to information in substantive terms. Section 10 of that Act puts the responsibility of providing information to the head of the public body. It states: "For the purposes of this Act, the Chief Executive of each public body shall be responsible for ensuring that records of the public body are accessible under this Act".

International instruments substantiate the requirement for access to information and consultation of the affected communities.

- The Equator Principles, 2006 state that: ***"for projects with significant adverse impacts on affected communities, the process will ensure their Free, Prior and Informed consultation..."***. Further the principles state: ***"The borrower will take account of and document the process and results of the consultation, including any actions agreed resulting from the consultation."***
- The FAO guidelines require that the affected people be given sufficient notice. The guidelines state: ***"Notice should be given as early as possible to allow people to object to the acquisition of their land, to submit compensation claims, or to appeal against incorrect implementation of procedures. The timing of notice varies: a period of three to six months is common in many countries; some countries require that owners and occupants are given at least one year's notice"***.
- The FAO guidelines also require that public meetings be organized. They state: ***"Public meetings provide an opportunity for people to learn more about the project, to receive answers to their questions about the process and its procedures, and to voice their concerns."***

The monitoring questions are as follows:

- Do you know where to get information about the projects that are being implemented in your locality?
- Have you or any individual/community in the affected area been able to access relevant and timely information on compensation and resettlement programmes in your community?
- Have you or the affected individuals/communities been informed about your rights, roles, responsibilities and entitlements at all stages of compensation and resettlement process (before, during and after)?
- Has the information been packaged in the manner that is understandable to the local people and has it been translated into the local languages?
- Was information provided before or after the commencement of the development project?
- Were you or the affected individuals consulted on the compensation and resettlement processes? What were you consulted on?

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- Were gender considerations factored in the discussions about compensation and resettlement of you or the affected individuals/ communities?
- Did the consultation processes specifically address the concerns of disadvantaged groups like women, the poor, the landless, the elderly, children, ethnic groups, child-headed households, religious and linguistic minorities including those without legal title to the land?
- Do you or the oil project affected individuals/communities consider the consultations meaningful and satisfactory?
- Did government or the oil companies organize public meetings for you or the affected individuals to speak freely about the project and obtain answers to your questions
- Were your views considered in the implementation of compensation and resettlement programmes in your community?

4.2 Preference for negotiated settlements

There is a general rule under national laws and international best practices that land for investment projects should be negotiated with the owners in as far as is possible before government or companies resort to forceful acquisition. Involuntary resettlement should only come as the last resort – after exhausting all avenues of an amicable settlement. It should never be the first option. This is supported by Section 19 of the Land Acquisition Act Cap 226 which requires **government to agree and amicably settle land claims before it invokes the legal right of compulsory acquisition**. Similarly, the Petroleum (Exploration, Development and Production) Act, 2013 generally makes preference for negotiations between the land owner and licensed oil company. It is only when negotiations fail that the matter is referred either to the minister or the chief government valuer.

The above viewpoint is further strengthened by International frameworks. The following extracts are particularly relevant.

- The IFC Performance Standard 5 on Involuntary Resettlements states the requirement for negotiated settlements in explicit terms. It states: **"clients are encouraged to use negotiated settlements meeting the requirements of this Performance Standard, even if they have the legal means to acquire land without the seller's consent"**;
- The World Bank Operational policies state that **"involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs."**
- The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement state that involuntary resettlement should only occur in exceptional circumstances. The guidelines state that **"comprehensive and holistic impact assessments should be carried out prior to the displacement...which explores alternatives and strategies for minimizing harm"**.

The monitoring questions therefore include the following:

- Were you or the affected individuals/communities given an opportunity to negotiate acquisition of your land by government/company before the decision to compulsorily take it over was made?

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- Did you or the affected individuals/communities participate in the decision making processes on the project location?
- Did the decision making processes include options and alternatives?
- Was relevant information concerning displacement, compensation and resettlement disclosed to the project affected people and other stakeholders in the area?
- Give examples of the information that was shared.
- What was the duration between the giving of information and the decision to displace, compensate or resettle you or the affected peoples?
- How many engagement meetings were organized?
- Did you or the project affected individuals/communities consent to the decision to take away the land to be used for the development project?
- Ever since the decision to take away the land was made, has there been a continuous process of disclosing relevant information and ensuring participation of the affected communities throughout the processes of planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement?

