



23/May/2017

The Chairperson,
Commission of Inquiry on Land,
National Records Centre and Archives,
Kampala (U)

Your Lordship,

R.E: MEMORANDUM OF PROPOSALS ON RESOLUTION OF LAND DISPUTES BY MEDIATION AT GRASSROOTS LEVEL

1. INTRODUCTION

Reference is made to the invitation **Ref COI/INV/34** extended by the Commission of Inquiry into the Effectiveness of Law, Policies and Processes of Land Acquisition, Land Management and Land Registration in Uganda to Africa Institute for Energy Governance (AFIEGO) to discuss resolution of land disputes by mediation at grassroots level.

AFIEGO appreciates the work done by the Commission thus far. We appreciate the commission's efforts to allow effective public participation in looking for solutions to challenges of land governance in Uganda.

AFIEGO is a Ugandan registered public policy research and advocacy non-governmental organisation (NGO) dedicated to influencing energy and related policies such as those on land to benefit poor and vulnerable communities. Registered in 2005, AFIEGO's work is based on three access rights of access to information, public participation and access to justice for redress through research, lobbying and public awareness. AFIEGO's mission is to ensure that energy and related resources are utilised in a way that promotes equitable development and respect for environmental and human rights for the common good. Our access rights work is spearheaded by lawyers and other professionals.

Through our work spanning over a decade with communities, we have noted challenges as regards access to justice for redress through dispute resolution mechanisms by mediation in as far as compulsory land acquisitions are concerned. These challenges have been noted during our awareness and empowerment work with communities whose property was acquired by government for:

- (i) The Mbarara-Mirama-Birembo (Rwanda) electricity transmission line (over 50km line);
- (ii) The Jinja-Kenya electricity transmission line (over 250km line);
- (iii) The Bujagali dam project;
- (iv) The Karuma dam project;
- (v) Uganda's proposed oil refinery to be located in Hoima district;
- (vi) The Hoima-Wakiso finished oil products' pipeline;
- (vii) The Hoima-Kaiso Tonya road project;
- (viii) The Ntungamo-Mirama hill road project and;
- (ix) Land access by oil companies for exploration activities across the Albertine Graben.

We have directly and indirectly sensitised and empowered over 100,000 households on property and other related rights across the country. We have also engaged and interacted with government and private sector institutions at all levels including parliament, ministries, agencies such as the National Environment Management Authority (NEMA), the National Forestry Authority (NFA), and Uganda Wildlife Authority (UWA). We have also engaged with local governments in our areas of operation, the private sector including electricity and oil companies and others. We therefore have rich experience in working to promote justice and equity for Ugandan citizens and national development.

Your Lordship, this memorandum is limited to the law and practice regarding compulsory land acquisition disputes and how they are resolved by mediation within the local communities, the role of government, mediation challenges and solutions to these challenges.

2. THE APPLICABLE LAW

2.1. NATIONAL PROVISIONS

Article 26: Protection from deprivation of property; the article provides that:

- (1) Every person has a right to own property either individually or in association with others.
- (2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:
 - (a) The taking of possession or acquisition is necessary for public use or in the interest of defense, 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 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.

In effect, the above article provides that as long as government wants land for public interest, no one can stop it from possessing or acquiring any land. However, no compulsory acquisition or possession can legally be effected before prompt payment of fair and adequate compensation by government to the owner, prior to taking of possession or acquisition.

Further, like the Constitution, **Section 42 of the Land Act 1998 as amended**, provides for acquisition of land by government/local government in accordance with Articles 26 and 237(2) of the Constitution. On the other hand, **Section 59 of the Land Act** provides for the functions of the district land boards which include:

- Section 59 (e): Compile and maintain a list of rates of compensation payable in respect of crops, buildings of non-permanent nature and any other thing that may be prescribed.
- Section 59 (f): Review every year the list of rates of compensation referred to in para (e) of this subsection.
- Section 59 (6): Every district council must have a district land office comprising of a district physical planner, land officer, district valuer, surveyor and district registrar of titles.

Section 60 of the Land Act 1998 as amended provides that in the performance of its functions, a district land board shall be independent of the Uganda Land Commission and shall not be subject to the direction or control of any person or authority but shall take into account national and district policy on land and the particular circumstances of different systems of customary land tenure within the district.

On the other hand, **Section 71 of the Electricity Act, Cap 145** provides that compulsory acquisition of land or interests in land must follow the Constitution, the Land Act and Land Acquisition Act of Uganda.

