

OVERLAPPING PROPERTY RIGHTS: WHEN RIGHTS TO NATURAL RESOURCES CONFLICT WITH RIGHTS TO LAND

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This report was made possible by the generous support of the American people through the United States Agency for International Development (USAID) under the terms of Cooperative Agreement No. RLA-A-00-07-00043-00. The contents are the responsibility of the Africa Biodiversity Collaborative Group (ABCG). Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of USAID or the United States Government. This publication was produced by **the World Resources Institute** on behalf of ABCG.



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In much of Africa, the bundle of land rights that most rural people might legally hold is relatively small—usually limited to surface rights and certain rights to some natural resources (e.g., rights to water for domestic use). Separate, distinct property rights regimes exist for many high-value natural resources (e.g., oil, natural gas, minerals and wildlife), governed by different laws and administered by various public institutions. The rights to these natural resources are often allocated to outside, commonly foreign entities for large-scale operations. As a consequence, one individual or institution may legally hold the rights to the land while other entities hold the rights to the natural resources on or under the same plot of land. This policy brief provides a review of the principal (framework) mineral and petroleum laws in Ghana, Kenya, Liberia and Uganda (Box 1). The laws were reviewed to assess the authorities of natural resource rights holders (hereafter licensees) operating on privately-held land, and the rights of landholders to exercise their land rights (including procedural and substantive rights).

Box 1. Laws, Regulations and Bills Reviewed for Research

Ghana

Minerals and Mining Act, 2006
 Petroleum Exploration and Production Law, 1984
 Petroleum (Exploration and Production) Bill, 2010

Liberia

An Act Adopting a New Minerals and Mining Law, 2000
 An Act Adopting a New Petroleum Law of the Republic of Liberia, 2002

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

Kenya

Mining Act, 1940
 Petroleum (Exploration and Production) Act, 1986
 Petroleum (Exploration and Production) Regulations, 1986
 Petroleum (Amendment) Rules, 2006
 Model Production Sharing Contract

This policy brief summarizes the findings from the paper “[Overlapping Land and Natural Resource Property Rights: A Comparative Analysis from Africa](#)” by Peter G. Veit with Gaia Larsen. Additionally, in the interest of space, the citations in this policy brief do not directly quote the passages of the law they are referencing. Please refer to the full paper for additional information.

1| Ownership and Control: *Who owns and controls the natural resource? Can governments acquire privately-held land in a compulsory manner for mineral and petroleum purposes? (Boxes 2 and 3)*

• **Minerals and petroleum are the property of the state**

The mineral laws in Ghana, Kenya, Liberia and

Uganda all establish that minerals are the property of the state; those of Ghana, Kenya and Uganda also establish that minerals are vested in the government (Liberia’s law is silent on this matter). The petroleum laws of the same four countries establish that petroleum is the property of the state, but none provide that petroleum is vested in or held in trust by the government for the people.

• **Mineral and petroleum operations require government authorization; use without government authorization is a crime**

The mineral laws and petroleum laws in Ghana, Kenya, Liberia and Uganda provide that exploration and extraction of minerals and of petroleum require government authorization. The mineral laws in all four research countries, as well as the petroleum laws in Ghana, Liberia and Uganda, also provide that conducting mineral operations and petroleum operations without government approval is an offense and establish specific penalties for such offenses (Kenya’s petroleum law is silent on this matter).

• **Most privately-held land is available for mineral and petroleum operations**

Most land, including most privately-held land, is open for mineral operations, although some laws restrict certain mineral operations from specific land. The petroleum laws in Ghana, Kenya, Liberia and Uganda establish that some privately-held land is open for petroleum operations. Except with special authorization, licensees in Liberia cannot execute petroleum operations on “Land located less than fifty meters from any building whether religious or not, Governmental building, or those in use by a public entity, walled enclosures, court and gardens, residence and groups or residences, villages, settlements, cultural reserves, burial grounds, wells, water sources, reservoirs, roads, paths, railroads, water drains, pipelines, work declared to the (sic) of public interests and works of art.”ⁱⁱ

- **In some countries, government can acquire privately-held land in a compulsory manner for mineral or petroleum operations**

The constitutions provide the governments in the four countries with the authority to acquire privately-held land in a compulsory manner, principally for various public interest purposes. However, only the mineral laws of Ghana and Kenya provide government with the authority to exercise this power specifically for the purpose of conducting mineral operations (the mineral laws in Uganda and Liberia are silent on this matter, although Uganda’s Constitution of 1995 (amended 2005) and land acquisition law do not authorize the government to acquire land in a compulsory manner for economic development purposes.) Ghana’s mineral law provides that “Where land is or required to secure the development utilization of a mineral resource, the President may acquire the land or authorize its occupation and use under an applicable enactment for the time being in force.”ⁱⁱⁱ In practice, the government rarely exercises this authority partly because the mineral law provides licensees with broad authorities to conduct operations on privately-held land and the costs of compulsory acquisitions can be considerable.