4.3 Restitution of land rights

International best practices postulate that there should be an opportunity for restitution of land to the original owner once the purpose for which it was acquired ceases. This means that government and oil companies should settle for leases or renting the land and returning it to the respective owners once the reason for which it was acquired ceases. This intention has been recently provided for in the Petroleum (Exploration, Development and Production) Act, 2013. Section 138(1) provides: ***"Subject to section 135 and to any law relating to acquisition of land, a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, obtain a lease of the land or other rights to use it upon such terms as to the rent to be paid for the land, the duration and extent or area of the land to which the lease or other right of the lease shall relate as may be agreed upon between the holder of a license and the land owner"***. Although the above provision is limited to the oil company and does not apply where it is government acquiring the land, it highlights a best practice that government should as well adhere to. The principle of restitution is substantiated by international instruments and standards as follows:

- The UN Basic principles and Guidelines on Development-Based Evictions and Displacement acknowledge that the circumstances of evictions and displacement seldom allow for restitution and return. Nevertheless, the guidelines go ahead to provide that when circumstances allow, and where the displaced people are interested in returning to their places of origin, States should prioritize those people's preference. The states should support the local communities in the return process

The monitoring questions are:

- Have you or the affected individuals/communities been informed about the option of restitution of land rights when the purpose for which that land was required ceases?

- Have you or the affected individuals pursued the option of leases or renting out their land to the oil companies?
- What challenges are often met in exercising the option of leasing or renting out the land?
- What fears do you or the affected individuals/communities have about the option of renting or leasing out the land?
- Do the affected individuals/communities prefer outright sale of their land to the option of renting or leasing?
- Has the government or the companies that acquire land supported the vulnerable groups like women, minority communities, the elderly, and people living with HIV to exercise the option of restitution?
- Has the government or the companies that acquire land put in place conditions that would facilitate voluntary return in safety of the project affected peoples to their habitual places of residence?
- Has the government or the companies put in place measures that ensure women's equal and effective participation in return or restitution processes?
- Has the government or the companies put in place measures that ensure the participation of other vulnerable groups like minority communities, the elderly, people living with HIV to participate in return or restitution processes?

4.4 Compensation values and guidelines

Determination of compensation values is often a controversial stage of the resettlement and compensation process. It is therefore important that the law provides proper guidance on who determines the compensation rates, when and how. The Land Act Cap 227 provides that compensation values for crops and non permanent assets are determined by the District Land Boards. **Section 59 (1) of the Land Act provides that the District Land Board shall put in place a list of compensation values which is reviewed every year.** It goes ahead to state that in the **computation of the compensation rates, the district land board shall consult technical officers in the district** (Section 59 (5)).

Section 77 of the Land Act cap 227 provides for compensation principles and these include:

- (i) The value of customary land is the open market value of the unimproved land;
- (ii) The value of buildings on the land is computed at open market for urban areas and depreciated replacement cost for rural areas;
- (iii) The value of standing crops is determined in accordance with compensation rates determined by the respective district.

Compensation rates for land and permanent structures are determined by the Assessment Officer (Section 6 of the Land Acquisition Act Cap 226) but there are no specific and detailed guidelines in place to guide this assessment. The National Land Policy states that the government shall develop regulations and guidelines for the quantification and payment of compensation but these guidelines are not yet in place.

The gaps in our national laws are substantively addressed by international frameworks. They provide as follows:-

- The FAO guidelines provide that there should be compensation guidelines in place, which should postulate the principles of equity and equivalence. Equivalence connotes real value of the land such that the land owner is not unfairly disadvantaged by the compulsory acquisition of their land. The guidelines provide: ***"Compensation should generally be in lieu of loss of the land acquired, buildings, crops, or any other improvements to the land, for the reduction in value of any land retained as a result of the acquisition and for any disturbance or other losses to the livelihoods of the owners or occupants caused by the acquisition and dispossession"***. The guidelines go ahead to state that compensation should be ***"in lieu of the location of the land, quality of the soil, improvements on the land, lost profits in terms of projected harvest, emotional, cultural and spiritual attachment to the land, interest on unpaid compensation from the date of possession, temporary loss of earnings etc"***.
- The ADB guidelines provide that compensation should not only encompass the rights of those legally owning the land but those of persons with a certain interest in the land including social, cultural and spiritual interests. The ADB guidelines specifically provide for the rights of ***"adversely affected population including indigenous groups, ethnic, religious and linguistic minorities, and pastoralists who may have usufruct rights to the land or other resources taken for the project should be catered for"***.

