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IMPLEMENTATION OF THE OIL REFINERY RESETTLEMENT ACTION PLAN IN UGANDA: HUMAN RIGHTS VIOLATIONS AND CHALLENGES



Perplexed and uncertain, oil refinery affected people are desperate to protect their property rights

Background

The recent discovery of oil in the Albertine GRaben region, western Uganda, is now the main focus of the nation's development plans. All projects and policies are geared towards ensuring that this oil will ultimately impact positively and benefit all citizens of the country. The National Oil and Gas Policy for Uganda 2008, recommends, among other things, value addition through the development of a refinery. Plans are currently underway to set up an oil refinery to produce oil locally in a bid to add value to the resource.

In preparation for the oil refinery development, Ministry of Energy and Mineral Development (MEMD) earmarked over 29SQKM of land in Kabaale, Buseruka sub-county in Hoima district to be acquired for this project. To acquire this land, MEMD allocated funds to formulate a Resettlement Action Plan (RAP) and Strategic Friends International (SFI) was contracted to prepare this plan. The general objective of the RAP is to lay down a framework for managing the loss of economic activities and livelihoods or resettlement from the site. The RAP forms the basis of compensation and resettlement- A necessity because the project involves loss of livelihoods and social cohesion and thus requires a well thought out plan to ensure successful reintegration of people into their new communities.

The Plan was designed to affect over 7000 persons in about 1200 households in Kabaale, Hoima district (as per RAP summary on page summary on page 30). A number of public and private structures including schools, churches, mosques, shrines, football pitches, water sources, markets and video halls will also be affected. Vulnerable groups such as women, children, elderly and the disabled and minority groups (depending on the vulnerability requests) were identified and to be catered for.

The principles of compensation and resettlement of the affected land owners forms the basis of the RAP. These principles are premised both in national legislation and international standards. They include: participation, promotion of choice of resettlement or compensation options, gender-sensitivity, restoration of livelihoods, monitoring and evaluation to mitigate the negative effects of resettlement and compensation.

The project is based on the constitutional principle of the right to own property under Article 26. The same article also provides for the compulsory acquisition of land by the Government in public interest. This can only be done where there is prompt payment of fair and adequate compensation to the affected person. Article 26 is echoed by the Land Act, section 77, which stipulates how payment of compensation will be assessed. Briefly, the section provides as follows:

- The value of customary land is the open market value of the unimproved land;
- The value of the buildings on the land is taken at open market value for urban areas, and depreciated replacement cost for rural areas;
- The value of standing crops on the land is determined in accordance with the district land board. In addition a disturbance allowance of either 15% or 30% of the assessed amount, depending on the period given in the notice to vacate, should be paid.

- A licensee who only has rights to use the land (but no title to the land) shall be compensated based on the diminished use of the land by the occupier.

The Land Act also recognises the various land tenure systems that are practiced and legally acceptable in Uganda under Article 237 of the Constitution including:

- a) Customary tenure which is not governed by any written law but by rules generally accepted as binding by the people it applies to. They are occupants of former public land and the land is owned perpetually. The owners have proprietary interest in the land and are entitled to certificates of Customary Ownership issued by the Parish Committees and eventually from the District Land Board.
- b) Mailo land tenure which was introduced by the British under the 1900 Buganda Agreement. It derives its legality from the Constitution and its incidents from written law including, holding land in perpetuity, separates ownership of land from the ownership of the developments on land made by lawful or bona fide occupants but enables the holder to exercise all the powers of ownership (bibanja owners).
- c) Freehold tenure which also derives its legality from the Constitution and from written law. It also involves holding land in perpetuity or for a period less than perpetuity fixed by a condition and enables the holder to enjoy full powers of ownership.
- d) Leasehold tenure created either by contract or by operation of the law. This is where the landlord (owner)/lessor grants the tenant/lessee exclusive possession of the land for a definite period and usually in return for a rent

The rights of other interested parties e.g. lawful and bona fide occupants and licensees or share croppers have also been considered and the RAP at pages 5-6 has proposed to compensate them.

The report reveals on pg viii that only 27 households chose the option of resettlement. It was recommended that land is identified in the refinery neighbourhood to construct houses and provide additional land for farming as part of the full resettlement package. However, the same document on the same page estimates that 50% of the affected households have opted for the cash compensation instead of resettlement. Both options have the effect of having the persons acquiring land within the refinery area thereby stretching the available social services.

A cut-off date of 2nd June 2012 was put in place and any developments made on the affected land after this date will not qualify for compensation. On page 33, the RAP proposes that only assets that were surveyed in the project-affected areas and persons residing or holding projects in these areas at the time of the cut-off date will be eligible for compensation. Compensation is to be paid after all transactions are fully agreed upon and before the actual start of the works. A Notice to Vacate of not less than three months will be given.