The petroleum laws in Ghana and Uganda are silent on compulsory land acquisition for the purposes of petroleum operations, although Ghana’s petroleum bill (2010) provides for this authority.^{iv} Liberia’s law, however, provides that “In order to facilitate that realization of petroleum operations, installations and related activities, the State may expropriate private land and declare same for public, upon the request of the National Oil Company of Liberia, for the purposes of public interest, convenience and necessity.”^v In Kenya, the Model Production Sharing Contract provides that, at the request of licensees, the government may acquire privately-held land, set apart Trust Land,^{vi} and grant “way-leaves, easements, temporary occupation or other permissions within and without the contract area as are necessary to conduct the petroleum operations.”^{vii}

Box 2. Ownership and Control of Minerals				
	Ghana	Kenya	Liberia	Uganda
CRITERIA	Minerals and Mining Act, 2006	Mining Act, 1940	An Act Adopting a New Minerals and Mining Law, 2000	Mining Act, 2003
Are minerals the property of the state?	Y [S1]	Silent	Y [S2.1]	Y [S3]
Are minerals vested in the government?	Y [S1]	Y [S4]	Silent	Y [S3]
Can the government acquire private land in a compulsory manner for mineral operations?	Y [S2]	Y [S7(3)]	Silent	Silent
Can the government allocate mineral rights under private land?	Y [S3]	Y [S7(1)(m)]	Y [S2.2]	Y [S3]
Do mineral operations require government approval?	Y [S9(1)]	Y [S6(1)]	Y [S4.1; S6.1]	Y [S4(2)]
Are mineral operations without government approval a crime?	Y [S106]	Y [S6(1)]	Y [S22.1]	Y [S4(3)]
Is a penalty established for mineral operations conducted without government approval?	Y [S108]	Y [S6(1)]	Y [S22.1]	Y [S4(3)]

Box 3. Ownership and Control of Petroleum				
	Ghana	Kenya	Liberia	Uganda
CRITERIA	Petroleum Exploration and Production Law, 1984	Petroleum (Exploration and Production) Act, 1986	An Act Adopting a New Petroleum Law of the Republic of Liberia, 2002	Petroleum (Exploration and Production) Act, 1985
Is petroleum the property of the state?	Y [S1.1]	Y [S3]	Y [S3.1; Preamble; S2.4.1]	Y [S2.1]
Is petroleum vested in the government?	Silent	Silent	Silent	Silent
Can the government acquire private land in a compulsory manner for petroleum operations?	Silent	Silent	Y [S9.4]	Silent
Can the government allocate petroleum rights under private land?	Y	Y	Y [S3.2]	Y
Do petroleum operations require government approval?	Y [S2.1]	Y [S4.1]	Y [3.1.i; S2.4.3]	Y [S2.2]

Are petroleum operations without government approval a crime?	Y [S31.1.a & d]	Silent	Y [S11.3]	Y [S2.3]
Is a penalty established for mineral operations conducted without government approval?	Y [S31.1.d]	Silent	Y [S11.3]	Y [S2.3]

2] Notification and Consent: *Must landholders be notified and provide their consent before rights to the natural resource on or under the land can be granted to another individual or institution (hereafter licensee)? Must landholders be notified and provide their consent before the licensees can enter onto the land and exercise their rights?*

- **Governments are not required by law to notify or have the consent of landholders to establish mineral or petroleum blocks over privately-held land**

The mineral laws of all four research countries do not require governments to notify or have the consent of landholders to establish mineral blocks over privately-held land. Similarly, the petroleum laws in all four research countries do not require governments to notify or have the consent of the landholder before establishing petroleum blocks.

- **Governments are not required by law to notify or have the consent of landholders to allocate petroleum rights over privately-held land**

The petroleum laws in all four research countries do not require governments to notify or have the consent of the landholder before granting petroleum rights.

