

# A Simple Guidebook on Legal and Policy Framework Regarding Land, Oil & Gas in the Albertine Graben



## UGANDA LAND ALLIANCE

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**Disclaimer:** This simple guide is NOT LIMITED to further research. It only gives a hint on the legal and policy framework regarding land, oil and gas activities in the Albertine Graben.



## FROM THE EDITOR



Dear partner,

Uganda Land Alliance recognizes land, oil and gas as critical sectors in ensuring a smooth growth path for Uganda. We believe that availability of handy information is important while making critical decisions in such sectors.

As part of our one year project in the Albertine [oil] Graben, we have produced this guidebook to support sector players to go about their respective duties.

The project, which is implemented in Hoima and Buliisa districts, is called: *Building capacity of networks of grassroots organizations on land, oil and gas governance in Hoima and Buliisa districts.*

It is being implemented using funds from our chivalrous development partner, Ford Foundation. The guidebook gives a hint on the general legal and policy framework governing land, oil and gas sector.

Succulent sectors like land, oil and gas require players who are familiar with the legal framework regarding them so as to make informed decisions.

As part of your research materials, we believe, this guidebook is of good use.

**Julius Businge**  
**Communications Officer – Uganda Land Alliance**



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## ACRONYMS AND ABBREVIATIONS

<b>PSAs</b>	Production Sharing Agreements
<b>NOC</b>	National Oil Company
<b>PAU</b>	Petroleum Authority of Uganda
<b>CSOs</b>	Civil Society Organizations
<b>CNOOC</b>	China National Offshore Oil Corporation
<b>L.A</b>	Land Act
<b>E.D&amp;P</b>	Exploration Development and Production
<b>ALC</b>	Area Land Committees
<b>ULC</b>	Uganda Land Commission
<b>DLB</b>	District Land Board



## INTRODUCTION

Uganda discovered commercial quantities of oil in the country in 2006 and ever since, there has been increased activity in the exploration of oil and gas. The exploration activities are being undertaken in the Albertine Graben in mostly the districts of Hoima, Buliisa, and Nwoya by international oil companies contracted by the government. Currently, there are three licensed companies namely, Tullow Uganda operations Ltd , Total E&P and CNOOC Uganda Ltd operating in the districts of Hoima, Buliisa and Nwoya within the Albertine Graben. The exploration of oil and gas in the country is being undertaken on land and therefore has an implication on land ownership and rights of the affected individuals and communities.

It is therefore, important that for oil and gas activities to be undertaken smoothly there is need to understand how they interact with land ownership and rights to enable their co-existence. This requires a proper definition of the rights and interests of different stakeholders involved in oil and gas activities and land use and management. The purpose of this booklet, therefore, is to give an overview of the implications of oil and gas activities on land ownership and rights in the Albertine Graben. It also briefly examines aspects of the management of oil and gas and oil revenue management.



## LEGAL AND REGULATORY FRAMEWORK

There are various laws and regulations that govern oil and gas and land in the country and the salient ones are the following;

### **Constitution of the Republic of Uganda, 1995**

The Constitution in Article 244 vests petroleum in the hands of government and any exploration and exploitation therefore is under the authority of the government. The constitution also in Art.237 vests the ownership of land in the citizens of Uganda to own it under freehold, mailo, leasehold and customary tenure systems. The Constitution also permits the government authority to acquire land compulsorily for public purposes.

### **The National Oil and Gas Policy for Uganda, 2008**

The policy provides the direction and strategies for the optimal utilization and exploitation of the country's oil and gas. Its policy objective is to use the country's oil and gas resources to achieve early poverty eradication and create lasting value to society. It identifies that oil and gas activities affect and are affected by land ownership and also provides for optimal utilization and prudent management of the revenues from the sector.

### **National Land Policy, 2013**

The Policy gives directives on the management and administration of land in the country with the goal of ensuring an efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall economic development. The policy gives directives on the access and acquisition of land for the exploration and exploitation of natural resources including petroleum.

