

SLEEPLESS NIGHTS

The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda's Resettlement Action Plan.



With support from DGF

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LIST OF ACRONYMS:

CSR	Corporate Social Responsibility
DRC	Democratic Republic of Congo
GRA	Global Rights Alert
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
KM	Kilometres
NGOs	Non-Governmental Organizations
PEPD	Petroleum Exploration and Production Department
RAP	Resettlement Action Plan
RCDAP	Resettlement and Community Development Action Plan
PAP	Resettlement and compensation of Project-Affected People
SFI	Strategic Friends International
UDHR	Universal Declaration of Human Rights

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EXECUTIVE SUMMARY:

“Sleepless nights” the title of this study report is derived from a song by the women affected by the government’s developmental project of establishing an oil refinery on land measuring 29sq. Kms and covering approximately 13 villages. The song originally written in vernacular is a sad attestation of the sleepless nights induced by the thoughts of losing the land that women, men and their families in these villages have experienced since the government decision to construct the refinery on the aforementioned land was announced to the community in 2011.

The study documents rights issues of the communities including gender, equality, protection and enforcement, remedy and access to justice on the one hand and transparency and accountability issues relating to compulsory acquisition of land in the project area and oil refinery interests of the government on the other.

The government decision to establish an oil refinery in-country moreover with the likely co-ownership of the project from the East African community member states is a welcome one given the advantages of capacity to refine oil from within and the resultant revenues from the refined products and anticipated low prices for petroleum in the country. The wisdom behind developing a policy framework to inform the resettlement of and payment of compensation to the communities affected by the refinery project as the case may be is also applaudable -an effort by government and its implementing agency Strategic Friends International (SFI).

The communities painfully and reservedly appreciate the constitutional right of the Government to compulsorily acquire their land in public interest and provide resettlement or compensation in return. However, all the 130 respondents from the 9 villages that this study interviewed all expressed great fears and dilemmas arising from the conduct of the resettlement and compensation process including;

- I. Being told under duress to sign documents showing valuations for land, developments and crops when the rates applied are unknown;
- II. Being told under duress to acknowledge receipt of compensation when no information as to payments or the payment itself has been received;
- III. Threats to lose out on compensation if documents showing valuation of land and receipt of compensation are not signed;
- IV. Risk of being forcefully relocated to other districts not being one’ choice such as Bududa and Karamoja districts if the said documents are not signed;
- V. Risks to life and livelihoods resulting from curving out gardens as part of the project area while leaving only a piece of land with an individual’ house;

- VI. Risks to life and livelihoods arising from the orders not to plant perennial food crops like cassava, maize, etc in the expectation of prompt compensation which has not happened and thus leaving communities exposed to hunger and lack of financial means to support families in times of sickness, school needs, children and adult needs etc.
- VII. Under valuation of total land size and or acreage owned by individuals;
- VIII. Application of low rates and rates not being those approved by the Hoima District Land Board in the assessment of food crops and gardens;
- IX. In excess of one year delays in paying the proper compensation to the affected communities with the result that land in the neighbouring villages outside the project area has appreciated and the proposed compensation awards cannot put the communities in the same position that they were in before the refinery project;
- X. Vulnerable groups including women, widows, persons with disabilities, child headed families, elderly etc have not been protected or given the attention and assistance in the resettlement process;

The same number of respondents expressed their dilemma with the government which in addition to the desire to establish an oil refinery for purposes of enhancing development the country has sacrificed the duty and responsibility to protect them as citizens by allowing them to be subjected to the above challenges as though they were second class citizens yet none of the respondents had offered to sell his or her land rather it was the government that had come and sought to compulsorily acquire their land.

SFI as the implementing agency was interviewed and its responses are included in this report. However, many of the questions asked were left unanswered in as far as the community issues outlined above are concerned.

The study thus presents real life challenges for the communities of the oil refinery project and aims at raising public awareness about the plight of these communities so that policy and decision makers and other stakeholders can work towards reversing the threats to life and livelihoods of the community members from the nine villages.

WINFRED NGABIIRWE
EXECUTIVE DIRECTOR

SLEEPLESS NIGHTS: The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda' Resettlement Plan.

INTRODUCTION:

With the 2006 discovery of an oil reserve estimated at 800 million recoverable barrels, Uganda now has the potential to accelerate its growth and diversify its economy. Oil production is projected to begin at 4,000-5,000 barrels per day, which is inconsequential in terms of revenue generation. However, if effective oil production can be sustained throughout the upcoming decade, the country has the potential to earning over \$2 billion in annual revenue for more than 20 years. The cumulative amount earned each year from oil would exceed the funding Uganda currently receives in development assistance, which is approximately \$1.7 billion per year. The emerging oil sector is likely to spur continued economic growth through the generation of revenues, new jobs, and investment opportunities¹, while increasing the country's savings on oil imports²

For such development to occur however, good governance, transparency and accountability must be some of the key principles governing the management of this nascent sector. In the absence of such, conflicts, insecurity, corruption, neglect of vulnerable groups and violations of human rights disrupting livelihood may be inevitable.

Since 2006 when the government announced the discovery of commercially viable oil deposits, a number of development processes have taken place in Uganda's oil and gas sector. These have included technical and scientific works in the Albertine region related to expanded exploration of oil and gas reserves; legislation and policy development. At the time of the study, a Resettlement Action Plan (RAP) stipulating land acquisition for the construction of the refinery was being implemented. Building a refinery in Uganda is in line objective No. 4 of the Policy which is to promote valuable utilization of the country's oil and gas resources. A consultant – Strategic Friends International (SFI) was procured to undertake a RAP study and come up with a framework that would guide government on how to compensate/relocate affected persons⁴.

Efforts from Private companies and civil society have also have also contributed immensely in shaping oil governance agenda in Uganda through education, research, advocacy among others. Despite the efforts of various stakeholders mentioned above, the levels of participation of communities especially the women and other vulnerable groups has been limited. Furthermore some Civil society organisations working on compensation and resettlement issues have received criticism from government to the extent of being labelled as saboteurs⁵

Amidst this host of activity, there are a number of challenges the sector is faced with particularly relating to the manner in which RAP is being implemented. Despite the well

¹<http://www.revenuewatch.org/countries/africa/uganda/transparency-snapshot>

²According to Bank of Uganda estimates, Uganda could save upto \$ 633 per year on oil imports. It could also earn between \$1-3.5 M annually during the peak production i.e b/n 2020-2030

³RAP report is not easily accessible but a copy which we have seen indicates that it was approved October 2012.

⁴Hon. Peter Lokeris, Minister Of State For Mineral Development; Resettlement Action Plan (Rap) For Persons Affected By Land Acquisition For The Refinery Development (Progress And Impact

On Host Communities) October 04, 2013 Golf Course Hotel, Kampala

⁵NGOs sabotaging Oil sector, sys govt, Daily Monitor Monday, Sept 30, 2013 page 1

See also NGOs warned over Oil Refinery,. New Vision Monday September 30, 2013

established mechanisms/ guidelines for RAP at national and international levels, poorly executed RAP implementation in relation to oil refinery construction is threatening human rights of host communities in Hoima district. A number of grievances relating to property rights, poor valuations, lack of information, and access to justice have been realised by the affected communities.

The process of legislation for the upstream and downstream sectors for instance raised a lot of issues and among its short comings was gender mainstreaming within the provisions of the legislation not being adequately provided for.

There is ample evidence to suggest that the negative impacts of the exploration and infrastructural development of the oil and gas sector is being faced by women and girls who are most vulnerable as discussed herein.

The government decision to establish an oil refinery in country and particularly in Hoima district for instance has triggered a number of rights issues for the communities affected by the project. Whilst the government contracted an implementing agency, which agency developed a policy framework to guide the resettlement of communities known as the Resettlement Action Plan (RAP)⁶, its implementation by Strategic Friends International has exposed glaring challenges of weaknesses and gaps that must be addressed with immediate effect if the exercise of compensation and resettlement is to be sensitive to the needs and rights of affected communities.