- **Governments are not required by law to have the consent of landholders to allocate mineral rights over privately-held land, although some laws require governments to notify the landholders**

In Ghana and Uganda, the mineral law requires the government to notify the landholder when issuing a mining license. In Ghana, the Minister must provide written notification of a pending license to the landholder, chief and local government not less than 45 days prior to allocating the license. In Uganda, the Mining Regulations (2004) provide that the Commissioner must notify the landholder and local government of the decision to grant a mining license and provide a map of the mining area. The mineral laws do not require the government to have the landholder's consent to issue a license.

- **In most countries, licensees must notify landholders before beginning mineral and petroleum operations; in some countries, licensees must have the consent of landholders before beginning mineral and petroleum operations**

The mineral laws require the licensee to notify and, in some countries, to have the consent of the landholder before beginning operations. In Kenya, the mineral law provides that mining of privately-held land requires the consent of the owner. If, however, consent "is unreasonably withheld or the Minister considers that any withholding of consent is contrary to the national interest, the Minister may" acquire the land in a compulsory manner.^{viii} This provision provides the Minister with considerable discretion to interpret "unreasonably withheld" and "national interest," rendering the consent requirement essentially useless.

In Uganda, the mineral law requires that the licensee have the written consent of the landholder to operate in certain areas. Specifically, the licensee cannot mine within 200 meters of occupied building, five meters of land prepared for agricultural crops, and 100 meters of cattle dips or tanks "without the written consent of the owner or lawful occupier"^{ix} and with "respect of or on any land, which is held communally for cultural rites, without the written consent of the community concerned."^x

In some countries, the petroleum laws require licensees to notify the landholder before beginning operations and, in Liberia, "mutual agreement" between the landholder and the petroleum operator is required, but if agreement cannot be reached, the government can intervene.^{xi}

In Ghana, before the commencement of petroleum operations, "...all persons having a title to or interest in the land on which such operations are to be carried out shall be notified of the purpose, nature and location of the proposed operations..."^{xii} The landholders, however, "...shall, after consultation with the Corporation, permit the carrying out of such operations..."^{xiii} Ghana's petroleum bill (2010) goes further by requiring permission—"Where the conduct of petroleum operations is likely to affect any lawful economic or social interest or activity the Corporation shall negotiate the appropriate permission required from the relevant authorities and interested persons and the Contractor or the Corporation shall pay the agreed compensation to the interested persons."^{xiv}

In Uganda, licensees must have the written consent of landholders to use land within 200 meters of occupied buildings, within 50 meters of cleared and ploughed agricultural land (including land that was farmed the previous year) and within 100 meters of ditches, tanks, dams or water used by man or cattle.^{xv} However, "...where consent of the lawful occupier is unreasonably withheld, the Minister may authorise the holder of the licence to exercise all or any of his or her rights under the licence on such land subject to such conditions as the Minister may deem fit..."^{xvi} The Uganda's petroleum bill (2012) provides the same restrictions,^{xvii} but also requires licensees to produce their license to landholders.^{xviii}

In Kenya, the petroleum law provides that licensees must give landholders a 48-hour notice before entering their land and, if required by landholders, must provide a security for compensation.^{xix} Further, the Petroleum Regulations (1986) provide that licensees cannot enter certain land, including places of worship, sacred buildings, burial grounds or "any area situated within fifty metres of any building in use, or any reservoir or dam."^{xx} Entry into these areas requires the consent of the competent authority (including customary leaders).^{xxi}

- **In some countries, mineral and petroleum licensees must have the consent of landholders to use certain natural resources (e.g., gravel and stones)**

Kenya's Mining law (1940) provides that for prospecting, the licensee may use "...with the consent of the owner or occupier of private land or on tendering to the owner or occupier a reasonable sum in payment therefore, any fuel other than standing timber."^{xxii}

Similarly to some mineral laws, the petroleum laws provides that the use of certain natural resources on privately-held land requires the permission of landholders. In Kenya, the Model Production Sharing Contract provides that "The contractor may, for the purpose of the petroleum operations, use gravel, sand, clay and stone in the contract area—but not in—(a) Trust land without a licence...; (b) other private land without the consent of the owner..."^{xxiii}

3] Licensee Authorities: *What rights and authorities do licensees have to use privately-held land to exercise their rights to natural resources?*

- **Licensees can acquire exclusive use of privately-held land for mineral or petroleum operations by purchase or lease, or by requesting the government expropriate and clear the land**

