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**THE COMMISSION OF INQUIRY INTO LAND MATTERS IN UGANDA CHAIRED
BY JUSTICE CATHERINE BAMUGEMEREIRE.**

EXPERT OPINION ON THE NEXUS BETWEEN LAND ACCESS & EXTRACTIVES

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THE REPUBLIC OF UGANDA

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Abstract

Access to land is essential for the successful operation of oil, gas, energy and mining projects. However, often a time, there are social, environmental and economic issues associated with acquiring land for these projects. Socially, many people are relocated to unfavourable places; economically, local communities are not given adequate compensation; environmentally, extractive industries are associated with pollution which negatively impact on the agricultural and fishing industries relied on by the local communities. In this short paper, I explore the situation in Uganda with the main objective of analysing the nexus between land access and extractives.

The paper follows the questions addressed to me on the 24th of October 2014, when I appeared as an expert witness before the Commission of Inquiry into Land matters in Uganda chaired by Justice Catherine Bamugemereire. This paper is therefore intended to address some of the issues that were raised by the commissioners and offer recommendations to the Commission of Inquiry and the Ugandan government. In this respect, the key issues to be addressed include:

1. What is the nexus between land and extractives in Uganda and what key issues should policy makers take into consideration?
2. How can the Ugandan government improve on the mining licencing regime in the country?
3. How can the government of Uganda improve and implement the existing mining laws to ensure that mining closures and land rehabilitation are adequately implemented at the end of the mining activities?

0.1. Note about the Expert Witness

Victoria is currently a Research Fellow at the Extractives Hub based at Centre for Energy, Petroleum Mineral Law and Policy (CEPMLP), University of Dundee in the United Kingdom. She is a holder of a PhD in International Energy Law and Policy. She offers extensive experience in the Energy and Mining sectors having worked with various organisations and institutions including assignments for: The Queen Mary University of London (EU Energy Project); The Energy Charter Secretariat in Belgium; The African Energy and Minerals Management Initiative (AEMI) in Uganda; The Columbia Center on Sustainable Investment in New York; the East African Community Secretariat (EAC) in Tanzania; the University of Dundee in Scotland; the Southern African Development Community Secretariat (SADC) in Botswana; Extractive Resource Hub in the UK; International Arbitration Case Law in New York (editor); and NEM energy and mining consultancy in Uganda. She has also worked with both the private and public legal sectors of Uganda including Kakuru & Co. Advocates and the Anti-Corruption court of Uganda.

Victoria is the founder and Executive Director of The African Energy and Minerals Management Initiative (AEMI), an NGO aimed at among other reaching out to artisanal miners and ensuring that the resources benefit the local people. Victoria is an author and has widely published on topics relating to oil, gas, renewable energy, land, climate change and mining in Africa. Her latest two books being, "Mining and the Law in Africa: Exploring the Social and Environmental Impacts" and another book on "Energy Poverty and Access Challenges in Sub-Saharan Africa: The Role of Regionalism". She also has an upcoming book on Land Access and Extractives in Africa.

Victoria has an active YouTube Channel i.e. Victoria Nalule and Podcast i.e. Dr. Victoria Nalule both focused on energy and mining discussions. She has also been invited as a guest lecturer, speaker and panellist in several forums, universities and conferences discussing topics concerning oil and gas; climate change, renewable energy, mining, transitioning to a low carbon economy, energy poverty and access just to mention but a few.

1. Introduction: Nexus between Land & Extractives

In recent years, Uganda just like other African countries has attracted enormous investments in the energy and mining sectors. Basically, extractives include oil, gas and mineral resources. The country has enormous mineral reserves including among others gold, copper, iron ore, steel, tin, tungsten, refined cobalt, salt, and refined lead. These minerals are distributed across the country and are found in areas such as Kamwenge, Karamonja, Busia, Tororo, Kanungu, Mubende, Moroto, Gulu just to mention but a few.¹ With respect to hydrocarbons, the country discovered commercially viable quantities of petroleum in 2006 and is estimated to hold 6.5 billion barrels of which 1.2–1.7 billion barrels are estimated to be recoverable and 500 billion cubic feet of proven reserves of natural gas.²

