



Community-based monitoring of land acquisition

Lessons from the Buseruka oil refinery,
Uganda

Bashir Twesigye



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Acronyms

| | |
|------|---|
| ADB | African Development Bank |
| CRED | Civic Response on Environment and Development |
| CS | Civil Society Organisation |
| IFC | International Financial Corporation |
| FPIC | Free, Prior and Informed Consent |
| MEMD | Ministry of Energy and Mineral Development |
| NG | Non-governmental Organisation |
| PEPD | Petroleum Exploration and Production Department |
| RAP | Resettlement Action Plan |
| UCMC | Uganda Contracts Monitoring Coalition |
| WBI | World Bank Institute |

Abstract

The constitution and enabling legislation in Uganda, as in many other countries, empower the government to acquire land in the public interest. Under Ugandan law a person whose land is identified for a public purpose must be compensated fairly, promptly, and prior to the acquisition of the property. International best practices, such as the World Bank Principles on Involuntary Resettlement and the International Financial Corporation (IFC) Standards and the United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement, substantiate protocols and safeguards that ensure development projects do not negatively affect communities. However, quite often, laws and best practices remain on paper only. Many individual landowners are poor, illiterate and marginalised; they are often ignorant about their basic rights, and lack the capacity and courage to speak out against injustice meted on them by development projects.

The decision by the Ugandan government to construct an oil refinery meant that over 1,200 households were to be displaced. It became imperative for Civic Response on Environment and Development (CRED), working under the umbrella of the Uganda Contracts Monitoring Coalition (UCMC) (a World Bank Institute supported initiative for monitoring contracts and ensuring compliance), to intervene by employing a tool as a means of empowering communities to monitor compliance with the oil refinery Resettlement Action Plan (RAP).

The community-based monitoring tool – a framework for community members to monitor compliance with national laws and protocols governing involuntary resettlement – was used as a premise for empowering persons affected by the project to be aware of their rights and responsibilities. As a result of the tool, community monitors spoke from an informed and knowledgeable position which influenced the resettlement process in a positive way. The experiences in the application of this tool are outlined in this paper and they draw important lessons for organisations seeking to replicate similar interventions.

1. Introduction

The community-based tool for monitoring legal compliance in the implementation of compensation and resettlement programmes in Uganda is a framework for empowering project-affected persons in the monitoring of resettlement and compensation processes in their localities. The tool is premised on the hypothesis that although there are often clear laws and protocols protecting communities from the negative effects of resettlement, the reality is somewhat different. Quite often, established protocols are not followed and development projects do more harm than good to communities. This tool was tailor-made for the Buseruka oil refinery project in Uganda, which was to displace more than 1,200 households. The process of developing and applying the tool draws lessons and positive experiences for championing community interests in situations where poor, weak and marginalised communities are pitted against governments or powerful multilateral companies.

Compulsory land acquisition, involuntary resettlement and compensation are constitutional principles and benchmarks in Uganda.¹ These principles are premised on the understanding that the public good overrides private interests, i.e. where there is a contestation between the public good and private interests, the public good prevails.² The law gives the government power to compulsorily acquire land, but with conditions that the acquisition should:

- (a) be necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
- (b) be made under the law which makes provision for prompt payment of fair and adequate compensation prior to the taking of possessions or acquisition of property.

Since the enactment of the constitution in 1995 the parliament has not revised the Land Acquisition Act to conform to, substantiate, and enforce the constitutional provision outlined above. As such, international principles and standards such as the World Bank Principles on Involuntary Resettlement, International Financial Corporation (IFC) standards, and African Development Bank (ADB) standards, among others, provide the necessary guidance. Development projects like the Buseruka refinery project are often funded through international financial institutions, in which case the relevant standard would become contractually binding. In any case, international standards reflect best practice, which if followed enhances legitimacy of development projects. It is perhaps on this account that the refinery's Resettlement Action Plan (RAP) considers the above standards. These

1 See Article 26 of the Constitution of the Republic of Uganda: www.statehouse.go.ug/sites/default/files/attachments/abridged_constitution_2006.pdf

2 Doctrine of eminent domain or compulsory acquisition of land.

standards generally put in place safeguards to ensure development projects put communities in a better situation than before. For example:

- The IFC Performance Standards provide that compensation should be more than fair and adequate. The standard provides that compensation should be based on the replacement cost (market value of the land plus transaction costs). It states “[...] 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 project 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 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 IFC Performance Standards also 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.”