Section 20 of the Land Acquisition Act Cap 226 provides for formulation of regulations for the assessment and payment of compensation regarding compulsory land acquisition.

2.2. WORLD BANK AND AFRICAN DEVELOPMENT BANK POLICIES ON FUNDED PROJECTS

The need for consent, information and participation of affected people: The World Bank (WB) Operations Manual provides that when a project affects indigenous peoples/local communities, the Bank assists the borrower in carrying out free, prior, and informed consultation with affected communities about the proposed project throughout the project cycle.

On the other hand, the African Development Bank (AFDB) Group Policy on Disclosure of Information provides that information concerning the Bank Group and its funded activities will be made available to the public without restrictions. It further adds that Environmental and Social Impact Assessments (ESIAs) must be prepared by the borrower for projects with potentially substantial environmental and social impacts and local populations shall be informed, consulted and their opinions respected.

Further, regarding displacement and resettlement of affected communities, the **World Bank Operations Manual 4.36** provides that the Bank strives to avoid or minimise involuntary

resettlement and, where this is not feasible, to assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The **African Development Bank Involuntary Resettlement Policy** provides that it seeks to mitigate the negative impacts of displacement and resettlement and establish sustainable economy and society. The objectives of the policy are to ensure that the disruption of the livelihood of people in the project's area is minimised and ensure that the displaced persons receive resettlement assistance so as to improve their living standards.

Regarding consultations and compensation, the World Bank Operations Manual 4.05 requires project implementers or developers to:

- Consult project-affected persons, host communities and local non-governmental organisations, as is appropriate.
- Provide them opportunities to participate in the planning, implementation, and monitoring of the resettlement programme, especially in the process of developing and implementing the procedures for determining eligibility for compensation benefits and development assistance (as documented in a resettlement plan), and for establishing **appropriate and accessible grievance mechanisms**.
- Pay particular attention to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation.

As regards payment of compensation, the African Development Bank Involuntary Resettlement Policy provides that compensation at the full replacement cost for loss of lands and other assets should be paid prior to project implementation with the view to improve the living standards, income earning capacity and production levels of the affected population. The improvement of these living standards should also apply to host communities. In addition, the needs of disadvantaged groups (landless, female headed households, children, elderly, minority ethnic, religious and linguistic groups, etc.) must be at the centre of the development approach.

3. TYPES OF DISPUTES

Through our work highlighted above, we have documented four types of disputes that accrue during compulsory land acquisitions. These include:

Intra-household disputes: These are seen within households which have been identified for compulsory land acquisition by government. These disputes often take the form of husband against wife whereby the husband may be desirous of receiving and using compensation monies without the wife's involvement. For example, women may be denied by their men/husbands a right to be co-signatories on bank accounts meant to receive compensation money. There are also disagreements on how to use the funds. This leads to domestic violence, sometimes leading to abandonment of wives/women by husbands/men.

Disputes arising from land speculation activities: In many areas of the country, whenever government plans a project in an area, the rich or educated who are aware of government's intentions to acquire land in an area entice locals to sell their land. While the law does not stop anyone from buying or selling land anywhere, this practice of speculation is depriving the poor of the possibilities to benefit from government projects. Many local households have been left landless leading to breakdown of families with children dropping out of school; whole communities also end up sinking into more poverty. To demonstrate how government's land acquisition projects and speculative activities lead to land disputes, we look at the 2011 study, *Land grabbing and its effects on the communities in the oil rich Albertine region of Uganda*¹, which showed that land grabbing and encroachment stood at 42 percent in the Albertine districts of Hoima, Buliisa and Amuru. Notably, land disputes owing to oil activities were shown to have increased by 27 percent. Customary tenure of land, which is the most prevalent form of land ownership in the Albertine Graben, is, unfortunately, an enabler of land grabbing. Uncertainty owing to oil activities is also enabling land grabbing. Unfair land transactions arising out of fear of the negative impacts of compulsory land acquisitions have seen communities sell their land at prices below market value as well.

Converting customary land into freehold and failure to provide certificates of customary ownership: One of the recent land reforms was the law authorising conversion of customary land to freehold but this reform only favours the rich who have the money to meet the costs. In the process, the rich are using this opportunity to acquire titles over land owned by communities whose interests in land are not registered. On the other hand, failure by government to support customary land owners to acquire Certificates of Customary Ownership (CCOs) has meant that most land owners remain vulnerable because a certificate of titles such as mailo hold, freehold or leasehold is still more respected and regarded as conclusive evidence of ownership at the expense of customary interests.