The RAP has positive elements such as recognition of vulnerable people including women, elderly and children. It also explains how grievances and conflicts are to be addressed during the RAP process. It caters for multi stake holder engagements between government, civil society, Rap implementing agency and local people⁷. RAP also highlights the different legal standards at national and international that guide in resettling and compensating communities such as those in Uganda's oil region.

Prior to commissioning this study it was apparent from engagements with oil refinery affected communities that a number of challenges are being faced before the actual resettlement can be effected and these included;

1. The Resettlement Action Plan is not understood by various actors and affected communities. There have been little dissemination and engagement by the responsible government agencies in this case Ministry of Energy and mineral Development and Ministry of Lands among others;
2. There are challenges in the land and property valuation processes. The community claims that the valuation results are wanting and have many errors. For example RAP provides that there will be "Willing buyer willing Seller" model for customary land , and that the value of Compensation should include more than the value of the land⁸ and developments⁹. This is contrary to current practice in the affected areas of Hoima and Buliisa districts;

⁶Petroleum Exploration and Development Department Ministry of Energy and Mineral Development Resettlement Action Plan for the proposed acquisition of land for the oil refinery in Kabaale Parish, Buseruka sub-county, Hoima District by Strategic Friends International Limited, October 2012

⁷For more information please refer RAP for the proposed acquisition of land for oil refinery in Kabale parish, Buseruka Subcounty Hoima district

⁸See provisions 2.5 on Valuation and Compensation for Property- RAP page 6

⁹ibid

3. There are alleged fraudulent actions by the RAP implementing agencies and government. The beneficiaries being made to sign agreements indicating that they have received their compensation, and handed over their land to the government when in actual sense they have not been paid;
4. Discrimination is apparent on the part of handling the compensation process as they are dealing with the men and ignoring the women who are utilising the land for family sustenance, there is a possibility that women headed households are being ignored in the decision making process;
5. The affected communities are disadvantaged by the fact that the land they occupy is unregistered and the owners are totally unaware of its value and have not got a chance to seek a second opinion where for example government value has been unacceptable by the people;
6. There is lack of preparation of the communities for the transition process to avoid disrupting their livelihoods. This is causing anxiety and uncertainty to the women who are traditional main users of the land and the ones that provide food, basic household needs for their families;
7. As the communities await to receive their compensation packages, there are not concrete steps and actions taken to equip them with skills on how to utilise the money effectively to facilitate their survival and development. If this is not done, they may not be able to place themselves in the positions that they were at or even be better off.

PROPOSED INTERVENTIONS:

Given the above background, GRA set out to expand her intervention strategies by addressing these emerging issues and creating opportunities for broader engagement in addressing issues directly affecting oil refinery project communities. The interventions aim at ensuring that the basic rights of access to information, participation, protection and justice are realised for the project communities. This it is hoped will significantly contribute to sustainable development at different levels and for the country at large. The objectives of this study are;

- 1) To document project communities' experiences, rights, grievances and violations as perpetrated in execution of the resettlement process;
- 2) To advocate for protection of the rights of individuals and government compliance with established international, regional and national standards in the implementation of resettlement and payment of compensation to oil refinery communities;
- 3) To establish a platform for engaging and advancing the rights of vulnerable people in the project affected communities.

SCOPE AND METHODOLOGY:

This study was commissioned to be undertaken in Buseruka, Hoima district and covered nine (9) villages out of the total 13 villages estimated to cover an area of 29sq.Km for the proposed refinery project namely; Bukona A and B, Kabaale 1, and 2, Kitegwa, Nyahaira, Kyapaloni, Nyakasinini, Kayera.

The study employed a mixture of both qualitative and quantitative approach to collect information on the views of project affected communities in respect and protection of their rights to information, participation, and access to justice in the context of the implementation of the resettlement action plan of the government of Uganda. To achieve the said objective a field activity involving interviewing respondents and a desk review and analysis was undertaken and this exercise is characterised by a convenient and systematic random sampling method where at least the first 10 households in each village were targeted save for Bukona A and B whose respondents drew more than 20 respondents as compared to the rest given.

The excess number of respondents for Bukona A and B was precipitated by the higher population of the respondents in the area and the fact that the entire land in the two villages is covered by the project.

The study proceeded on the assumption that respondents in the 9 villages sampled would be cooperative and willing to share their experiences of the effects of the implementation of the resettlement project involving compensation and or relocation.

GENDER ISSUES:

The above challenges notwithstanding, a host of critical and important gender rights issues arise and need to be addressed in the context of the existing law and policy on individual rights to land and property and these include;

1. Participation in the discussions on compensation and resettlement for men and women in order to cater for the unique challenges, expectations and wishes of either;
2. The impacts of resettlement on women and their greater socio-cultural responsibilities;
3. Lack of information and awareness on the rights of the more vulnerable groups particularly women, children and orphans and the effect of negatively impacting on the right to defend themselves against human rights abuses;
4. The existence of redress mechanisms and accessibility of these mechanisms to the communities.

SOCIO-CULTURAL ISSUES:

The study established that respondents from the villages in the project area were populated by individuals from diverse ethnic and indigenous communities of Uganda including the Alur, Basoga, Baganda, Bakiga, Banyoro, Lugbara and Langi. These individuals both men and women have lived on the land in issue between 15 to over 100 years through the traditional and cultural inheritance from the head of the family who is the father in a patriarchal society save for situations where the individual acquired the particular piece of land through a transaction of buying and selling. The individuals were either married, single, widows, or separated. According to RAP, the population distribution in the entire project area was as follows; Alur (70%), Banyoro (7.3%), Bakiga (6.6%), Lugbara (5.6%), Baganda (1.0%), Acholi (1.2%) and others (0.6%).

Population age distribution:

8 out of 10 respondents in any of the nine study villages were below the age of 40 years. The remaining respondents fell in the age bracket of 40-90 years. The obvious conclusion is that the majority of the population is a youthful one that has been born and brought up on this land without much exposure to other parts of the country thus explaining the well founded fears of not knowing how best to deal with the question of relocation and starting a new life in a completely unknown place.

Land Tenure and Usage:

The land tenure system, the study established was primarily customary land holding and 10 out of 10 respondents had inherited¹⁰ the land on which they lived and derived their sustenance. This would be from a parent or relative and this inheritance had passed on from one generation to another. Whilst this is so for most of the land owners, some of the land owners had on their own acquired an additional and separate piece of land to add onto their own inheritance. Other occupants are tenants at sufferance or licensees.

Land in the project affected area was mostly fragmented into individual ownership where households lived and cultivated a number of gardens the study notes.

Livelihoods:

All respondents practiced mostly subsistence agriculture where farming was the most noted activity and a few practised domestic animals rearing. A few households however conducted small scale trade in non agricultural items. The two activities above accounted for the source of livelihoods for the entire project area communities and provided financial basis for supporting household needs including medication, clothing, food, school age going children needs etc.

¹⁰ For further reading see Kenneth Kakuru, "Land Compensation Policy: A Case for Uganda" Paper prepared for the Africa Biodiversity Group, at pg8.

This livelihood has been threatened by the oil refinery project notwithstanding the promise of the millions of shillings in compensation. Fruit trees like mangoes and jack fruit often provide immediate source of income during the season in addition to food supplement moreover these take several years to bear the fruit and perhaps even more time in the event of a fresh seedling planting.

Respondents, as outlined in the stanzas of the song (sung to the researchers) by the women;

**...ebi tongore mu tuyambe...ba tushashure turige egi....
...endwara ye'bitekateko ne ndwara mbi.....
...endwara ye' bitekateko tegira mu'bazi....
...kuba tugambire amataka gaitu ni benda ku ga twihamu ni'benda ku ga twara twa rwara...**

Literally translated as;

**....civil society organisations come to our rescue....so we can be paid and leave this place....
...the sickness of thoughts is a bad sickness....
...the sickness of thoughts has no treatment....
...when they told us that our lands would be taken from us we fell sick....**

This song tells of the sentimental burden of losing out on this fertile land that has been home to them for many years and the promise of millions of shillings which promise has not impacted on their lives in any positive way but rather threatens their lives with the thoughts of challenges related to restoration of the livelihoods.