The monitoring questions are:-

- Are you aware of up-to-date compensation values for crops and non permanent structures in your community?
- Are you aware of any comprehensive compensation guidelines for land and permanent structures?
- Do the compensation processes in your community consider:
 - The location of the land
 - quality of the soil
 - improvements on the land that promote agricultural production
 - lost profits in terms of the projected harvest?
 - emotional, cultural and spiritual attachment to the land?
 - Interest on unpaid compensation from the date of possession;
 - Expenses incurred as a direct and reasonable consequence of the acquisition;
 - Loss in value to other land owned by the affected owner due to the project.
 - The increase in value of the land as a result of the project (betterment)
 - Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents;
 - Costs of moving and costs of acquiring alternative accommodation;
 - Costs associated with reorganization of farming operations when only a part of a parcel is acquired;

- Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition;
- Temporary loss of earnings;
- Personal hardship;
- Other losses or damages suffered;

4.5 Compensation should be fair, adequate and prior to the appropriation of the property

The Constitution of the Republic of Uganda clearly spells out the manner, quantum and timing for compensation payments. Article 26(2)(b)(i) states that ***"no person shall be compulsorily deprived of property or interest in property unless where the compulsory taking ...is made under a law which makes provision for prompt payment of prior and adequate compensation..."***. As has been noted above, the parliament has not passed a law to substantiate the constitutional provisions on land acquisition and compensation payments. Valuable provision is made by international instruments.

- The IFC Performance Standards provide that the compensation should be more than fair and adequate. It is provided that the developer should also cater for replacement costs (Replacement cost is the market value of the land plus transaction costs). The IFC standards provide ***".... Clients shall effect compensation at full replacement cost and other assistance be provided to help improve or restore the standards of living of the affected people"***.
- The ADB standards also provide that Compensation should be computed at ***"the full replacement cost for loss of lands and other assets and should be paid prior to projects implementation with the view to improve living standards, income earning capacity and production levels of the affected population"***.
- The World Bank Operational policies on involuntary resettlement state that ***"displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels..."***
- The compensation should be effected before the takeover of the land. The IFC Performance standards provide that ***"the client will take possession of acquired land and related assets only after compensation has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation."***

The monitoring questions are:-

- Was the compensation provided before the takeover of the land?
- Was it adequate (in your own view)? Justify
- Was it provided in a transparent manner
- Was it applied consistently to all communities and persons affected by the displacement
- Were the affected people provided assistance (such as moving allowances) during the displacement?
- Were the displaced persons provided with any other appropriate development benefits from the project?

- Is there a framework for ensuring continued access to common property resources (such as fishing grounds, forests and parks) to collect natural resource products?
- If the affected people can no longer access the natural resources-based products, have they been compensation for the non access?

4.6 Compensation should be made to all persons with interest in the land and special consideration should be made for disadvantaged groups

In many parts of Uganda, there are overlapping interests on the same piece of land. The Land Act recognizes the interests of the land owner, the lawful and bonafide occupants, spouses, sharecroppers among others (Sections 29-31 of the Land Act). All such and other interests must be compensated. Section 6(1) of the Land Acquisition Act Cap 226 states that ***"the Assessment Officer shall make an apportionment of the compensation among all the persons known or believed by him or her to have an interest in the land, whether or not they have appeared before him or her"***. International instruments substantiate on the different interests that should be compensated.

- The World Bank Operational Policy 4.12 states that the developer should classify the project affected people in three categories: (i) those who have formal rights recognized under the law; (ii) those who do not have formal legal rights but have a claim to such land or assets provided such claims are recognized at law or under the resettlement plan; and (iii) those who have no recognizable legal right or claim to the land they are occupying. The standard goes ahead to provide that ***the people in (i) and (ii) are provided compensation for the land they have lost and other assistance. Those under (iii) are provided resettlement assistance and other assistance as necessary to have them relocate.***
- In addition, The World Bank Operational Policy states that ***"particular attention be paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, the women, children, indigenous peoples, ethnic minorities and other displaced people..."***.

The monitoring questions are:

- Were all people with claims in the land compensated?
- Does the compensation cover the interests of:
 - The poor (living on less than 2700 Uganda shillings a day)
 - The aged
 - Women
 - Children
 - Indigenous people
 - Ethnic minorities
- Are women's perspectives obtained and are their interests factored into all aspects of resettlement planning and implementation.
- Are the perspectives of the elderly, children, indigenous peoples and ethnic minorities factored in resettlement planning and implementation?