### **Oil and Gas Revenue Management Policy, 2012**

The Constitution vests with Government the responsibility of managing any natural resources on behalf of the people and to ensure its equitable distribution. In order to promote social cohesion and stable investment and production environment, 7% of all royalty revenues shall be set aside for sharing between local governments located in the oil and gas producing areas.



The mechanism of sharing these revenues amongst the local governments will take into account intra-regional fairness, level of production and sustainability principles.

## The Petroleum (Exploration, Development and Production) Act, 2013

The law provides for the licensing, exploration and production of petroleum. The law also provides for the access and acquisition of land for oil and gas activities. Most importantly it requires consent to be obtained from the land owner/occupier before execution of activities on their land and provides for payment of compensation for any damage on the land or developments thereon.

***The Act states that, the upstream oil and gas sector in Uganda is managed by three main entities:***

1. The Minister for Energy and Mineral Development (the **Minister**) is responsible for granting and revoking licenses, developing and implementing Uganda's oil and gas policy, issuing regulations, approving field development plans and negotiating petroleum agreements.
2. The Petroleum Authority of Uganda (the **Authority**) which is a newly created institution is tasked with monitoring, approving and regulating exploration, development and production of petroleum in Uganda. Whereas the Authority is independent, the Minister may give written directions to it with respect to the policy to be implemented. Funding for the Authority is provided by Parliament and certain funds raised by the Authority. The Authority has monitoring and regulation functions and is therefore given certain enforcement powers to ensure compliance from licensees.
3. The National Oil Company (the **NOC**) which is a newly created state owned company is to manage the commercial aspects of Uganda's petroleum activities and the participating interests of the State under petroleum agreements. As with the Authority, the Minister may issue instructions in respect of the NOC's execution of its functions under the Act.



### ***Other institutions;***

The National Oil and Gas Policy recognize the function of other government institutions in the sector. For instance the National Environment Management Authority and the Uganda Revenue Authority are responsible respectively for environment and fiscal matters.

### **Local content**

Under the Act, any application for an exploration or a production license must include a local content plan for the involvement of local employees and the use of local goods and services. The licensee shall also submit recruitment and training plans to the Authority every year.

According to section 125, the licensee is required to give preference to goods which are produced or are available in Uganda and services rendered by Ugandan citizens and companies. Where such goods or services are not available, the licensee is obliged to enter into a joint venture with a Ugandan company under which the Ugandan company holds at least a 48 per cent stake.

The Act does not, however, define when goods or services can be deemed “not available” in Uganda, what qualifies as a “Ugandan company” and what involvement this Ugandan company must have in the joint venture.

### **State participation**

The law allows the State to participate in petroleum activities through a specified participating interest in a license or contract granted under the Act and in a joint venture established by a joint operating agreement in accordance with the license and the Act.

## **The Public Finance Management Act, 2015**

**This is the principal law that deals with the management of petroleum revenues.** *Section 56* provides for the establishment of the Petroleum Fund.

It requires all petroleum revenues, which accrue to Government; to be paid into the Petroleum Fund. The Minister responsible for



Finance is responsible for the overall management of the Petroleum Fund and shall oversee the transfer into and the disbursements from the Petroleum Fund.

**Under section 58 of the Act - withdrawals from the Petroleum Fund** shall only be made under authority granted by an Appropriation Act and a warrant of the Auditor General -

- (a) To the Consolidated Fund, to support the annual budget; and
- (b) To the Petroleum Revenue Investment Reserve, for investments to be undertaken in accordance with section 63.

Under Section 63, the money from the Petroleum Revenue Investment Reserve shall be invested in accordance with the petroleum revenue investment policy issued by the Minister responsible for Finance in consultation with the Secretary to the Treasury and on the advice of the Investment Advisory Committee.

The investment policy shall include a requirement that investments under this section shall be undertaken in a manner that does not jeopardize the macroeconomic stability of Uganda and that the money of the Petroleum Revenue Investment Reserve shall be invested in -

- (a) An internationally convertible currency deposit or a debt instrument denominated in an internationally convertible currency that bears interest or a debt instrument of a fixed amount equivalent to interest.

