



**DATE:** 22/November/2016

## **R.E: MEMORANDUM OF PROPOSALS BY CIVIL SOCIETY FOR THE 2016 DRAFT LAND ACQUISITION & RESETTLEMENT FRAMEWORK FOR THE OIL SECTOR**

### **Introduction & Background**

This memorandum highlights proposals by AFIEGO and six other CSOs and CBOs from the oil region for the 2016 Draft Land Acquisition and Resettlement Framework (LARF); the framework has been developed by the Joint Venture Partners - CNOOC Uganda Ltd, Total E & P Uganda Ltd and Tullow Oil Uganda Pty Ltd- and the government of Uganda to guide the process of land acquisition for infrastructure for the oil and gas sector.

Before its adoption, the framework was disclosed to us –Africa Institute for Energy Governance (AFIEGO) and other CSOs on October 27, 2016. Requests for input into the framework by CSOs including AFIEGO were accepted.

AFIEGO conducted community meetings in the oil region where the draft framework was discussed and proposals for its improvement were collected and adopted.

These proposals are presented in this memorandum which was sent to CNOOC Uganda Ltd, Total E & P Uganda Ltd and Tullow Oil Uganda Pty Ltd, the minister of Energy and Mineral Development and the minister of Lands, Housing and Urban Development.

The companies CNOOC Uganda Ltd, Total E & P Uganda Ltd and Tullow Oil Uganda Pty Ltd are currently the three major operators in Uganda’s oil sector with valid Production Sharing Agreements (PSAs) for the 6.5 billion barrels of confirmed oil reserves. On the basis of the confirmed reserves, the companies and the government are in the process of commencing oil production processes which will require displacement of communities in order for them to acquire or possess permanent land for oil development infrastructure including a refinery, pipelines, central processing centers, water abstraction sites, roads and others. The LARF is therefore an important part of the oil development processes that has the potential to promote equity and social justice or injustice in the country.

## **The memorandum**

The above refers

We, a consortium of civil society organisations, take this opportunity to thank you for the efforts undertaken to develop the 2016 Draft Land Acquisition and Resettlement Framework. As you capture in the framework, processes of compulsory land acquisition in Uganda have been belaboured with several challenges and shortcomings despite attempts to adhere to best practices. This has had far-reaching negative impacts on the human rights situation in the country, the environment and community livelihoods within and across the Ugandan borders.

It is therefore commendable that in conjunction with government, you are developing a framework based on national laws, policies and international best practices to standardise and guide the process of compulsory land acquisition for the infrastructure needed to develop Uganda's oil and gas resources. The framework seeks to promote equity and social justice in the processes for the benefit of the citizens and this is good.

We are also happy to recognize the following positive steps in the LARF:

- First, the framework's efforts to formalize plans to conduct censuses of Project Affected Persons (PAPs), develop Resettlement Action Plans (RAPs) and to follow IFC Performance Standards in land acquisition processes is a welcome development. This will enable proper planning for equitable resettlement of PAPs.
- In addition, through the framework, the JV partners and government show their commitment to secure social licence to operate in the communities. This is good and we hope it will not stop at just using communities but will go a long way to build mutual respect between government, the companies and host communities. This may address the challenges of suspicion and mistrust that exist in Uganda's oil region today.
- Other positive attributes of the framework include the LARF's proposal and commitment to avoid or minimize resettlement, ensure cultural appropriateness in land access and resettlement, compensate PAPs at full replacement value and recognize informal land rights in compensation of PAPs.

However, despite the above highlighted positives, AFIEGO and partners observed that the draft LARF contains several weaknesses and assumptions based on wrong information that require urgent attention before a final framework is developed to avoid misleading future RAPs. These weaknesses and assumptions are:

**i). Promoting the use of cut-off dates as a determinant of what property to compensate.** The LARF notes that Principle 6 guiding land acquisition of the JV Partners will include publicly

disclosing cut-off dates (pgs. 13, 40)” to among others, limit speculative behavior and limit eligibility of PAPs to those who are genuinely affected.

Partners expressed their disappointment and observed that it is unfortunate for the draft LARF to emphasize the use of cut-off dates well knowing that this violates Article 26 of the Ugandan Constitution. They noted that while setting a cut-off date is a best practice, the way it has been applied in Uganda has not only negatively affected rights provided for under Article 26 of Uganda’s supreme law, it has also led to untold suffering, desperation, isolation and many other evils. Partners noted that setting cut-off dates without a timeline within which they will expire has facilitated delayed compensation and has made many PAPs become landless and poorer –as they are not allowed to develop their land after the cut-off date-, that sometimes, they have ended up encroaching on and destroying critical resources such as forest reserves, game reserves, river banks, lake shores and other delicate biodiversity resources out of desperation.