Mechanisms of dispute resolution were also captured by the RAP. It envisaged several categories of disputes ranging from ownership, boundaries, valuation, succession, divorce, discrimination and identification of property. It refers to section 74 of the Land Act which establishes land tribunals at all levels of local government and mandates them to resolve such disputed before recourse to courts of law. However, the RAP recognises that land tribunals are non-functional due to lack of facilitation. It proposes to sensitisation of the community about resettlement approaches, explanation and arbitrations as mechanisms of dispute resolution.

The RAP was prepared by SFI in accordance with both national and international legal frameworks and policy guidelines. Nationally, Uganda's National Oil and Gas Policy, National Land Use Policy and draft National Land Policy, The Constitution of The Republic of Uganda, The Land Acquisition Act cap 226 and The Land Act cap 227 among others were applied. Internationally, the principles and guidelines of resettlement were incorporated and applied from the Universal Declaration of Human Rights, The African Charter on Human and People's Rights, International Finance Corporation Standards on Environment and Social Sustainability, 2012 and World Bank Operational Policy on Involuntary Resettlement.



AFIEGO CEO, Dickens Kamugisha (right), listens to a project affected woman as other PAPs (in the background) map out a way forward in protecting their land rights.

SFI also came up with a budget associated with the implementation of the RAP- estimated at over 74 billion shillings. This is meant to cover costs of preparation, actual implementation to the conclusion and final

evaluation of the project. The summarised budget was availed; however, the detailed budget has been kept confidential with Petroleum Exploration and Production Department.

This paper analyses the legalities of the aforementioned legal framework vis-à-vis the actual implementation of the RAP by Strategic Friends International (SFI). It is important to observe at the onset that the Government has taken great strides in ensuring that its citizens shall benefit from this resource, bearing in mind that Article 244(1) of the Constitution provides that, 'Subject to Article 26 of this constitution, the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.'

Objective:

To analyse the violations and challenges during the implementation of the RAP and to map away forward and ensure that the human rights of PAPs are protected even as the nation enjoys the oil resource.

Violations and Challenges;

1. Stopping People From Using Their Land Freely;

The Constitution of The Republic of Uganda under Article 26(1) of the Constitution provides for every person's right to own property either individually or in association with others. Article 26(2) however, provides for the circumstances under which a person may be compulsorily deprived of any interest or right over their property, including;

A). the taking of possession or acquisition is necessary for public use; 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 the property.

The fact that Government is taking people's property without following the steps laid down by the law means their right to own this property is being violated.

2. Government Taking Over People's Land Before Payment;

As observed above, Article 26(2) permits the Government to deprive a person of their right to property **after** prompt, fair and adequate compensation. The RAP at page 33 proposed compensation packages when all transactions are fully agreed upon. The land was identified, surveyed and people stopped from gainfully using it. People can no longer access their land (their source of livelihood) and yet they have not been paid for it especially since the transactions have not been concluded. Therefore, by stopping people from using their land without complying with the requirement of prompt payment for it violates Article 26(2) (b) (i) and section 42 of the Land Act

A cut-off date (dead line), June 2nd 2012, was put in place. Starting from this date, people in the affected lands were stopped from further developing their land. Any developments on the project affected land after this date will not be eligible for compensation. It is almost 2 years after the cut-off date and compensation is yet to be made- Hence violating the constitutional requirement of prompt payment in Article 26(2) (b) (i). For two years, the PAPs have lived in uncertainty- Unable to grow perennial crops or plan long term. To date, government has not yet stated a date by which they will actually be compensated and resettled.

Also, some people are being made to sign payment receipts acknowledging transfer of their property rights to the Government when actually no money in form of compensation has been given to them. As required by Article 26(2) (b) (i) of the Constitution, government can only acquire such property after prompt, fair and adequate compensation. Making people sign without payment totally violates this provision of the law because no compensation has been done.

3. Use Of out-dated Compensation Rates

The Constitution under Article 240 and section 56 of the Land Act establishes District Land Boards for every district. These DLBs are expected to perform functions that include compiling and maintaining a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed; and these land boards shall review every year the list of rates of compensation referred to above as provided for in section 59 (1) (e) and (f) of the Land Act. The rates being applied by the RAP to compensate the people of Hoima district for their crops etc are rates of for the year 2010/2011. The out-dated compensation rates do not reflect the current values of the items. As a result inadequate payments will be/are being made thus also violating Article 26(2) (b) (i) on adequate compensation.