The livelihoods of these communities, it will be recalled has been enjoyed under security of occupancy and possession from any adverse claims before the refinery project demands for their land under the government' compulsory land acquisition scheme ever came alive.

EXISTING LEGAL AND POLICY FRAMEWORKS ON THE PROTECTION OF THE RIGHT TO PROPERTY AND EQUITY:

The Universal Declaration of Human Rights:

Article 2 of the UDHR makes provision for the guarantee and protection of all the rights defined under the declaration for everyone. Discrimination is prohibited on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 17 of the declaration guarantees specifically the right to property and protects an individual against arbitrary deprivation of one's property.

The International Covenant on Civil and Political Rights (ICCPR):

The ICCPR entered into force in respect of Uganda on 21st September 1995. Accordingly, the covenant is binding on the state of Uganda by reason of its entry into force. Article 1 (2) thereof provides for the right of peoples to freely dispose of their natural wealth and resources and protects against deprivation of their means of subsistence. It goes further to mirror the provisions of UDHR discussed above by creating obligations for states parties in article 2(1) to respect and ensure that the rights of individuals defined in the Covenant are enjoyed without distinction or without discrimination on the basis of the prohibited grounds mentioned in the UDHR above. The Covenant additionally provides in article 2 (3) for the right of the individual to an effective remedy in the event of a right under the said instrument being violated.

Equality before the law and equal protection of the law and without discrimination is a fundamental right established, guaranteed and protected by the Covenant in article 26. States are accordingly obliged to enact legislation to provide for equality before the law and protection from discrimination within their domestic settings.

International Covenant on Economic, Social and Cultural Rights (CESCR):

This covenant came into force for Uganda on the 21st April 1987. The Covenant is the major binding international law instrument on economic social and cultural rights. The Covenant arguably mirrors and provides legal basis for realisation and protection of economic, social and cultural rights provided for under the UDHR which is not binding on member states.

Although lacking in specific guarantee and protection on rights of ethnic minorities in the enjoyment of land, environment, this Covenant like the ICCPR provides in article 1 for the rights of peoples to freely dispose of their natural resources and wealth. It further prohibits the arbitrary deprivation of a people of its subsistence means. Similarly, article 2(2) obliges states parties to the covenant to guarantee non discrimination of individuals in the enjoyment of Covenant rights on the basis of the prohibited grounds discussed above.

Article 3 thereof adopts the spirit in the ICCPR by requiring states to ensure the right to equal treatment for all men and women in the enjoyment of the Covenant rights.

The African Charter on Human and people's Rights:

The African Charter on Human and Peoples rights is the main human rights instrument bringing African states together. It became enforceable in Uganda on the 10th May 1986 upon ratification.

Article 2 of the Charter, protects and guarantees the individual's right to enjoy charter rights without any distinction and or based on any of the prohibited grounds. Article 3 provides for equality before the law and for equal protection by the law for every individual. Article 14 guarantees the right of every individual to property.

It provides the exception of public interest where such property may be encroached or taken but in any event this must be in accordance with the existing laws.

The Constitution of the Republic:

The Constitution of the Republic of Uganda is the grand norm or supreme law of the country¹¹.

Equality for all persons before and under the law in the spheres of political, economic, social and cultural life in every respect is protected under the constitution and other reinforcement provisions are made prohibiting discrimination on all or any of prohibited grounds as mentioned in the international and regional instruments above. The Constitution of Uganda progressively and expressly adds among the prohibited grounds, disability¹².

The right of every one to own property in Uganda either as an individual or in association with others is protected. Deprivation of property like in the international and regional mechanisms discussed earlier is prohibited except where the taking of property is consistent with needs which are for 'public use or in the interest of defence, public safety, public order, public morality or public health' and are in accordance with the existing law and as it relates to payment of prompt and adequate compensation¹³. Article 237 recognises that land in Uganda belongs to its people and vests in them in accordance with the land tenure systems namely; customary, mailo, freehold and leasehold.

Land Policy¹⁴:

This policy document was given effect earlier this year although the various laws that it impacts have not been amended or brought into conformity with the policy objectives and strategies therein to facilitate the sustainable management of the land resources.

It is stated in this policy frame work that "In Uganda, the land rights of ethnic minorities as ancestral and traditional owners, users and custodians of the various natural habitats are not acknowledged even though their survival is dependent upon access to natural resources. Establishment of national parks and conservation areas managed by government, as well as large scale commercial enterprises such as mining, logging, commercial plantations, oil exploration, dam construction etc, often takes place at the expense of the rights of such ethnic minorities. Since minorities occupy land on the basis of precarious and unprotected land rights systems, they are exposed to constant evictions, removals and displacements. The compensation given to these occupants is not prompt, adequate and fair as provided for by the Constitution."¹⁵

¹¹ Article 2 (1), the 1995 constitution of the Republic of Uganda

¹² Article 21.

¹³ Article 26.

¹⁴ Ministry of Lands, Housing and Urban Development Uganda National Land Policy, March 2011

¹⁵ Para. 57, Land Policy

To this end and as a policy measure, government commits to “...in its use and management of natural resources, recognize and protect the right to ancestral lands of ethnic minority groups”; and ensure that where land belonging to ethnic minorities is needed for public interest it “shall pay prompt, adequate and fair compensation to ethnic minority groups that are displaced from their ancestral land by government action.

A number of strategies are proposed to be undertaken as measures aimed at redressing “the rights of ethnic minorities in natural habitats” and these include;

- (i) establish regulations by Statutory Instrument to:
 - a) Recognize land tenure rights of minorities in ancestral lands;
 - b) document and protect such de facto occupation rights against illegal evictions or displacements;
 - c) consider land swapping or compensation or resettlement in the event of expropriation of ancestral land of minorities for preservation or conservation purposes;
 - d) detail terms and conditions for displacement of minorities from their ancestral lands in the interest of conservation or natural resources extraction;
- (ii) pay compensation to those ethnic minorities that have in the past been driven off their ancestral lands for preservation or conservation purposes;
- (iii) deliberate and specify benefit-sharing measures to ensure that minority groups benefit from resources on their ancestral lands rendered to extractive or other industry;
- (iv) recognize the vital role of natural resources and habitats in the livelihood of minority groups in the gazettement or degazettement of conservation and protected areas.

The above legal and policy frameworks not only provide for outright protection of the project affected communities, but also provide guiding measures for response to need for land in public interest through a compulsory land acquisition process as further discussed here below.

COMPULSORY LAND ACQUISITION:

Compulsory land acquisition is not a new theory but has long been established with the creation of the modern state that, a government may acquire individual or private land where such acquisition is for the greater benefit of the public than the individual. Whilst this may be so it does not necessarily imply that the owner of the land will be displaced. The law as outlined above demands that in all such situations where land is compulsorily acquired, the victim must be fairly, promptly and adequately compensated.

The said land acquisition is according to the Ministry of Energy necessitated by a number of factors including the fact that “the East and Central African region has only one refinery in comparison with other regions like South Africa with seven refineries and North Africa with 21 refineries” and added to the challenges of ensuring stable supply of petroleum products, an oil refinery would “boost the region’s refining capacity and ensure security of supply of petroleum products especially for the land locked Partner States such as Rwanda and Burundi.¹⁷” Other reasons advanced, by the ministry include improving the country’ balance of payments through reduction of importation of petroleum products and job creation.

From a rather simplified view, if the acquisition of land for the refinery was justified by the geological reports about the total oil reserves base as for example the 3.5Billion barrels believed to be ready for extraction, it would make economic sense when spread out over 20 years to avoid a pipeline in preference of a refinery however if more reserves of up to 6 billion barrels existed in the ground implying more refinery output per day then the justification for a refinery would not arise and a pipeline would be the best option simply because a shipping company would pay the price of laying the pipeline per barrel and government revenue would be assured¹⁸. The reasons thus advanced by the government are not so compelling enough to result in the decision to expropriate people’ land considering that the compensation and source of funding still remains to be found.