## Royalties in the Public Finance Management Act

### **Section 75... Sharing of revenues from royalties**

- (1) Government shall retain 94% of the revenue from royalties arising from petroleum production and the remaining six percent shall be shared among the local governments located within the petroleum exploration and production areas of Uganda.
- (2) The Minister responsible for petroleum shall publish the local governments eligible to receive royalties under subsection (1).
- (3) Fifty per cent (50%) of the revenue from royalties due to



- the local governments shall be shared among the local governments involved in petroleum production based on the level of production of each local government or impact.
- (4) The balance of 50 % of the revenue from royalties due to the local governments shall be shared among all the local governments based on population size, geographical area and terrain.
  - (8) The Government shall grant one percentage point of the royalty due to the Central Government to a gazetted cultural or traditional institution.
  - (9) The revenue from royalties shall be appropriated to a local government in the annual budget for development purposes.
  - (10) The revenue from royalties shall be considered as part of the revenue of the local government and shall be integrated in the budget of the district to be spent on priorities determined by the Local Government Council, taking into consideration national priority programme areas.

### **The Land Act Cap. 227**

The Land Act provides the framework for land tenure systems, management and administration in the country. It lays down the procedures for acquisition of land and compensation for land.

### **Land Acquisition Act Cap. 226**

The law provides for compulsory land acquisition of land for public purposes and compensation for compulsory acquisition. It also provides for replacement of land.



## INSTITUTIONAL FRAMEWORK

### Ministry of Lands, Housing and Urban Development

- Lead agency in land matters
- Gazetting land required for development projects
- Endorsing compensation rates compiled by the District Land Boards
- Approving land surveys
- Approving valuation reports
- Determine disputes between licensees and land owners regarding compensation
- Registering land transactions

### Uganda Land Commission (ULC)

- Holding and allocating land acquired by government
- Holding land acquired by oil companies and vested in the government under the PSAs
- Leasing land to oil companies and other sector investors for their operations

### District Land Boards (DLB)

- Compiling and reviewing compensation rates
- Allocating public land in the district
- Facilitating the registration and transfer of interests in land

### Area Land Committees (ALC)

- Assisting and advising the land board on land matters including inspection for registration or allocation purposes
- Mediating land disputes referred to it by the parties



## ROLE OF CIVIL SOCIETY ORGANIZATIONS (CSOs)

The National Oil and Gas Policy (2008) recognize Civil Society Organizations as important stakeholders in the petroleum sector. The roles they are required to play include the following;

1. Advocacy
2. Mobilization
3. Dialogue
4. Holding government institutions accountable in the execution of their functions.
5. They may also be engaged to provide services to communities

## Land Requirements for Oil and Gas activities

### Land requirements in phases

- The National Oil and Gas Policy (6.1.1) clearly recognize that execution of oil and gas operations through all its phases' impacts on land ownership.
- During exploration and appraisal, land is only required on a temporary basis for carrying out surveys, accommodation, drilling of exploration and appraisal wells, access roads etc. In this phase, compensation is paid for deprivation of land use. **(S.73 L.A & S.139 P (E, D&P) Act.)**
- At the development, production, processing and transportation stages, land is required for a longer time for the development of infrastructure like production well pads, pipelines, refineries, access roads, camps, among others. At this stage land is acquired on a permanent or long term basis by outright acquisition of the interest of the owner. **(S.73 & 77 L.A & S.139 P (E, D&P) Act.)**

## Compensation

- The Constitution requires any person deprived of their property to be promptly paid adequate and fair compensation before acquisition or possession of the land. **Art.26**
- The amount of compensation is determined in accordance with the Land Act. **S. 59 & 77 L.A**



- The value of crops and buildings of a non- permanent nature are determined basing on compensation rates compiled by the district land board. **S.59 (1) (e) and S. 77 (3)**
- The value of land and permanent structures is determined based on the market value there of. **S.77 (1) L.A**
- A disturbance allowance of 15% or 30% of the compensation value has to be paid where the notice to vacate is more or less than six months respectively. **77 (2) L.A**
- Cadastral land survey and valuation of properties are conducted by certified consultants under the supervision of the commissioner surveys and mapping and the CGV respectively.