Generally, energy and mining projects require massive areas of land to be effective. In the acquisition of the required land however, social, environmental and economic issues do arise. Socially, many people are relocated to unfavourable places; economically, local communities are not given adequate compensation; environmentally, extractive industries are associated with pollution which negatively impact on the agricultural and fishing industries relied on by the local communities.³ Although there are many issues to be addressed with respect to land access and extractives, the focus in this short report will be on the key questions raised during my hearing as an expert witness before the Commission of Inquiry into land matters in Uganda. The focus will be on land rehabilitation; mining licenses; relocation and compensation.

1.1.Land Access in the perspective of Energy and Mining projects

There is enormous literature on the issue of land and as such this paper will not dwell on what land entails but rather highlights the issues relating to compensation. Nevertheless, ownership of land is key in determining who owns the legal rights and title of such land. In some countries, citizens have a right to own land while in other jurisdictions, the ownership of land is vested in

¹ For more information on the mining sector of Uganda, see, Nalule V.R., Ayebare R.T. (2018) Uganda: Mineral Policy. In: Tiess G., Majumder T., Cameron P. (eds) Encyclopedia of Mineral and Energy Policy. Springer, Berlin, Heidelberg

² For more information on the energy sector of Uganda, see, Nalule V.R., Rukundo A.T. (2018) Uganda: Energy Policy. In: Tiess G., Majumder T., Cameron P. (eds) Encyclopedia of Mineral and Energy Policy. Springer, Berlin, Heidelberg

³ Nalule, V.R., 2018. *Energy Poverty and Access Challenges in Sub-Saharan Africa: The Role of Regionalism*. Springer.

the State. In Uganda for instance, the ultimate ownership of land is vested in the country's citizens. In this respect, the Supreme law of the land which is the Constitution under Article 237(1) and (3) vests the ownership of land in the citizens of Uganda. The Article further outlines the different tenure systems under which the land can be held.⁴

The owner of the land is entitled to compensation if oil, gas and mining activities are to be carried out on his/her land. The reasoning behind compensation is based on the fact that a mining title does not per se extinguish the rights of the landowner, rather it grants the owner of a mining licence a right to exploit the natural resources present in the subsoil which definitely requires access to the surface.⁵ In Uganda, natural resources including hydrocarbons and minerals are held by the government on behalf of the people. In this respect, the State will intervene to ensure that the land owners are fully compensated. If no agreement can be reached then the State may move to expropriate the land for mining purposes, in which case the land owner will still be entitled to compensation. A question may arise on what to consider when compensating people where oil, gas and mining activities take place?

1.2.What to consider when compensating people in oil, gas and mineral rich areas?

- a) Considering the fact that most land where mining is carried out is located in rural areas with communities who depend on agriculture, farming and fishing, it becomes imperative to calculate such compensation taking into consideration of the livelihood of the local communities and how they will negatively be impacted if they can no longer have access to their land to carry out their daily activities.
- b) There is a need to ensure that women and children benefit from this compensation. In this respect policy-makers should ensure that the wife and older children take part in the negotiations before the final compensation is agreed upon.
- c) There is also a need to have a resettlement plan so that the people have better options for relocating.

⁴ The Constitution of Uganda, 1995, as amended

⁵ Nalule, V.R., *Mining and the Law in Africa: Exploring the social and environmental impacts*. Springer Nature.

- d) Compensation may also consider disruption caused to the land owner. In Uganda, this is well stipulated under Section 83 of the Mining Act, 2003.