The above reasoning aside, the Constitution of the Republic of Uganda, as noted above provides numerous rights and protections to the individual. Other enabling legislation such as the land Act and Land Acquisition Act provide for the procedural aspects as follows;

Compulsory acquisition under the Land Act:

Section 43 of the Act provides that the Government or local Government may acquire land in accordance with the provisions of article 26 and 237(2) of the 1995 constitution. It will be noted however that no provision is made under the Act (as primary legislation) expressly requiring the Government to make prompt and adequate payment to persons whose land is compulsorily acquired as provided under the Constitution.

Section 77 (1) provides guidance on considerations to be made when valuing land to include the following;

- I) In the case of a customary owner, the value of land shall be the open market value of the unimproved land.
- II) The value of building on the land, which shall be taken at open market value for urban areas and depreciated replacement costs for the rural areas.
- III) The value of standing crops on the land, excluding annual crops which could be harvested during the period of notice is given to the tenant.
- IV) In addition to compensation assessed under the this section , 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, 30percent of any sum assessed under subsection (1)¹⁹.

¹⁷See “Uganda’s Oil and Opportunity for Transformation” available at <http://www.petroleum.go.ug/page.php?k=curnews&id=69>

¹⁸This argument is further reinforced by a study which according to the energy ministry shows that results of a 2010 feasibility study undertaken by Foster Wheeler on the development of a green field refinery in Uganda confirmed its profitability. It was established that a 60,000bpd refinery for a 20 year project life, achieved very robust project economics with a post-tax rate of return of 33%, a Net Present Value (NPV) at 10% discount rate of US\$ 3.2billion, with a payback period of 2.7 years.

¹⁹Section 77(2) Land Act 1998

Section 77 (1) (e) of the Act gave District Land Tribunals a limited jurisdiction of determining any disputes relating to the amount of compensation to be paid for land acquired. Land tribunals have since phased out and the jurisdiction formerly exercised by the land tribunals is now vested with Courts of Judicature.

Sec 59 (1) (e) of the Act requires a District Land Board to compile and maintain a list of rates of compensation payable in respect of crops , building of a non permanent nature, and any other things that may be prescribed. The list mentioned here must under paragraph (g) be reviewed annually.

Compulsory acquisition under the Land Acquisition Act:

S.2 (1) of the land Acquisition Act provides that the minister is empowered to acquire any land if he is satisfied that the land is required for “Public Purpose”. Compensation to any person whose interest in land is extinguished as a result of the compulsory acquisition is expressly provided for and any person aggrieved by the Minister’s decision or by the compensation paid may appeal to the High Court.

Section the Act makes provision to the effect that an assessment officer shall make an award under his hand specifying the compensation, which in “his opinion” should be allowed for the land. This requirement that the assessment officer determines the compensation has been overtaken by the provisions of section 59 of the land Act cited above. On a separate note section 20 of the Act provides that the Minister, by Statutory Instrument shall make regulations for the assessment and payment of compensation under the Act. No such regulations have been made. This provision is at odds with Article 26(2) of the 1995 Constitution which requires the enabling legislation in this case the Act to provide for prompt payment of fair and adequate compensation.

Section 13 of the Act provides for redress to any aggrieved persons and provides that in such event, the person objecting to the award made or any part of the award or where the assessment officer excludes the person from apportionment, may appeal to the High Court within 60days of the date on which the award made under section 6. The above policy and legal frameworks combine to guide in the proper and effective implementation of land acquisition and the resultant compensation and or resettlement.

Compensation:

The term compensation is undefined under Constitution of the Republic of Uganda or any of the enabling legislation on land. The term however has through international law, policy and practice acquired meaning where a person entitled to compensation is supposed to be put in a place that he or she was before the victimisation or particular incident in issue happened²⁰.

²⁰ See United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147)

This position in no way suggests that the person benefits more than he had. This position is ably stated in an Australian case²¹ where Dixon J held;

“Compensation is a very well understood expression. It is true that its meaning has been developed in relation to compulsory acquisition of land. But the purpose of compensation is the same, whether the property taken is real or personal. It is to place in the hands of the owner expropriated the full money equivalent of the thing which he has been deprived. Compensation prima facie means recompense for loss and when an owner is to receive compensation for being deprived of real or personal property his pecuniary loss must be ascertained by determining the value the property taken from him. As the object is to find the money equivalent for the loss or, in other words, the pecuniary value to the owner contained in the assets, it cannot be less than money value into which he might have converted his property had the law not deprived him of it. You do not give him any enhanced value that may attach to his property because it has been compulsorily acquired by the governmental authority for its purpose...

Equally you exclude any diminution of the value arising from the same cause. The hypothesis upon which the inquiry into value must proceed is that the owner had not been deprived by the exercise of compulsory powers of his ownership and of his consequent rights of disposition existing under the general law at the time of acquisition”

The above finding of the Judge, very much agrees with international and national law providing for the right and protection of an individual to own property and freely dispose of it as and when he or she determines.

As has been noted earlier under the constitutional provisions, compensation for expropriated land through a compulsory land acquisition scheme has to meet three basic standards namely fairness, promptness and adequacy. These terms are neither defined by the constitution nor enabling legislation although some guidance has been given such as the District Land Board being statutorily required to annually compile a list of rates to be applied to crops and other agricultural products to assist where recourse to the rates becomes necessary as in the case of paying compensation to land owners affected by government expropriation of land. The said compensation standards were thus arguably included in the constitution to bridge the gap that previously existed in determining public discontent with compensation measures²².

²¹Nelungaloo Pty Ltd. -vs- Commonwealth (1948) 75 CLR 495 at 571.

COMMUNITY CONCERNS ABOUT THE RAP PROCESSES:

The Government appointed an implementing agency (SFI) who developed a policy framework to assist it in the execution of its mandate. The RAP policy framework much of which would appear to have been adopted from the Bujagali resettlement plan provides a seemingly reasonable mechanism for working with the affected communities. It provides an over view of the socio – cultural setting of the community and project as well as a review of essential international and regional standards and spells out the importance for community sensitization and providing for avenues of redress among other things.

This study engaged respondents in nine villages indicated above to document their concerns in the backdrop of an existing policy framework for engaging communities by the implementing agency. The following are findings from the community responses;

Entitlements:

According to the Ministry of Energy, communities have been sensitized in accordance with the RAP on issues including “disclosure of valuation figures, functioning grievance handling mechanisms, financial management and livelihood restoration programmes ahead of compensation and resettlement”. Seven out of every ten respondents indicated that they had heard about the RAP as per the public meetings that have been held by the MEMD officials in conjunction with the implementing agency. This response by the respondents notwithstanding, it is noted from the overall study that this is inconsistent with the concerns raised by communities about aspects relating to disclosure of rates applied to the valuation of land and developments; redress mechanisms indicated in the RAP; participation of NGO’s etc.

Respondents indicate that they have not received very adequate information on a number of issues, for example, they have no idea of the sources of these rates let alone what has been applied against the crops. The only information available is the total amounts computed for the gardens and crops and indeed the documentation made available to this study research team did not show the rate per crop even where the template document used makes provision for this.

Individual interests in Land:

The RAP sets out and undertakes among other things to ensure equality and respect for all individuals on the land whether they are land owners or tenants in realising the right to ownership of their property and hence prompt fair and adequate compensation. In respect of the interest in land, nine out of ten respondents indicated that they were land owners in the project area and acknowledged that their rights over land notwithstanding, the government acquisition and or expropriation of their land in public interest for the oil refinery was greater and welcome for development. However each household had reservations towards the government’s measures in valuing their land and paying compensation fairly, promptly and adequately. This is noted from the interviews conducted as well as documents signed by some of the respondents in

which “acknowledgement or receipt of compensation” is attested to by the land owner as well as by several individuals when in reality no payment has been effected. Examples of these documents can be seen in the second annex to this report.

The impugned documents may for practical purposes have been a necessary process in effecting compensation to the various households and or individuals. The problem is that these same individuals and or household heads have not received the right information if at all about the use of these documents by the implementing agency in documenting that “acknowledgement of receipt of compensation” is a part of the accountability process or not. The matter is made worse when the documents in issue are written in English and the purported recipients of compensation are illiterates. The Illiterates protection Act among other legislation would come in to provide protection against any fraudulent denial of compensation rights to the affected communities in any event.