Government-induced disputes from compulsory land acquisitions: Compulsory land acquisitions by government, which are provided for under Articles 26 (2) and 237 (2a) of the 1995 Uganda Constitution, Section 42 of the 1998 Land Act, the 1965 Land Acquisition Act, and sections 70, 71 and 93 of the Electricity Act and others have also led to land disputes. These disputes have largely arisen from government's failure to pay:

- prompt,
- fair and,
- adequate compensation to project-affected persons.

¹*Land grabbing and its effects on the communities in the oil rich Albertine region of Uganda*<http://landgovernance.org/system/files/ULA%20Land%20Grabbing%20Study%202nd%20October%202011.pdf>

For example, today, a number of persons whose land was part of the 29.34 sq. km of land that was acquired for Uganda's proposed oil refinery are in court over what they say is government's failure to compensate them with prompt, fair and adequate compensation.

The land acquisition process for the refinery project especially demonstrates how compulsory land acquisition processes by government for different projects lead to land disputes and in the short brief below, we show how.

4. CAUSES OF LAND DISPUTES: THE CASE OF UGANDA'S OIL REFINERY PROJECT

To enable realisation of objective 4 of Uganda's 2008 National Oil and Gas Policy, which is "to promote valuable utilisation of the country's oil and gas resources through in-country refining of crude oil"², government plans to refine Uganda's oil at the proposed oil refinery to be located in Kabaale parish, Buseruka sub-county, Hoima district.

To develop the proposed oil refinery, which is envisaged to meet the 200, 000 barrels per day petroleum consumption of the Ugandan and East African markets, government began on the process of acquiring 29.34 sq. km of land in Kabaale parish, Buseruka sub-county, Hoima district in 2012.

While government committed to uphold best practices and standards through its Resettlement Action Plan (RAP) 2012 for the refinery project, the actual land acquisition process was fraught with challenges which resulted in disputes. Among these challenges were the following:

- (i) **Lack of regulations on what is prompt, fair and adequate:** While section 20 of the Land Acquisition Act of 1965 mandates the Minister of Lands, Housing and Urban Development to put in place regulations for the assessment and payment of compensation to help district land boards and the Chief Government Valuer (CGV) to set rates of compensation and approval of valuation reports in order to conform to prompt, fair and adequate compensation as is provided for under article 26 of the 1995 Uganda Constitution, the Land Act, the Electricity Act and others, such regulations do not exist. Without the regulations, project-affected persons and government conflict over what prompt, adequate and fair compensation is. Court cases, such as the aforementioned one involving the refinery-affected people against government, have been lodged with court being asked to compel government to define key terms to prevent under- and delayed-compensation of project-affected persons.

- (ii) **Use of cut-off dates in compulsory land acquisitions:** While cut-off-dates are necessary to cap speculative behaviour and therefore deter bulging compensation bills, the dates have been used unfairly in compulsory land acquisition processes in Uganda. For instance,

²Uganda's oil refinery – An opportunity for transformation:
<http://www.energyandminerals.go.ug/downloads/UGANDAOILREFINERY.pdf>

government set a June 2, 2012 cut-off-date for the refinery project meaning that any developments on the land after the date would not be compensated. The cut-off date was not time-bound such that the over 100 families which are yet to be compensated have complained that their ability to make a living through growing perennial cash crops has been derailed for nearly five years. This has caused disputes between government and the project-affected persons with agencies such as the Uganda Human Rights Commission (UHRC) being asked to mediate in them.

(iii) Unfair valuations: Another thorny issue in the land acquisition process for the refinery project was the use of valuations that sections of the project-affected persons considered unfair. To date, after five years since the cut-off date, some of the affected persons have not signed for the compensation that government gave them on grounds that it was unfair. Moreover, compensation rates for crops were considered unfair with crops such as bananas, mangoes and coffee among others that provided families with annual incomes being compensated as a one-off and at low rates. For instance, an acre of mature, good bananas were compensated at Shs 1.9M. An acre of mature robusta and clonal coffee were compensated at Shs 2.5M. Families complained that such compensations did not factor in income and food loss. The above crops are planted once and families harvest produce over a number of years. Families expected to be compensated for the income and food loss they would incur as these crops were replanted and they grew in the new areas of resettlement. However, this did not happen.

(iv) Delayed compensations: Despite article 26 of the Constitution and other laws providing for prompt payment of compensation prior to compulsory land acquisitions by government, the refinery-affected people's compensation were also delayed. To date, households numbering over 100 which opted for relocation and those who rejected the compensation that was unfair are still awaiting payment and relocation. The matter of delayed relocation has been a subject of disputes especially because families have experienced various socio-economic impacts including insecurity, loss of income and others owing to delayed relocation.