Adherence to the spirit and letter of the constitution and the above international standards governing involuntary resettlement would ensure win-win solutions for the government, multinational corporations and the communities. However this is often not the case; in some instances, communities have been manipulated when development projects are implemented. For example, while the law requires that compensation is provided prior to the start of the development programme, this is quite often not the case. In a number of instances, communities have been displaced before resettlement or compensation are provided. On the one hand, laws and protocols are not adhered to by those in authority. This is due to lack of appreciation and support for community causes.³ On the other hand, the communities are poor, illiterate and marginalised; they lack the most basic information on rights, policies, laws and procedures and are therefore unable to hold duty bearers accountable.

³ The president of Uganda was reported to have said that the law should be changed to allow intending investors in the minerals sector to access private land that contains minerals without having to negotiate with the landowners. See Daily Monitor news headline for 2 October 2014: www.monitor.co.ug/News/National/Owners-will-lose-rights-over-mineral-rich-land---Museveni/-/688334/2471678/-/f4jchu/-/index.html

Upon discovery of petroleum resources in Uganda in 2006, the government produced a policy document which committed to adding value to its petroleum.⁴ In 2012, a decision was made to construct a refinery in Kabaale parish, Buseruka sub-county, Hoima district. The Ministry of Energy and Mineral Development (MEMD) commissioned a study of the economic, social and cultural status of the affected communities and thereafter commissioned a privately owned company to prepare a Resettlement Action Plan (RAP)⁵ for the project. Although the MEMD mentioned the RAP⁶ in policy dialogues and engagements with civil society, the document was not officially provided to the public, including the affected people.

Implementation of the RAP raised a number of concerns. For example, compensation monies were paid to men without provision for spousal consent (Global Rights Alert, 2013), as required by the Land Law, and initially there was no functioning complaints mechanism.

Protecting the rights of those affected by the Buseruka refinery project was a big challenge. The location is in a remote setting where the majority of the population is illiterate, poor and marginalised. Out of the 1,221 households that were affected by the project, 23.5 per cent had no formal education, while 54.3 per cent had not completed primary education (PEPD – MEMD, 2012). This implies that the affected communities were generally unaware of their basic rights and would find it difficult to make demands. This called for interventions that would plug the knowledge gaps by developing strategies to empower the affected persons to demand the enforcement and protection of their individual and collective rights to property.

With the above challenges, civil society organisations intervened to protect the rights of the affected communities by developing and applying a tool to empower and guide project affected persons to monitor project compliance. The Uganda Contracts Monitoring Coalition (UCMC), a platform for monitoring contracts and ensuring compliance to laws, regulations and protocols concerning development programmes, is one of the civil society groups that responded. UCMC is part of the evolving contracts monitoring platforms in East and West Africa being supported by the World Bank Institute (WBI).⁷ It has a total membership of 22 CSOs and its monitoring initiatives cover six sectors: (i) education, (ii) health, (iii) water and environment (iv) roads and infrastructure (v) agriculture, and (vi) energy and extractives.

4 Government of Uganda, 2008, National Oil and Gas Policy.

5 The detailed Oil Refinery RAP document is available on the Ministry of Energy and Mineral Development website (www.energyandminerals.go.ug) and/or Strategic Friends International

6 www.scribd.com/doc/212044472/Resettlement-Action-Plan-for-Refinery#scribd

7 WBI is a global connector of knowledge, learning and innovation for poverty eradication. wbi.worldbank.org/wbi/

The energy and extractives cluster of the coalition, led by the Civic Response on Environment and Development (CRED)⁸ developed the community monitoring tool and applied it for the Buseruka refinery project. The tool was intended to aid community monitors who were identified and trained by the UCMC to monitor compliance of government agencies/departments and the private sector responsible for the implementation of resettlement programmes based on the existing legal standards and protocols.

This paper provides information on the tool for monitoring land based acquisition for the Buseruka refinery project in Uganda. It starts by providing information about the tool and its application. It then discusses the challenges, lessons for sustainability and provides a conclusion.