According to the SFI director, the agency lawyer was always present to assist the parties in executing the documents. Indeed he argues further that during the signing process, there was always interpretation and or translation for the affected persons. Unfortunately for SFI, there is no such evidence (of interpretation or translation) anywhere on the documents referred to by the various people who did append their signatures to the documents. It is even embarrassing considering that SFI claims they had legal counsel present. Was this legal counsel properly procured and competent to be hired for such a large and technical project? The study is left to wonder.

Some respondents registered their displeasure with the government in as far as they observed that it was not their individual decision to forgo their rights over the land they owned but rather it was a government decision in taking interest in their land for which it ought to provide the necessary protection to ensure prompt and adequate compensation. However non had received any such protection.

Optional packages:

8 out of 10 respondents from the 9 study villages indicated their preference for cash compensation as opposed to being relocated by the government. A number of reasons informing the decision were advanced including the following;

- i) All owners of land opting for relocation/resettlement would not receive the same land acreage or size that they owned before. This was allegedly so because in resettling a household, government through its implementing agency would be expending highly to construct a more permanent dwelling house than existed.

For example:

The household of Mr. And Mrs. Ayine-omugisa (not real name) from Kitegwa village owned 22 acres but had been advised that they would receive not more than 5acres in return if they opted for a resettlement.

This argument advanced for not restoring the same land size militates against the principle of compensation for which affected communities are supposed to be put in a position similar to the livelihoods each enjoyed prior.

When asked to respond to this issue SFI director denied any such development and maintained that every person would be given the same land acreage from land that government had identified in Buseruka for resettlement or was currently procuring.

- ii) As owners of land, the individuals and household heads are aware of the value and size of their land in respect of the farming needs and the returns from the said farming. The cultural factors are not left out for example future generations will be expected to live and derive livelihoods from the same land
- iii) Individual owners are better informed about their preferred areas of relocation in the event of compensation.

According to PEPD “the value for land is determined by valuers after conducting a survey to establish the prevailing market price for land in a given locality using a comparative method. These rates are verified and approved by the Chief Government Valuers.”²⁴ While this may be the case, this information was not provided to the communities by the respective government officials to the effect that certain rates as market values had been established and approved. For example some villages like Kabaale II and Nyahaira were offered a compensation rate of U.shs.4.5million an acre and others including Bukoona ‘A’ and ‘B’ were offered U.shs.3.5million.

SFI director in response to a question on the disparity in the rates applied per acre in the different villages stated that the difference in the rates is informed by how far the affected communities were located in the villages from the main town. He also noted that comparable market surveys were undertaken in Hoima and Buliisa and it was established that the maximum price for an acre in the area was U. Shs. 800,000/= however being aware that the price of land per acre was likely to rise, the decision to pay 3.5million or 4.5million was taken and these rates are more than what was deserved. When asked to explain this, he responded by saying it was an economic calculation that GRA may not understand.

This parameter (if at all) is an important point of concern for it has no scientific formulae let alone being consistent with existing government policy as defined above or even as stated in the RAP itself. It does point to the competency of the firm to undertake this activity as well as seriously indict the line ministry over its supervisory role and perhaps by extension the government agency responsible for conducting valuation.

Compensation:

The constitution as noted in the review of policy and legislation above requires fair, prompt and adequate compensation to an individual/ group whose land has been subject to compulsory acquisition. The valuation of properties of communities in the project area was done more than a year ago. The effect, for all the affected communities this study established, is that the money value in 2012 was sufficient then to acquire a similar size of land which it cannot do today because several factors including speculation, inflation etc have influenced the prices of land in the neighbouring villages such that it would be very expensive if not impossible to acquire land at the value of 3.5million or 4.5million shillings assessed for the various individual land owners. The respondents observed that

²⁴See “Uganda’s Oil and Opportunity for Transformation” available at <http://www.petroleum.go.ug/page.php?k=curnews&id=69>

an acre of land in neighbouring villages like Kayera, Kataba and Nyamasoga ranged between 7 to 20million shillings which is thus impractical (for these communities) to be resettled and or returned to positions they were in before the refinery project.

In response to a question on the delay in effecting compensations, the SFI director declined to respond and only stated that compensation would be effected within three weeks (read within October 2013). In an interview with the OBSERVER news paper of August 21, the same director was reported to have declared compensation would be effected in the month of September 2013.

Clearly, the inefficiency of SFI and or responsible line ministry to pay prompt and adequate compensation is being arbitrarily and unfairly visited on the affected communities to find alternative land when the value of land in the communities has appreciated so highly that even if the compensation was made it would be of no effect. Respondents in mitigation proposed several rates per acre and although some were outrageous, the average rates of between 7-35million prevailed.

Crops and Gardens:

In respect to crops, the assessment is according to the RAP and confirmed by SFI supposed to be based on the district rates for crops as determined from year to year. The Hoima District Land Board has not established rates in the period of assessment to be applied in compensation for the various crops and gardens of the individuals in the project area. All respondents including those who signed documents acknowledging receipt of compensation contest the lumpsum figures attached to their crops. For instance, a one Grace from Kitegwa village was told that for a $\frac{3}{4}$ of an acre garden of sugar cane she would be paid U.shs.8,000/=. This value she argued was a mockery of her right over the land and as a farmer considering that she sold on open market a single sugar cane at U.shs.1,000/=. Other outrageous figures applied to crops were reported by respondents , for example, a head of cabbage being compensated at U.shs.200/=.

Respondents proposed a review of the rates of crops to reasonable prices depending on a particular crop and some suggested interesting formulas for arriving at a rate of permanent crops like jackfruits and mangoes. For example it was suggested that annually (two seasons) a mango tree could fetch up to U.shs.800,000/=. To plant a mango tree and re-harvest from it would take approximately 5years thus to restore the livelihood a multiplication of the sum of 80,000 by 5years would be adequate compensation.

Vulnerability:

When asked about the categories in the communities that needed support and the nature of support, respondents overwhelmingly agreed that vulnerable groups include persons with disabilities, the elderly men and women, widows and child headed families and these need to receive direct support through provision of all relevant information as well as resettling any such group by reason of their vulnerability. Every 2 respondents out of 10 fell in the vulnerable categories identified above, the study noted. The RAP interestingly also recognises these same groups and notes the importance of protecting them however from the survey, respondents did show that in practice the implementing agency had done nothing to demonstrate regard for the vulnerable groups although the RAP provides for such support for vulnerable people²⁵.

²⁵5.9RAP pg.40

Example:

Manjeri (not real name) aged about 90 years owned three gardens in the project area. She is illiterate and without any adult member of her family and has lived all her life and derived sustenance from her three gardens. Her residential property is however curved out of the refinery project. The total valuation for her land and crops was reached at U.shs.1,800,000/=. If and when compensation is made she is expected to find gardens elsewhere outside the project area and a distance from residential property. Assuming this was possible, the value of U.shs.1,800,000/= cannot even acquire her an acre of land within the neighbouring villages because the price of land per acre over a year after it was announced to the project communities would be compensated, has risen so high and ranges between U.shs.7million to 20million.

SFI when asked to respond to the issue did not provide any satisfactory answer but merely stated vulnerable people including elderly, child headed households will not receive money compensation but rather will be resettled because they have no choice.

If this (above) is the official government and SFI position, then the information has not been communicated to the communities because some of the respondents this study interacted with are elderly and other vulnerable people have appended signatures to documents provided by SFI implying that the option of resettlement is not true.

The importance of spousal consent and or participation is a fundamental facet of Ugandan constitution and land law. Not only does this law provide for equality of treatment but also protection. The implementing agency seem not have given it priority in the RAP documentation and in practice. Respondents informed the researchers that women were not encouraged to attend meetings with their husbands and those who did acted on their own interest in knowing the developments however at those times where communities were invited to append signatures and marks to the documents, women were asked to stay away since their husbands were present.

