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# Overlapping Land and Natural Resource Property Rights in Africa

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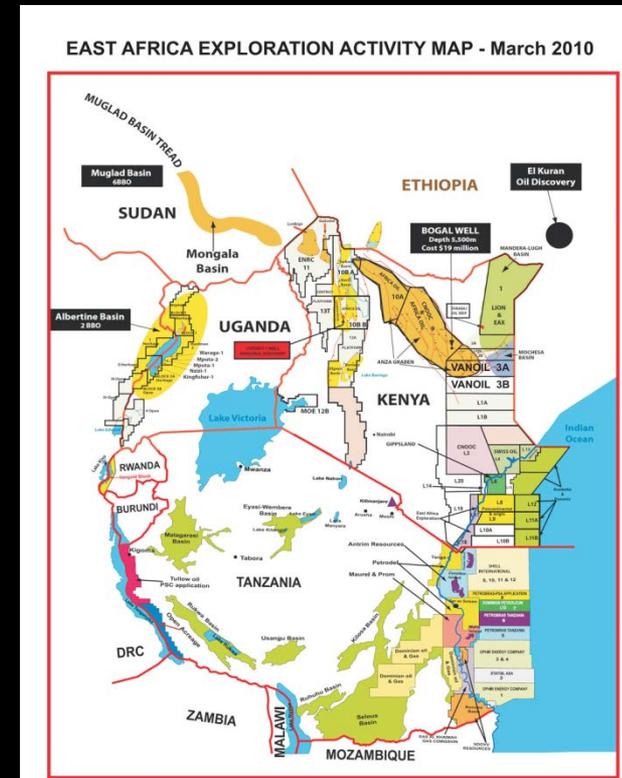
ABCG

2 October 2012



# Overlapping Rights

- Attention on overlapping land claims
- Less on overlapping land & NR rights
- Distinct property rights regimes
- Land rights often limited to surface rights



# ABCG Research

- Rights of landholders; authorities of NR licensees
- Petroleum, minerals & trees/forests
- Uganda, Kenya, Ghana, Liberia
- 5 Issues:
  - Ownership & control
  - Notification & consent
  - Licensee authorities
  - Landholder rights
  - Compensation

# Legislation

## Ghana

- Minerals and Mining Act, 2006
- Petroleum Exploration and Production Law, 1984
- Petroleum (Exploration and Production) Bill, 2010
- Forest Ordinance, 1954
- Forests (Amendment) Ordinance, 1954
- Timber Resources Management (Amendment) Act, 2002 (from 1998)
- Timber Resource Management Regulations, 1998

## Liberia

- Act Adopting a New Minerals and Mining Law, 2000
- Act Adopting a New Petroleum Law of the Republic of Liberia, 2002
- Act Adopting the National Forestry Reform Law, 2006

## Uganda

- Mining Act, 2003
- Mining Regulations, 2004
- Petroleum (Exploration and Production) Act, 1985
- Petroleum (Exploration and Production) Regulations, 1993
- Petroleum (Exploration, Development and Production) Bill, 2012
- National Forestry and Tree Planting Act, 2003

## Kenya

- Mining Act, 1940
- Petroleum (Exploration and Production) Act, 1986
- Petroleum (Exploration and Production) Regulations
- Petroleum (Amendment) Rules, 2006
- Forest Act, 2005

# Minerals



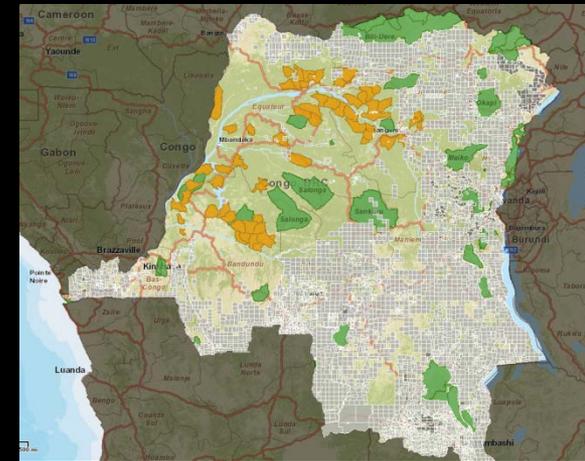
## Ownership & Control

- Property of state &/or vested in govt
- Access/use requires govt approval

## Notification & Consent

- Privately-held land not excluded
- Uganda/Ghana -govt must *notify* landholder in writing before license is granted.
- Ghana-President can authorize use of land or acquire in compulsory manner
- Kenya-requires *consent* of landholder; if “unreasonably withheld,” govt may acquire land in compulsory manner