⁸ CRED is a non-partisan, not-for-profit public interest oriented policy research and advocacy organisation, based in Kampala, Uganda and registered under Ugandan law. For more information, visit: www.creduganda.org

2. The Buseruka refinery community-based monitoring tool

The community-based monitoring tool is a framework that enables community members to monitor land acquisition processes, in this case for the refinery project. The tool identifies the most critical themes that are relevant to the affected communities, makes narratives that explain the laws and protocols governing involuntary resettlement, and poses questions to determine whether the development project is in compliance with the said laws and protocols. It is structured around key principles of responsible involuntary resettlement drawn from the constitution of Uganda, the Land Act, Land Acquisition Act and other domestic laws and international standards governing involuntary resettlement. The principles explored by the tool are:

- Affected persons should have access to relevant and timely information and should be consulted when decisions are being made that affect them.
- Negotiated settlements are preferred to involuntary resettlement.
- Requirement for the restitution of rights to the original owners upon cessation of the project.
- Determination of compensation should be based on fair values and should follow laid-out guidelines.
- Compensation should be fair, adequate and prior to the appropriation of the property.
- Compensation should be made to all persons with an interest in the land, and special consideration should be made for disadvantaged groups.
- Provision of alternative land is the preferred form of compensation for vulnerable communities.
- Resettlement should be premised on a RAP that is properly developed and implemented.
- Compensation and resettlement processes must embody the values of transparency, equitability and benefit sharing.
- There should be grievance mechanisms in place that are independent and easy to access.

Each of the monitoring principles/themes was separately expounded using both national frameworks and international standards to give the reader ample information and basis for the monitoring without necessarily having to collect all the various pieces of laws and standards cited.

The narrative/learning text discussing the theme is accompanied by a set of monitoring questions tailored to address the particular theme in issue vis-à-vis the rights of the individual and or affected respondent. Most of the questions are elaborate and solicit for a closed ended response i.e. yes/no to make it simple for respondents, especially the semi-illiterate. For example, the monitoring principle that compensation should be fair, adequate and prior to the appropriation of the property, the tool posed the following monitoring questions:

- Was compensation provided before the takeover of the land?
- Was it adequate (in your own view)? Justify.
- Was it provided in an open/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, has there been compensation for the non-access?

These questions are compiled into one comprehensive questionnaire that is annexed at the end of the tool, where the community monitors record responses during the monitoring.

The tool was applied by the community monitors who were identified and trained by the UCMC from the affected communities. The UCMC organised periodic review meetings with the community monitors to review the progress of the monitoring. In these meetings, the community monitors would submit the filled-in questionnaires to the UCMC team, discuss the monitoring process, and the achievements and challenges. The UCMC team then analysed the monitoring results and shared the results with the Petroleum Exploration and Production Department (PEPD) in the MEMD in the first instance. The PEPD, which is the government institution responsible for the refinery, was the primary recipient of the UCMC-analysed data, and this ensured constructive engagement. Meetings were organised where the PEPD and RAP implementing company responded to the monitoring results, made comments and clarifications.

Major steps in the development and application of the tool

UCMC followed the following steps in the application of the tool:

- i. Development of the draft monitoring tool through a consultative process with members of the UCMC.
- ii. Identification and mobilisation of the community monitors.
- iii. Training of the community monitors.
- iv. Pre-testing of the tool to assess its usability by the community monitors.
- v. Presentation of the tool to the PEPD.
- vi. Incorporation of comments about the monitoring tool from various stakeholders, including the MEMD.
- vii. Application of the tool by the community monitors.
- viii. Feedback analysed and presented to the MEMD.

3. Application of the tool: the case of the Buseruka refinery project

After discovering commercially viable oil and gas deposits in the country, the government of Uganda made a decision to construct the first oil refinery in Buseruka sub-county. The Buseruka oil refinery project primarily targets crude oil produced from Ugandan oilfields. It is expected to have a capacity of 120,000 barrels of oil per day over the long term, starting with 20,000 barrels in the short term, and 60,000 barrels in the medium term. It will be constructed and run under a public-private partnership arrangement. Countries in the region may acquire a stake. A total acreage of 29 square kilometres has been identified. In February 2015, a Russian company was announced successful bidder for the project. The project is expected to be completed in 2020.

The government of Uganda, through the MEMD, commissioned a socio-economic survey of the affected households. The government also commissioned the development of a RAP for the project. The RAP report dated October 2012 is premised on national laws and international standards including the World Bank Principles 4.12, IFC Standards, and the United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement,⁹ among others. It should be noted that these standards are not domesticated in national policy or legislation and therefore are not binding. However, reference to them in the RAP demonstrates a good precedence for developing practice and ultimately creates binding duties and obligations.

The RAP gave 2nd June 2012 as the cut-off date for compensation claims. The government commissioned a valuation of the properties and lists of persons to be affected. Cadastral prints and maps of the land were displayed in the communities from 29 August to 15 September 2012. In October 2012, the government named the affected properties and released a valuation report. The affected households were to soon discover inconsistencies with the valuations, omission of properties and inadequate compensation rates. The development and application of the monitoring tool was developed to help the community monitors identify and address gaps in implementation.

