

Does the Petroleum Bill (2012) consider and adequately cater for how to access land under Customary Land Tenure System?

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Background to Petroleum & Gas in Uganda

Exploration for oil in Uganda dates back to the early 1920s, when a British geologist E.J. Wayland documented the presence of hydrocarbons in the Albertine Graben. Preliminary well-drilling in 1938 was halted by the start of World War II and its aftermath. In the 1940s and 50s a few shallow wells were drilled for stratigraphic purposes. Oil exploration did not resume again until the 1980s. Between 1983 and 1992 Uganda acquired aeromagnetic data across the entire Graben region, which helped identify five sedimentary basins in the country in the Albertine Graben, in Lake Kyoga, in Lake Wamala, and Moroto-Kadam. The basin most primed for oil exploitation is the Albertine Graben, located in Masindi, Kibaale, and Hoima districts, and situated along the Uganda-Congolese border, and the Uganda-South Sudan border.

Over the past decade, the Ugandan government has signed contracts with a number of international companies to engage in preliminary exploration and testing. This and concern for the implications of oil exploitation for the residents of the Albertine Graben basin (AGB) where the prospecting has started, prompted Civil Society Organisation (CSO's), Legislatures, and Opinion leaders from the AGB to request for an acceptable regulatory framework and policy for oil and gas exploitation in Uganda. Of primary concern was the need for due diligence and transparency in the process of oil exploitation process. Another critical concern was the lack of clarity on

the nature of benefits to accrue to the residents of the AGB, and the process to be followed by government and licensees to acquire land for oil exploitation. Parliament demanded that government streamline and make transparent, the process of contracting international companies for oil exploitation with due respect to good governance practices.

The Uganda government has made strides towards putting in place statutory documents for institutional infrastructure, and a regulatory framework, for defining and regulating the relationship between government, the occupants of the land in and around the areas with potential for petroleum and gas production.

Since The National Oil and Gas Policy for Uganda, came into effect in 2008, members of the Parliament of Uganda, Civil society, Development partners, journalists and other stakeholders have gone out of their way to study and highlight particular concerns not sufficiently addressed by this and other Bills and policy related to the oil and gas sector.

In representing the interests of the people, CSO's are advocating for the rights of the citizens living in the AGB to be acknowledged and respected, and to ensure that they are well informed and prepared for both the direct and indirect, positive and negative implications of oil exploitation on their environment, health, property and livelihoods.

Under the National Oil and Gas Policy, the Ministry of Energy will handle the policy

aspects, while regulatory and commercial aspects will be handled by the Petroleum Authority of Uganda (PAU) and the Uganda National Oil Company, respectively.¹ ”

In this paper LEMU reviews the Petroleum Bill to ensure it addresses customary land tenure system concerns at all stages and makes recommendations for amending the draft Petroleum Bill.

2.0 How will land be accessed for oil and gas production

Land has emerged as the primary source of conflict in the country particularly in relation to government and investors accessing land for investment such as for sugar cane production. For oil production; access to land is a must and government needs to disseminate information to people in the five oil basins on their Land rights, and the legal-framework government will use to regulate and acquire land for petroleum production. LEMU believes that the strategy government uses to acquire land; the effective management of conflicts related to the environment, health and livelihoods in the oil basins will be a critical factor in the successful development of Uganda's oil industry. This is because the area designated for petroleum exploration has predominantly been owned by families and communities and used for agriculture as the primary means of livelihood. It is therefore important that people's land rights are not abused and they are supported to adopt new means of livelihood.

LEMU anticipates that if the complexity of the customary land tenure system (commonly used in oil basin areas) is not well understood, managed and handled by the petroleum Bill, resulting ownership conflicts are likely to lead many, particularly **women and children, to become landless and chronically poor.**

In this Policy Brief LEMU highlights concern for the common person (a peasant farmer) who holds land under the customary land tenure system, and stands to lose the primary means of livelihood (subsistence/ small-scale farming) if the land they have is taken for oil production without following the law and without considerations to their livelihoods.