(v) Poorly-facilitated district land boards and electricity disputes tribunals: District land boards and electricity tribunals in Uganda are generally poorly facilitated as regards financing and human resources. While section 59 of the 1998 Land Act mandates land boards to compile and annually review compensation rates for crops and buildings of a non-permanent nature, the boards, are unable to deliver on this mandate. Where they have been able to as has been admitted district land board members we have engaged with, the Chief Government Valuer (CGV) has slashed these rates, as if the boards are under the control of the CGV. This not only results in compensation-related disputes between communities and government over low compensation, it also undermines and weakens land boards in their efforts to address land dispute challenges in their respective jurisdictions.

- (vi) Failure to differentiate the roles of Chief Government Valuer from those of the District Land Boards:** While sections 59 and 60 of the Land Act clearly provide for the roles and independence of the district land boards (DLBs), the central government continues to treat DLBs as departments under the CGV. Unfortunately, because the DLBs lack both financial and human resources, they have accepted to be controlled by the CGV even when the law does not allow it. It is impossible for the CGV to appreciate values of properties and cultures to be compensated across the country. This explains why most of the affected communities are rejecting values offered by government and even when they accept and get compensated, they sink into more poverty than before the developments.
- (vii) Inadequate involvement of women in compulsory land acquisition processes:** Failure to adequately involve women in land acquisition processes, especially in preparation of Resettlement Action Plans (RAPs) results in intra-household disputes. As the RAP for the refinery project noted, only 48.5 percent of women had documents showing that they owned property; 69.4 percent men on other hand owned property. This meant that more men than women were entitled to compensation. Moreover, men were more educated than women with a literacy level of 72.8 percent being recorded in male-headed households compared to 30.5 percent among the women. Further, more men (16.6 percent) than women (6.1 percent) owned bank accounts³. This put women in a vulnerable position in which men could receive compensation at their detriment.
- (viii) Discrimination in payment of disturbance allowance:** While the law requires payment of a disturbance allowance of 15 to 30 percent to any affected person depending on the period for eviction, there are cases such as the oil refinery land acquisition process where government did not follow the law. In the refinery land acquisition process, the people who asked for cash compensation were paid 30 percent on the total value of their property while those who asked for relocation did not get a full disturbance allowance. This has been a subject of disputes.
- (ix) Lack of specialized land tribunals:** While the tax and other sectors have tribunals to handle cases, land acquisition processes do not have such tribunals and the benefits accruing from them. Tribunals such as the electricity disputes tribunal only exist in Kampala and therefore cannot help the grassroots communities.
- (x) Weak or illegitimate local councils:** Todate, the local council system is weak and perceived with bias by communities because of the way they operate. For many years, they have not been elected and they are no longer confident to deliver. Perhaps this is the reason why during most of the compensation processes, they are co-opted by government and developers against the interests of their own communities.

³Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka sub-county, Hoima District

- (xi) **Lack of supporting legal framework for RAP-established grievance handling committees:** For every big project, government prepares a RAP with a section on grievance handling but these sections are purely at the discretion of the RAP implementers. The grievance handling committees often do not have any element of an impartial tribunal. This deters those with disputes from adequately using them.
- (xii) **Government’s failure to follow the RAP commitments:** In many of the RAPs, government makes specific commitments to the affected people but it does not fulfil those commitments during implementation. This causes disputes with project-affected persons complaining over government failure to deliver on the commitments made in RAPs.
- (xiii) **Failure to issue customary land certificates:** Finally, failure to issue customary land certificates by the Ministry of Lands to customary land owners in the Albertine Graben has fuelled land grabbing. Customary land ownership is the dominant land tenure system in the Graben.

5.1 DISPUTE HANDLING MECHANISMS AVAILABLE TO COMMUNITIES

Dispute handling mechanisms available to aggrieved communities in compulsory land acquisition processes include:

- (i) **Local council institutions:** Local councils used to solve disputes but these are no longer respected by the communities for many reasons.
- (ii) **Intra-household disputes:** RAP implementing agencies try to prevent intra-household conflicts through involvement of women in compensation by compulsory land acquisition implementing agency.
- (iii) **Land disputes arising out of speculative behavior:** District land boards, Area Land Committees and Recorders are supposed to handle such disputes.
- (iv) **Land disputes arising out of compulsory land acquisitions:** Redress is attained through the RAP Implementing Agency (RAPIA). If this fails, redress by mediation committees independent of implementing agency is triggered. If both fail, redress can be sought from court. This process is as per the RAP for the refinery project⁴.
- (v) **Land grievance handling mechanisms by companies/developers:** The grievance handling mechanism by companies such as the Joint Venture Partners in the oil sector including CNOOC (U) Ltd, Total E&P B.V and Tullow Oil Pty Ltd as stated on page 76 in their 2016 Land Acquisition and Resettlement Framework (LARF) involves resolution of complaints through the Community Liaison Officer or through courts.

