



AFRICA INSTITUTE FOR ENERGY GOVERNANCE

Education vs. oil sector developments: How a multi-sectoral approach in oil sector projects can mitigate negative impacts on education



AFIEGO Policy Briefing Paper No. 3

**Africa Institute for Energy Governance (AFIEGO),
Space House, Buwate P.O.Box 34913, Kampala,
Tel: +256 4145715**

Table of Contents

About AFIEGO.....	ii
Abstract.....	iii
Introduction and background.....	1
Problem Statement	3
Objective.....	4
Legal framework providing for children’s education.....	4
Gaps in legal framework in land acquisition processes.....	5
Gaps in insititutional frame work in oil sector land acquisition process.....	7
Poor planning of the resettlement process.....	7
Recommendations.....	8

About AFIEGO

Africa Institute for Energy Governance (AFIEGO) is a public policy research and advocacy NGO dedicated to influencing energy policies to benefit the poor and vulnerable. Based in Kampala, Uganda, the organization was born out of the need to contribute to efforts to turn Africa's energy potential into reality and to ensure that the common man and woman benefits from this energy boom.

Through lobbying, research and community education, AFIEGO works with communities and leaders to ensure that energy resources are utilized in a way that promotes equitable development, environmental conservation and respect for human rights.

Our Vision

A society that equitably uses energy resources for socio-economic development

Our Mission

To promote energy policies that benefit poor and vulnerable communities

Abstract

Uganda has pegged part of its hopes of transforming itself from a poor country to a middle income one on exploitation of its natural resources such as oil and gas. To this end, the goal of the National Oil and Gas Policy (2008) is to “use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society”.

The means by which the country plans to transform its nationals from poverty using its natural resources includes ensuring job creation in the oil and gas sector. To achieve national content in the sector, the country needs to adequately skill her population.

Attempts to do this have been made with petroleum courses being introduced at institutions such as Makerere University and with the formation of the Uganda Petroleum Institute Kigumba (UPIK) in 2009. Curiously however, activities in the oil and gas sector stand to discourage Uganda's dreams for national content and consequent poverty eradication. This is because oil and gas activities are negatively affecting education.

This paper highlights how so by putting a spotlight on the problematic nature of compulsory land acquisition processes in Uganda and the destruction of education dreams they leave in their wake.

It recommends that gaps in land acquisition laws are filled, laws are implemented and a multi-sectoral approach involving ministries such as that of Education is adopted in formulation of resettlement plans so as to mitigate the negative effects compulsory land acquisitions have on education. There is also need to undertake environmental and social impacts assessments before any acquisition and displacement of communities to generate evidence on how to plan for the different categories of the affected people including school going children.

1. Introduction and background

Compulsory land acquisition processes in Uganda by government often pose several challenges to communities from whom land is acquired. From the initial stages, government fails to abide by best practices in compulsory land acquisition such as the World Bank principles on involuntary resettlement. These principles require restoration or improvement of the standard of living at which government finds the persons from whom it acquires land. Interestingly, government also fails to respect its own laws. How so?

Article 26 (2a)¹ of the Uganda Constitution (1995) and the Land Acquisition Act (1965), which governs land acquisition processes in Uganda, affirms that government may acquire land for public use –uses could include setting up a refinery- and in the interest of defence, say the land in question is required for strategic reasons by the army.

The same laws also state that government may compulsorily acquire land for public safety, public order, public health and public morality.

However, before government acquires the land in question, it is mandated under Article 26 (2bi) of the Uganda Constitution (1995) to pay prompt, adequate and fair compensation to the land owners. This has not always happened.

In 2005 for instance, government acquired land from over 1,300 families for power transmission lines' projects between Mbarara and Rwanda and between Jinja and Kenya, but to date, ten years later, some of the families from whom land was acquired have not been adequately compensated yet.

Beginning in 2008, the National Forestry Authority (NFA) evicted over 20,000 people from their land in Kiboga and Mubende districts to pave way for a “forestry and timber products' business”², New Forests Company (NFC), to grow trees. Families which were promised compensation on grounds that they were “historic occupants” did not receive any compensation (Oxfam 2011)³ It is important to note that the evicted land owners said that they were “bona fide, lawful occupants and/or customary tenants”⁴.

Additionally, before upgrading of the Kaiso-Tonya road to bitumen in 2012, land was compulsorily acquired from families but to date, some have not received compensation. Yet fake claimants –“ghosts”- received theirs.