## Resettlement

During the acquisition of land, the land owners are given an option of cash or physical relocation as compensation. Relocation is derived from the need to replace what the person had i.e. where the land owner has a household on the affected land then they have to be given replacement land of the same acreage and a house. Still again if the person only has their farm land affected then they are entitled to equivalent farm land.

## Compulsory Acquisition of Land

Compulsory acquisition is derived from;

- Constitution Art.237 (2) , the Land Act Section 42 and the Land Acquisition Act Cap 226

Article 26 of the Constitution guarantees the right of every person to own property either individually or in association with others.

It further states that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied -

- the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and
- The compulsory taking of possession or acquisition of property is made under a law which makes provision for - (i)



prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and (ii) a right of access to a court of law by any person who has an interest or right over the property.

- The Constitution, Land Act and the Land Acquisition give government the authority to compulsory acquisition of land for public interest or use, among others.
- The Minister responsible for land is mandated to declare by statutory instrument that land is required for a public purpose.
- When the land is gazetted, the interest of the owner is converted to a right to compensation.
- Once the land has been gazetted, the land is supposed to be surveyed and valued to determine the award to be paid to the land owner.
- Once the award has been made and the land owner is satisfied, they sign for it and get paid.
- If the land owner is not satisfied with the assessment, they may appeal to court.
- Where there is disagreement on the award or impracticability in its payment, the government may apply to court to pay the money into court.

### **Land Act Cap 227 - S.42**

The Government or a local government may acquire land in accordance with articles 26 and 237(2) of the Constitution.

Land Acquisition by non citizens...subject to article 237 (2) (c) of the Constitution, a noncitizen may acquire a lease on land in accordance with this section.

- A lease of five years or more acquired by a noncitizen shall be registered in accordance with the Registration of Titles Act.
- A noncitizen shall not be granted a lease exceeding ninety-nine years.
- Subject to the other provisions of this section, a noncitizen shall not acquire or hold mailo or freehold land.
- Any citizen holding land under freehold or mailo tenure who loses Ugandan citizenship shall have the freehold or mailo tenure converted to a leasehold tenure for a period of ninety-nine years.



## CHALLENGES ANTICIPATED IN LAND ACQUISITION

- High expectations among land owners and stakeholders
- Speculative land transactions
- Land disputes resulting from the increased interest in land in the region.
- Delay in the review of district compensation rates
- Ignorance of land rights by communities
- Limited technical capacity in the district land offices

## RECOMMENDATIONS

- Formation of communal land associations to register and protect communal land which is rampant in some of the areas with oil and gas activities. S.15 L.A
- Prioritization of the Albertine Graben for systematic demarcation by government to mitigate land conflicts
- Sensitization of communities on their land rights
- Issuance of customary certificates of ownership to customary land owners





## CONCLUSION

Since oil and gas operations in the Albertine Graben are taking place on shore (on land) and all the facilities required for the development and production of the oil are on land, it is inevitable that there will be an impact on land ownership in the area. This will be in terms of an increased interest in the land through speculation and also an increased assertion of land rights by the different players including individual land title holders, customary owners, communities, families, clans among others.

The discovery of oil and gas provides the country with an opportunity to fast-track the economic and social transformation process. However, oil and gas resources are finite and the associated revenues can be immense. If not well managed, these revenues have the potential to undermine the macroeconomic, budgetary and governance structures that have been built over the years leading to waste. In order to sustain the economic and social transformation process beyond the oil and gas era, the country will have to manage the oil and gas revenues in a manner that will encourage other sources of wealth creation. It is therefore, important that responsible authorities brace themselves to deal with these issues. This requires capacity building of the institutions and stakeholders.





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