- Have indigenous peoples/ ethnic minorities been offered monetary compensation or non monetary compensation?

4.7 Resettlement as a form of compensation

It is in order for government or the oil companies to offer non monetary compensation. Section 19 of the Land Acquisition Act states: ***Nothing in this Act shall prevent the Government from entering into an agreement with a person having an interest in land by which that person's claim to compensation for land under this Act is settled by the grant of other land or in any other way.*** International instruments substantiate further on non monetary compensation.

- The IFC Performance Standards provide that ***"where the livelihood of displaced persons is land-based, or where land is collectively owned, the client is obliged where feasible to offer the displaced persons land-based compensation"***.
- Similarly, the World Bank Operational Policy 4.12 provides that ***"Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land based"***.
- It should further be noted that in the event of resettlement, the resettlement area should be of equal or better quality. The UN Principles reiterate principles of international law and state that ***"All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education."***

The monitoring questions are:-

- Have the affected people been informed about their options and rights pertaining to resettlement?
- Have the affected people been consulted?
- Have they been offered choices/ technically and economically feasible resettlement alternatives?
- Have the project affected people been provided assistance (such as moving allowances) during relocation?
- Have the project affected people been provided with residential housing or housing sites or agricultural sites for which a combination of productive potential, local advantages and other factors is at least equivalent to the advantages of the old site?
- Were the affected people offered any support after displacement (for a transitional period to restore their livelihoods and standard of living)?
- Have the affected people been provided with support such as land preparation, credit facilities, training or job opportunities?

4.8 Resettlement Action Plan should be properly developed and implemented

The World Bank Operation Policy 4.12 states that a ***Resettlement policy framework or Resettlement Action Plan (RAP) should be prepared and implemented.*** The Plan should ensure that resettlement is

conceived and executed in the most deserving manner. RAP preparation follows defined steps which are intended to ensure that the RAP is consultative and properly formulated.

The monitoring questions are:

- Was an appropriate team constituted to develop the RAP? Did the team bring on board different expertise such as a Sociologist, Surveyor, Valuation Experts, legal experts, representative of local governments and communities?
- Were consultations done with key stakeholders including community members?
- Did the RAP consider all the project affected people (PAP) - those who stand to lose as a consequence of the proposed projects all or part of their physical assets , including homes, communities, productive lands, fishing areas, or important cultural sites , commercial properties, tenancy, income earning opportunities, as well as social and cultural networks and activities?
- Were vulnerable groups given particular attention in the preparation of the RAP? Vulnerable groups include those economically and /or physically displaced, particularly those below the poverty line, the landless, the elderly, women and children, women and child headed households, indigenous groups, ethnic minorities, HIV/AIDS afflicted persons, orphans and street children, and other historically disadvantaged groups.
- Did the RAP consider addressing livelihood impacts within the household? For example, women and men's livelihoods are affected differently. Women many times have preference for non cash compensation, while the men often prefer cash compensation.
- Was a census carried out to collect appropriate socio-economic baseline data on persons who were to be displaced by the project?
- Were people that were eligible for compensation properly determined?
- Were ineligible people for compensation (such as opportunistic settlers) appropriately handled?
- Was there a cut off date for eligibility for compensation?
- Is the RAP accessible to the local communities/NGOs and is it in a language that is understandable to stakeholders?
- Is there in place a procedure to monitor and evaluate the implementation of the resettlement action plan?
- Is there a procedure for taking corrective action where irregularities are discovered?
- Was the resettlement process overseen by competent resettlement professionals whose job is to verify the monitoring information?
- Was an external completion audit of the Resettlement Action Plan or Livelihood Restoration Plan carried out to assess whether the RAP provisions were met?

4.9 Transparency, equitability and benefit sharing

Transparency equitability and benefit sharing in the development project is provided for under a number of Ugandan policies such as the National Forestry Policy and the Uganda Wildlife Policy. However, the equitability and benefit sharing ideals have not been put in compelling legal language.