In addition, over 80 families whose land was acquired for the Karuma hydropower dam project –construction of the dam started in 2013- and some families whose land was acquired for the Bujagali hydropower dam project –the dam was commissioned in 2012- have not received adequate compensation yet.

Against this background, in 2012, government set in motion a plan to acquire 29 sq. km of land for an oil refinery in Kabaale parish, Buseruka sub-county, Hoima district. The 30,000-barrels-per-day refinery is expected to produce products to be consumed by Ugandans and her neighbours with the rest being exported. Over 1, 200 households with more than 7, 100 members were affected by the land acquisition. Of these household members, 1, 344 were children.

¹http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf (Uganda Constitution, 1995)

²<http://www.newforests.net/> (New Forests Company)

³<https://www.oxfam.org/sites/www.oxfam.org/files/cs-new-forest-company-uganda-plantations-220911-en.pdf> (Oxfam International's report on land evictions, without compensation, in Mubende and Kiboga)

⁴<https://www.oxfam.org/sites/www.oxfam.org/files/cs-new-forest-company-uganda-plantations-220911-en.pdf>

While government was quick to set a cut-off date of June 2, 2012, it has been slow in compensating and relocating the refinery-project-affected people. Compensation started in December 2013 and it is ongoing to date, four years since government acquired land for the refinery; over 20 families are yet to be compensated. In addition, over 80 families which opted for physical relocation are also yet to be resettled. The slow and poorly planned resettlement process has had myriad negative effects including on education.

This is because the land acquisition process affected two schools in the refinery area, Nyahaira P/S in Nyahaira village and Kyapaloni P/S in Kyapaloni village. The schools, which had over 500 and 600 pupils respectively, have no pupils today because while the pupils' parents are yet to be compensated or relocated, most of their teachers were driven to leave the refinery area following receipt of low compensation.

Without enough teachers and with bushy paths riddled with animals, the over 1,100 pupils of Nyahaira P/S and Kyapaloni P/S stopped going to school. Children who attained the school-going age while their parents wait to be resettled have also not joined school.

This presents a problem more so when one considers that government and oil sector developers are in advanced stages to set up various infrastructures including the crude oil export pipeline to Tanzania, a finished products' pipeline from the refinery in Hoima to Buloba in Wakiso and beyond, pipelines from the oil fields to Central Processing Facilities (CPFs) and other infrastructure.

With all these developments requiring big amounts of land –the export pipeline alone will require an estimated 1,444 km-, the impact of oil activities on education may get worse especially if past mistakes are repeated. This needs to be avoided. Other development projects such as the Standard Gauge Railway (SGR) and the Kampala-Entebbe expressway among others will also have negative effects on education if past mistakes are repeated.

⁵<http://www.energyandminerals.go.ug/downloads/NATIONALOILANDGASPOLICYFORUGANDA.pdf> (The National Oil and Gas Policy for Uganda, 2008)

⁶[http://www.ulii.org/ug/legislation/act/2013/3/Petroleum%20\(EDP\)%20Act%202013.pdf](http://www.ulii.org/ug/legislation/act/2013/3/Petroleum%20(EDP)%20Act%202013.pdf) (Petroleum (Exploration, Development and Production Act, 2013)

2. Problem statement

Uganda is looking to use her estimated 6.5 billion barrels of oil –reported to be the fourth largest in sub-Saharan Africa- to transform her nationals from poverty. In fact, as was already noted, the goal of the National Oil and Gas Policy (2008) is to “use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society”⁵.

The oil and gas sector is expected to do this through spurring of investment in education, health, clean water and through job creation among others. With the oil and gas sector requiring highly skilled labour, it is important that Uganda adequately trains its population. Yet training remains inadequate despite founding of institutions such as Uganda Petroleum Institute Kigumba (UPIK) and for some sections of the population, it remains totally out of reach. Part of the reasons for this is because policy makers fail to plan for the education of project-affected school-going children.

As has been shown above, over 1,100 refinery-project-affected children have remained outside school since 2012. Yet Section 126 (2) of the Petroleum (Exploration, Development and Production) Act (2013) mandates companies in the oil sector to train and recruit Ugandans “in all phases of petroleum activities taking into account gender, equity, persons with disabilities and host communities”⁶.



Some of the refinery-affected children who should be in school but are not.