The mineral laws in all four research countries provide licensees with broad authorities to conduct mineral operations on privately-held land, including using the land and certain natural resources to exercise their mineral rights. In Liberia, the law provides that all mineral licenses must provide the holder with various rights, such as the rights to erect buildings, construct roads, dig drainage ditches, make trenches and cut timber for mining operations.^{xxiv}

In Ghana, the mineral lease provides the licensee the rights to "(a) conduct mineral operations including, without limitation, to mine for the specified minerals of the mining lease, (b) erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered by the holder during the mining operations, (c) take and remove from the land the specified minerals and dispose of them in accordance with the holder's approved marketing plan, (d)

stack or dump a mineral or waste product as approved in the holder's Environmental Impact Statement, and (e) conduct other incidental or ancillary activity."^{xxv}

In Uganda, the mineral law provides similar authorities to the licensees. It does not authorize the government to expropriate privately-held land for mineral operations, but does provide that licensees can obtain the exclusive use of such land.^{xxvi} Further, the enabling regulations provide that license holders can request government to remove landholders from their land.^{xxvii}

In some countries, the mineral law provides the licensee with the right to use certain natural resources for specific purposes. In Uganda and Ghana, water for mineral operations must be acquired separately.^{xxviii} In Liberia, however, the mineral law provides that the mineral license must provide holders with the right to use "water and other resources necessary for the execution of the work,"^{xxix} including timber.^{xxx} The mineral law in Kenya provides that licensees have the authorities, "subject to the provisions of any law relating to water, to lay water pipes and to make water-courses and ponds, dams and reservoirs, and to divert from a natural watercourse any water on or flowing entirely through the land..."^{xxxi} Further, the holder may "...cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes" although the licensee must "...pay to the owner or occupier of the land on which such tree is standing a reasonable sum therefore" as well as any fees and royalties that may apply.^{xxxii}

Licensees in the four research countries have considerable authority to conduct petroleum operations on privately-held land, including the authority to use certain natural resources. In Ghana, licensees have the right to conduct petroleum operations in their block,^{xxxiii} including the right to enter any land.^{xxxiv} In Kenya, the Model Production Sharing Contract provides that "The contractor shall have the right to carry out the petroleum operations within the contract area, subject to the provisions of this contract for the term hereof."^{xxxv}

In Liberia, the petroleum law authorizes licensees to "(o)ccupy the land necessary for the execution of petroleum operations and related activities"^{xxxvi} and to conduct petroleum operations, including infrastructure development.^{xxxvii} Licensees also have the authority to use water^{xxxviii} and all "ground material" for petroleum operations "subject to payment of fair compensation to the owner."^{xxxix}

In Uganda, petroleum *exploration* licenses provide holders "the exclusive right to explore for petroleum, and to carry on such operations and execute such works as may be necessary for that purpose, in the exploration area."^{xl} *Production* licenses provides exclusive rights "to carry on such operations and execute such works in the development area as are necessary for or in connection with" petroleum exploration and development.^{xli} Licensees can also obtain exclusive use of privately-held land—such use cannot be refused by landholders, although rent is negotiable.^{xlii}

- **Licensees must meet some social and environmental safeguards**

While the authorities of licensees are broad, they are not absolute. All mineral laws require licensees to meet international social and environmental standards in performing their mineral operations, although it is often not clear which standards they must adhere to (Box 4). Some mineral laws also provide that licensees must make efforts to not adversely affect the interests of the landholder. The mineral law in Uganda provides that "The rights conferred by a mineral right shall be exercised reasonably and in such a manner as not to adversely affect the interests of any owner or occupier of the land on which the rights are exercised."^{xliii}

Similarly, the authorities of petroleum licensees also have limitations. In Uganda, licensees must operate in a responsible manner on privately-held land—"The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lessee or lawful occupier of the land to which the rights are exercised..."^{xliiv} In Kenya, the Model Production Sharing Contract provides that "...the contractor shall not unreasonably deprive the users of land, domestic settlement or cattle watering place of the water supply to which they are accustomed."^{xliiv} In Liberia, when operating off-shore, "The

Licensee shall not carry out any operation or authorize any operations in such a manner as to interfere unjustifiably with navigation or fishing in the Licensed Area.”^{xlvi}

Box 4. Meeting Environmental Safeguards

In all four countries, the law provides that the licensee must meet national environmental standards in performing their mineral operations. Uganda’s law requires that all mining operations conduct an environmental impact assessment and receive approval (Mining Act (2003), Section 108), that “There shall be included in every exploration licence or mining lease granted under this Act a condition that the holder of such licence or lease takes all necessary steps to ensure the prevention and minimisation of pollution of the environment in accordance with the standards and guidelines prescribed under the National Environment Statute, 1995, Statute No. 4 of 1995” (Mining Act (2003), Section 109(1)), and that “There shall be included in an exploration licence or a mining lease granted under this Act, a condition that the holder shall submit an environmental restoration plan of the exploration or mining area that may be damaged or adversely affected by his or her exploration or mining operations” (Mining Act (2003), Section 110(1)).

