



LAND ACQUISITION AND RESETTLEMENT FRAMEWORK: PETROLEUM DEVELOPMENT AND PRODUCTION IN THE ALBERTINE GRABEN COMMENTS ON THE DRAFT REPORT 2016

COMMENTS ON THE DRAFT REPORT 2016

Civil Society Coalition on Oil and Gas (CSCO), Global Rights Alert, Civic Response for Environment and Development, Transparency International, Advocates Coalition for Development and Environment (ACODE), African Energy Governance (AFIEGO) and Green Watch

Acronyms

JVP	Joint Venture Partners
LARF	Land Acquisition and Resettlement Framework
MEMD	Ministry of Energy and Mineral Development
MLHUD	Ministry of Lands, Housing and Urban Development
NEMA	National Environment Management Authority
PAPs	Project Affected Person(s)
UIA	Uganda Investment Authority
UNRA	Uganda National Roads Authority

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Introduction

The Land Acquisition and Resettlement Framework (LARF) is a document that is usually prepared in the earlier stages of crafting a development project. It is made at a time when the actual nature and magnitude of land acquisition or restrictions to land use as a result of the project (physical displacement economic displacement or losses), are unclear or not easily ascertainable with precision.

The LARF under review is a document of the Tullow Uganda Operations Pty Limited (TUOP), Total E&P Uganda B.V (TEPU), and CNOOC Uganda Ltd. (CUL), all of which are together referred to as the JV-partners in the draft report (and this document), and the government of Uganda.

This review document has been prepared following participatory processes involving a number of civil society organizations working on various themes such as human rights, environmental protection, and promotion of good governance in the oil and gas sector.¹ The review of the Land Acquisition and resettlement framework has taken an audit approach. By this, it has assessed the levels to which the document takes care of pertinent human rights guarantees of the Project Affected Persons (PAPs) as set out in the laws of Uganda and internationally recognized best practices and safeguards in situations of compulsory land acquisition.

A review of the document reveals that there are a number of gaps and issues in the LARF that need further clarification as will be indicated below, if it is to offer a nuanced perspective to other documents whose development it will guide; such as Resettlement Action Plans.

Below are the general and specific comments on various themes for the LARF:

A. General Comments

The LARF attempts to give framework within which land acquisition and resettlement will take place for the projects to be implemented by the JV-partners. It gives the rationale for land acquisition, goals and principles to guide the processes, the development context of the region where the project is to be implemented, previous resettlement experiences in Uganda, legal and administrative frameworks, etc.

The legal and administrative framework that will be applied as set out on pages 30-49 is wide enough in terms of categories. It includes corporate policies, Uganda's legislation, IFC Performance Standards (PS5) and Land Acquisition and Resettlement (LAR) framework. It also contains a gaps analysis. Specifically on the JV- partners' Policies, all of them point out the need for stakeholder engagement and involvement in the projects from the beginning to the end; commit to comply with Ugandan laws and respect human rights. This is a positive aspect.

¹These include Global Rights Alert, ACODE, Green Watch, CRED, Transparency International Uganda, International Alert, AFIEGO and PEMO, all of which coalesce under the Civil Society Coalition on Oil and Gas (CSCO)

The Draft Report contains some good information on compensation, compensation rates and matrices, valuation processes, and a description of the challenges that are encountered in processes valuation and compensation, mostly attributed to absence of a comprehensive legal and policy framework on the above subjects.

Although informative *as-is* there are a number of gaps that should be filled if the document is to be comprehensive and also promote pro-human rights outcomes without necessarily compromising the levels of success of the JV- partners' projects. Below are some suggestions for consideration in a bid to improve the document.

B. Scope and Delineation of Roles for Government and JV- Partners

The document should explicitly define the scope of activities it is drawing a framework for and at the same time the scope of the framework for purposes of clarity.

In terms of government's role, although the Executive summary indicates that the JV-partners and the government of Uganda agreed to develop the LARF, a reading of the document does not clearly bring out: (i) the government's levels of engagement in the development of the LARF (ii) what the role of government will be in land acquisition processes. It is important to note that land acquisition processes impact on the rights of Ugandans, which evokes the government's responsibility to protect her people. The LARF *as - is* tends to cloud the primary role of government in deliberations with a clear focus on land acquisition for the project at all costs. It is important to; from the onset clearly set out who will have the primary responsibility for land acquisitions for the JV-partner's Projects, how the government's agency role in the protection of her people will be ensured, and the circumstances and levels at which other stakeholders will be involved in these processes.