**ii). Silence on plans for protected areas.** The partners also observed and were surprised to note that LARF is silent about the challenges facing Uganda’s protected areas such as forest reserves, national and game reserves, lakes, rivers, wetlands and others. All these resources which government owns in trust for the citizens are being endangered by the oil activities in the Albertine Graben but it appears that both the government and the JV partners think that there is no need for a framework to properly manage and conserve the resources amidst oil threats. Partners noted that perhaps this is the reason why the LARF is silent about the acquisition and possession of critical biodiversity resources and that this is unfortunate and should be remedied.

**iii). Incorrect portrayal of previous RAPS.** Further, partners noted that the attempt by the 2016 draft LARF to portray the previous RAPS in Uganda as upholding the supremacy of Ugandan laws was unfounded and misleading. With compulsory land acquisition processes being inundated by poor and delayed compensation processes in contravention of Article 26 of the Uganda Constitution, it was stated that it is sad for the JV partners and government in their LARF to portray that implementation of RAPS in Uganda often upholds the supremacy of Ugandan laws and international best practices. This wrong impression should urgently be corrected.

**iv). Erroneous portrayal of previous compensation processes.** Further, it was noted with concern that the framework erroneously states that previous RAPS offered PAPs compensation rates exceeding those prescribed by Ugandan laws (See pg. 30). The partners observed that district land boards are still weak and poorly facilitated by the central government and as such, they have failed to compile and update compensation rates in consultation with communities as required by section 59 of the Land Act 1998 (as amended). Partners noted that this was evident in the refinery project where the District Valuer, who is not a member of the Hoima District Land Board, erroneously approved and signed compensation rates which were used to compensate over 7,000 refinery PAPs. Partners noted that the use of wrong compensation rates explains why for many years, government has failed to compensate all the oil refinery project affected people including those who asked for relocation.

**v). Lack of proposals on closing gaps between Ugandan laws and IFC Performance Standards.** Outside of the framework, AFIEGO, her partners and communities observed that gaps identified by the LARF between the Ugandan laws and the IFC Performance Standards stand to undo the ambitions of the LARF. Without mandatory requirements providing for censuses of PAPs, development of RAPs, construction of houses for physically displaced PAPs, compensation of economically displaced PAPs who lose land and how women and vulnerable groups in host communities should be engaged in land acquisition processes, Ugandans are left to the mercy and whims of developers acquiring land. Partners noted that provision for these in the EIA Guidelines for the Energy Sector is insufficient as these guidelines have no force of law.

**vi). Absence of definition of key terms.** The LARF recognizes that the Ugandan laws do not clearly define key terms including timely, adequate, fair and prompt compensation. Failure to define these terms has seen PAPs across the country get delayed and poor compensation that sometimes, they have ended up in court battles which PAPs often cannot afford. It was noted that the framework too, which appreciates the importance of timely compensation for lost assets at full replacement cost” (pgs.5 & 31), does not define these key terms. To this extent, the LARF fails to solve the challenges of delayed compensation in this area and therefore should be improved with definitions of key terms.

**vii). Lack of regulations for assessment and payment of compensation.** Another gap identified in the LARF by AFIEGO and partners is the failure by the Minister of Lands, Housing and Urban Development to commit to put in place regulations for the assessment and payment of compensation as provided for under section 20 of the Land Acquisition Act of 1965 to act as a framework guide on how government and developers can negotiate with the PAPs to reach consensus on fairness of compensation.

**viii). Planned amendments of land laws and their negative impacts.** More so, the Minister of Lands, Housing and Urban Development is planning amendments to land laws to remove the requirement to compensate PAPs prior to acquisition or possession of their land and this is a danger to Article 26 of the Uganda Constitution. Partners noted that the proposed changes will worsen the challenges of land-grabbing in the country thus increasing the suffering of local communities. Amending Article 26 of the Constitution will deprive the communities the only possible available tool against injustice, partners noted.

## **Recommendations**

In view of the above observed gaps in the draft LARF, the following recommendations were made by AFIEGO and partners for adoption into the final LARF:

**a). Drop proposal to use cut-off dates as one of the principles of land acquisition and resettlement:** Article 26 of the Uganda Constitution does not allow use of cut-off dates in Uganda. Any acquisition or possession of someone’s property can only take place after payment of prompt, fair and adequate compensation to the affected person. Unfortunately, despite the

unconstitutionality of the cut-off date, government and developers/companies have continued to place cut-off dates on people's property before payment of fair and adequate compensation. Moreover, the use of cut-off dates has been responsible for untold suffering of the PAPs in the form of food and water insecurity, family breakdowns, collapsing of schools and many other challenges. We therefore appeal to the JV Partners that they should not formalise and fall into the trap of using cut-off dates as used by government. Doing so will make the JV partners appear as if they are conniving against the citizens.

