



ISER

Facilitating Social Justice

INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

ISER Policy Advocacy Brief No. 4

Who is Responsible?

A Situational Brief on the Air Pollution in Lugazi Town

JUNE 2013

“A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfill our aspirations or even live at a level commensurate with minimum standards of human dignity.”(OHCHR)

Background

For close to two years, residents, workers and passersby in Lugazi Town Council have had to put up with an obnoxious smell that engulfs the town in the late evenings and early mornings. Lugazi town is located in Buikwe District, on the Kampala – Jinja Highway, approximately 50 kilometers east of Kampala.

Besides complaints from the residents, the issue of the obnoxious smell has also been reported in the media and there seemed to be a mystery surrounding its source. Although residents and local authority officials blamed the pollution on the Sugar Corporation of Uganda (SCOUL), their management consistently denied this in media reports and employees remained tight-lipped on the subject.

As part of the organization’s continuing effort to ensure the protection of the right to a clean and healthy environment under the wider right to health program, the Initiative for Social and Economic Rights (ISER) embarked on a fact finding mission to establish the steps taken by Lugazi Town Council and the National Environment Authority (NEMA) to address this air pollution that has permeated the town and is having a negative impact on its people and the travelers passing through the town.

All interviews held with various residents, pointed to SCOUL as being the source and they complained about the negative impact of the air pollution.

“I have lost many customers since the odor started. Since this is a highway, many visitors make a stop over here but the moment the stench hits, they complain and leave immediately,” said a businessman who owns a bar and lodge in the town.

“I had to relocate my wife and children to another village because the stench always made my pregnant wife sick,” said another resident.

Another businessman noted that SCOUL employs many people from Lugazi Town who fear to complain publicly. “Most are reluctant to speak out because they’re all afraid they’re going to lose their jobs,” he said

Interviews with the officials from Lugazi Town Council and the National Environment Management Authority (NEMA) confirmed that the air pollution was indeed caused by the activities of SCOUL with who's management they have had several meetings to address the problem which is clearly a public nuisance and a threat to public health.

NEMA which is the government environment watchdog made site inspections and held meetings with the SCOUL management following numerous complaints from the public and media reports about the air pollution. Due to the gravity of the matter, the NEMA Executive Director and Environment Police also inspected the factory.

The NEMA inspection revealed that SCOUL has been releasing Hydrogen Sulphide into the air, causing great discomfort to the communities around. The Hydrogen Sulphide is from the Effluent Treatment Plant (ETP). According to a senior official in NEMA, the flare of the excess gas generated goes out and a strong stench of Hydrogen Sulphide spreads across Lugazi town to the inconvenience of the public.

The former Lugazi Town Council Health Inspector also carried out an investigation and recommended closure of the factory, but subsequent meetings between the Town Council, Buikwe District Chairperson and SCOUL resolved to give the factory until March 2013 to procure equipment needed to address the problem. This deadline has since passed but the air pollution continues.

During a meeting held at the Mayor's office, the Lugazi Town Mayor John Bosco Asea Ozuma said that smell had subsided and was now nonexistent, but this was disputed during the same meeting where the residents who had accompanied our team insisted that the pollution was still there. One of the residents confirmed to the mayor that he had experienced the obnoxious smell while attending the morning service at St. Paul's Church a day earlier and stated that all the church goers were equally inconvenienced since they complained of the same.

Dangers of the air pollution to the public:

Section 1 of Uganda's National Environment Act defines pollution as any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or

aquatic life, or to plants or to cause a contravention of any condition, limitation or restriction which is subject to a license under the Act.

As noted earlier, the air pollution in Lugazi town is caused by Hydrogen Sulphide. Hydrogen sulphide has various impacts on human beings depending on the levels of exposure. The mere smell of H₂S can cause worry, anxiety and resentment, while repeated odor events may culminate in real symptoms such as headache, fatigue and nausea. According to experts, the health impacts of repeated exposure to hydrogen sulphide may include: rhinitis bronchitis, pulmonary edema, headache, inflammation of the conjunctivae and eyelids.

In high concentrations, hydrogen sulphide may cause instant paralysis and death. The above therefore means that the air pollution in Lugazi poses a health risk to the people around the town.

The right to a clean and Healthy Environment:

Article 39 of the Constitution of the Republic of Uganda provides for the right of every Ugandan to a clean and healthy environment. Section 3(1) of the National Environment Act also restates that every person has a right to a healthy environment.

Violation of the right to a clean and healthy environment adversely affects the enjoyment of a broad range of human rights, including the rights to life, health, food and water. The UN Committee on Economic, Social and Cultural Rights reaffirmed in its General Comment No. 14 of 2000, that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. The same position has been taken by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

At the African level, in the case of *Social and Economic Rights Action Center v. Nigeria (Ogoniland Case)*, communication No. 155/96, para. 67; the African Commission on Human and Peoples' Rights found that environmental harm can give rise to violations of the right to life.

The right to a clean and healthy environment has been upheld in several cases in Uganda including *The Advocates Coalition for Development and Environment V Attorney General (AG) and National Environment Management Authority (NEMA)*(High Court Misc.Aplcn No.0100 of 2004), where the court

held that the right to a healthy environment entitles Ugandans to a right to an environment adequate for their health and wellbeing. In *Uganda Electricity Transmission Company Ltd V De Samaline Incorporation Ltd*, (High Court Misc. Cause No. 181 of 2000), the court elaborates the right to clean and healthy environment as follows:

‘... the right to a clean and healthy environment must not only be regarded as a purely medical matter. It should be regarded as a holistic social cultural phenomenon because it is concerned with physical and mental well-being of human beings... a clean and healthy environment is measured in both ethical and medical context. It is about linkages in human well-being. These may include social injustice, poverty, diminishing self-esteem, and poor access to health services. That right is not restricted to a clinical model’.