Liberia’s law has similar provisions for the licensee to conduct EIAs (Section 8.4), protect environment and limit pollution (An Act Adopting a New Minerals and Mining Law (2000), Section 8.1) and restore the site (An Act Adopting a New Minerals and Mining Law (2000), Section 8.2 and 8.3). The law also does not allow the licensee to clear “the land of all trees, scrubs and other obstacles” (An Act Adopting a New Minerals and Mining Law (2000), Section 11.6). Ghana’s law requires that licensees get all the necessary approvals from environmental agencies and comply with environmental regulations (Minerals and Mining Act (2006), Section 18); restoration of the site is not in the law, but is in most licenses. Kenya’s law requires that the licensee get approval for sectoral government agencies (forestry agencies, water agencies) and requires the licensee to clean up (not restore) the site (Mining Act (1940), Section 35(2)).

The petroleum laws in all four research countries also require licensees to meet certain social and environmental standards in performing their mineral operations (Box 5). In Kenya, petroleum agreements require licensees to “Conduct petroleum operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of petroleum and other resources and the protection of the environment and human life.”^{xlvii}

4) Landholder Rights: *What rights do landholders have to use their land and what authorities do they have over licensee operations on their land?*

Box 5. Environmental Provisions in Framework Petroleum Law

Requirement	Liberia	Kenya	Ghana	Uganda
Application must include environmental plan	No	No	No	Yes
Must conduct Environmental Impact Assessment	Yes	No	No	No
Must protect the environment	Yes	Yes	No	Yes
Must meet international environmental standards	Yes	No	No	No
Must clean up any pollution	Yes	No	Yes	Yes
Must restore/reclaim the land after operations	No	No	Yes	No

• **Mineral and petroleum laws do not explicitly provide landholders many significant rights over their land**

The mineral laws vary considerably in the rights they provide landholders. While the mineral laws in Ghana, Liberia and Uganda provide landholders some rights, only the petroleum laws in Liberia and Uganda provide landholders with some rights. Rather the petroleum laws explicitly limit landholder rights and establish sanctions for non-compliance.

- **With one exception (minerals in Liberia), landholders do not have the right of first refusal over minerals and petroleum under their land**

In Liberia “The legal owner or lawful occupant of property on which minerals are discovered shall be entitled to a right of first refusal in any application...” for mining.^{xlviii} The mineral laws in Ghana, Uganda and Kenya, however, do not provide the landholder with any special rights to the minerals under the land, although s/he may apply for a mineral license.^{xlix} Ghana’s mineral law is clear on this matter, “Despite a right or title which a person may have to land in, upon or under which minerals are situated, a person shall not conduct activities on or over land in Ghana for the search, reconnaissance, prospecting, exploration or mining for a mineral unless the person has been granted a mineral right in accordance with this Act.”¹

- **Some mineral and petroleum laws restrict the construction of buildings or other structures, or to upgrade to a higher value crop without the written consent of licensees**

In Ghana, the mineral law explicitly restricts certain rights—the landholder “shall not erect a building or a structure”^{li} and “shall not upgrade to a higher value crop”^{lii} without the consent of the holder of the mining lease.

The petroleum law in Uganda provides that “the lessee or lawful occupier of any land within the area shall not erect any building or structure on the land without the written consent of the registered holder of the licence.”^{liii}

- **Some mineral laws provide landholders with the right to cultivate crops or graze livestock on their land, but only in-so-far as the activities do not interfere with mineral operations**

The mineral laws in Kenya and Liberia are silent on whether and how landholders may use their land. In Ghana, however, the law provides that “The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.”^{liv} In Uganda, landholders may also graze livestock and cultivate the land if they do not interfere with mineral operations.^{lv} Any loss to stocks and crops is borne by the landholder and any interference with mineral operations “shall be a ground for terminating such right.”^{lvi}

- **Petroleum laws do not explicitly provide landholders with the right to cultivate crops or graze livestock on their land (although Uganda’s petroleum bill provides such rights)**

In Uganda, the petroleum bill (2012) has provisions similar to the petroleum law prohibiting landholders from constructing buildings,^{lvii} but also provides that “A land owner of an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of the land insofar as the grazing or cultivation does not interfere with petroleum activities or safety zones in the area.”^{lviii} Further, it provides landholders “the right to movement and other activities where the subsurface activities do not interfere with an exclusive right, or with petroleum activities in the area.”^{lix} These provisions are consistent with those provided landholders in Uganda’s mineral law.