3.0 Policy issues & Recommendations

Policy Issue 3.1: *The Petroleum Bill lacks a provision and guidelines for identifying the head of family within the customary land tenure system that prevents the head of family, called to manage the family land in trust, to enter into a leasehold or sales agreement without the consent of the family members, including the women and children and (clan members),*

The different ways of accessing land in Uganda is through purchase, lease, gift, inheritance and compulsory acquisition. For a licensee, the most likely options are only two, through leaseholds and purchase.

There are 4 different tenure systems under which Ugandans own land. Three of these (Mailo, Freehold, and Leasehold) are

¹Uganda Oil & Gas Documentation Bureau, Advocates

individualized and titled and governed by Acts of Parliament. Purchasing or leasing land which has paper titles is therefore much easier because it is easier to identify the owners of these lands and to prove that they own the land.

The fourth and predominant tenure system in the "oil region" is customary land tenure system. Under customary tenure, there are three types of land ownership units, namely: the individual, family and community. Individual land may be purchased; most family land is inherited and held in trust for the family. Community land is usually for grazing, forests, hunting, etc. Community land can be owned by as many people as those in a village or two villages. It is these people who have the right to access and live off it; The fact that communal land is more often than not owned by many makes it difficult to bring all the owners together to agree to either sell or lease the land. Most community lands in the north and east are also adjacent to wetlands. Communities would need to apply for licenses for their use. Family land on the other hand, is managed in trust for the family by the head of family (i.e. a married man, a widow, an adult unmarried woman, a divorced woman), under the supervision of the clan (which could be a father, grandfather, or uncle).

Customary land is governed by customary law which is legally binding for all transactions and affects the interpretation and procedures to be followed in the case of sales, gifts and rental agreements. Unfortunately, Lawyers in Uganda are not

adequately trained in customary law at law-school, and are often not well versed enough to understand land rights and responsibilities under customary land tenure system.

Specific Recommendations:

- 1) *Due to the oral nature of customary tenure systems, it is difficult to know who the head of family for which land is and what customary law applies. It is therefore recommended that the Ministry of Lands works:-*
 - a) *with the traditional institutions in the albertine graben region to agree boundaries tree species and campaign for owners of land and neighbours to plant them. This will help in identifying units of land owned.*
 - b) *understand the family rights and support families to draw sketch maps and write names of all family members who own the land on it to avoid only the individual head of family (married man, widow, unmarried woman, divorced woman) usurping the land rights of the family members who have equal rights to the land. This will be useful when negotiating for access to land for oil production.*

- 2) *The Bill should provide a clause and guidelines to:-*

- a) *identify the head of family and preventing that s/he from entering into a leasehold or sales agreement without the consent of the family members and the clan authorities*

- b) Start with an option for land owners to negotiate to sell or lease their land, with compulsory acquisition by government, being the last option.
- c) Clearly specify that compensation will be made whenever private land is acquired for oil exploitation.
- d) Clearly specify that only government can compulsorily acquire land.
- e) If the land that is taken for oil and gas is government land, then a resettlement of the people on the land is arranged by Government.
- f) If the land needed for oil for a short duration is government land that people were living on, then resettlement should be arranged for the same period of displacement.