However, international frameworks substantiate this as follows:

- The IFC Standards oblige clients to implement standards that are ***transparent and consistently applied to all communities and persons affected by the displacement, disclose all information, inform and consult with affected peoples and to provide opportunities to the displaced communities and persons to derive appropriate development benefits from the project.*** In addition, the standards provide for sharing of the affected people in the benefits accruing from the project. The Standard provides: ***"In addition to compensation, the displaced peoples whose incomes levels are adversely affected will also be provided opportunities to improve or at least restore their means of income earning capacity, production levels and standards of living"***.
- Similarly, the African Development Bank resettlement policy requires compensation and resettlement to be done equitably and allow for affected people/community to share in the benefits of the project. The benefits of the project could include infrastructure⁴ developed as result of the emergence of the industry/project in an area, Corporate Social Responsibility (CSR), Royalties, deliberate and special tax contributions by government to the affected individuals/communities, security, health, employment, and/or a share in the profits of the project.

The monitoring questions are as follows:

- Was the resettlement process carried out in a transparent manner
- Are you or the project affected people aware of any benefit sharing arrangements that have been put in place in your community?
- Were the affected people granted opportunities such as trainings, jobs etc?
- Were you or the project affected individuals/communities granted continue access to communal resources in the project area such as cultural sites, watering points, grazing areas etc?

4.10 Grievance mechanisms

It is trite law that land acquisition processes should have integral mechanism for resolving grievances. A judicial mechanism is envisioned under the constitution. Article 26(2)(b)(ii) provides that ***government or a local government shall not compulsorily acquire a person's land except where the compulsory taking is done under a law which makes provision for a right of access to a court of law by any person who has an interest or right over the property.*** International instruments not only recognize judicial mechanisms but also administrative mechanism, which are usually more accessible by the project affected people.

⁴ . Roads, health, education, telecommunications and energy facilities,

- The IFC performance standards enjoin clients to have in place grievance mechanism for receiving and addressing concerns relating to compensation and relocation raised by the displaced persons or members of the host community in a timely fashion. The standards state: ***"the client will establish a grievance mechanism as early as possible in the project development phase"***.

The monitoring questions are as follows:

- What grievance mechanisms are in place?
- Is there in place an administrative grievance mechanism (by government)?
- Is there in place a project-level grievance mechanism (by the company)?
- Does the project level grievance mechanism cover the following:
 - Is it sufficient to cover all the potential risks in the community?
 - Is it in consonance with the cultures and practices in the community?
 - Is it accessible?
 - Is there transparency and accountability in the discharge of the functions of the grievance mechanism?
 - Does it offer appropriate protection to the communities?
- Is there a judicial grievance mechanism in place?
- Is the judicial grievance mechanism accessible and affordable to the local people?

5.0 Conclusion

The 1995 Constitution took important steps of reforming land tenure and management in Uganda. However, almost eighteen years since the Constitution was promulgated, the spirit of the Constitution has not come to fruition because many of the laws that are supposed to deliver that spirit have not been put in place. Fortunately, the gap in the national law is addressed by several international obligations which are applicable to Uganda, standards and best practices. This tool on monitoring resettlement and compensation programmes should not only facilitate the government and the oil companies to improve the resettlement and compensation process, but should also help the relevant authorities to identify the legal and policy gaps and work towards filling those gaps.

References:

The National Oil and Gas Policy for Uganda, February, 2008

National Land Policy, February, 2013

The Constitution of the Republic of Uganda, 1995 (As amended), October, 1995

The Land Act, Cap 227 (As amended), July 1998

The Land Acquisition Act, Cap 226, July 1965

The Petroleum, Exploration, Development and Production Act, April 2013

International Covenant on Economic, Social and Cultural Rights

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement – Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living;

A/HRC/4/18

The Food and Agriculture Organization (FAO) Guidelines on Compulsory Acquisition of Land and Compensation, 2008

The International Finance Corporation (IFC) Performance Standards, January 2012

The World Bank Operations Manual, December 2001

The African Development Bank (ADB) Involuntary Resettlement Policy, November, 2003

The Equator Principles, June, 2006

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Draft Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish , Buseruka Sub-County, Hoima district, October 2012

UCMC TOOL, EXTRACTIVES CLUSTER- COMPENSATION AND RESETTLEMENT			
Monitoring Questions	RESPONSE		COMMENT/ EXPLAIN/ EXAMPLES
	Yes	No	
Theme 1: Access to relevant and timely information and consultation of the affected communities			
Do you know where to get information about the projects that are being implemented in your locality?			
Have you or any individual/community in the affected area been able to access relevant and timely information on compensation and resettlement programmes in your community?			
Have you or the affected individuals/communities been informed about your rights, roles, responsibilities and entitlements at all stages of compensation and resettlement process (before, during and after)?			
Has the information been packaged in the manner that is understandable to the local people and has it been translated into the local languages?			
Was information provided before or after the commencement of the development project?			
Were you or the affected individuals consulted on the compensation and resettlement processes? What were you consulted on?			
Were gender considerations factored in the discussions about compensation and resettlement of you or the affected individuals/ communities?			
Did the consultation processes specifically address the concerns of disadvantaged groups like women, the poor, the landless, the elderly, children, ethnic groups, child-headed households, religious and linguistic minorities including those without legal title to the land?			
Do you or the oil project affected individuals/communities consider the consultations meaningful and satisfactory?			