C. Legal and Policy Framework

There is need for a clear systematic analytical approach to the legal and policy framework on land acquisition in Uganda beyond what is done in the LARF. The LARF promises to do a comprehensive legal review although a good number of the laws and policies s listed on page 33 is not reviewed and some laws and policies such as those concerning wildlife protection are not listed. Despite that promise, a review of the report indicates that there is more of a descriptive approach taken and this does not necessarily bring out the pertinent issues or the gaps (see for example annex- 2).

The description of the law and some policies comes later in the annex 2. It is suggested that a clear systematic analysis of the law and policy should be among the preliminary sections of the LARF in which case it can form a background against which analysis of other issues is made in the LARF.

Whereas the RAPs will undertake detailed legal reviews, it is still important for the LARF as the foundational policy framework to delve into a detailed legal analysis to guide the following processes. This analysis should give a clear picture on; (i) Under what circumstances is compulsory land acquisition allowed in the constitution and laws of Uganda? (Articles 237 (2) (a), 26 of the Constitution, Land Act cap. 227 Section 42) (ii) Which institution has the power of

compulsory land acquisition and under what law (government or it extends to other institutions?) (iii) What are the pre-conditions/ processes for compulsory land acquisition? (iv) Is acquisition for economic activities such as oil and gas development envisaged under article 26? (v) How do we reconcile the need for land acquisition with other imperatives for environmental preservation and biodiversity (under environmental laws and wild life laws)? (vi) Is the legal and policy framework comprehensive? What are the gaps on land acquisition processes, valuation and compensation, institutional mandate stipulations, rehabilitation, care for PAPs during the transition period-between land acquisition and resettlement etc.?

D. Acquisition of Customary Land; A Unique situation

The predominance of customary land in the Albertine Graben implies that much of the land that might be acquired by the JV- partners is customary land. The peculiarities of customary tenure compared to other tenures require that special tools/procedures need to be adopted in its acquisition to mitigate or avoid human rights violations that may result from treating the customary as if it was just like the other tenures with more registered rights and interests.

The LARF contains some pointers to customary tenure in the legal framework (page 19 and 24). It is however important to have a more nuanced perspective on customary land. The LARF should problematize land acquisition of customary land and go beyond to stipulate the safeguards that may be put in place to avoid violation of rights of customary land owners. The issues that need to be addressed include: (i) what is the law applicable to customary land in a particular geographical region in the Albertine Graben? (ii) How does one ascertain ownership by individuals, families, communities/associations? (iii)What are the centers of authority or who has power over regulation of customary land in a given geographical area? (iv)To what extent has certification of customary rights taken place in a given area and what are the consequences of certification processes? (Who is certifying and how has this impacted on the rights of customary claimants to land) (v) How have some legally recognized processes such as conversion of customary land into freehold affected claims of ownership to customary land; and who is converting? (v) How will the land acquisition processes affect communities' access to common resources such as wells for water, forests/thickets for firewood, medicinal plants etc. (vi) What is the status of women and vulnerable groups under customary land and how land acquisition may affect them.

E. Valuation of Archaeological, ancestral, Cultural and other Special Items

The LARF contains some information on processes of valuation of land and other properties and the challenges that are encountered. As highlighted in the LARF, Uganda legislation provides “specific guidelines in terms of valuation” (page 66). We note however that the guidelines in the Land Act sections 76 (1) (b) and 77 may be specific but not comprehensive.

Uganda does not have a comprehensive legal and policy framework to guide processes of valuation. This raises a number of issues about the institutions engaging in valuations; the office of the Chief Government Valuer and the consultants hired to value land under its supervision. How equipped are they to deal with the magnitude of work arising from big land acquisitions in contemporary Uganda, such as those in the Albertine Graben.

Further, existing guidelines are not sufficient to deal with valuation of archaeological items, cultural, ancestral items and other non-land items such as carbon trade values and climate change.