The documents including "Payment Receipt", "Transfer Form" and "Hoima project Compensation Form" all do not have provision for spousal consent and participation. This failure in providing for spousal participation in the land transactions not only ignores the provisions of the land law in as far as it provides for protection of interest in land where a family ordinarily derives sustenance, it also puts at risk the female gender and children in situations where irrational and irresponsible men or husbands could misuse the compensation sums through engaging in social evils of drunkenness and prostitution or remarrying; considering that bank accounts opened for the compensation process in the project area as the study established, are all registered in the names of the men. 9 out of every 10 women and their children are exposed to the above conditions. Others are at risk of hostile in laws in any eventuality such as death of the husbands etc.

Spousal consent and participation:

SFI director in response to a question on lack of protection and participation of women in the RAP processes denied the study' respondents assertions by stating that meetings were held for both men and women in the refinery affected regions and a separate meeting held for women on the auspices of the Resident District Commissioner (RDC) and the District Community Development Officer Hoima District. The recommendations made at this meeting were then integrated into the Resettlement Action Plan (RAP) report. He also argued that men and women were encouraged to open accounts with their spouses and some did. Some women were ok with just their spouse opening the account while others were not (especially in the polygamous families) he noted. He added that those that were uncomfortable with the joint participation, agreements were drawn up by the mediation committees and these provided for how the compensation monies would be divided among the wives and children and which persons would be signatories to the different accounts.

The report alluded to by SFI is not public as this study has not seen it however if as claimed women were engaged and participated in the RAP process then it begs the question why the participation of women in the documentation is not included or why there was no insistence for joint accounts to be produced as a measure for the women' protection in accordance with the law. Additionally, RAP employed standard forms for contract and payment which on the face of it appear to have been developed by MEMD. If this is the case then another question that arises is how does a mediation committee which is supposed to handle grievances develop agreements with no sanction from the line Ministry?

Security of ownership:

This study established from all respondents that each land owner and household had enjoyed security of ownership and occupancy as holders of customary interest in land in any of the 9 study villages and in line with the constitutional and land law. This security of ownership is similarly recognised by the RAP in the over view brief however respondents thought that this right was being abused by the processes in which their concerns were not being addressed by the implementing agency in the course of determining the due compensation.

Awareness of constitutionally established grievance mechanisms:

The reviewed legal framework above specifies the existing procedural measures in land acquisition and compensation processes. In the event of conflict arising from disagreement with an assessment of compensation and or consideration for compensation, the land Acquisition Act, specifically provides for an appeal procedure to the High Court within 60days. Respondents from the study indicated that the only redress mechanism that they had been informed about was grievance mechanism under the RAP where any person with any concern would be at liberty to register the same.

The RAP outlines a robust grievance mechanism where any complaint must be registered with the implementing agency, processed and disposed of. In cases of dissatisfaction with the decision then the same complaint may be brought before a mediation committee independent of the implementing agency. The study established that no such independent committee was in place nor was the implementing agency processing any community complaints rather threats were being

issued to the communities and yet there was huge disagreements with the assessments made both for land and crops.

In response, SFI director argues that the RAP committees were upgraded to mediation committees. These committees registered grievances or disputes and disposed of them. If an aggrieved party was not satisfied with the outcome, then he or she was at liberty to seek legal redress in the courts of law. The said upgrading of the grievance mechanism is not only inconsistent with the RAP itself but it also demonstrates that communities were not sensitized about the change. In fact, when asked how many grievances have been handled and disposed of by the mediation committee, the SFI director did not readily provide any figures but did state that all grievances were handled which is inconsistent with the study' findings above.

The above notwithstanding, the requirement by the law to file an appeal within 60 days from the date of award appears to deprive all aggrieved persons of their constitutional rights to adequate compensation and considering that some have been forced to sign documents under duress implies that these individuals are under serious threat and urgent legal action needs to be taken to safeguard the various individuals and their livelihoods.

Livelihoods:

The study further established that upon valuation of the gardens and crops, all respondents were directed not to grow or plant anything else because the compensation process would be effected immediately and they would have to leave the land. Unfortunately for these communities the compensation has not been prompt and yet the communities depend on subsistence agriculture for their livelihoods. Respondents noted that they had followed the directives not to grow fresh crops as these would not be compensated for and thus all the food reserves were getting exhausted and there was nothing for food security let alone sources for income for such things as school fees for children, medication and other household basic needs.

According to SFI, some allowance had been given to the communities to plant short term yielding crops pending the compensation process. Whilst this may be the case a food crisis is looming in the area as communities are left without proper information about what to do thus presenting a risk to both life and livelihoods for all the affected communities.

SUMMARY OF IMPACT ON COMMUNITIES:

ACTIVITY	COMMUNITY RESPONSE	ACTION TAKEN
<i>Entitlements</i>		<i>Non</i>
<i>Individual interests in Land</i>		<i>Non</i>
<i>Optional packages</i>		<i>Non</i>
<i>compensation</i>		<i>Non</i>
<i>Crops and gardens</i>		<i>Non</i>
<i>vulnerability</i>		<i>Non</i>
<i>Spousal consent and participation</i>		<i>Non</i>
<i>Security of ownership</i>		<i>Non</i>
<i>Awareness of constitutionally established grievance mechanisms</i>		<i>Non</i>
<i>livelihoods</i>		<i>Non</i>

INDICATORS FOR THE SUMMARY ON IMPACT:

COLOUR DEFINITIONS	NUMERIC FIGURE REPRESENTATION	COLOUR REPRESENTATION
Least affected	1 - 3	
Affected	4 - 6	
Not seriously affected	7 - 9	
Seriously affected	10	

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Least affected	1 - 3	
Affected	4 - 6	
Not seriously affected	7 - 9	
Seriously affected	10	

ISSUES ARISING FROM COMMUNITY CONCERNS:

The study identifies the following issues as critical concerns for the communities that require urgent intervention before they can be forced off their land;

- I. The refinery project communities have been subjected to undue duress through demands that they append signatures or their marks to documents showing valuations for land, developments and crops when the rates applied are unknown, disputed and or not of the district land board;
- II. The communities have been subjected to undue duress to acknowledge receipt of compensation when no information as to payments or the payment itself has been communicated rendering them suspicious and scared that no compensation may actually be made;
- III. Threats directed at project communities to lose out on compensation if documents showing valuation of land and receipt of compensation are not signed have been made by the implementing agency staff in violation of the rights of individuals under the law;
- IV. Other threats include suppositions that communities risk being forcefully relocated to other districts not being one' choice such as Bududa and Karamoja districts if the said documents are not signed;
- V. The non prompt and adequate compensation of project affected communities, risks life and livelihoods of some individuals in unique situations such as curving out gardens as part of the project area whilst leaving only a piece of land with an individual' house;
- VI. The non prompt and adequate compensation of the said project communities risks life and livelihoods in as far as directions have been made that no development should be made on the land including cultivation of food and perennial crops like cassava, maize, etc. In the anticipation of paying the necessary compensation no food security measures have been put in place for these communities and yet the compensation process remains tainted with challenges thus leaving households exposed to hunger and lack of financial means to support families in times of sickness, school needs, children and adult needs etc.

- VII. The non exhaustive attention by the implementing agency to community concerns in respect of under valuation of total land size and or acreage owned by individuals -through the identified and documented mechanisms in the RAP remains thorny in the protection of the individual and his/her right to be placed in a position that they were in prior to the coming of the refinery project;
- VIII. The non exhaustive attention to community concerns about the application of low rates and rates not being those approved by the Hoima District Land Board in the assessment of food crops and gardens, remains unaddressed;
- IX. In excess of one year delays in paying the proper compensation to the affected communities with the result that land in the neighbouring villages outside the project area has appreciated so high that the compensation cannot put the communities in the same position that they were in before the refinery project and thus without effective measures to redress this issue, lives of households are at serious risks;
- X. In as much as the majority of project communities are able bodies persons and or individuals, there are vulnerable groups including women, widows, persons with disabilities, child headed families, elderly etc who need support. These have not been protected or given the attention and assistance in the resettlement process. There is thus need for strategic measures to ensure the protection of the groups.

