

# Do current Petroleum laws and policies consider and adequately cater for alternative livelihoods of land owners where oil and gas are found?

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## Background to Petroleum & Gas in Uganda

The Ugandan government has made strides towards putting in place statutory documents for institutional infrastructure, and a regulatory framework to define and regulate the relationship between government and the owners/occupiers of the land in and around potential areas for petroleum and gas production. Since The National Oil and Gas Policy for Uganda, came into effect in 2008, two bills have become laws. These are the Petroleum (Exploration, Development and Production) Act of 2012 and The Petroleum (Refining, Gas Processing and Conversion Transportation and Storage) Act of 2012. A third law will soon be in Parliament for discussion. This is the Public Finance Bill of 2012 which is guided by the oil and gas revenue management policy of February of 2012 and caters for, among other things, how oil revenue is to be shared amongst stakeholders. This policy brief focuses on this last bill and issues not resolved by the two previous bills that are now laws. The issues raised within this brief are: 1) how revenue from oil is distributed to cater for alternative livelihoods of the land owners/occupiers; 2) land rights and how land is acquired for the national priority of oil and gas production; and 3) how owners of land are identified and paid. The policy brief is informed by the findings of research into land tenure security issues carried out in all the 5 districts of Bunyoro in March of 2013 by Bunyoro Kitara Kingdom, assisted by Land and Equity Movement in Uganda, a national NGO, and the work of LEMU in north and east of Uganda since 2003.

## Policy Issue 1.0: Oil Revenue Sharing.

The Petroleum laws and the planned public finance bill propose the share of the oil revenue to be 97% to the Government and 3% to the local governments. This is different from the

rate proposed for the sharing of minerals which provides that 80% of the revenue goes to the central Government 17% to the local government, and 3% to the owners or occupiers of land. It is not clear why the policy and laws for minerals give different revenue shares. Equally puzzling is why there is revenue for a citizen whose land is taken for mining, but no revenue for a citizen whose land is taken for oil and gas production (petroleum is not defined as a mineral, according to Art. 244(4) of the Constitution). By not catering for revenue sharing for land owners/occupiers where oil and gas is found, the government appears discriminatory in its approach and puts the livelihoods of landowners at risk in exchange for the national priority of oil production. This is unfair and inequitable; the rest of the citizens of Uganda, who are beneficiaries to the oil and gas revenue do not lose their main source of livelihoods – land. Additionally, the central and local governments use the revenue for the community good by building roads, hospitals, schools, etc. The revenue will not cater for household needs such as food, medicine, school fees, etc. The Kingdom of Bunyoro Kitara, other traditional institutions and other stakeholders equally concerned about the social and cultural welfare of the people of Uganda know that losing land has a grave impact and can lead to very serious consequences.

Land provides a renewable source of food crops, cash crops, fishing, firewood, herbal medicine, school fees, grazing and cattle keeping for wealth, production and dowry, delicacies such as white ants and mushrooms, and building materials such as grass, reeds, and bricks. To lose all these resources, without any form of replacement (either as a resettlement or in periodic monetary replacement) puts the livelihoods of the people whose land is taken for oil and gas works at peril.



One may argue that compensation is given for the land taken and so all should be well. The finding from the research revealed that the compensation given is not according to the law as provided for by Articles 237 (2) (a) and 26 of the Constitution which provide for the government to compulsorily acquire land for the public interest, but on the condition that the acquisition is made lawfully with "prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property". Sections 42 and 77 of the Land Act Cap 227 provide that when the Government or local government acquires land compulsorily, it should give different types of payments to the land owners: a) market rate purchase price of the unimproved land; b) value of improvements on land such as buildings and standing crops on land excluding annual crops which could be harvested during the period of notice given to the owners/occupiers (c) disturbance allowance of 15% or 30%. It is these compensation rates for crops and buildings, etc that the District Land Boards are supposed to keep and revise yearly to assist in this payment.

Despite this very progressive law, the research findings from Bunyoro revealed that when land is taken for oil works, the various actors involved are not following the laws in four ways:

1. The oil companies are paying land owners/occupiers. If the law was followed, the government should pay for the land acquired compulsorily from the citizens for the oil company.
2. The payment given to the land owners/occupiers is only compensation for crops, using the District Land Board rates, not all the payments as provided for by Section 42 and Section 77 of the Land Act.
3. Payments are not made prior to possession of the land by the oil companies.
4. The procedure for compulsory acquisition which is provided for by the Land Acquisition Act CAP 226 is not being followed. This is partly because this law was passed prior to the 1995 Constitution and has provisions contrary to the Constitution.

If the oil and gas works continue to ignore the land rights of owners/occupiers of land, and the government does not provide alternative livelihood sources, the impact will be far-reaching with implications for livelihood

insecurity leading to malnutrition, ill health, crime increase and possible death of the land owners/occupiers. Furthermore, the children of the owners may not have the same opportunity as other citizens for education. Moreover, they will be born landless. This can then mean only one thing: that the children of the land owners whose land have oil and gas can only become casual labourers throughout their lives.