Government responsibility to protect and fulfill the right to a clean and healthy environment

The Government of Uganda has the obligation to protect its people from infringement of human rights not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by non-state actors, including private businesses. This duty calls for positive action on the part of government in fulfilling its obligations under domestic and international human rights instruments.

Article 12, paragraph 2 (b) of the International Covenant on Economic, Social and Cultural Rights provides that the steps to be taken by States party to the Covenant to achieve the full realization of the right to health “shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene”. The UN Committee on Economic, Social and Cultural Rights has interpreted this phrase to comprise, *inter alia*, “the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.

Section 24 of Uganda’s National Environment Act requires NEMA to establish air quality standards, take measures to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both to meet the requirements of air quality standards established under the law, and make guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution.

Section 55 of Uganda’s Public Health Act empowers local authorities (in this case Lugazi Town Council) to “take all lawful, necessary and reasonably practicable measures for maintaining its area at all times in a clean and sanitary condition, and for preventing the occurrence in the area of, or for remedying or causing to

to be remedied, any nuisance or condition liable to be injurious or dangerous to health and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.”

Section 57 defines a nuisance as including “*any factory or trade premises not kept in a clean state and free) any factory or trade premises causing or giving rise to smells or effluvia which are injurious or dangerous to health;*

In the *Ogoni Land* case cited above, the African Commission on Human and Peoples’ Rights stated that “[t]he right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) . . . requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development . . . obligate governments . . . [not to]tolerat[e] any practice, policy or legal measures violating the integrity of the individual.” Para. 52 (citations omitted).

It is therefore the duty of the state including the local government to protect the right of the residents of Lugazi to a clean and healthy environment.

Notably, NEMA has not yet come up with the air quality standards to control air pollution in the country- an indication that the government of Uganda is in violation of its obligations to protect the right to a clean environment under both domestic and international law.

Steps taken so far:

At the time of our visit, NEMA had conducted inspections of the SCOUL factory and recommended that there should be continuous improvements in the treatment of sugar waste and that the operators and overseers of the ETP should ensure to re-light the flare as soon as it goes out. However according to experts, use of a flare (which oxidizes H₂S to SO₂) is not a particularly effective means of controlling H₂S emissions from an ETP at a sugar refinery. Venting gases from the ETP to a bio filtration unit would be a more reliable means of controlling H₂S emissions. NEMA had also gone ahead to task SCOUL to seek design improvements to guard

against flare going out.

However, more needs to be done in terms of ensuring immediate remedies. This situation has gone on for quite a long time, and it is time that NEMA used its powers under the law to ensure compliance by the offending company.

Government has the duty to ensure that the business owners respect the rights of the residents. By failing to come up with air quality standards and ensuring their implementation, the government of Uganda is failing to protect and fulfill the constitutional right to a clean and healthy environment, which has an impact on other rights including the right to health and the right to life.

The corporate responsibility to respect human rights:

In June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights presented to it by the Special Representative of the United Nations Secretary-General, Professor John Ruggie. This move established the Guiding Principles as the global standard of practice that is now expected of all States and businesses with regard to business and human rights. While they do not by themselves constitute a legally binding document, the Guiding Principles elaborate on the implications of existing standards and practices for States and businesses, and include points covered in international and domestic law.

The Framework of the guiding principles rests on three pillars. The first pillar concerns the duty of States to protect against human rights abuses committed by third parties, including businesses, through appropriate policies, regulation and adjudication. The second pillar is the corporate responsibility to respect human rights and the third is the need for greater access by victims of human rights violations to an effective remedy.

Guiding principle 11 enjoins businesses to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved. We therefore urge SCOU to take steps to remedy the issue of the air pollution that is causing a lot of discomfort to the people in Lugazi.

According to section 52 of Uganda's National Environment Act, every person has the duty to manage any waste generated by his or her activities or the activities of those persons working under his or her direction in such a manner that he or she does not cause ill health to the person or damage to the environment. The section further requires every person whose activities generate waste to employ measures for the minimization of waste through treatment, reclamation and recycling. Failure to do this is an offence.

Recommendations

To the Sugar Corporation of Uganda (SCOUL)

ISER urges SCOUL to accept responsibility and take immediate steps to remedy the situation, and put NEMA recommendations into action.

SCOUL should consider using a biofiltration system to control the Hydrogen Sulphide emissions from its Effluent Treatment Plant.

To the National Environment Management Authority (NEMA)

Fast track the process of coming up with the National Air Quality standards to be able to better manage pollution in the country and enforce the law in case of violations.

Be more proactive in ensuring a quick remedy to the obnoxious smell that is now affecting many people in the area.

Conduct regular inspections of factories to ensure that there is compliance with regulations, and prevent future violations of the right to a clean and healthy environment.

NEMA, Lugazi Town Council and SCOUL should share information with the affected communities about the steps being taken to alleviate the problem.

About the Initiative for Social and Economic Rights (ISER)

The Initiative for Social and Economic Rights (ISER) is a registered national not-for-profit human rights non – governmental organization (NGO) in Uganda. ISER was founded in February 2012 to ensure full recognition, accountability and realization of social and economic rights primarily in Uganda but also within the East African Region.

Initiative for Social and Economic Rights (ISER)

Plot 60 Valley Drive, Ministers Village, Ntinda – Kampala

P.O. Box 73646 Kampala, Uganda

Email: info@iser-uganda.org

Website: www.iser-uganda.org

Tel: +256 414 581 041

Cell: +256 772 473929