- **In some countries, landholders can request that mineral or petroleum licensees acquire exclusive use of their land, either by sale or lease**

By the mineral law, landholders in Uganda can request licensees to obtain exclusive use of some of his land (presumably by sale or lease).

The petroleum law in Liberia provides that landholders can request that licensees purchase their land,^{lx} but otherwise, also establishes that landholders cannot interfere with petroleum operations.^{lxi} In Uganda, the petroleum law provides that the landholder can request licensees to lease their land and pay rent for the exclusive use.^{lxii}

- **Some mineral and petroleum laws specifically provide that interference with operations is a crime punishable by fines and/or imprisonment**

In Ghana, the petroleum law provides that any person (including landholders) who unlawfully interferes, obstructs or hinders petroleum operations, commits a crime punishable by a large fine and/or imprisonment.^{lxiii}

5] Compensation: *What compensation, if any, is provided to landholders for damages, disturbances to their land rights and other losses?*

- **The mineral and petroleum laws provide landholders with compensation for losses, damages or disturbances paid by governments or licensees. Compensation is also provided landholders for the exclusive use of their land (from government expropriation or lease)**

In Liberia, the “...Landowners or Occupants of Land shall be entitled to just, prompt and adequate compensation for any diminution in the value of Land caused by disturbance, disfigurement or other factors occasioned by the Government’s exercise of its rights” over minerals.^{lxiv} In Ghana, “The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier...”^{lxv} Similar provisions are in the mineral laws in Kenya^{lxvi} and Uganda.^{lxvii} In many African countries, public interest

law organizations have represented poor and marginalized communities, ensuring they receive fair and prompt compensation for property damages (e.g., Centre for Public Interest Law (CEPIL) in Ghana).^{lxxviii}

Similar to the mineral laws, the petroleum laws provide landholders with compensation for damages and disturbances. In Kenya, the Model Production Sharing Contract provides that licensees must pay landholders compensation for the acquisition of privately-held land^{lxxix} and for any damages from petroleum operations.^{lxxx} In Ghana, the petroleum law provides compensation for “any loss or damage as a result of the petroleum operations”^{lxxxi} and establishes a procedure for determining payment.^{lxxxii}

In Uganda, licensees must pay compensation for petroleum operation damages^{lxxxiii} and rent for the exclusive use of privately-held land. In case of a dispute, the matter is referred to the Chief Government Valuer for determination.^{lxxxiv} The petroleum bill (2012) provides similar language,^{lxxxv} but limits the period to request compensation to four years. In Liberia, licensees must pay compensation for: all injuries and harms caused by petroleum operations;^{lxxxvi} the encroachment and use of the land with the national oil company mediating^{lxxxvii} (including for pipelines^{lxxxviii}); government acquisition of privately-held land in a compulsory manner;^{lxxxix} and taking and using “ground materials.”^{lxxx}

- **Some mineral laws provide landholders the right to select from alternative forms of compensation (e.g., payment or resettlement, in Ghana; and payment or a share of mineral royalties, in Uganda)**

The mineral laws in some countries provide landholders a choice in the type of compensation. Ghana’s mineral law provides landholders the option of receiving compensation payments or being resettled.^{lxxxix} Uganda’s law provides that “The owner or lawful occupier of any land subject to a mineral right is entitled to compensation ... or to a share of royalties....”^{lxxxix} The landholder share is currently set at 3% (2nd Schedule).^{lxxxiii}

- **Petroleum laws do not explicitly provide landholders the right to select from alternative forms of compensation**

6] Recommendations:

In most cases, licensees cannot exercise their mineral or petroleum rights without infringing upon and interfering with the surface rights of landholders. The findings and conclusions from this research, however, show that the mineral and petroleum laws grant such broad authorities to licensees and so significantly restrict land rights that landholders are left with few options. Overlapping land and natural resource rights have resulted in conflicts between licensees and landholders and between governments and landholders. They have also increased the risks and costs of doing business for licensees, and resulted in new hardships for landholders. Research and experience show that restrictions on land use as well as involuntary resettlement, even with fair and prompt compensation, can result in the affected people falling deeper into poverty.

