

# WOMENS' LAND RIGHTS UNDER THE OIL AND GAS SECTOR: THE CASE OF UGANDA

## Introduction

Land acquisitions throughout Africa are largely driven by increased investments in land triggered by increased global demand for energy, minerals, oil resources, food and infrastructure development (Cotula, L 2009)<sup>1</sup>. In Uganda, land acquisitions are largely triggered by infrastructure development for electricity generation, transmission and distribution, roads, mineral and petroleum extraction, agricultural investments, resettlements for war/conflict and environmental refugees, conservation purposes and preservation and restoration of the environment.<sup>2</sup>

Both public and private sector projects involve acquiring land which often requires people to move elsewhere and resettle. In general, resettlement has not always been successful and there are several recent examples where impacted people have claimed negative human rights outcomes.<sup>3</sup> The consequences of poorly planned resettlement are well known internationally and include landlessness, homelessness, joblessness, relatively higher mortality and morbidity, food insecurity, lack of access to common property and public services, and disruption of the existing social organization.<sup>4</sup>

## Background

Uganda is a landlocked country located in East Africa with an area of 236,040 square kilometers (146,675 square miles) and a total land boundary of 2,698 kilometers (1,676 miles). It is a natural resource dependent country, and agriculture is dominated by small-holder farmers.<sup>5</sup> Therefore, land is an essential asset for the population and national development.

Uganda has a total population of 31.8 million people and an average population growth rate of 3.2 % per annum; Approximately 85.2 % live in rural areas and 14.8% of the population live in urban areas; Average population density is 123 persons per square kilometre; 56.1% is youthful of **less than** 18 years, and women constitute 51 % of the population.<sup>6</sup>

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<sup>1</sup>Cotula, L et al (2009) *Grab or Development opportunity: Agricultural Investment and International Land Deals in Africa*, IIED/FAO/IFAD London/Rome

<sup>2</sup> Uganda National Land Acquisition, Resettlement and Rehabilitation Policy Draft I ( 2017)

