

Universal Periodic Review - Malawi

Human Rights violations in the context of ASX-listed Sovereign Metals Limited

Submission by Malawi Right to Food Network

Malawi Right to Food Network submits this report. The report encapsulates the actions of the Malingunde Community Action Group which is a community led group fighting forcibly eviction by ASX-listed Sovereign Metals Limited, a business consortium of Australian and South African businessmen who have been awarded mining rights by the Malawi Government. In case the forced eviction is carried out, it could deepen the poverty, lead to hunger, malnutrition and other related rights such health, education, clean environment for the Malingunde community.

Malawi and the right to food

Malawi is a land-locked country, with a population of approximately 17.9 million¹; the country has one of the highest population densities in Sub-Saharan Africa growing at the rate of 2.2% per annum and one of the lowest per capita income levels in the world at US\$ 340 in 2011. It is divided into three administrative regions namely the North, Central and Southern Regions. The country attained independence in 1964 and transitioned into a multi-party democracy in 1994 under a new constitutional order that contained a bill of rights.

Malawi is classified as a Least Developed Country and in the UNDP Human Development Report it was ranked 173 out of 186 countries.²The country's economy is agro-based with agriculture accounting for more than one-third of the gross domestic product, and 90% of export revenues with tobacco being the major export earner. Almost 80 % of the population lives in the rural areas with more than half of the population (52 %) living below the poverty line. About 6.4 million Malawians live in poverty and as many as 2.7 million live in ultra-poverty. The countries adult literacy rate is at 62.7%. The Malawi poverty vulnerability assessment report³ of 2006 indicated that hunger and poverty in Malawi are interrelated, and for the food insecure people it is impossible to build the necessary human, physical and social capital that would enable them to raise their welfare level on a sustainable basis. About one in every five people lives in such dire poverty, that they cannot afford to meet even the daily-recommended food requirements. In addition, almost 17% of the population are below the minimum level of dietary needs.

Malawi Right to Food Network spearheaded the drafting of the draft Right to Food (RtF) Bill in 2002. Currently the RtF Bill is proceeding to cabinet stage after which it will go to the National Assembly for eventual adoption as law. The Department of HIV and AIDS is also developing Right to Food Guides for monitoring School Feeding programs. The Right to food Bill is a step forward to put in place policies that will guide the Malawian government programs to support rural population in their farming, fishing and livestock rearing activities, hence, progressively alleviating poverty, hunger and malnutrition. Peasants and other people living in rural areas,

¹ It has been designated by the United Nations Population Fund (UNFPA) as one of 15 population hotspots across the globe with the population expected to triple to 40 million by 2040

²Human Development Index 2015

³Malawi Government and World Bank (2006) *Malawi Poverty and Vulnerability Assessment: Investing in our Future* Malawi Government

once fully supported by the government of Malawi programs, they could feed themselves, support the education of their children and be able to pay health centers/hospitals when needed.

Malawi ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 22 December 1993. It also ratified all other treaties relevant to the right to food, including the International Covenant on Civil and Political Rights – 22 December 1993, the Convention on the Rights of the Child - 2 January 1991 and the Convention on the Elimination of All Forms of Discrimination against Women - 12 March 1987. This means that, under its international human rights obligations, the Government of Malawi has the duty to guarantee the enjoyment of the right to adequate food and nutrition, and other connected rights in Malawi

Malawi being an agro based economy makes land the single most important resource. Land is mostly acquired through the Chiefs, which can later on be passed to heirs through inheritance. The average land holding size per capita is highest in the Northern region where it reaches 0.43 per capita, while in the Southern and Central regions it is 0.29 and 0.35 hectares per capita respectively. Smallholder farmers account for approximately 4.5 million hectares and the estate sector occupies approximately 1.2 million hectares of land. Land is increasingly under pressure from a rapidly growing population assessed at the rate of 2.2% per annum.

Although the land size has been attributed toward low production⁴ it is mostly underutilization of land that is problematic. Land lies idle for the most of the dry season with limited utilisation. The technologies used on land remain the traditional type of inter-cropping, use of traditional seed and organic fertilizer with limited use of irrigation farming. Limited irrigation affects poor households who have insufficient food to sustain them until the following harvest and who derive their means of livelihood exclusively from agriculture.

Malingunde case of the Right to food and nutrition violation

Members of the Malingunde community in Lilongwe are living in fear of forced eviction from their ancestral land to pave way for mining activities following the reported discovery of a large graphite deposit in their area.

ASX-listed Sovereign Metals Limited will run the Malingunde Graphite Project⁵ and projections are that mine construction at the site may commence with commissioning set for 2020 for a proposed period of 15 years.

The Right to Food Network's field visit to the prospecting area established that the project proposes massive relocation of villages as the graphite deposit has traversed the main road from Lilongwe City to Malingunde, homes and gardens in this fertile part of rural Lilongwe where communities depend on agriculture including the growing of tobacco, Malawi's major foreign exchange earner.