Given the importance of land to rural people and recognizing that few rural people have significant off-farm economic opportunities, there is a need to balance the authorities of licensees and the rights of landholders. This would allow for genuine negotiations and the crafting of compromises that work for both licensees and landholders. To achieve this balance, the authorities of licensees will need to be restricted or limited, and the rights of landholders will need to be broadened and strengthened. This includes providing landholders with stronger procedural rights to better engage in critical decision-making processes, and with more secure property rights to continue using their land for livelihood purposes. More specific policy options and programming recommendations include:

- Increase the bundle of land rights to include mineral, petroleum and other natural resource property rights

- Limit the authority of government to acquire privately-held land in a compulsory manner to genuine public interests, not including economic development, such as mineral and petroleum operations
- Require governments to have the consent of landholders (*e.g.*, FPIC) before establishing mineral or petroleum blocks over privately-held land and allocating mineral and petroleum rights
- Require licensees to have the consent of landholders before entering onto privately-held land and conducting mineral or petroleum operations
- Require mineral and petroleum licensees to meet international social and environmental safeguards in their operations
- Require mineral and petroleum licensees to utilize the latest technologies in their operations to minimize the disturbances and losses to landholders (*e.g.*, horizontal drilling)
- Require licensees to reach agreement with landholders on how the land is used
- Empower landholders with the authority to demand that government or licensees acquire exclusive use of privately-held land—either by purchasing or leasing the land
- Ensure landholders receive fair and prompt compensation for all losses and damages, and for all disturbances to their land rights (*e.g.*, market value plus a premium and payment prior to mineral and petroleum operations)
- Offer landholders various forms of compensation (*e.g.*, payments, share of royalties and resettlement)

ⁱ This research was made possible by the generous support of the American people through the United States Agency for International Development (USAID) under the terms of Cooperative Agreement No. RLAA00070004300. The contents are the responsibility of the Africa Biodiversity Collaborative Group (ABCG) and do not necessarily reflect the views of USAID or the United States Government.

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- ⁱⁱ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.2.1.
- ⁱⁱⁱ Ghana Minerals and Mining Act (2006), Section 2.
- ^{iv} Ghana Petroleum (Exploration and Production) Bill (2010), Section 12(3)
- ^v Liberia An Act Adopting a New Petroleum Law (2002), Section 9.4
- ^{vi} Kenya Model Production Sharing Contract, Section 17
- ^{vii} Kenya Model Production Sharing Contract, Section 17(3)
- ^{viii} Kenya Mining Act (1940), Section 7(3)
- ^{ix} Uganda Mining Act (2003), Section 78(1)(b).
- ^x Uganda Mining Act (2003), Section 78(1)(i)
- ^{xi} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3
- ^{xii} Ghana Petroleum Exploration and Production Law (1984), Section 6(2)(a).
- ^{xiii} Ghana Petroleum Exploration and Production Law (1984), Section 6(2)
- ^{xiv} Ghana Petroleum (Exploration and Production) Bill (2010), Section 12(2).
- ^{xv} Uganda Petroleum (Exploration and Production) Act (1985), Section 38(1)
- ^{xvi} Uganda Petroleum (Exploration and Production) Act (1985), Section 38(1)(iv)
- ^{xvii} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 132(1)
- ^{xviii} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 132
- ^{xix} Kenya Petroleum (Exploration and Production) Act (1986), Section 10(1)
- ^{xx} Kenya Petroleum (Exploration and Production) Regulations (1986), Section 6(1)
- ^{xxi} Kenya Petroleum (Exploration and Production) Regulations (1986), Section 6
- ^{xxii} Kenya Mining Act (1940), Section 14(a)(iv).
- ^{xxiii} Kenya Model Production Sharing Contract, Section 7(4)
- ^{xxiv} Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d)
- ^{xxv} Ghana Minerals and Mining Act (2006), Section 46
- ^{xxvi} Uganda Mining Act (2003), Section 81(1)
- ^{xxvii} Uganda Mining Act (2003), Section 40
- ^{xxviii} Uganda Mining Act (2003), Section 87; Ghana Minerals and Mining Act, (2006), Section 17
- ^{xxix} Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d)(5)
- ^{xxx} Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d)(4)
- ^{xxxi} Kenya Mining Act (1940), Section 47(b)(v)
- ^{xxxii} Kenya Mining Act (1940), Section 32.
- ^{xxxiii} Ghana Petroleum Exploration and Production Law (1984), Section 24(1)(a)
- ^{xxxiv} Ghana Petroleum Exploration and Production Law (1984), Section 6(1)
- ^{xxxv} Kenya Model Production Sharing Contract, Section 7(1)
- ^{xxxvi} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.1