By applying out-dated rates, the PAPs were not involved in the process of computing the compensation rates for the year in question, 2012/2013. The out-dated rates were imposed on them. Use of out-dated compensation rates implies that the local people have not participated in the decision-making processes on matters affecting them directly. By denying them the opportunity to participate in the rate compilation process, their right to citizen participation is violated. Also, the rates that are compiled through a process they were not involved in are likely to be perceived as low and unacceptable to the community.

Failure to accept people's choices on the mode of compensation;

The RAP purports to give PAPs the freedom to choose either cash compensation or resettlement. The RAP states that 27 households chose land resettlement, and the rest had opted for cash compensation. But in reality, the choices of cash compensation have already been made by the implementers. People were "advised" to choose cash compensation or risk losing their property to government without any compensation. RAP implementers deliberately propagated misconceptions concerning resettlement among the general public- For example; some of them were told that they would be resettled in places as far as Karamoja. Feeling perplexed, intimidated and lacking information, members of local communities do not have a levelled ground on which to negotiate because the contract terms have already been determined and government expects them to accept them without question. Consequently, failure to negotiate fairly with affected people is a violation of their right to fair and adequate compensation or resettlement.

4. Use of Low compensation rates;

By applying the said out-dated compensation rates, the affected persons are being paid compensation that is far lower than what they are entitled to receive under the law. This also violates Article 26(2) on adequate compensation. Some of their land has been assessed below market value while some have been promised piece meal payment because government does not trust them to handle large sums of money.

5. Failure To make Regulations To Determine Assessment of compensation;

Section 20 of the Land Acquisition Act enjoins the Minister to make regulations for assessment and payment of compensation. These regulations are meant to guide assessments and compensations to be awarded to affected people. However, these Regulations have not been made. In their absence the compensations being awarded are unfair and inadequate. As a result, the transactions are violating legal requirements under section 20 of the Land Acquisition Act and the subsequent deals are unfair to the locals.

6. Failure to provide for all vulnerable groups;

Section 39 of the Land Act places restrictions on transfer of land by family members. It requires the written consent of the spouse or children (of majority age or by the committee on behalf of children of minority age) prior to entering any transactions on land on which such persons ordinarily reside and from which they derive their sustenance among others. Several family members have complained of being excluded from these land transactions. In fact there are almost no written consents by interested family members. Women have been marginalised in this exercise. This is unconstitutional as it contravenes Article 21 on non-discrimination on grounds of sex. It also violates Article 33 on Rights of Women and has caused public outcry.



Giramiya is a P.1 pupil at Kyapaloni primary school, one of the affected public amenities. With the exclusion of women and mothers from the oil discourse, children like her suffer the most.

Similarly, other vulnerable groups of people such as the elderly, disabled, and minority groups among others have also lodged complaints of being marginalised during the implementation of the RAP. This approach has discriminated against such persons and therefore, violating Article 21 of the Constitution on the right to freedom from discrimination. This also violates the rights of persons with disabilities under Article 35 and rights of minorities under Article 36 of the Constitution which protects these persons in decision making processes affecting them.

7. Failure To Set up Land Tribunals;

Article 26(2) (b) (ii) of the Constitution avails the right of court redress by any interested party on the land. Article 50 further enshrines the right to legal redress before a competent court which may include compensation. The RAP violated the constitution when it did not propose any option of resolving disputes through legal means.

The rationale is that grievance handling mechanisms proposed by RAP may be quick and save on the limited resources and time. However, the RAP downplayed the role played by the District land tribunals in this huge project. Article 243 of the Constitution and section 74 of the Land Act set up District Land Tribunals who are empowered to determine any dispute relating to the amount of compensation to be paid for land acquired compulsorily by Government under section 42, (refer to section 76 (1)(b) of the Land Act). Section 77 of the Land Act goes ahead to stipulate the computation of assessing compensation referred to above.

The RAP should have petitioned the line Minister to ensure that these institutions are put in place in conformity with the constitutional requirement. However, it has been trivialised and thereby violating Article 26 (2) (b) (ii) as well as Article 50.

8. Failure to follow the RAP;

At page 48, the RAP recommended for Witness NGOs to be signatory to the Compensation Agreements. However, the implementers have disregarded this proposition that would have helped some of the affected persons. For example persons disabled in one way or the other or those who are unable to read or write and yet have to sign English-written documents are finding challenges following the RAP. Witness NGOs are not being involved and neither are the Parish Committees, to the disadvantage of the vulnerable, poor and illiterate. By not engaging witness NGOs, the implementers failed to follow their own proposal and accordingly violated people's right to effective participation in decision-making processes.

9. Financial Loss To The Taxpayer;

RAP points out that the value of compensation should include more than the value of the land and developments. It acknowledges that there is disturbance following compulsory acquisition which means that people lose access to their source of livelihood. It gives a general notice of a period of not less than 3 months to vacate the land and has calculated a 'blanket disturbance allowance' of 30 percent for all the affected land owners. Contrary to the RAP, Section 77(2) of the Land Act provides that in addition to the compensation assessed there-under, there shall be paid as a disturbance allowance of 15 percent or, if less than six months' notice to give up vacant possession is given, 30 percent of any sum of the earlier assessment.