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Did government or the oil companies organize public meetings for you or the affected individuals to speak freely about the project and obtain answers to your questions			
Were your views considered in the implementation of compensation and resettlement programmes in your community?			
Theme 2: Preference for negotiated settlements			
Were you or the affected individuals/communities given an opportunity to negotiate acquisition of land by government/company?			
Did you or the affected individuals/communities participate in the decision making processes on the project location?			
Did the decision making processes include options and alternatives?			
Was relevant information concerning displacement, compensation and resettlement disclosed to the project affected people and other stakeholders in the area?			
Give examples of the information that was shared.			
What was the duration between the giving of information and the decision to displace, compensate or resettle you or the affected peoples?			
How many engagement meetings were organized?			
Did you or the project affected individuals/communities consent to the decision to take away the land to be used for the development project?			

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Ever since the decision to take away the land was made, has there been a continuous process of disclosing relevant information and ensuring participation of the affected communities throughout the processes of planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement?			
Theme 3: Requirement for restitution of rights			
Have you or the affected individuals/communities been informed about the option of restitution of land rights when the purpose for which that land was required ceases?			
Have you or the affected individuals pursued the option of leases or renting out their land to the oil companies?			
What challenges are often met in exercising the option of leasing or renting out the land as opposed to outright sale?			
What fears do you or the affected individuals/communities have about the option of renting or leasing out the land?			
Has the government or the companies that acquire land supported the vulnerable groups like women, minority communities, the elderly, and people living with HIV to exercise the option of restitution?			
Has the government or the companies that acquire land put in place conditions that would facilitate voluntary return in safety of the project affected peoples to their habitual places of residence?			
Has the government or the companies put in place measures that ensure women's equal and effective participation in return or restitution processes?			
Has the government or the companies put in place measures that ensure the participation of other vulnerable groups like minority communities, the elderly, people living with HIV to			

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participate in return or restitution processes?			
Theme 4: Compensation values and guidelines			
Are you aware of up-to-date compensation values for crops and non permanent structures in yours community?			
Are you aware of any compensation guidelines for land and permanent structures?			
Do the compensation processes in your community consider:			
(a) The location of the land			
(b) quality of the soil			
(c) improvements on the land that promote agricultural production			
(d) lost profits in terms of the projected harvest?			
(e) emotional, cultural and spiritual attachment to the land?			
(f) Interest on unpaid compensation from the date of possession;			
(g) Expenses incurred as a direct and reasonable consequence of the acquisition;			
(h) Loss in value to other land owned by the affected owner due to the project.			
(i) The increase in value of the land as a result of the project (betterment)			

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(j) Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents;			
(k) Costs of moving and costs of acquiring alternative accommodation;			
(l) Costs associated with reorganization of farming operations when only a part of a parcel is acquired;			
(m) Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition;			
(n) Temporary loss of earnings;			
(o) Personal hardship;			
(p) Other losses or damages suffered;			
Theme 5: Compensation should be fair, adequate and prior to the appropriation of the property			
Was the compensation provided before the takeover of the land?			
Was it adequate (in your own view)? Justify			
Was it provided in a transparent manner			
Was it applied consistently to all communities and persons affected by the displacement			
Were the affected people provided assistance (such as moving allowances) during the displacement?			

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Were the displaced persons provided with any other appropriate development benefits from the project?			
Is there a framework for ensuring continued access to common property resources (such as fishing grounds, forests and parks) to collect natural resource products?			
If the affected people can no longer access the natural resources-based products, have they been compensation for the non access?			
Theme 6: Compensation should be made to all persons with interest in the land and special consideration should be made for disadvantaged groups			
Were all people with claims in the land compensated?			
Does the compensation cover the interests of:			
(a) The poor (living on less than 2700 Uganda shillings a day)			
(b) The aged			
(c) Women			
(d) Children			
(e) Indigenous people			
(f) Ethnic minorities			
Are women's perspectives obtained and are their interests factored into all aspects of resettlement planning and implementation.			