Our view is that rather than restrict the discussion in the LARF to the “specific guidelines on valuation” in the Land Act, the information on valuation should be discussed against an analytical backdrop of absence of a clear detailed legal and policy framework on the same. The LARF should then propose ways in which the challenges that arise in this regard will be addressed as a stop-gap measure to avoid undue loss that may arise from application of inappropriate valuation methods and formulas to value land and other items for the PAPs.

F. Gender Issues

Processes of compulsory land acquisition and their aftermath affect men and women differently and it is therefore imperative to have gender as a frame of analysis mainstreamed in various themes in the LARF. At the same time, it is our view that gender should be among the guiding principles in the practice of land acquisition and every stage of the process should be executed with due regard to gender considerations. This is more so since women have been disproportionately negatively affected by land acquisition processes more than their male counterparts. For example, acquisition of land on which the women accessed water puts an undue burden on them to find alternative sources of water. Acquisition of land on which women farmed to feed their families leaves them with constrained alternatives yet they still have to provide food. Acquisition of land on which they settled with their families without adequate alternative accommodation leaves them with an unfair burden since they are the primary care givers in most households.

The LARF under review only highlights the situation of women within the context of past project experiences with reference to assistance to vulnerable groups. It is noted that spousal consent was used to include women in making choices about compensation options (page 29). This is commendable. It should however be noted that participating in the choice of option does not guarantee that the vulnerable women will partake in the compensation option chosen, more so if it is cash.

The LARF framework should encourage participation of women in all activities and at all phases of the process. It should suggest ways through which issues pertaining to women will be dealt with at all stages (from consultation through all phases to the post land acquisition phase), to ensure gender equity in processes and practices of land acquisition.

G. Environment and Tourism

The Albertine Graben is said to have 70% of the country’s conservation area with natural forests, lakes, rivers and wildlife.² Land acquisitions aimed at giving way to oil development activities will definitely have implications for the environment. Among the objectives of the National Oil and Gas Policy, 2008 is to ensure that oil and gas activities are undertaken in a manner that conserves

² Halima Abdalla, *Oil and Tourism: Can Murchison have both?* The East African, February 13, 2015.

the environment and biodiversity. At the same time, Strategic Environmental Assessment (SEA) for the Albertine Graben was meant to ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity.

The above notwithstanding, the LARF is narrow in its scope of addressing the pertinent legal and policy frameworks on the environment, and at the same time how impacts from activities of oil and gas will be dealt with to minimize damage. It need to go beyond the narrow focus to craft the framework of biodiversity, water, fisheries and trans boundary issues in this regard in relation to land acquisition for oil activities.

Note that other ethical issues are indirectly connected to the debates on the environment within the context of the LARF and should be brought out. These are related to access to food, water, and common water resources, as a result of change in the environment with a causal link to oil activities, or as consequent upon displacement to give way for oil activities through land acquisition processes. The question that arises then is how would one alleviate the negative consequences of the above oil activities and land acquisitions? The LARF may address this by highlighting the need to balance between conservation and economic activities. At the same time, informed participation, benefit sharing and respect for human rights may guard against would be violations to PAPs and others who may be indirectly affected. (U.N., Special Rapporteur on the right to food)

Besides the above, it is unequivocally stated in the LARF that part of Murchison Falls National Park will be acquired. This has implications for Tourism and wildlife conservation, yet the LARF does not list the Wild life Act 1996 and the National Policy on Conservation and Sustainable Development of Wildlife Resources. The two important points to note here are; first, the Act above recognizes the role of the Local Government as a stakeholder in wildlife conservation. In practice, the local governments share in the proceeds from the tourism sector. Second, the above policy advocates for a framework within which oil and gas activities should be carried out in harmony with preservation of wild life. The fact that acquisition of land in the National Park might lead to cutting off tour circuits and animal trails has implications for livelihood of wildlife and the tourism industry in Uganda.

The LARF should also discuss the ease or difficulty or complex issues that arise when land acquired is “public” in nature; who then is the PAP? How is the public interest in such land catered for considering the notion of “public trust” that gives the government power to hold on behalf of all? How does the public participate in decisions about ‘public goods’ such as acquisition of part of a National Park?