COMPARATIVE VIEW FROM OTHER PROJECTS:

The Bujagali electricity project is one project in the country that has had issues of resettlement of communities. The Bujagali Interconnection Project – Resettlement and Community Development Action Plan (RCDAP)²⁷ as it was known was guided by the IFC and World Bank standards for the resettlement of the communities in the project affected areas.

Oil refinery RAP by Strategic Friends International does seem to have been copy of the standards from the Bujagali project as with the citing of IFC and World Bank standards on resettlement. The Bujagali RCDAP defined key principles for the resettlement strategy as follows;

- I. Resettlement and compensation of Project-Affected People (PAP) will be carried out in compliance with Ugandan legislation, IFC's Performance Standard 5 and WB OP 4.12,
- II. All physically or economically displaced people will be offered an option between either a full resettlement package, including the provision of replacement residential land and a house, or cash compensation.

²⁷See F.Giovannetti, "Bujagali Interconnection Project – Resettlement and Community Development Action Plan", December 2006 available at <http://www.bujagali-energy.com/docs/IPSEAREPORTS.Web%20Version/IP%20SEA.Appendix%20G%20-%20RCDAP.pdf>

The Bujagali RCDAP documented lessons from other projects and were thought to be useful ones to guide in them in the implementation of resettlement plan which may have been useful but the project was dogged by unresolved issues²⁸. It is common knowledge that even with these lessons a number of legal actions were initiated by the victims²⁹ of the project and settled by the World Bank through out of court settlements. The above notwithstanding RCDAP learning lessons include the following;

- I) Land-for-land compensation options (resettlement, as opposed to cash compensation) tend to protect the weakest in the community (females and children, vulnerable people), whereas cash compensation is often detrimental to females and children as it is much more likely to be used (and sometimes misused) to the sole benefit of males; this tendency is not easy to mitigate given the current place of females in rural Ugandan communities, but needs, however, to be recognized and mitigated, as follows:
- II) Seeking full consent of females in the households with proposed compensation options, not only to achieve formal compliance with Section 40 of the Land Act (which requires a sign-off of spouses, amongst others, on compensation options) but to put spouses at equal level with the household level in the discussion and decision-making on compensation options;
- III) It has been observed in a similar program in neighbouring DRC that the payment of large amounts of cash compensation in carefully distributed instalments (sometimes over several years) mitigated to a large extent the potential for cash misuse; paying cash compensation in instalments will be the choice option for any amount larger than USD 500;
- IV) Monitoring will be key in ensuring that female spouses are not put at risk of being entirely deprived of Project benefits, particularly when compensation will be paid in instalments over long periods of time.
- V) Livelihood restoration support activities need time to achieve results, particularly when households have less land to farm and need to rely on non-farming activities that they are not fully

These outlined lessons from the Bujagali RCDAP are restated in the oil refinery RAP almost word for word but as this study has noted, the implementation by the oil refinery implementing agency has demonstrated that what is on paper in terms of a developed policy framework is different when it comes to implementation. The example of land for land situations would be the best for vulnerable groups given their limitations but must not be used as the rule because a household has the right to chose the option it considers the best in the circumstances. What is important is that all relevant information must be provided for an informed decision to be taken by a particular household.

The Bujagali RCDAP had a useful guide for the compensation of land and developments in the project area as compared to the oil refinery RAP. Although the RAP refers to application of Ugandan law, it does not really specify or provide the guidance which the Bujagali RCDAP does. For instance, the basis for compensation of perennial crops on lost land was valuation based upon count and official rates + 15% disturbance allowance. None the less both do not provide successful stories of implementing a settlement plan.

²⁸See National Association of Professional Environmentalists: The Unresolved Issues in the Bujagali Dam Project in Uganda, June 2007.

²⁹ See Observer News Paper March 12 2009: Compensation Claims mar Bujagali power lines available at http://www.observer.ug/index.php?option=com_content&view=article&id=2592:compensation-claims-mar-bujagali-power-lines

CONCLUSION AND RECOMMENDATIONS:

This study has demonstrated that communities affected by the oil refinery project welcome the development in their area albeit not by their own choice but rather through the compulsory land acquisition scheme as provided under the constitution and enabling law. It has further shown that communities do appreciate that in these situations, as owners of land under any land holding system obtaining in the country and as recognised by the constitution, they are entitled to a fair, prompt and adequate compensation.

Unfortunately for these project communities, the existence of a RAP, policy and legislation, the implementing agency has not executed the RAP as it promises to do and in situations where it has had attempts, the results have not been satisfactory. The lack of adequate awareness and sensitization of the rights to redress has not helped matters and in fact has exposed these same communities to further risks in which life and livelihoods could be endangered.

This study therefore recommends that affected project communities rights related to access to information, participation, protection and access to justice and remedies be respected through taking both administrative and legally actions with the responsible officials and ministries to establish mechanisms for safeguarding the communities affected by the project. These actions are precipitated by the following;

- 1) the delay in registering appeals with the high court in respect of the disputed assessments;
- 2) the signing of documents which are not clearly understood;
- 3) the signing of documents acknowledging receipt of compensation when no such compensation has been made and or no explanation provided for;
- 4) the risk to livelihoods in light of the directive not to grow food thus no reserves and source of funding for family needs and yet the compensation has not been prompt;

The study further recommends that the following administrative and legal actions for protecting the project affected communities be initiated;

Administrative:

- 1) Engage MEMD in a dialogue to find solutions to community issues.
- 2) Advocate for robust sensitisation of the communities on all issues including the reasons behind signing documents when they have not received payments in consideration; the rates applied for crops etc.
- 3) Invite MEMD to consider revising the rates for land and crops given the effects of delays in effecting compensation.
- 4) Invite MEMD to consider providing communities with livelihoods support in light of the directions to stop any cultivations and the delayed compensation.

Legal:

- 5) Initiative a legal process to secure an injunction on the RAP process with the view to establishing to prevent any evictions before proper response to community grievances.
- 6) Initiate a constitutional action with the view to having an interpretation of issues of fair, prompt and adequate compensation in relation to the loss of land through compulsory land acquisition.

With the above actions it is hoped that there will be protection of the affected communities, their lives and livelihoods.

Annex 1

FIELD QUESTIONNAIRE AND GUIDE

Global Rights Alert (GRA) is a nongovernmental organisation implementing a project on gender justice in Uganda's oil sector that aims to ensure that men and women affected by developments arising from the oil exploration and development are protected and given redress from the adverse effects. These developments include the government's compulsory acquisition of 29sq.km of land in 9 villages in Buseruka sub county, Hoima District for the proposed oil refinery.

In order for GRA to provide advocacy support towards the men and women to ensure protection of their rights and for remedy, it needs to document issues of concern to those affected by this project and identify opportunities for redress and as such we shall seek to get answers to the following questions;

Name of Respondent (optional).....

Village..... Date:.....

Sex (M).....(F)..... Age:.....

1) What is your marital status? (a) Widow (b) married (c) single mother (d) unmarried (e) separated (f) divorced (g) other

Entitlements:

- 2) From whom have you heard about the Resettlement Action Plan (RAP)?
a) The Government (b) Strategic Partners (c) LC's (d) NGO's
- 3) Which of the following describes your interest in the land?
(a) land owner (b) tenant (c) Squatter

Resettlement packages:

- 4) Which of the two do you prefer?
(a) Resettlement with land purchased for your shelter and farming; and or
(b) Cash compensation with purchasing your own land for shelter and farming.
- 5) If you prefer resettlement, where would you like to be resettled?
(a) In the neighbourhood of the project area (b) not in the neighbourhood of the project area but within the district (c) outside the district.
- 6) Have you been threatened about taking you to another place which is not your preferred choice?
(a) yes (b) No. If yes where?
- 7) Who has threatened you?
- 8) Who was present in the discussion of the resettlement packages?
(a) I and my partner (b) My husband (c) Myself (d) My in-laws
- 9) Did you participate and give your consent as husband or wife?
(a) Yes (b) No
- 10) If no why was your participation or consent not considered?