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Are the perspectives of the elderly, children, indigenous peoples and ethnic minorities factored in resettlement planning and implementation?			
Have indigenous peoples/ ethnic minorities been offered monetary compensation or non monetary compensation?			
Theme 7: Resettlement as a form of compensation			
Have the affected people been informed about their options and rights pertaining to resettlement?			
Have the affected people been consulted?			
Have they been offered choices/ technically and economically feasible resettlement alternatives?			
Have the project affected people been provided assistance (such as moving allowances) during relocation?			
Have the project affected people been provided with residential housing or housing sites or agricultural sites for which a combination of productive potential, local advantages and other factors is at least equivalent to the advantages of the old site?			
Were the affected people offered any support after displacement (for a transitional period to restore their livelihoods and standard of living)?			
Have the affected people been provided with support such as land preparation, credit facilities, training or job opportunities?			

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Theme 8: The Resettlement Action Plan to be properly developed and implemented			
Was an appropriate team constituted to develop the RAP? Did the team bring on board different expertise such as a Sociologist, Surveyor, Valuation Experts, legal experts, representative of local governments and communities?			
Were consultations done with key stakeholders including community members?			
Did the RAP consider all the project affected people (PAP) - those who stand to lose as a consequence of the proposed projects all or part of their physical assets , including homes, communities, productive lands, fishing areas, or important cultural sites , commercial properties, tenancy, income earning opportunities, as well as social and cultural networks and activities?			
Were vulnerable groups given particular attention in the preparation of the RAP? Vulnerable groups include those economically and /or physically displaced particularly those below the poverty line, the landless, the elderly, women and children, women and child headed households, indigenous groups, ethnic minorities, HIV/AIDS afflicted persons, orphans and street children, and other historically disadvantaged groups.			
Did the RAP consider addressing livelihood impacts within the household? For example, women and men’s livelihoods are affected differently. Women many times have preference for non cash compensation, while the men often prefer cash compensation.			
Was a census carried out to collect appropriate socio-economic baseline data on persons who were to be displaced by the project?			
Were people that were eligible for compensation properly determined?			
Were ineligible people for compensation (such as opportunistic settlers) appropriately handled?			

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Was there a cut off date for eligibility for compensation?			
Is the RAP accessible to the local communities/NGOs and is it in a language that is understandable to stakeholders?			
Is there in place a procedure to monitor and evaluate the implementation of the resettlement action plan?			
Is there a procedure for taking corrective action where irregularities are discovered?			
Was the resettlement process overseen by competent resettlement professionals whose job is to verify the monitoring information?			
Was an external completion audit of the Resettlement Action Plan or Livelihood Restoration Plan carried out to assess whether the RAP provisions were met?			
Theme 9: Transparency, equitability and benefit sharing			
Was the resettlement process carried out in a transparent manner			
Were the affected people granted opportunities such as trainings, jobs etc?			
Were you or the project affected individuals/communities granted continue access to communal resources in the project area such as cultural sites, watering points, grazing areas etc?			
Theme 10: Grievance mechanisms			

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What grievance mechanisms are in place?			
Is there an administrative grievance mechanism (by government)?			
Is there in place a project-level grievance mechanism (by the company)?			
Does the project level grievance mechanism cover the following:			
Is it sufficient to cover all the potential risks in the community?			
Is it in consonance with the cultures and practices in the community?			
Is it accessible?			
Is there transparency and accountability in the discharge of the functions of the grievance mechanism?			
Does it offer appropriate protection to the communities?			
Is there a judicial grievance mechanism in place? Is it accessible and affordable?			
Theme 10: Grievance mechanisms			
What grievance mechanisms are in place?			
Is there an administrative grievance mechanism (by government)?			
Is there in place a project-level grievance mechanism (by the company)?			
Does the project level grievance mechanism cover the following:			
(a) Is it sufficient to cover all the potential risks in the community?			

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(b) Is it in consonance with the cultures and practices in the community?			
(c) Is it accessible?			
Is there transparency and accountability in the discharge of the functions of the grievance mechanism?			
Does it offer appropriate protection to the communities?			
Is there a judicial grievance mechanism in place?			
Is the judicial grievance mechanism that is in place accessible and affordable to the local people?			