H. Grievance Redress Mechanisms (GRM)

Disputes over land and other issues in addition to various forms of disgruntlement about several aspects of the land acquisition process are inevitable in situations of compulsory land acquisition. It is therefore important to put in place mechanisms to resolve such disputes in a manner that is responsive to the human rights of the PAPs and at the same time facilitates smooth land acquisition

processes in the interest of the project implementers. Such a mechanism should be tasked to resolve all grievances beyond those associated with “compensation values/rates” (see LARF at 76).

The LARF contains a GRM with three levels, and clearly the first levels are run by an individual (the Community liaison officer) who may address questions to the legal department in the process of resolving disputes. It is our view that more space should be dedicated to elaboration on the Grievance redress mechanism. In the interest of fairness/natural justice in the processes, we recommend adoption of a team of persons to compose the Committee or body to deal with grievances (at all levels) instead of an individual at the start. Such a Committee or body may be composed of persons from various professional backgrounds and experience such as: a surveyor, valuer, social development expert, sub county/parish community development officers, Local Council member, Civil Society and a specified number of representatives of the PAPs.

Beyond the composition, the LARF should describe the general framework within which the GRM is going to be run: (i) require that the members of the committee/body should be trained on how to handle cases; (ii) procedure of filing a case should be reduced to writing; detailing out the specific procedural steps with clear directions on where to go, and timelines if any; (iii) information about it should be produced in the local languages of the PAPs or commonly spoken languages in the area; (iv) information material about the procedure should be readily available through local leaders, and also displayed in conspicuous places; (v) it should contain an estimation of the time during which grievances are expected to be resolved (vi) it should detail out the complainant(s)’ right to appeal to other courts of judicature in case s/he/they is not or are not satisfied with the outcome of the procedure; (v) Grievances at the highest level such as courts of law ought to be at the cost of the project and not the PAPs, and this information should be given to the PAPs.

Provision of a robust structure that is clearly streamlined as suggested above has potential to fill existing gaps. The current grievance handling mechanisms in the different laws is grossly insufficient and ineffective in as far as many are not functional like the village local council courts and district land tribunals.

The other important issue that arises in the LARF concerns what happens if a grievance arises from a rejection of the offer by a PAP. The LARF suggests “the JV partners and MEMD reserve the right to call upon the expropriation procedure to obtain rights to land required for the project” where a PAP disagrees and refuses to sign an offer after attempts of convincing him/her. It is our contention that this procedure is contrary to international best practice, violates the PAPs recognized right to property/land and leaves the PAP in an unfavorable situation. Rather, it is highly recommended that IFC Performance Standard 5, s.13 be adopted for it stipulates the procedure to be adopted if a PAP rejects an offer “that meets the requirements of this Performance Standard.” The IFC Performance Standard does not provide for automatic expropriation but collaboration with the responsible government agency on the matter. Note that this is only where what was offered to a PAP was sufficient within the meaning of the IFC Performance Standards.

I. Institutional Framework and Coordination

In general terms, the absence of a clear legal and policy framework on compulsory land acquisition in Uganda leads to overlaps in mandates of institutions that engage in regulation or actual land acquisition on behalf of the government of Uganda. It is not surprising that this problem at the national level will seep through to shape processes and practices of land acquisition in the Albertine Graben for the JV- partner's projects. There are three JV-partners for whose oil development projects land is going to be acquired. The role of the government of Uganda in the LARF is described in a hazy fashion that makes it difficult for us to exactly tell whether it is central or secondary to the dominant position that the LARF presents for the JV- partners and their land acquisition imperative.

The existence of these three JV partners, their respective institutions and agendas on the one hand, and the government on the other with its various institutions³ is fertile ground for overlaps in mandates. It further raises concerns about how activities of the actors will be coordinated, for smooth running and to avoid undue burden to the PAPs. It is against this background that we suggest a conspicuous discussion of the Institutional framework and who will do what, who will coordinate activities of the actors. The Institutional framework may go beyond to indicate the Institution that will monitor to ensure that there is adherence to the general principles set out in the LARF and at the same time the laws of Uganda.