To reverse the current situation of land rights abuses and to avoid future risks to livelihoods of the land owners/occupiers (and their children), who have forfeited their land to national priority, we propose the following:

#### **Specific Recommendation 1:**

*The Public Finance Bill should:*

*specify that all households and people who give, sell or lease land for oil exploitation benefit from the income from oil and gas production; the percentage allocation of revenue allocation we propose is as follows: 80% to the Government, 13% to local government, 4% to the traditional institution such as the Kingdom of Bunyoro Kitara, and 3% to the land owners/occupiers. Alternatively, we recommend that the percentage allocation be the same as is given to mineral land owners – 80% to the Government, 17% to local government, and 3% to the land owners/occupiers.*

#### **Policy Issue 2.0: Rights to land and how to access land**

We appreciate that land surface covered for oil and gas works, including land where pipes will be laid can be large, and compensating land owners can put great financial strain on the government. Nevertheless, the oil and gas revenue to the Government includes royalties, profit oil, taxation, bonuses, and surface rentals and other fees. In order to put less strain on the government to acquire land compulsorily and pay all the legal funds, we recommend the following:

#### **Specific Recommendation 2.1:**

*The Government should allow the surface rental that is paid yearly by the oil companies to be paid to the owners/occupiers of land. If this is done, it will also ensure that after oil work ends, land reverts back to the owners/occupiers, thereby ensuring future livelihoods of the families.*



### **Specific Recommendation 2.2:**

*It is also further recommended that the provisions protecting the interests of the owners/occupiers that are in the Mining Policy and Mining Act of 2003 but missing in the Petroleum laws be included in the Petroleum laws. These are sections providing for environmental impact assessment, protection and restoration, on employment preference to citizens, protection of rights to waters and wetlands, right to graze, stock, and cultivate, and respect of or on any land which is held communally for cultural rite, etc.*

### **Specific Recommendation 2.3:**

*If the proposal for payment of annual surface rental is not acceptable, in the alternative, it is proposed that oil companies first negotiate the purchase or rent of the land with oil and gas, and only on failure of such negotiations does the Government compulsorily acquire land. For this, it is recommended that the process of amending the Land Acquisition Act be faster. The Land Acquisition Act is the law to guide how compulsory land acquisition is to be done, but it was passed before the 1995 Constitution and does not conform to the Constitution to provide prompt, fair, and adequate compensation for those that lose their land through compulsory acquisition of land by the Government. This Act is currently under revision.*

### **Policy Issue 3.0: Accessing land for oil and gas production**

There are four tenure systems under which Ugandans own land. Three of these (mailo, freehold, and leasehold) are individualized, titled, and governed by acts of Parliament. Purchasing or leasing land with paper titles is much easier because it is simple to identify owners and prove land ownership. The fourth (and predominant) tenure system in the "oil regions" is customary land tenure system. Under customary tenure, there are three types of land ownership units: the individual, the family, and the community. Individual land may be purchased; most family land is inherited and held in trust for the family. Family land is managed in trust for the family by the head of family (i.e. a married man, a widow, an adult and unmarried woman, a divorced woman), and under the supervision of the clan (represented by a father, grandfather, or uncle). 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. 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.

Additionally, customary land is governed by customary law, which is legally binding for all transactions and affects the interpretation and procedures to be followed for sales, gifts, and rental agreements. Unfortunately, these laws are oral (except for Lango, Teso, Acholi and the Kumam) and lawyers in Uganda are not adequately trained in it at law school and are often not well versed enough to understand land rights and responsibilities under customary land tenure system. Understanding land rights correctly is important to ensure family, community and clan consent for any land transactions.

### **Specific Recommendations 3.1:**

*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, Housing and Urban Development (MLHUD) working with the Bunyoro Kitara Kingdom, other traditional institutions and other actors, puts in place an administrative guideline for:*

- a) agreeing on boundary tree species and campaigning for owners of land and neighbours to plant them. This will help to identify units of land owned.*
- b) understanding the family rights and supporting 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 (i.e., 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 and for revenue payment.*
- c) identifying the head of family and preventing him/her from entering into a leasehold or sales agreement without the consent of the family members and the clan authorities.*

### **Specific Recommendations 3.2:**

*To access land according to the legal provisions cited above, we recommend that the Ministry*



of Lands, Housing and Urban Development (MLHUD) puts in place a guide for accessing land that specifies that the procedure will:

- a) start with an option for land owners to negotiate, sell, or lease their land, with compulsory acquisition by government being the last option.
- b) specify that compensation will be made whenever private land is acquired for oil exploitation.
- c) specify that only the government can compulsorily acquire land.
- d) arrange that if the land that is taken for oil and gas is government land, then the Government should arrange a resettlement of the people on the land.
- e) specify that 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.

### **Specific Recommendations 3.3:**

To ensure that all land owners and land rights holders receive the fairest deal as land is accessed for oil and gas, we recommend that the Ministry of Lands, Housing and Urban Development (MLHUD) working with other

stakeholders, should:

- a) write a form contract between oil company and land owners that is translated in local languages.
- b) help 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.
- c) provide for accessibility of legal services at local and district levels to support land owners to lease their land or sell through the process of compulsory acquisition.
- d) pay for customary land leased or purchased to the head of household responsible for managing family land (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.
- e) raise awareness with people who own land affected by oil ownership, and sensitize people about their rights and responsibilities related to ownership of land on which oil is found. This is especially true for Bunyoro, where the oil is principally on private land.

### **Conclusion**

If the above proposed changes are agreed in principle, then relevant clauses to the current The National Oil and Gas Policy for Uganda, Public Finance Bill 2012 and the two oil and gas Acts of Parliament would need to be changed, and the authors are available to participate in this. The authors can also work with the Ministry of Lands regarding the proposed administrative guidelines on how to access land by oil companies and the amendment of the Land Acquisition Act.

If the above considerations are not made, then oil and gas production will surely be a curse and not a blessing, and the Bunyoro Kitara Kingdom, other traditional institutions, the Local governments, and the people will pay the price. Policy actions should pre-empt, avoid, and reduce conflict. This policy brief provides such conflict-preventive actions.



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in Uganda (LEMU)**

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