# Minerals



## Licensee Authorities

- Licensee has considerable authority
- Liberia-mineral rights are “absolute and supersede the rights of landowners or occupants of lands”
- Ghana-mining license allows licensee to “conduct mineral operations...without limitation”
- Uganda-licensee must make efforts to not adversely affect the interests of the landholder; mining on cultural sites requires written consent of community. Licensee can *acquire-or be asked by landholder to acquire-exclusive* use of land

# Minerals

## Landholder Rights

- Landowner can apply for rights to minerals; Liberia-landowner has a right of first refusal
- Ghana/Uganda-landowner retains rights to farm & graze livestock insofar as it does not interfere
- Ghana-cannot upgrade to higher value crop or erect building without consent of licensee
- Uganda-interference is grounds for terminating ag

## Compensation to Landholder

- Compensation for losses & damages
- Liberia-“for any diminution in the value of land”
- Ghana/Kenya-for disturbance of the rights of the owners or occupiers
- Uganda-landholder receives compensation or “share of royalties”

# Petroleum



## Ownership & Control

- Property of state &/or vested in govt
- Use requires govt approval

## Notification & Consent

- Privately-held land is not excluded
- Govt not required to notify landholder, but...
  - Ghana-licensee must notify & consult landholder to operate; landholder “shall” consult with licensee and permit operations
  - Kenya- licensee must give 48 hr notice &, if required by landholder, a security for compensation. Water use requires separate agreement; use of sand & stone requires consent of landowner
- Liberia/Ghana-govt can acquire land in compulsory manner
- Kenya-govt can acquire land, establish easements, order temporary occupation, etc.

# Petroleum



## Licensee Authorities

- Licensees have considerable authority
- Kenya-licensee must operate to protect human life & env. Cannot enter places of worship, sacred buildings, burial grounds, etc.
- Uganda-licensee must operate in responsible manner & must have written consent of owner for use of occupied/utilized land. If “unreasonably withheld,” govt can override. Licensee can acquire-or be asked by landholder to acquire-exclusive use
- Liberia-Need for “mutual agreement” between landholder & licensee. If agreement cannot be reached, govt can intervene. Licensee cannot operate on land within 50m of buildings, burial grounds, wells, etc.

# Petroleum

## Landholder Rights

- No significant landholder rights
- Liberia-cannot interfere with operations but can require land to be acquired by govt
- Ghana-interference with petroleum operations is a crime
- Uganda-cannot erect building without written consent of licensee; landowner can graze stock and farm insofar as it does not interfere

## Compensation to Landholder

- Kenya- compensation for compulsory acquisition of land, damages & disturbances of rights of land owner
- Ghana-damages & disturbances of owner's surface rights
- Uganda-damages & disturbances of land rights; rent for exclusive use
- Liberia-damages & annual compensation for use; compensation for land acquired by govt in compulsory manner

# Trees and Forests

## Ownership and Control

- Liberia-all forests held in trust by govt; all natural & indigenous forests are state controlled. Communities can obtain rights
- Ghana-all natural trees are owned by state; planted trees owned by planter
- Kenya-private forests
- Uganda-govt has no ownership of trees/forest produce on private land. Private forests must be registered to be recognized private forests
- Govt control over private trees/forests (*e.g.*, mngt plans, govt approval, licenses, certain species are protected, etc.)

# Trees and Forests

## Notification and Consent

- Liberia-permission of landowner is required but govt can intervene
- Ghana-govt must have written consent of landowner and holders of stool land to extract natural trees (but no share of profits); unallocated stool land is open to logging.

# Options to Strengthen Land Rights

- Land rights include NR rights
- Right of first refusal to NRs
- Opportunities to engage in reviewing bids
- Notification and consent to use NRs
- Landholder rights to use land or provided alternative land
- Landholder can request acquisition
- Social and environmental safeguards
- Compensation for damages & disturbances, rent & share of profits

THANK YOU