Without education, the equity aspired towards in the Petroleum (Exploration, Development and Production) Act (2013) and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act (2013) through recruitment and training of host communities cannot be achieved.

Additionally, without education, children, once they become adults, will not be employed in the oil sector and because the sector will not be beneficial to them, they will present problems such as have been seen in countries that have mismanaged their oil resource such as Nigeria.

They will destroy oil infrastructure, pilfer oil and refine it in

crude refineries presenting challenges to government –which will have to provide security-, oil companies –which will suffer losses- and to Ugandans –who will shoulder the monetary burden of paying for the security of oil infrastructure. The international public will be affected too as international public goods such as food security may be compromised by activities of ill-equipped crude refineries.

It is therefore critical to address the challenge of education for oil-project-affected children before it presents bigger problems.

It is also important to address this challenge in order to enable children enjoy their right to education provided for by several national, regional and international legal instruments that will be shown in this paper.

⁵<http://www.energyandminerals.go.ug/downloads/NATIONALOILANDGASPOLICYFORUGANDA.pdf> (The National Oil and Gas Policy for Uganda, 2008)

⁶[http://www.ulii.org/ug/legislation/act/2013/3/Petroleum%20\(EDP\)%20Act%202013.pdf](http://www.ulii.org/ug/legislation/act/2013/3/Petroleum%20(EDP)%20Act%202013.pdf) (Petroleum (Exploration, Development and Production Act, 2013)

3. Objective

This policy brief seeks to address gaps in oil sector project resettlement processes to protect the right to education of oil sector project-affected children; this will in turn contribute to realization of the goal of the National Oil and Gas policy (2008).

4. Legal framework providing for children's education

A number of national, regional and international legal instruments provide for the right to education of children.

For instance, Article 30 of the Uganda Constitution provides for a right to education for all persons. Article 34 (2) of the same constitution affirms that “A child is entitled to basic education which shall be the responsibility of the state and the parents of the child”.

The Education (Pre-primary, Primary and Post-primary) Act, 2008 defines basic education as “the minimum education package of learning made available to each individual or citizen through phases of formal primary education and non-formal education system to enable him or her be a good and useful person in society”⁷.

With some refinery-affected children having never attended school, it becomes evident that government has failed to provide basic education for the refinery-affected children. Parents who are willing to provide education for their children have also been let down because schools have two and one teacher for Nyahaira P/S and Kyapaloni P/S respectively.

On the regional level, Article 11, clause 1 of the African Charter on the Rights and Welfare of the Child states that “every child shall have a right to education”. Clause 3a of the same charter mandates states such as Uganda that are party to the Charter should provide free and compulsory basic education. Clause 3b encourages the “development of secondary education in its different forms and to progressively make it free and accessible to all”⁸.

On the international level, Article 28 of the United Nations Convention on the Rights of the Child mandates “Parties [to the Convention to] recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means [and];
- (d) Make educational and vocational information and guidance available and accessible to all children”⁹.

In view of the above, it is important to ensure that the right to education for oil sector projects affected children is protected.

⁷http://planipolis.iiep.unesco.org/upload/Uganda/Uganda_EducationAct.pdf (The Education (Pre-primary, Primary and Post-primary) Act, 2008)

⁸http://www.childrensrights.ie/sites/default/files/submissions_reports/files/UNCRCEnglish_0.pdf (UN Convention on the Rights of the Child)

⁹http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf (African Charter on the Rights and Welfare of the Child)

5. Gaps in legal framework on land acquisition processes

Legal instruments governing compulsory land acquisition processes by government in Uganda include the Uganda Constitution (1995), the Land Act (1998) and the Land Acquisition Act (1965).

Article 26 of the Constitution affirms every individual's right to own property either as an individual or with others. It protects individuals from being deprived of land stating that “No person shall be compulsorily deprived of property or any interest in or right over property of any description except where”¹⁰ certain conditions are fulfilled.

These conditions, as laid down by Article 26 (2a), include government acquiring property for public use, in the interest of defence, public safety, public order, public morality or for public health. Before compulsory acquisition of land by government however, Article 26 (2bi) of the Constitution affirms that prompt, fair and adequate compensation has to be made.

On its part, the Land Act (1998), in section 56, establishes the district Land Boards and these bodies, which are mandated to act independently, are supposed to perform the duty of compiling and updating compensation rates among others. These rates are supposed to be payable for crops and buildings of a non-permanent nature among others when government compulsorily acquires land.