The selection of community monitors was an important stage in the monitoring process. The community monitors were identified with the assistance of community-based organisations working in the proposed refinery area. The selection criteria were ability to read and write and willingness to volunteer. Since communities are the ones affected by the involuntary resettlement and it is their

9 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

rights that are at issue, it is crucial that the communities demonstrate interest in the proposed action. The interested individuals who were identified to monitor the RAP process assisted other affected persons in voicing their rights at public meetings and other fora. They also doubled up as focal point persons for any actions that might arise, such as the need to undertake litigation for urgent redress mechanisms. It is important to determine the responsiveness of communities to this kind of activity, and the community monitors were trained by the UCMC on the policy, legal and international standards governing involuntary resettlement, the community monitoring tool itself and its application, and documentation of results and reporting.

Analysis generated by the tool

As the community monitors implemented the tool to monitor land acquisition for the Buseruka refinery project, they raised concerns about a number of irregularities, including the following:

- There was limited access to information by the affected persons and there was no Free, Prior and Informed Consent (FPIC) throughout the compensation and resettlement process. The community monitors in their feedback observed that affected persons were made to sign the payment vouchers without being given a chance to look at the contents of the vouchers. The consultancy firm that was commissioned to implement the RAP refuted these allegations¹⁰.
- The compensation process was based on the Financial Year 2011/2012 compensation rates (for payments made in 2013 and 2014). The Land Act, Chapter 227 of Uganda Law, requires that compensation is based on up-to-date rates¹¹.
- The monitors were not aware of grievance mechanisms available to them, whether at project level or administrative. Many of the affected persons could not afford the judicial mechanism without external support due to the costs involved¹².
- Compensation awards were given to men without proper consideration of the women and children's interests in the homestead. Often, the men would use the compensation money to buy alcohol and leave their families stranded.¹³
- It was not clear how community assets like churches, mosques, schools, common watering points were to be compensated for.¹⁴

10 UCMC (2013) Monitoring report

11 *ibid*

12 *ibid*

13 *ibid*

14 *ibid*

- Affected persons that opted for the resettlement option were living in anxiety about the contents of the resettlement package. They felt they had not been consulted about where they were going to be resettled, and were not being updated on the resettlement progress on a timely basis.

The UCMC collected the monitoring questionnaires, analysed the data and prepared a monitoring report. The report was presented to the PEPD and the UCMC had meetings with the government department and the consultancy firm that was doing the actual work to address the complaints and concerns about the implementation of the project.

The PEPD initially contested the monitoring results at a meeting held with the UCMC that was also attended by officials from the World Bank Institute. However a number of the issues raised were subsequently addressed and compensation effected without further conflict, while others are yet to be resolved and so engagement continues with the PEPD, the MEMD and other relevant government departments such as the Ministry of Lands, Housing and Urban Development. The following concerns have so far been addressed:

- Gender concerns were given more attention. As is provided for in the Land Act, Chapter 227, spouses must consent to the sale or mortgage of matrimonial property. This requirement of the law was consequently paid heed to by creating a requirement that both spouses sign the compensation forms. Unless otherwise agreed by the spouses, the compensation monies are paid into a joint account of the spouses. Where there is contestation amongst the spouses, the RAP implementer and PEPD staff have come in to mediate the parties and ensure amicable resolution of misunderstandings.
- An administrative grievance mechanism provided for in the RAP document was implemented. Persons dissatisfied with the compensation awards were able to submit their complaints to the RAP implementer. The PEPD staff is also on the ground to receive complaints. Although there are often delays in the processing of complaints, having a grievance mechanism in place is a step in the right direction.
- Allegations of intimidation and coercion to sign the consent vouchers by the affected persons were not reported again. This can be attributed to the empowerment of the affected persons on the one hand, and corrective action on the part of the RAP implementers on the other hand.
- The PEPD and the consultancy firm released information concerning the socio-economic survey to the UCMC. This information was used to enrich the monitoring tool. The UCMC passed on this information to the community monitors during training sessions.
- The PEPD and the consultancy firm have since clarified the processes and procedures for compensating for communal resources and infrastructure.

- Persons who opted for resettlement have been consulted on the resettlement area. Although there are concerns about delays in the resettlement process, involvement of the affected persons in the decision-making processes is commendable¹⁵.