The 26 villages affected by the graphite prospecting project include those under Group Village Headmen Chitsulo and Pingeni in Traditional Authority (T/A) Masumbankhunda.

As part of the feasibility study for the project, ASX-listed Sovereign Metals Limited has engaged local and international consulting firms which are executing an Environmental and Social Impact

⁴ Right to Food Assessment Report Civil Society Agricultural Network 2017

⁵ Sovereign Metals limited, <http://sovereignmetals.com.au/projects/>, consulted on 13 September 2019

Assessment (ESIA) study which has involved consulting various stakeholders including community representatives to sensitise them on the project. The process requires more sensitization as communities are not yet convinced that the project will bring tangible benefits and adequate compensation for being relocated from their ancestral land, which currently sustains their livelihoods through farming, fishing and livestock rearing.

Communities around Malingunde are concerned with the paltry amounts being offered as compensation. They find for instance K4000 (USD 5 dollars) as disturbance allowance for destroying crops in the field which was later increased by Sovereign Metals to K20,000 (USD 27).⁶ The allowance is being offered as compensation for all types of land irrespective of its size.

Struggle of the communities

The company has held meetings in the community, coercing villagers that it is in their best interests to accept eviction because it would bring development to the community. However, Community villagers have decried the continued exploitation by ASX-listed Sovereign Metals Limited aimed at violating the economic, social and cultural rights particularly the right to food.

Malawi Legal framework

The 1981 Mining Act is outdated and exacerbates the continued exploitation of poor and vulnerable communities. Conversely, it makes it easier for companies like ASX-listed Sovereign Metals Limited to protect its vested interests due to its expansive provisions. The provisions are weak and subject to gross violations since the law predates Malawi's change to multiparty democracy, a period that places emphasis on Rights Based Approaches.

To address the problem of land ownership, the country in 2004 adopted the National Land Policy which seeks to reform the land holding systems and the regulation of land related matters such as land use, planning, administration, resettlement and registration. However, the new Land Law (which complements the corresponding policy) has radically changed the customary land holding system which vested powers in traditional authorities with people having only minimal powers. The Malingunde community has customary rights on their land. Unfortunately, since the enactment of the new Land law, the Malingunde community is concerned that it will be forcibly evicted as its land protection has been diluted by this new law. An example is given of the individualized land tenure system which represents a fundamental change in the social organization of the community it is aimed at helping. This shifting in the land tenure system has an impact on the Malingunde community who has a communal land tenure under the customary law. Another criticism of individualization is that it results in significant impacts on the distribution of land holdings and on the distribution of income. While it widens the nature and scope of economic actions and broadens the opportunity to earn income through agriculture, it also displaces some individuals or even villagers from the land they have used for centuries. For displaced people, the opportunity to earn a living through agriculture is severely affected. Those who are in the best position to acquire land are those

⁶ Mining in Malawi Newsletter, March 2018

who have substantial income derived from nonagricultural activities. Those individuals have the assets to enable them to acquire land and are not necessarily the most vulnerable.⁷

Yet another criticism of individualization is the loss of security of economy opportunity by the peasants. The customary tenure provides security of opportunity through the guarantee of a right to earn at least a subsistence living from farming. Individualized tenure exposes the individual to the possibility of losing his/her land and thus losing the opportunity to farm. The guarantee of subsistence income is completely destroyed, thereby removing the only guarantee of an opportunity to earn a subsistence income.

At the same time as land is increasingly under pressure from a rapidly growing population in Malawi, the Malingunde community losing their land, would be catastrophic for its survival as the community depend exclusively on that piece of land.

International Human rights obligations vis à vis the government of Malawi

The government of Malawi has international human rights obligations to protect the Malingunde community against any forced eviction from their land that would be given to ASX-listed Sovereign Metals Limited.

According to the General Comment 7 of International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸, Malawi “...*must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions...*” Instead, the government of Malawi should “*use all appropriate means, including the adoption of legislative measures, to promote all the rights protected under the Covenant... Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it.*” Finally, the government of Malawi should be aware that “*Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.*”

Recommendations

During the UPR, following recommendations should be given to the State of Malawi:

1. To uphold the rule of law and protect Malingunde community from any forced eviction
2. To ensure that all land rights of Malingunde community are respected and protected
3. To ensure the speedy enactment of the draft Right to Food Bill in order to respect, protect

⁷ Civil Society Agriculture Network Report on New Land Law 2015

⁸ ICESCR, GC7:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f6430&Lang=en

and fulfil the progressive realisation of this Right

4. To ensure the speedy enactment of a new draft Land Bill which must protect customary land tenure
5. To enact a revised 2018 Mines and Mineral Act after thorough consideration of communities and civil society constituencies recommendations and replace the out-dated 1981 Mining Act