**b). Do not amend land laws to remove the requirement for government and companies to pay land owners fair and adequate compensation before acquisition or possession:** The JV partners should use the LARF cooperation with government to advise government and the Ministry of Lands not to amend Article 26 of the Constitution in order to protect the sanctity of citizens' property rights. As noted, amendment of the law will further fuel land-grabbing and worsen the poverty situation in the host communities. It will also affect the companies' social license to operate as this will increase mistrust and suspicion among communities against the companies. Further, the amendments to Article 26 of the Uganda Constitution will make the LARF irrelevant to the citizens if the requirement for prior payment of fair and adequate compensation to the affected people is removed from the Ugandan laws. We therefore call upon the JV Partners to work with the government to keep the property laws safe to safeguard citizens' rights.

**c). Formulate regulations for the 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 of 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 PAPs to reach consensus on fairness of compensation. The regulations should provide for a formula on how to ascertain what fair, adequate and prompt compensation is; set a time frame within which an affected person should receive compensation after the date of assessment and establish compensation tribunals in all districts and sub-counties to ensure access to affordable justice to PAPs among others. The LARF should recommend this development.

**d). Close gaps between Ugandan laws and IFC Performance Standards:** For the LARF to succeed, there is need to improve Ugandan Laws. Gaps identified between the IFC Performance Standards and Uganda's legislation on compulsory land acquisition should therefore urgently be filled. Provisions for the following should be made compulsory: censuses of PAPs, development of RAPs, construction of houses for PAPs, compensation of economically displaced PAPs who lose land and how women and vulnerable groups in host communities should be engaged in land acquisition processes. As noted, some of the above are provided for in the EIA guidelines for the Energy Sector but these guidelines are not legally binding and therefore cannot be used to protect the rights of the citizens.

**e). Strengthen district land boards to perform their roles:** As noted in this memorandum, district land boards are weak and are fuelling challenges such as poor compensation of PAPs due to failure to update compensation rates in consultation with the people. They should be

strengthened to play their roles. The LARF should propose ways through which government can empower the districts land boards.

**f). Establish a multi-stakeholder monitoring committee:** The LARF should propose establishment of a committee comprised of government, companies, cultural and religious institutions, retired justices of court, CSOs and others to monitor and evaluate the conduct and implementation of the LARF and RAPs in Uganda.

**g). Expand the scope of the LARF to cover protected areas:** As noted above, AFIEGO and partners are surprised about the LARF's silence regarding the challenges facing Uganda's protected areas such as forest reserves, national and game reserves, lakes, rivers, wetlands and others. All these resources which government owns in trust for the citizens are being endangered by the oil activities in the Albertine Graben. We call upon the JV partners to ensure that the LARF provides a framework which requires government to consult citizens before any oil activities are conducted in protected areas.

Thank you and we look forward to your co-operation.

**Signed by:**

- Africa Institute for Energy Governance
- Guild Presidents Forum on Oil Governance;
- Oil Refinery Residents Association (ORRA);
- GRAFFEN, Kaiso Women's Association;
- Kwatanisa Women's Association;
- Twimukye Group;
- Kakindo Orphans

**About AFIEGO and her partners**

This memorandum was developed following discussions of the LARF by Africa Institute for Energy Governance (AFIEGO) and national and community groups that have been affected by compulsory land acquisition processes including Guild Presidents Forum on Oil Governance (GPF OG), Oil Refinery Residents Association (ORRA), GRAFFEN, Kaiso Women's Association, Kakindo Orphans, Kwatanisa Women's Association and Twimukye Group among others.

AFIEGO is a public policy research and advocacy NGO whose main objective is to promote good governance in the energy sector. For over seven years now, AFIEGO has engaged with parliament, government, judiciary, private sector and stakeholders across borders to build harmony and promote the rights of oil project-affected communities.

The GPF OG on the other is university youth association whose purpose is to promote better governance in the energy sector. Some of its members have been affected by oil activities.

Oil Refinery Residents Association (ORRA), GRAFFEN, Kaiso Women's Association, Kakindo Orphans, Kwatanisa Women's Association and Twimukye Group are oil region CBOs working to defend the rights of oil projects affected people.