The above therefore clearly brings out the nexus between land and extractives. We should note that the land tenure system also greatly affects the formalization of artisanal and small-scale mining (ASM) which is a big issue in Uganda.⁶ Another issue to consider with respect to land and extractives is the issue of pollution. As experienced in other African countries such as Nigeria and South Sudan, the local communities where these resources are extracted from are often burdened with oil spills, gas flaring, air and water pollution just to mention but a few.⁷

Although there are various advantages associated with these infrastructural, mining and energy developments, if not well managed they could be counterproductive and unsustainable leading to the privatization of gains and socialization of losses. It is against this stark background that governments and policy makers in African countries such as Uganda are keen to address the issue of land access and extractives. Although there are many issues to be addressed with respect to the topic, the specific questions to be addressed in this paper include:

1. What is the nexus between land and extractives in Uganda?
2. How can the Ugandan government improve on the mining licencing regime in the country?
3. How can the government of Uganda improve and implement the existing mining laws to ensure that mining closures and land rehabilitation are adequately implemented at the end of the mining activities?

In addressing the questions above, a three-step frame work is employed in the form of sections. Section one is the introduction and it addresses the nexus between land and extractives; section two tackles the issue of mining licences; section three tackles the issue of land rehabilitation; section four gives the concluding remarks and recommendations to the Ugandan government.

⁶ The issue of ASM will not be explored in this short brief but we are open to give guidance upon a request from the Ugandan government.

⁷ For more information on the environmental impacts of mining see, Nalule, V.R., 2020. Social and Environmental Impacts of Mining. In *Mining and the Law in Africa* (pp. 51-81). Palgrave Pivot, Cham. My fieldwork video on mining closures can also be accessed at https://www.youtube.com/watch?v=u5t0_n7Gr5w

2. Mining Licensing regime in Uganda: what is the problem?

During the expert witness session, the commissioners raised an issue of the inadequate mining licencing regime in Uganda. The issue of concern for the commissioners was that, most people who own the mining licences are either relatives or friends of the people in power who in most cases lack the necessary capital and expertise to carry out mining activities on a large-scale. Consequently, this has increased corruption and bribery in the sector making it hard for genuine mining investors to acquire licences. Before addressing this issue, a brief background of mining licences is discussed.

2.1.A synopsis of mining licenses

A mining licence basically gives a person/ company the rights to mine the specified minerals on a defined area for an agreed period. Mining licences in Uganda include a prospecting license, an exploration license, a retention license, and a mining lease or location license.

Different licences grant the holder different rights. The prospecting license for instance grants the holder prospecting rights while an exploration license grants exclusive rights to carry out exploration operations in the land in question. In Uganda, there are steps and requirements for the acquisition of these licenses as stipulated in the Mining Regulations under Part II, III, IV, V, VI, and VII.⁸ These steps will not be fully discussed in this short paper but rather we should be aware of the relevant institutions responsible for granting mining licenses.

The key institutions responsible for the mineral sector in Uganda include the Ministry of Energy and Mineral Development; the Directorate of Energy and Mineral Development; and the Geological Survey and Mines Department. Key officials include the Minister, the Commissioner and other senior officials. The Commissioner for the Geological Survey and Mines Department has several duties regarding mining licences and leases and as such has the powers of granting, transferring, cancelling, suspending and renewing mining licences/leases or export and import permits; powers of inspection and information gathering. These powers can also be exercised by the Minister or delegated to other senior officials in the Ministry of Energy and Mines.⁹

⁸ Uganda Mining Regulations, 2004

⁹ For a detailed discussion on Mining Licences see, Nalule, V.R., 2020. Regulation of Mining in Africa. In *Mining and the Law in Africa* (pp. 19-50). Palgrave Pivot, Cham.

2.2.How can we address the issue of mining licences in Uganda?

To address this challenge, there are some key things the government of Uganda should consider including:

1. Transparency and accountability: geologic map and mining data base

There is a need for transparency and accountability in the mining sector. First, the public should have access to the geologic map that shows the various minerals and hydrocarbons in the country and where these are located. Additionally, the ministry of energy and minerals should establish a data base with the names of companies or individuals who are in possession of mining licences in the different parts of the country. This data base should entail the date these individuals acquired the mining licences; what developments have taken place so far; what minerals they are exploring and other relevant information. The data base should be made available for public scrutiny. This will enable the policy-makers to be aware of the dormant mining license holders.