Policy Issue 3.2: *The Petroleum Bill does not differentiate stages and the different terms for land access. Clause 48 of the Bill states that "The Minister shall open up areas for petroleum activities" but does not articulate how land for oil exploration will be acquired.*

Specific Recommendations:

The Petroleum Bill should:

1. *Specify the stages and different terms for land access and how the land will be acquired.*
2. *State clearly whether land will be purchased or leased or compulsorily acquired by the government by promptly paying for the purchase price, paying for improvements on the land and disturbance allowances.*

Policy Issue 3.3: *The Land Acquisition Act does not describe the due process prior to the compulsory possession or acquisition of property, and does not clearly specify that compensation for land thus acquired be prompt, fair and adequate. The law providing for the process of compulsory land acquisition predates the 1995 Constitution and does not provide for prompt, fair and adequate compensation.*

Specific Recommendations: *The Land Acquisition Act should be amended to:*

Clearly describe the due process of compulsory acquisition of property by government where the land owners refuse to sell or lease the land which the government needs "for the public interest", the Government can purchase the land compulsorily but following the conditions set by Article 26 of the Constitution for prompt, fair and adequate compensation for those that lose their land through compulsory acquisition of land by government.

Policy Issue 3.4: *The Petroleum Bill proposes that the licensee first negotiates to purchase or lease the land, but is not clear about the point at which the licensee can turn to the state for compulsory acquisition.*

Specific Recommendations:

The Petroleum Bill should:

1. *Specify that accessing land through compulsory acquisition is only limited to government.*

2. *Specify that each stage of activity specified in the Petroleum Bill: land exploration, development and production, will require different Agreements, memoranda and licenses, and different terms for land access.*
3. *The licensee should be required to negotiate for consent of land owners for a lease or purchase of land and only turn to the state for compulsory acquisition, as a last resort, after failed negotiations. In this case, Government should endeavour to understand the reasons for failed negotiations before starting compulsory acquisition process.*

Policy Issue 3.5: *Section 72 of the Land Act gives one only 3 days' notice to vacate land. This is not sufficient time to enable one to prepare to negotiate for the sale or leasing of their property, or look for an alternative settlement, or to pursue prompt, fair and adequate compensation by government, prior to the compulsory acquisition of their property and the right to access it.*

Specific Recommendations:

The Petroleum Bill should:

Specify that owners are given 6 months' notice under this section to vacate their land for oil production following a formal understanding and agreement of the terms and form of compensation, and not before.

Policy Issue 3.6: *The Petroleum Bill lacks a provision that entitles those who may have encroached on Government land, to be compensated.*

Specific Recommendations:

The Petroleum Bill should:

Articulate compensation for encroachers that have investments or established settlement on government land.

Policy Issue 3.7: *The Land Act does not give head of family as defined under customs and communal land owners' status as a legal entity so as to negotiate for fair lease or sales agreements with the licensee.*

Specific Recommendations:

The Petroleum Bill should:

Give heads of family and communal land owners automatic legal entity so that they can negotiate for fair lease or sales agreements with the licensee.

Policy Issue 3.8: *The Petroleum Bill does not address the livelihoods of those who lose all or most of their land to oil production. This has far-reaching implications for livelihoods and household incomes, as it reduces the level of food production (unless intensive farming is introduced, encouraged and supported.)*

Specific Recommendations:

The Petroleum Bill should:

The Petroleum Bill should either limit the amount of land acquired for oil production to protect acreage put to farming; provide for resettlement or payments to households from oil or provide employment in the oil industry to cater for livelihoods provisions.

Policy Issue 3.9: *The Petroleum Bill does not specify that a percentage of the income from oil and gas will be used by the licensee to improve the livelihoods of the families who lose land; payment to the sub-county; the district and the traditional institutions*

Specific Recommendations:

The Petroleum Bill should:

- 1) *specify that all households and people who give, sell or lease land for oil exploitation or who live in communities in and around the oil basin will benefit from a specific percentage of the income from oil and gas production; a percentage payment to the sub county, the district and traditional institutions should be agreed upon at policy level to ensure that people, households and other bodies benefit from the secondary use of their land. It will also minimize any subsequent conflicts, and migration to urban areas.*
- 2) *In relation to this, government should establish and implement a minimum wage policy, to ensure there is no exploitation of labourers by the licensee.*

Policy Issue 3.10: *The Petroleum Bill does not adequately express itself on protection*

of land rights and interests of the people living in and around the five sedimentary basins in the country in the Albertine Graben, Lake Kyoga, Lake Wamala, and Moroto-Kadam.