The district land boards are also charged with the duty of consulting the people when compiling compensation rates and to inform them of up-to-date rates and listen to their complaints regarding unfair rates. In this way, the Land Act (1998) provides for fair compensation exercises where prevailing market rates are used and individuals whose property is acquired are part and parcel of the process of determining the rates at which they will be compensated.

The Land Acquisition Act (1965) on its part empowers government to compulsorily acquire land but it does not clearly compel government to compensate affected people before acquisition of the said land. This is problematic so much so that in the Uganda National Roads Authority Vs. Irumba Asumani & Peter Magelah case that was heard by the Supreme Court, the court held that section 7 of the Land Act was null and void to the extent that it contradicted Articles 2 and 26 of the Constitution. It had the effect of empowering government to compulsorily displace and acquire people's property before compensation.

It is important to note that the Uganda National Roads Authority [UNRA] Vs. Irumba Asumani & Peter Magelah case was filed against UNRA over its acquisition of land for the approximately 92 km Hoima-Kaiso-Tonya oil road before compensation.

While this is a positive step towards addressing gaps in the legal framework governing land acquisition and while it may be argued that because the Constitution provides for prompt and adequate compensation, which would lead to a presupposition that families whose land is acquired speedily relocate and find new schools for their families, we know that in Uganda, delays in compensation mar land acquisition processes.

Additionally, the laws governing land acquisition in Uganda do not clearly define what fair compensation is. This problem is exacerbated by the fact that section 6 of the Land Acquisition (1965)¹¹ gives assessment officers excessive powers to determine compensation rates and where rates are considered low by project-affected persons and they file complaints say in court, the process of compensation is delayed. This negatively affects education as teachers who are compensated leave project areas, paths grow bushy and demoralised parents fail to engage in productive activities to acquire money for scholastic requirements for their children.

⁹ http://www.childrensrights.ie/sites/default/files/submissions_reports/files/UNCRCEnglish_0.pdf (UN Convention on the Rights of the Child)

¹⁰ http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf (Uganda Constitution, 1995)

¹¹ <http://www.ulii.org/ug/legislation/consolidated-act/226> (Land Acquisition Act, 1965)

Implementation of laws in Uganda is also problematic. As shown earlier, some refinery-project-affected people are still waiting for compensation since 2012. Others are waiting for relocation yet the Ministry of Energy reports its successful acquisition of the refinery land in its report, *Progress of Implementation of the National Oil and Gas Policy for Uganda*¹².

Additionally, as noted earlier, over 80 families affected by the Karuma hydropower project are also still awaiting compensation since 2013 despite Article 26 (2) of the Constitution mandating that they should have been paid promptly. Some Bujagali hydropower dam project-affected people and some property owners affected by the Mbarara-Rwanda and Jinja-Kenya transmission lines' projects are also still awaiting adequate compensation as was noted earlier.

In Tororo, Guangzhou Dongsong Energy Group Ltd's 2014 Sukulu phosphate project has run into trouble due to a botched land acquisition process in which the locals are accusing it of under-compensating them.

Indeed, land acquisition processes in Uganda are often problematic and gaps in laws such as the Land Acquisition Act (1965) exacerbate the problems of compulsory land acquisition. This needs to be remedied through a new law on resettlement and rehabilitation of persons affected by compulsory land acquisitions. This law should provide for a humane, participatory and transparent process for land acquisition for development.

It should also make adequate provisions for the affected persons' rehabilitation and resettlement including provisions on access to education, health and social services during the relocation process for as we know, relocation does not happen in a short period of time.

Specifically, the law should provide for Social Impact Assessment (SIA) studies to be mandatorily undertaken before compulsory land acquisition. The SIAs should meet the following parameters:

- a). Assessment as to whether the proposed acquisition serves public purpose;
- b). Estimation of affected families and the number of families among them likely to be displaced;
- c). Extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- d). Whether the extent of land proposed for acquisition is the absolute bare minimum needed for the project;
- e). Whether land acquisition at an alternate place has been considered and found not feasible;
- f). Study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project.

In determining that land being acquired is for a public purpose and in ensuring that land acquired is the absolute bare minimum, Uganda will see to it that land is not acquired for selfish gain and for wasteful purposes—as happened with the Shimoni Demonstration School and Shimoni Teachers College land—and that as few people as possible are affected by land acquisitions.