The RAP assessment of compulsory 30% disturbance allowance to all affected persons therefore, encourages wastage of tax-payers' money and financial resources since not all affected land owners qualify for the 30 percent allowance.

10. Lack Of Transparency and Integrity;

SFI (Strategic Friends International) prepared the RAP and proposed that an Independent entity be contracted to implement it. SFI knew that the Implementation Agency had a budget allocation of over Ug Shs 3.7bn. With this and other information, SFI knew it stood to unfairly benefit by agreeing to implement the program. Therefore, it should have stepped aside and allowed other players to implement its proposals. It shouldn't have accepted the offer to implement the program. However, SFI did not reject the offer as it should have. Instead MEMD went ahead and again contracted them to implement the RAP without a transparent process to identify other potentially (and better) implementers; a perfect case of conflict of interest. Several complaints have also been raised against SFI by the affected persons and have been ignored by MEMD. Consequently, the program seems to be flawed with corruption and lack of transparency.

11. Lack of Access To Information;

Relevant information on RAP is not being disseminated effectively. For instance, the summarised budget for the RAP was availed but the detailed budget has been kept confidential for the PEPD. Members of the public have not been informed of what the RAP is about. RAP is written in English and has no translation in the appropriate local language and adequate sensitisation has not been carried out. This poses a challenge of failure to understand and appreciate the program. It also means that the affected people are making uninformed decisions because they cannot access this information. This violates the right of access to information under Article 41 of the Constitution. The consequence has been the misconception that the Government is 'stealing people's land'.

12. Intimidation By RAP Implementers;

The issue of conflict of interest by SFI (the makers and implementers of the RAP) has been highlighted. It was proposed that there will be freedom to negotiate the kind of compensation the affected persons want i.e. cash compensation and resettlement. But in reality, the choices of cash compensation have already been made by the implementers. A number of people have been aggrieved by this option and the way RAP is being implemented. Note that they complain to the same implementers who use their position to intimidate affected persons. In turn, this has caused many to shy away from raising their grievances and as a result violated right to freedom of expression.

13. What is AFIEGO Doing?

In line with its mission of ensuring proper energy governance, AFIEGO works at the grass roots to empower PAPs to advocate for their rights. This is done through:

- 1) Information sharing
- 2) Human rights training and capacity building of PAPs
- 3) Litigation
- 4) Petitions to government, parliament and other stake holders to push for action
- 5) Advocacy on social and traditional media
- 6) Livelihood improvement programmes like Ecosystems Alliance.
- 7) Community outreach and youth empowerment programmes
- 8) Empowerment of women and promotion of a gender sensitive approach to the rights of PAPs

14. Conclusion and recommendations

The general objective of the RAP was to lay down a framework for managing the loss of economic activities and livelihoods or resettlements from the site. Basically, it was to restore the affected persons to a state similar to the one they were in before or transform them to an even better state. At page 7, reference is made to the International policy instruments such as the International Finance Corporation Standards on Environment and Social Sustainability, 2012 which lists down 8 standards to be followed during resettlement. However, as observed above, compensation is neither prompt nor fair nor adequate. It is not based on current rates and there are no guiding regulations. No transformations are taking place hence people may not be restored to former livelihoods thus violating Article 26 (2) (b) (i) and other tenet rights enshrined in the Constitution. The following should be done to put a stop to the violations:

- 1) Information is power. The entire RAP should be made public and easily accessible by all relevant stakeholders (not only parts of the document). The media should be involved in the RAP implementation process in order to ensure transparency and accountability.
- 2) District Land Boards should up-date compensation rates every year, preferably at the beginning of each Financial Year.



PAPs share their grievances with the media at a conference organised by AFIEGO

- 3) Concerned stake holders should intensify advocacy efforts at community level and on social media like facebook and twitter in order to amplify the voices of PAPs and move government to take steps to ensure that their rights are protected.

- 4) RAP implementers should follow the law to the letter to avoid human rights violations, unnecessary delays to this long awaited project and to avoid wastage of resources on resolving grievances.
- 5) Government should ensure that the Land Tribunals are properly set up and effectively functioning.
- 6) The minister should make Regulations for the Assessment and Compensation as required by section 20 of the Land Acquisition Act.
- 7) Witness NGOs should be involved in the RAP to ensure the effective participation of the affected persons
- 8) Litigation against government and project implementers should be pursued in order to demand that human rights, as guaranteed under the constitution, be respected; and to bring violators to book.