

Do the Petroleum laws and policy consider and adequately cater for alternative livelihoods of land owners where oil and gas is found?

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Background to Petroleum and Gas in Uganda

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 owners and 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, two bills have been passed into laws. These are the Petroleum (Exploration, Development and Production Act of 2012 and The Petroleum (Refining, Gas Processing and Conversion Transportation and Storage) Act, 2012. A third law is currently in Parliament for discussion. This is the Public Finance Bill, 2012 which is guided by the oil and gas revenue management policy of February, 2012 and caters for, among other things, how oil revenue is to be shared amongst stakeholders. This last bill and issues not resolved from the previous two bills, now laws, are the main focus of this policy brief. 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 this national priority, oil and gas; 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, 2013 by Bunyoro Kitara Kingdom, assisted by Land and Equity Movement in Uganda, a national NGO.

Policy Issue 1.0: Oil Revenue Sharing.

The Petroleum laws and the proposed 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 sharing revenue rates. 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). 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 at risk the livelihoods of those whose land is taken for a national priority of oil production. This is unfair and inequitable because 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. Besides, the central and local governments use the revenue for the community goods such as roads, hospitals, schools, etc. The revenue will not cater for household needs such as food, medicine, school fees, etc. The Kingdom of Bunyoro Kitara and other stakeholders, who are as concerned as government about the social and cultural welfare of the people of Uganda, know that the impact of losing land as a livelihood source is grave and can lead to very serious consequences.

Land provides a continuous livelihood source for 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, building materials such as grass, reeds, and bricks. To lose all these livelihood sources, without any form of replacement either in form of a resettlement or in periodic monetary replacement is to put 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 compulsorily acquiring land in the public interest but on conditions that the acquisition is made under a law which makes provisions for “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 Government or local government acquire land compulsorily, they should give 4 types of payments to the land owners namely: a) market rate purchase price of the unimproved land; b) value of buildings on the land, again at the market rate; c) value of standing crops on land excluding annual crops which could be harvested during the period of notice given to the owners/occupier (d) disturbance allowance of 15% or 30%. It is these compensation rates for crops and buildings of a non permanent nature 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 laws are not being followed by the various actors in three ways:

1. The oil companies are the people paying land owners/occupiers. If the law was to be followed, it is the government who should acquire land compulsorily from the citizens for the oil company to start work.
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 S.42 and S. 77 of the Land Act.
3. Payments are not made prior to possession of the land by the oil companies.

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 livelihoods insecurity leading to malnutrition, ill health, crime increase and possible death of the land

owners/occupiers. It will also lead to the children of the owners not have the same opportunity as other citizens for education. Besides, 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 risks to future livelihoods of the land owners/occupiers (and their children), who have forfeited their land to national priority, we make the following proposals:

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 government; 13% to local government 4% to 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 government; 17% local government and 3% land owners/occupiers.

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

We appreciate the fact 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 a lot of 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 not to put too much strain on the government to acquire land compulsorily and pay all the legal funds, it is recommended as follows:

Specific Recommendation 2.1:

The Government allows the surface rental that is paid yearly by the oil companies to be paid to the owners/occupier 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 that protect the interests of the owners and occupiers that are in the Mining policy and Act of 2003 but missing in the Petroleum laws, be included in the petroleum laws. These are sections providing for environment 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 the land with oil and gas, failure of which, the government compulsorily acquires 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 government. This Act is under revision.

Policy Issue 3.0: Accessing land for oil and gas production

There are 4 tenure systems under which Ugandans own land. Three of these (Mailo, Freehold, Leasehold) are individualized and titled and governed by Acts of Parliament. Purchasing or leasing land which has paper titles is therefore much easier because it is easy to identify the owners of these lands and to prove that they own the land. 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, namely: the individual, family and community. Individual land may be purchased; most family land is inherited and held in trust for the family. 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 and unmarried woman, a

divorced woman), 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.

Besides, 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, these laws are oral and as such, 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.

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, working with the Bunyoro Kitara Kingdom 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 in identifying 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 (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 that s/he enters 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, it is recommended that the Ministry

of Lands puts in place a guide for accessing land that specifies that the procedure will:

- a) Start with an option for land owners to negotiate to 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 government can compulsorily acquire land.
- d) arrange that 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.
- 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, it is recommended that the Ministry of Lands, working with other stakeholders:

- a) writes a format for contract between oil company and land owners that is also translated in the local language.
- b) helps 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.
- c) provides for accessibility of legal services at local and district levels to support land owners to lease, sell or through the process of compulsory acquisition.
- d) pays for customary land leased or purchased 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.

Conclusion

If the above proposed changes are agreed in principle, then relevant clauses to the current Public Finance Bill 2012 and the two oil and gas Acts of Parliament would need to be changed, and the author is available to participate in this. The authors can also work with the Ministry of lands for 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 the oil and gas production will surely be a curse and not a blessing and the Bunyoro Kitara Kingdom, the Local governments together with the people will pay the price. Policy actions should be to pre-empt conflict and take actions to avoid or reduce them. This policy brief provides those conflict preventive actions.