2. Need for checks and balances

We also note that there is a need for checks and balances in the relevant mining institutions. We need to ask, who is responsible for issuing out mining licences? Who is responsible for ensuring that the people who are in possession of these licences meet the necessary criterion? Who is responsible for cancelling these licenses? Now, from the overview above, we note that the Commissioner of Mines has these powers. Policy makers should ask themselves if it is safe to give so much powers to an individual without any checks? In order to ensure that there is transparency, accountability and check & balances: the Ugandan government should establish another organ/person that can carry out these responsibilities or whom the commissioner of mines can be accountable to. This will solve the issue raised by the commissioners of the mining licenses being in possession of family and friends of the officials.

3. Land rehabilitation and mining closure

During the expert witness session, the commissioners raised an issue of the abandoned mines in the different parts of the country and they asked for guidance on how the Ugandan government can solve this issue. This section therefore gives a brief background about mining closures and makes recommendations to the Ugandan government.

3.1.What is Mine Rehabilitation?

Mine rehabilitation is the process where the post-mined landscape is restored to enable the use of land for other activities. Rehabilitation works consist of reforestation, removal of all installation and ensuring the safety of perimeters. Whereas it is the duty of the mining company to establish and present a mine rehabilitation plan and finance the process; on the other hand, it is the duty of the state to supervise and ensure that the company complies with the plan.

Various mining legislations have provisions that require companies to enforce rehabilitation plans. Many mining communities in Uganda have been faced with fatal accidents, health and safety issues and environmental degradation resulting from the unclosed mines. Additionally, local communities are mostly dependent on agriculture and run the risk of not re-using the land after the mine cycle if the open mine is left unattended. All these have necessitated the rehabilitation provisions in mining laws.

Basically, provisions for rehabilitation and mine closures have their basis from national constitutions and other international instruments such as the Basel Convention. In Uganda, the relevant legal provision is Section 66 of the Mining Regulation, 2004 and Section 110 of the Mining Act, 2003.

Whereas there are laws with respect to mine closures and land rehabilitation, these have not been adequately enforced in Uganda.

3.2.Key considerations for policy-makers in Uganda

Ensure that the mining companies have a mining closure plan before they are granted mining licenses.

Financial assurances: The mining company must prove that it has the necessary money and finances required to ensure a successful mining closure. This may take a form of creating a rehabilitation fund; security deposit or payment of a provision by a mining company. Financial assurances can be provided through among others: irrevocable letters of credit; trust funds; corporate guarantees and cash deposits.

The mining closure plan should include a schedule for post-closure monitoring. This is essential to ensure that environmental and social conditions have been adhered to including ensuring good quality of the ground water, physical site and surface water.

Following up on the abandoned mines and bringing legal cases against the mining companies concerned

4. Conclusion and recommendations

There are various issues to be addressed with respect to land access and extractives however this short report has focused on the main questions asked by the commission of inquiry into land matters in Uganda. We note that Uganda has good laws with respect to mining and energy albeit there is need for implementation. The key recommendations with respect to the issues addressed in this report are:

1. Compensation

In calculating compensation, policy-makers should take into consideration the livelihood of the local communities who mostly rely on fishing and agriculture and how they will negatively be impacted if they can no longer have access to their land to carry out their daily activities. Additionally, women and children should be represented and government should have a resettlement plan.

2. Mining licences

Ensure transparency and accountability in the mining licencing regime by sharing with the public a geologic map and mining data-base with all the relevant information about the mining activities in the country. There is also a need for checks and balances especially with respect to the powers and responsibilities of the Commissioner of mines to ensure that the right people are in possession of mining licences.

3. Land rehabilitation

Policy-makers should ensure that a company produces a mining closure plan before they are granted mining licences. The financial assurances should also be taken seriously, and a land rehabilitation fund must be set up.

Besides the above three, there are many issues that must be addressed including Artisanal and Small-Scale Mining (ASM); gender equality in the extractive industries; environmental protection and climate change; local content; community engagement just to mention but a few. I am available to provide insights on these once called upon by the Ugandan Government.