⁴Resettlement Action Plan for the Proposed Acquisition of Land for the Oil Refinery in Kabaale Parish, Buseruka sub-county, Hoima District

- (vi) **Electricity disputes tribunal:** Even when the Electricity disputes tribunal exists, solving disputes in the electricity sector remains a challenge especially for local communities.

EFFECTIVENESS OF DISPUTE HANDLING MECHANISMS

In reality, the above grievance handling mechanisms are ineffective, by and large, especially in as far as compensation-related disputes are concerned. This is especially because the entities doing valuations are the same ones to handle disputes. These entities rarely decide against themselves.

In as far as courts are concerned, challenges include their inaccessibility owing to their expensive nature, their geographical location that is often far away from communities and the slow process of hearing cases, which causes frustration.

Government outlines grievance handling mechanisms in RAP reports but hardly acts on complaints raised by project-affected persons. For instance, 27 persons who rejected low compensation in 2012 are yet to come to fruitful discussions with government. As a result of this, we would say that the grievance handling mechanisms are hardly supported by government. This is more so the case because parish, sub-county and district land tribunals have not been renewed since 2006.

6. RECOMMENDATIONS

Based on the causes of land disputes identified in section 4 of this memorandum, we present the following recommendations:

- (a) **Put in place regulations for the 1998 Land Act, Cap 227 (as amended):** In consultation with the public, the Minister of Lands should urgently, in line with section 20 of the Land Acquisition Act (1965), put in place regulations for the assessment and payment of compensation to act as a guide on how government and developers can negotiate with project-affected persons to reach consensus on the promptness, fairness and adequacy of compensation. The regulations should provide clear guidelines on time frames for when payments should be made after assessment and valuation of property. The terms fair and adequate as they are provided for under article 26 of the 1995 Uganda Constitution should also be defined to remove ambiguities.
- (b) **Set a time frame within which compensation must be made and when cut-off dates expire:** Cut-off dates are necessary but should have expiration dates to curtail disputes arising from community dissatisfaction over failure to use their land for productive purposes. India's 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act can provide guidance. Section 38 (1) of the Act states that compensation has to be paid between three and six months after compensation awards have been agreed on. Section 38 (2) states that relocation has to be done within 18 months.

If agricultural land is assessed and is not compensated within six months, government has to re-assess property and pay the new awards accordingly⁵.

- (c) **Equip district land boards, Areas Land Committees and Recorders to deliver on their mandates:** The above institutions should be sufficiently facilitated with funds and skills to enable them update compensation rates in consultation with communities on an annual basis. The CGV should also be directed to respect the rates set by district land boards for the boards are the entities with knowledge of market rates in their respective districts.
- (d) **Implement provisions on women involvement in land acquisition processes:** While various RAPs make provisions for women involvement in land acquisition processes, these provisions are often ignored. To prevent intra-household disputes, project implementers must ensure women involvement in land acquisition processes. Quarterly assessments by the Equal Opportunities Commission (EOC) or district development officers must be made to ensure women involvement in land acquisition processes.
- (e) **Issue customary land certificates:** Finally, the Ministry of Lands must be compelled to issue customary land certificates to oil host communities in the Albertine Graben to strengthen customary land tenure and address land grabbing.
- (f) **The CGV should allow the DLBs to independently execute their work** as is provided for under Sections 59 and 60 of the Land Act. This will help the DLBs to execute their mandates without being perceived as incompetent and affecting government interests.
- (g) **Revive district land tribunals** with clear laws on their functioning to enable communities' access to affordable justice.
- (h) **Like in parliamentary electoral cases, give a time frame for resolution of cases relating to disputes under Articles 26 and 50 of the Constitution.** Any case on land acquisition and compensation disputes should be resolved by courts and tribunals within a period of six months from the date of filing it.

Thank you

For God and my country.



Dickens Kamugisha

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⁵India's 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act: <http://indiacode.nic.in/acts-in-pdf/302013.pdf>