J. Involvement of Cultural Institutions

A reading of the LARF shows that much of the land that will be acquired is customary land. Customary land and the practices on it are entrenched within the customary spaces in which traditional norms and cultural institutions are pertinent. The LARF makes provision for consultation of PAPs, community leaders and local governments (pages 73-75). Clearly the foregoing does not envisage cultural institutions in the Albertine Graben. Yet is it highly plausible that some of the land that will be up for acquisition is trust land which the cultural institution holds in trust for the people, or land that belongs to the cultural institution. At the same time, since the hallmark of customary tenure is custom, cultural institutions are bestowed with agency on matters of land for their people. Execution of this agency may require participation in processes that may affect the customary land rights of holders of customary land within the customary spaces of cultural institutions in the Albertine Graben. It is therefore important to clearly define the level of involved of these institutions in the LARF.

K. Trans Boundary issues and Land Acquisition in the Albertine Graben

A wider contextual framework within which land acquisition processes are to be undertaken is invaluable as an informative tool in the preparation and implementation stages of land acquisition and RAPs. The LARF contains information about the socio-economic context of the Albertine

³Such as: MEMD, MLHUD, NEMA, UNRA, UIA, Uganda Land Commission

Graben, but does not venture into the Trans boundary contexts which in our view are very pertinent.

It is well documented that following the discovery of oil, tensions heightened between Uganda and the Democratic Republic of Congo and it is believed that their cause was linked to mineral resources in the area.⁴ Although they could be cast away as historical in nature, the border disputes between Uganda and the Democratic Republic of Congo have over the years shaped relationships between the two countries and also heightened suspicion among the leaders of the two countries about resources in the region. It is our view that these Trans boundary issues should be teased out as pertinent to the contextual analysis in the LARF. Does this context imply any thing for security in the Albertine Graben and the increased securitization? What mechanisms will be put in place to ensure smooth processes of land acquisition within a border context where people freely move in and out of one country? How will any arising issues of persons displaced as a result of the above context be handled?

L. Consultation and Feedback Mechanisms

The LARF contains information on consultation and information disclosure in addition to mitigation measures to address the gaps between Ugandan legal standards and international best practices. There is a tendency to engage in consultation processes in a top-down measure to tick the box in fulfillment of the requirement to consult. It is therefore important that the LARF emphasizes the need to ensure meaningful consultations of all people and participation of vulnerable/minority groups. Consultations should take a bottom - top approach; in which case processes begin at the community level, inform the next administrative level, which then feeds into the national level. The preceding should be the norm, rather than top - bottom approaches to consultation. The necessary steps for mobilizing communities to participate and the framework for other necessary processes and steps to achieving meaningful consultation need to be described.

There is a possibility that consultation can turn out to be perfunctory. Establishment of proper feedback mechanisms between the JV -partners and the PAPs could be one of the ways to ensure that consultation is meaning full; the PAPs can follow up or get to know efforts that are being put in place to address their concerns and challenges if at all. Such feedback mechanisms should be elucidated upon in the LARF.

M. Livelihood Restoration upon displacement

Livelihood restoration upon resettlement is not anchored in Uganda's laws and policies on land acquisition, but is considered a good international practice. The LARF extends more to cash compensation and resettlement and not livelihood restoration. Yet, cash compensation and resettlement may not lead to restoration of the livelihoods lost as a result of land acquisition and displacement. The LARF should make an attempt at describing how lost livelihoods can be restored.

⁴ See For example; Okumu W. *Resources and border disputes in East Africa*, J. E. Afr. Stud. 4 279-2977 & Alstine, van J, et al, *Resource governance dynamics: The Challenge of new oil in Uganda*, Resources Policy 40, 2014, 48-58, AT 51.

Conclusion

Clearly, an effort was made in to try and cover sufficient ground in terms of thematic areas in the LARF. Considering that the framework is intended to offer guidance in the development of other pertinent documents such as the Resettlement actin plan, more needs to be done to extent the coverage of the themes in this LARF. Examples of what needs to be included are environmental and wildlife conservation laws, a critical approach to the legal framework on prerequisites for land acquisition, institutional mandates in situations of land acquisition, elaboration on the *problematiques* of acquiring customary land, who of the government and JV- partners plays the primary role in land acquisition in the Albertine Graben, etc. This report contains pointers to what needs to be done to improve the LARF.