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.*

<sup>5</sup> Uganda National Development Plan II 2015-2020

<sup>6</sup> Uganda Bureau of Statistics, 2010

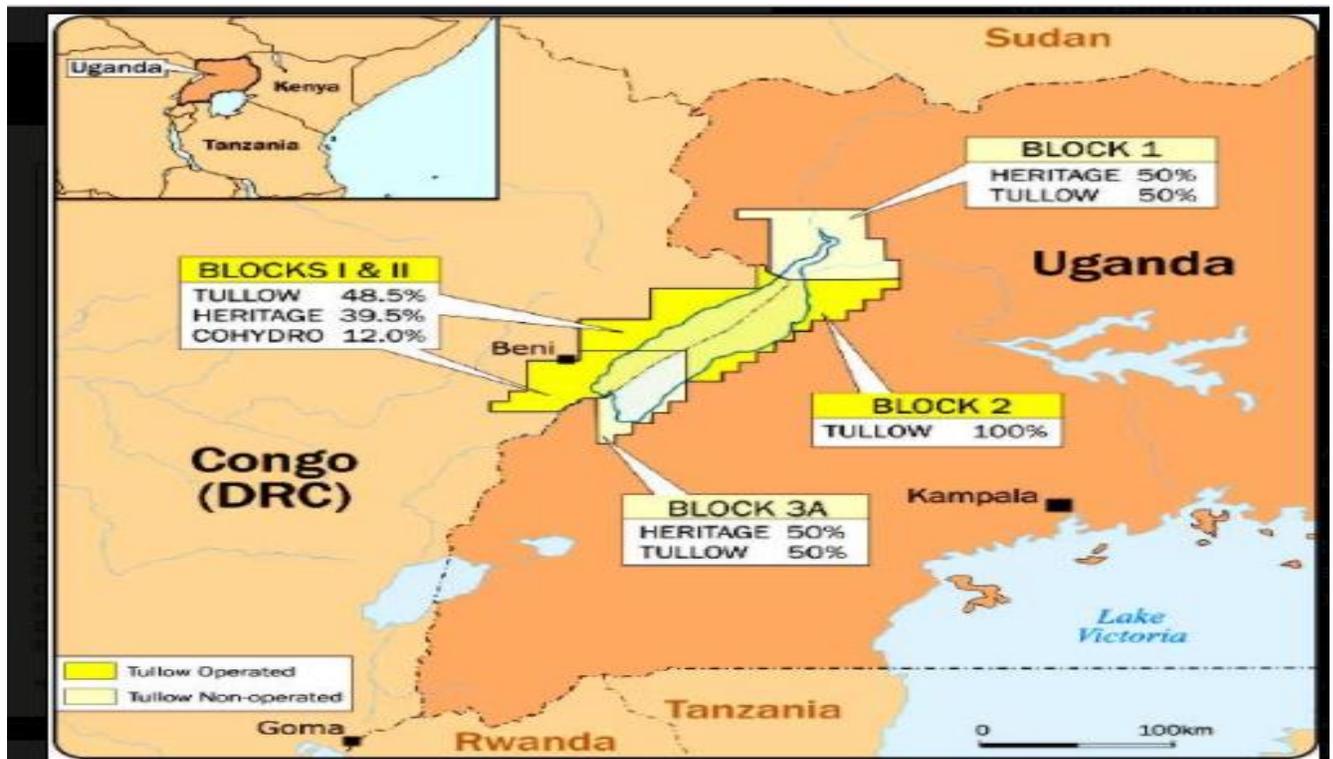


Following the discovery of commercially viable oil reserves in 2006 estimated at approximately 6.5 billion barrels in one of Uganda's lakes known as Lake Albert; (now commonly known as the Albertine Graben), Uganda's attention was turned on the development and exploration of this natural resource.<sup>7</sup> As a result of this, the government issued production licenses to several foreign oil companies which in turn triggered land acquisition by government for purposes of infrastructure development in form of roads, dams, refinery and pipeline; consequently creating demands on the land in those areas which is predominately customary and yet highly remains untitled with most areas having common user rights by the communities<sup>8</sup>.

The map below shows land acquisition by different international oil companies

<sup>7</sup> ACOE Policy Research Series No.75,2016

<sup>8</sup> ACOE, *ibid*.



Research carried out by a number of institutions specifically ACODE and Environmental ALERT showed that the land rights of these communities have been greatly affected and with increasing conflicts amongst the people and affecting mostly the women and vulnerable groups.

Women employees in Uganda's oil sector constitute just 9.4% of the total labour unit<sup>9</sup>. This is all because of poor education of women. Yet even available scholarships to improve skills are going mainly to men to fill up not just the labour intensive jobs but also the administrative jobs. Women are also the first victims of environmental pollution; they are the first to suffer from chemical pollution related disease like cancers. They walk for hours looking for water, firewood and food for their families. When oil and gas pollutes the local environment, women often have had to go the extra mile to gather water and find food. In trying to achieve this, however, women and girls often have less time for other activities – such as schooling<sup>10</sup>.

### **Gender, Policy and legal framework governing oil and Gas Sub sector**

Gender equality is enshrined in Uganda's national laws and policies, including affirmative action clauses. This has resulted in modest success under development indicators such as Millennium Development Goal (MDG) 3 (promoting gender equality and empowering women). However, challenges remain in closing the gender gap on the limited access to and control over productive resources, notably land.

The National Oil and Gas Policy, 2008 (NOGP) has the eradication of poverty and creation of lasting value to society as its two overarching goals. However, it does not take into account

<sup>9</sup> Uganda National Development Plan II (2015-2020)

<sup>10</sup> See What is in it for Us by International Alert

gender-specific manifestations of poverty and hence the subsequent need to tackle it in a particularly gender-sensitive way. Laws governing the oil and gas industry in Uganda are similarly gender-blind, with only two provisions in the 2012 Upstream Act concerned with gender.<sup>11</sup>

### **Linkages of the National Oil and Gas Policy to the Country's key policy frameworks**

The impact and linkages of the National Oil and Gas Policy to the country's key policy frameworks like the Poverty Eradication Action Plan (PEAP), the Plan for Modernization of Agriculture (PMA) and the country's drive for industrialization, have been articulated in the respective sections of the policy document.<sup>12</sup> Uganda's Poverty Eradication Action Plan (PEAP) focuses on promoting private-sector led economic growth in such a way that growth leads to a reduction of absolute poverty in the country to levels below 10% by the year 2015.<sup>13</sup>

It is expected that The development of an oil and gas sub sector in the country will contribute significantly to the early achievement of the above goal by enhancing the country's capacity to invest in productive sectors of the economy, development of new economic and social infrastructure, increasing power generation capacity and the general enhancement of energy security through production and refining of oil.<sup>14</sup>

Furthermore; it is expected that the oil and gas activities will have a positive impact on the country's Plan for Modernization of Agriculture (PMA) through the enhancement of areas with higher multiplier effects, like provision of energy services and infrastructure for rural agro-processing industries, together with the increased use of modern and mechanized agriculture through the provision of more affordable inputs like fuels and fertilizers.<sup>15</sup>

According to the policy, Oil and gas operations will provide opportunities for both forward and backward linkages in the country's industrialization drive. On one hand, oil and gas activities will provide raw materials which will be used as inputs during the manufacturing process. On the other hand, oil and gas activities will act as a market for industrial products, both directly and indirectly. Oil and gas operations will provide the country an opportunity to develop a petrochemical industry.<sup>16</sup> This will include industries like oil refining; the offshoot industries utilizing the refinery by-products to produce soap, plastics, pesticides, paints, medicine, asphalt, chemicals and others; together with industries arising from the utilization of natural gas like cement production, iron ore smelting and production of fertilizers.