Payments:

- 11) Do you know the market value being applied to compensate you for your land?
(a) Yes (b) No

- 12) What rate would you prefer to be applied? And why?
- 13) Do you know the price of an acre of land in the neighbouring villages not affected by the refinery project?
If so how much?
- 14) When was your land valued?
(a) One year ago (b) more than 6 months ago (c) 6 months ago (d) 3 months ago
- 15) Do you know the rates being applied to value your crops?
(a) Yes (b) No
- 16) What rate would you prefer to be applied to your land? And why?
- 17) When was your land valued?
(b) One year ago (b) more than 6 months ago (c) 6 months ago (d) 3 months ago
- 18) Have you received any payment in respect of your land?
(a) Yes (b) No.
- 19) If yes by what mode was it made?
(b) Cash (b) cheque (c) direct transfer
- 20) If No. Why?
- 21) Do you own a personal bank account?
(a) Yes (b) No
- 22) How long has it taken to receive the payment?
(a) More than a year (b) 1 year (c) More than 6months (d) less than 6months
- 23) Indicate a document you have signed in respect of the land and project area?
a) Acknowledgment of receipt of compensation
b) Deed assigning land to MEMD
c) Other (specify).....

Vulnerability:

- 24) Identify a vulnerable person among the following:
(a) Women (b) widows (c) child headed families (d) older persons.
- 25) What assistance should any or all of these vulnerable people be given?

Grievance handling and Redress:

- 26) Do you have any complaint in respect of the compensation?
- 27) To whom have you registered the complaint?
(a) The Government (b) Implementing agency (c) the LC's (d) NGO's
- 28) Has your complaint been addressed? If not why do you think it has not?
- 29) What kind of assistance would you like to be assisted with in respect of your complaint?

Protection of rights:

- 30) How long have you lived and worked on the land?
- 31) What rights do you have as land owner or tenant on the land?

THANK YOU FOR YOUR TIME

Annex II



MINISTRY OF ENERGY AND MINERAL DEVELOPMENT: Form C: Transfer Form (untitled plots)
Payment of Approved Compensation to Project Affected Persons

CONTRACT REFERENCE: MOE/ CONSULTANCY SERVICES TO IMPLEMENT THE RESETTLEMENT
ACTION PLAN FOR THE OILREFINERY LAND IN KABAALÉ, BUSERUKA SUBCOUNTY, HOIMA
DISTRICT

CONTRACT REFERENCE NO: MEMD/SRVCS/12-13/00309/PEPD
SERIAL No: 112

Hoima District Local Government

6.380 sq. meters/ Acres/ Ha at KITEGWA

I/ we KARHEMERA JOHN
of KITEGWA LC1 village KABAALÉ Parish BUSERUKA sub
County being the rightful owner(s) of the land described above in consideration of the sum of
shillings 37,393,200 paid to me/ us by the Assignee on or before the
execution of these presents the receipt thereof I/We hereby acknowledge. I/WE DO HEREBY
ASSIGN all that piece of land as described above to the MINISTRY OF ENERGY of P.O Box 7270,
Kampala (hereafter called the Assignee) to HOLD the Assignee for all my/our estate herein.
Dated this 17th day of 07 year 2013

Signed by the said KARHEMERA JOHN
Name and signature of Assignor

In the presence of:
Witness name: J. RUMUNYI
Address: KITEGWA
Qualification: CHIEF

Witness name: NGAMBEU JOHAM A.
Address: HOIMA DLG BOX 2 HOIMA.
Qualification: CAO

Signed by the said [Signature]
Signature and stamp of LC1

Signed by the said [Signature]
Signature and stamp of CAO
HOIMA DISTRICT

Signature of Assignee:

In the presence of:
Witness name: NAMARIMBO JACKLINE
Address: STRATEGIC FRIENDS INTERNATIONAL LTD
Qualification: STRATEGIC FRIENDS INTERNATIONAL LTD

Signed by the said [Signature]
Signature and stamp of Assignee

Receipt issued in Quadruplicate will be distributed as follows:

1. Original copy taken by Payee/ Assignor
2. Duplicate for MOE
3. Triplicate for the Land Officer
4. Quadruplicate for records



MINISTRY OF ENERGY AND MINERAL DEVELOPMENT (MEMD)
Form 2: Payment Receipt

Insert Passport
Size PHOTO
Here

Payment of Approved Compensation to Project Affected Persons

CONSULTANCY SERVICES TO IMPLEMENT THE RESETTLEMENT ACTION PLAN FOR THE OIL
REFINERY LAND IN KABAAL, BUSERUKA SUBCOUNTY, HOIMA DISTRICT

CONTRACT REFERENCE NO: **MEMD/SRVCS/12-13/00309/PEPD**

SERIAL No: Date: 17/07/2013

PAYMENT DETAILS CRANE BANK A/C NO 1401054842100 HOIMA

Payment made to:
Mr/Mrs/Ms: KARWEMERA JOHN of

Village KITEGWA

Contact Address/ Telephone Number NIL

Assessment Reference No: HORKIT024

PAYMENT SUMMARY

A	B	C	D	E	F	G	H
Plot and Block No.	Area (Ha/Acre)	Land/ Kibanja value (Shs)	Development/ Structures (Shs)	Crops (Shs)	Sub Total C+D+E (Shs)	Disturbance Allowance 30% of F (Shs)	TOTAL F+G (Shs)
-	6.380	22,330,000	1,174,000	5,260,000	28,764,000	8,629,200	37,393,200

Amount in words: Twenty seven million three hundred ninety three thousand two hundred (only)

Paid By: NABAKIBESI CECILIA
For assignor on behalf of MEMD
17/07/2013
(Signature & date)

Received by: KARWEMERA JOHN
(Signature & date)

Payee has been identified by: JRUMBA SILVEST
(Name, Signature & Stamp of Local Council Chairperson)

Witnessed by member of compensation committee K. Fred

Payment by

EFT/ Cash:

Bank & Branch

Note: For Registered Plots:

Title deed received on behalf of MEMD for Amendment: YES NO
Registration of titles act transfer form filled and signed: YES NO

Receipt issued in Quadruplicate will be distributed as follows:

White: To payee for identity Pink: MEMD yellow: District green: Records



0059

0059

HOIMA PROJECT COMPENSATION FORM

ASSESSMENT NO. 03 DISTRICT HOIMA

NAME OF REGISTERED OWNER TINDIMWEBWA KILBERFORCE

NAME OF TENANT IN OCCUPANCY

NAME OF L.C.1 KYAPALONI

BUILDING/IMPROVEMENTS Property consists of one permanent house, 1 grass Thatched house and goat shed, and one mud and wattle with GI roof.

NAME OF CROP/TREE	DESCRIPTION	QUANTITIES	RATE	VALUE (SHS)
Avocado	Mature	10 trees		
Jackfruit	Mature	18 trees		
Eucalyptus	Medium	80 trees		
Pawpaw	Mature	15 trees		
Mangoes	Mature	40 trees		
Miruke	Mature	30 trees		
Cassava	Medium	16,200m ²		
Maize	Medium	26,600m ²		
Rice	Medium	4500m ²		
Coffee	Mature	30 stans		
Sweet potatoes	Medium	1580m ²		
Bee hives	Local (tree trunks)	5		
Beans	Mature	6000m ²		
Ground nuts	Medium	3050m ²		
Vegetables	Mature	40 stans		
Bananas	Medium	40 clumps		
Millet	Young	2000m ²		
Yams	Medium	20m ²		
Rice	Medium	5000m ²		
Graves	Mud (Earth)	4		

REMARKS Property owner has a lot of crops growing with trees consisting of mainly mangoes and miruke used for charcoal burning.

SIGNATURE OF TENANT/OWNER Tindimwebwa Kilberforce DATE 06-06-2012

SIGNATURE OF L.C.1 CHAIRMAN/REPRESENTATIVE DATE 06-06-2012

SIGNATURE OF VALUER/ASSESSOR DATE 06-06-2012



Plot 128, Old Kira Road,
P.O Box 27977, Kampala-Uganda
Tel. +256 414 531 661
Email: info@globalrightsalert.org
Website: www.globalrightsalert.org