Challenges faced

The PEPD was not pleased with some of the analysis presented to them. This was possibly because the results were largely negative. For example, they indicated that 80 per cent of the respondents were of the view that compensation was not being provided in a transparent manner, and 75 per cent reported that it was not being applied consistently (being applied selectively). Constructive engagement therefore became difficult. Accusations like “you are working with foreigners to disrupt the project”, “you are rebels out to disrupt government programmes”, “you do not have the capacity”, derailed an otherwise well-intended monitoring exercise.

Immediately after the meeting with PEPD where the monitoring results were presented, the community monitors were summoned by the security agencies; they were intimidated and ordered to disband. On 14 June 2013, officials from the NGO board summoned CRED for an explanation. On 2 April 2014 CRED and other organisations that were advocating for the rights of the affected peoples attended a meeting with the Minister of Internal Affairs over these issues. This turned out to be an opportunity as it opened up spaces for engagement. CRED and other civil society actors used the opportunity to engage with the minister and members of the NGO board. Subsequently, the board made a visit to the refinery area to verify the complaints of the affected peoples. Since then, CSOs and officials from the Ministry of Internal Affairs have had regular fora to interact on these issues.

There was limited financial support for the monitoring activities. The funding was for a duration of six months, yet community monitoring is meant to be a continuous process. The funding breaks made it difficult to maintain consistency and to keep the community monitors engaged and motivated. When the funding ceased, it became difficult to organise the periodic review meetings. Consequently, the monitoring rigour phased out. This is particularly challenging as it affects relationships with communities who may feel left out.

The UCMC was also faced with internal challenges of coalition cohesiveness, especially when the PEPD accused the coalition of attempting to block the refinery project. It became difficult to continue to operate as a coalition as some of the members that had initially been part of the process distanced themselves from the monitoring activities.

15 *ibid*

4. Lessons for effectiveness, sustainability and replication

First, it is important to tailor the tool to local contexts, needs and capacities. This was achieved by making the tool easy to use by using simple language, and the use of questions for monitoring. Pre-testing of the tool by the UCMC assessed its usability by the community monitors. Subsequently, the UCMC simplified the tool further and carried out trainings for the monitors to acquaint themselves with the tool. An easy-to-use tool puts the community monitors in the vanguard of the monitoring process, and enhances ownership and sustainability.

Second, the project-affected persons often had unrealistic expectations about the development project. This tool helped to provide accurate information to the community monitors which helped to curb expectations that seemed unrealistic. This helped the project-affected persons plan properly and reduced the pressure on project implementers and the government.

Third, the importance of strategic and constructive engagement and advocacy cannot be overstated. Civil society should be careful not to shame the government, but work with them and support them to overcome weaknesses in the projects. This may involve presenting the analysis gradually. On the other hand, civil society must carry out advocacy that raises the stakes of the debate and has the government willing to engage. However, the levers of engagement must be employed carefully.

Last but not least, there must be a form of institutional arrangement and flow of information that enhance the credibility and confidence of the stakeholders involved. In the case of the UCMC, the support of the WBI helped in opening up spaces for engagement. The community monitors would report to the UCMC, which did the analysis and presented the monitoring results to the PEPD. It was impermissible for the UCMC to channel the monitoring results to the media, unless engagement with the PEPD had failed or was not fruitful. The relevant cluster of the coalition must own the monitoring results before they are shared with the entire coalition for information and input. It is at this point that the monitoring results are shared with the PEPD. It is important that the set protocols are adhered to, so as to ensure solidarity and effectiveness.

5. Conclusions

The monitoring of the Buseruka oil refinery project was a protracted engagement with government, but also an informative and fruitful experience. Working with the community monitors demonstrated that when empowered, local change agents are more sustainable in delivering change at minimal cost and with greater efficiency. It also enhances the legitimacy of the operations of civil society organisations that seek to monitor controversial development projects as the community members participate in the change process themselves. Tailoring the tool to national laws and international financing standards is especially important as it creates early indicators to international financial institutions on possible violations of the international standards that bind their clients.

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Community-based monitoring of land acquisition: lessons from the Buseruka oil refinery, Uganda

The constitution and enabling legislation in Uganda, as in many other countries, empower the government to acquire land in the public interest. Under Ugandan law a person whose land is identified for a public purpose must be compensated fairly, promptly, and prior to the acquisition of the property. International best practices, such as the World Bank Principles on Involuntary Resettlement and the International Financial Corporation (IFC) Standards and the United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement, substantiate protocols and safeguards that ensure development projects do not negatively affect communities. However, quite often, laws and best practices remain on paper only. Many individual landowners are poor, illiterate and marginalised; they are often ignorant about their basic rights, and lack the capacity and courage to speak out against injustice meted on them by development projects.

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