Specific Recommendations:

The Petroleum Bill should provide that:-

- 1) *The Ministry of lands should help to register the traditional institutions governance systems so that they may be called upon to sanction land transactions and ensure that all family members give consent to the transactions.*
- 2) *Provide for accessibility of legal services at local and district levels to support land owners to lease, sell or through the process of compulsory acquisition*
- 3) *Payment for customary land leased or purchased should be made to: the head of household responsible for managing family land, (with, in the case of a married couple, money split equally between a husband and wife); payments should not be split if the household head is a widow, an unmarried woman, or a divorced woman.*
- 4) *Provide for environmental assessments before oil production.*

Conclusion.

If the above proposed changes are agreed in principle, then relevant clauses to the current Petroleum (exploration, development and production) bill, 2012 would need to be changed, and the author can ensure this is done at a later stage. If the above considerations are not made, then the oil and gas production will surely be a curse and not a blessing. Policy actions should be to pre-empt conflict and take actions to avoid or reduce them

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LEMU's Publications Include :

Policy Discussion Papers

1. Protection & land rights
2. Titling customary land
3. Landlessness
4. Does customary tenure have a role in modern economic development?
5. Linking land tenure and Agricultural Modernisation: Making PMA relevant for all.
6. Return or transformation? Land and resettlement of IDPs in Northern Uganda.

Information Leaflets :

1. Know the law on: Compulsory Acquisition
2. Know the law on: The consent clause
3. How is land under customary law managed?
4. Customary rules or excuses of land grabbers?
5. How can we minimise land conflicts?
6. Is your clan strong?

Position Papers

1. Will the Land (Amendment) Bill No.27 of 2007 help protect rights on customary land? A position paper by Cultural Institutions from Acholi, Arua, Lango, Nebbi, Teso and Land and Equity Movement in Uganda (LEMU)

Information Packs :

- Titling Pack (Will papers help me protect my land?)
- Let's face up to Land Grabbing Pack
- Accessing Land for Development Pack
- Protecting your Community Land Pack

Other Policy Papers:

- Fighting the wrong battles? - Towards a new paradigm in the struggle for women's land rights in Uganda
- Further submission to National Land Policy
- What land rights do people have under the rules of customary tenure?
- How can women's land rights be best protected in the National Land Policy?
- Precedence and other Learning from 2008-2010 LEMU mediation cases.
- Lango Communal Land Assessment Report

Local Language Publications:

- Jwik lara kede Bura me wang kinga i Lango.
- Eipone Bo Ali Ipedoria oni Aitdisiar Amariao Ka Engunget Loka Alup Ko Teso?
- Epone mene kame wa twero dwodwoko kede atwomotwomun ne lobo Iteso?
- Nutupitono ka nuiswana koidare loka alipok nuka ateker ka apedorosio nuka ikulepek alupok, 1st Omaruk 2009
- Cik me lobo tekwaro me Lango - nama 1 me mwaka 2009
- Iswilia, Tice, Twero kede Epelu me atekerin i epone me gwoko lobo me itok.

Books

- Learning Report 1. Land rights : where we are and where we need to go
- Research Report : Land Matters in Displacement. The Importance of Land Rights in Acholi land and What Threatens Them.
- Research Report 1. A Land Market for Poverty Eradication?
- Research Report 2. Land transactions in land under customary tenure in Teso
- Ateso Principles, Practices, Rights and Responsibilities (PPRR) for Customary Tenure Management as of June 2009
- Principles, Practices, Rights and Responsibilities (PPRR) for Customary Tenure in Lango Region - No. 1 of 2009
- Principles and Practices of Customary Tenure in Acholiland, June 2008
- Kumam Principles, Practices, Rights and Responsibilities (PPRR) for customary land tenure management. October, 2011.