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- xxxvii Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.2
- xxxviii Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.3
- xxxix Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.4
- xl Uganda Petroleum (Exploration and Production) Act (1985), Section 12
- xli Uganda Petroleum (Exploration and Production) Act (1985), Section 25
- xlii Uganda Petroleum (Exploration and Production) Act (1985), Section 40(1)
- xliii Uganda Mining Act (2003), Section 79
- xliv Uganda Petroleum (Exploration and Production) Act (1985), Section 39(3)
- The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lessee or land owner to which the rights are exercised, and petroleum activities shall be carried out in a proper manner” (Section 133(3)).
- xlvi Kenya Model Production Sharing Contract, Section 7(3)
- xlvii Liberia An Act Adopting a New Petroleum Law (2002), Section 2.9
- xlviii Kenya Petroleum (Exploration and Production) Act (1986), Section 9(f)
- xlviii Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.4.
- xlix Some mineral laws provide that landholders may use certain minerals, such as sand, from their land without authorization.
- ¹ Ghana Minerals and Mining Act (2006), Section 9(1)
- ⁱⁱ Ghana Minerals and Mining Act (2006), Section 72(4)
- ⁱⁱⁱ Ghana Minerals and Mining Act (2006), Section 72(6)
- ⁱⁱⁱ Uganda Petroleum (Exploration and Production) Act (1985), Section 39(2)
- ^{iv} Ghana Minerals and Mining Act (2006), Section 72(3)
- ^{iv} Uganda Mining Act (2003), Section 80(1)
- ^{lvi} Uganda Mining Act (2003), Section 80(2)
- ^{lvii} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 133(2)
- ^{lviii} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 133(1)
- ^{lix} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 134
- ^{lx} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.3. This includes land for pipelines (Section 8.4.6).
- ^{lxi} For example, “The owner of such land, which is encumbered by the pipelines, shall refrain from any act likely to interfere or harm the proper functioning and usage of the pipelines and installations” (Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.4).
- ^{lxii} Uganda Petroleum (Exploration and Production) Act (1985), Section 40(1)
- The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides that “(1) ...a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, and shall, if requested by the lessor of any part of that area, obtain a lease of the land or other right to use it upon such terms as to the rent to be paid for the land, the duration or the extent or area of the land to which the lease or other right of the lease shall relate as may be agreed between the holder of a licence and the lessor. (2) Where the holder of a licence and the lessor under subsection (1) fail to agree, the matter shall be referred to the Chief Government Valuer for determination” (Section 135).
- ^{lxiii} Ghana Petroleum Exploration and Production Law (1984), Section 31.1
- ^{lxiv} Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.3
- ^{lxv} Ghana Minerals and Mining Act (2006), Section 73(1)
- ^{lxvi} Kenya Mining Act (1940), Section 26(1)
- ^{lxvii} Uganda Mining Act (2003), Section 82(1)
- ^{lxviii} Centre for Public Interest Law (<http://www.cepil.org.gh/>)
- ^{lxix} Kenya Model Production Sharing Contract, Section 17(1)(c)
- ^{lxx} Kenya Model Production Sharing Contract, Section 10
- ^{lxxi} Ghana Petroleum Exploration and Production Law (1984), Section 6(2)(b)
- ^{lxxii} Ghana Petroleum Exploration and Production Law (1984), Section 7
- ^{lxxiii} Uganda Petroleum (Exploration and Production) Act (1985), Section 41
- ^{lxxiv} Uganda Petroleum (Exploration and Production) Act (1985), Section 40(2)
- ^{lxxv} Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 136
- ^{lxxvi} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.6
- ^{lxxvii} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.
- ^{lxxviii} Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.5
- ^{lxxix} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.4
- ^{lxxx} Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.4
- ^{lxxx} Ghana Minerals and Mining Act (2006), Sections 73(3); 73(4); and 94
- ^{lxxxii} Uganda Mining Act (2003), Section 83
- ^{lxxxiii} Uganda Mining Act (2003), Section 98(2)