This will mean that fewer children and schools are affected by land acquisitions, preventing putting their education in jeopardy.

Additionally, an assessment on the extent of common properties including schools to be affected by a proposed land acquisition will help to determine whether it is cost-efficient to acquire such land. Finally, in determining of the social groups within a community through SIAs, government should adequately plan for them including planning for the education of school going children.

¹² http://www.energyandminerals.go.ug/downloads/MINOFENERGY_4Pages.pdf (Progress of Implementation of the National Oil and Gas Policy for Uganda)

6. Gaps in institutional framework in oil sector land acquisition processes

In land acquisition processes for the oil sector done thus far, critical stakeholders such as the Ministry of Water and Environment, Ministry of Agriculture, Animal Husbandry and Fisheries, and Ministry of Education have been overlooked. For instance, in the process to acquire land for the oil Kaiso-Tonya road, Uganda National Roads Authority (UNRA) was the lead authority in acquiring land. Significant ministries were overlooked.

In the process to acquire land for the refinery, the Ministry of Energy and Ministry of Lands worked together. This partnership came short because the Ministry of Education, the Ministry of Environment and Environment and the Ministry of Labour and Social Development were critical stakeholders whose roles and responsibilities to provide education, protect the environment and prepare communities for social development were negatively affected by the project. As such, they should have been part of the process to acquire land for the refinery.

Certainly, too many government ministries and agencies working on the same land acquisition process could have negative effects such as delays but, it is possible for all relevant stakeholders to work together on projects without causing delays.

7. Poor planning of resettlement processes

While Resettlement Action Plan (RAP) reports are prepared for the resettlement and rehabilitation of project-affected people for every project where project-affected people opt for physical relocation as opposed to cash compensation, poor planning has still been characteristic of resettlement processes.

An example is the refinery project where though a 2012 RAP report was formulated by Strategic Friends International (SFI) and it was adopted by the Ministry of Energy, the report is silent on how children whose parents would wait for relocation and compensation would access education.

Yet the same report recognized that the refinery project affected vulnerable people including women, the elderly and 1, 344 children.

Additionally, in the resettlement exercise of the same project, the project planners failed to take into account the fact that teachers would be compensated before some parents were and on leaving the refinery area, they would leave pupils without teachers.

Because the resettlement exercise was also not time bound, the project planners failed to plan for the education of children for if a project planner is not sure whether they shall relocate project-affected people in one or two years, they cannot adequately plan for social services such as education in addition to other unforeseen factors.

But perhaps a bigger problem than poor planning is that of inadequacies in current laws on compulsory land acquisition and failure to implement the good sections of laws such as Article 26 (2bi) of the Constitution. This failure, in addition to the shortcomings above, have seen education for oil-project-affected people compromised.

8. Recommendations

This paper recommends the following to protect this right:

i). That a new law on the resettlement and rehabilitation of persons whose land is compulsorily acquired is formulated. As noted, the Land Acquisition Act (1965) is inadequate yet Ugandans need a robust law to be protected, and to have rights such as that to education protected, when their land is acquired;

ii). That as recommended by the *Strategic Environmental Assessment (SEA) of oil and gas activities in the Albertine Graben, Uganda* report, a social development plan for host communities in the oil region is developed. The social development plan should address how education should be fostered in an environment of heavy investments and displacements from land acquisitions. This will ensure that host communities are skilled to not only work in the oil sector but to also engage in other income-generating activities;

iii). That a multi-stakeholder committee comprising of cultural leaders, religious leaders, civil society and relevant government institutions is instituted to formulate the above and organise processes such as Resettlement Action Plan (RAP) studies, resettlement and rehabilitation plans and to approve compensation rates among other processes involved in the resettlement and rehabilitation of people.

The committee, which should be named the National Land Acquisition, Rehabilitation and Resettlement Committee (NLARRC), should ensure that Social Impact Assessment (SIA) studies are undertaken for every project to provide information on how best to minimize project impacts on affected communities such as livelihood of affected families, roads, schools, clean water, electricity and health care facilities among others.

Government institutions on the NLARRC should include Ministry of Education, Ministry of Water and Environment, Ministry of Tourism, Wildlife and Antiquities and Ministry of Gender, Labour and Social Development.

iv). Finally, that projects are time bound and that laws providing for adequate and fair compensation are implemented to the letter. That where they are not implemented, project managers and officers who fail to implement them are held personally accountable.