The Policy also addresses the cross-cutting issues between oil and gas activities and the country's education and research plans, employment opportunities and patterns, population distribution, land ownership and use, energy availability together with relationships with other countries.<sup>17</sup> Needless to mention is also the fact that the policy recognizes that if the country's

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<sup>11</sup> Environment Alert, *Ibid.*

<sup>12</sup> See Uganda Oil and Gas Policy 2008 (p. ix-x)

<sup>13</sup> Uganda Oil and Gas Policy 2008

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

petroleum resources and revenues are not well managed, the sub sector has the potential to have the most negative impact on society, “*The Oil Curse*” or the paradox of plenty. The oil curse is the negative effect of oil and gas resource utilization leading to economic stagnation, environment degradation and increased poverty. This oil curse could be avoided through borrowing of *working best practices*.<sup>18</sup>

### **Oil exploration impacts and livelihoods for women**

Oil exploration and exploitation have direct economic, social and cultural impacts on local communities. Oil activities can reduce people’s access to traditional livelihood resources, but can also open up new opportunities. Women and men, girls and boys, play specific economic roles in their families and communities. The oil sector, therefore, has unique and gender-differentiated impacts on their livelihoods. For instance, the loss of food crops from surveying land has had specific and disproportionate consequences for women because they tend to play a greater role in food crop cultivation and are responsible for ensuring household food security. This factor makes women less engaged in income generation and salaried employment, where they generally lack qualifications.<sup>19</sup>

Important areas where good land governance needs to be realized are the areas of equality between women and men and grassroots participation in land issues

Without specific affirmative measures to rectify the discriminatory practices of the past, recognition of equal rights between men and women remains a theory for the many women who cannot afford to buy land or housing<sup>20</sup>.

### **Gender, community land and livelihoods**

In Uganda, two factors shape the pattern of land acquisition; land tenure and land titling.<sup>21</sup> The Albertine Graben which is predominantly customary tenure is no exception to this. The protection of land rights under customary tenure are weak because it remains largely undocumented or unregistered making most communities especially the women vulnerable to dispossession and losing out on compensation because their names are either not on the title or they have no evidence to prove ownership. The attainment of gender equity with regard to land rights consequently depends not only on legal recognition of those rights, but also on overcoming social and cultural constraints and recognizing the fact that women have secondary land rights on land as primary users. Customary biases often mean that women will not have the ability to exercise their land rights until there is a shift in the thinking, attitudes, and understanding of men and women as well as officials and local authorities responsible for undertaking programs related to land acquisition, compensation and resettlement through capacity training, to be able to *use specific gender lenses*.

### **Constitutional and Legal framework governing land acquisition in Uganda**

The Constitution of the Republic of Uganda, the Land Acquisition Act, Cap 226 and the Land Act, Cap 227 are the main legal instruments that govern land acquisition and compensation.

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<sup>18</sup>*ibid*

<sup>19</sup>*Environmental Alert ibid.*

<sup>20</sup> See *EnvironmentAlert ,ibid.*

<sup>21</sup> ACODE, *ibid*

There are sectoral laws (e.g. in sub-sectors like electricity, mining, water, gas and oil) with skeletal provisions touching on land acquisition and compensation. There is, however, no law which provides for resettlement and rehabilitation after compulsory land acquisition.

### **The Constitution of the Republic of Uganda**

The Constitution provides for both the protection of private property rights and the power of the government to acquire land compulsorily. Article 237(2)(b) empowers the Government or a local government, subject to article 26 of the constitution, to acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament. Public interest is subjected to the taking of possession or acquisition being necessary for public use or in the interest of defence, public safety, public order, public morality or public health (article 26(2)(a)). Secondly, the compulsory deprivation of property or an interest in or right over property of any description can only be made under a law which makes provision for prompt payment of fair and adequate compensation prior to the taking possession or acquisition of the property, and a right of access to a court of law by any person who has any interest or right over property (article 26 (2) (b)).

This broad constitutional provision has not been translated into more specific guidance in legislation, which means that interpretations of “public use” and “public interest” vary and this leaves room for misuse of these terms in justification for any land taking or acquisition. This lack of clarity weakens the country’s land governance environment.

### **The Land Acquisition Act, Cap 226**

The LAA is the central law applicable to land acquisition in Uganda. It is however, not entirely in line with the constitutional provisions. For example, it does not require payment prior to taking possession of the land. Section 7 allows the assessment officer to take possession of the land “as soon as he or she has made his or her award under section 6, except that he or she may take possession at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him or her to do so”. The LAA also leaves broad authority in the hands of the Minister of Lands (and persons authorized by the Minister) as section 3 provides that “whenever the Minister is satisfied that any land is required by the Government for a public purpose, he or she may, by statutory instrument, make a declaration to that effect”. The law does not define what constitutes a “public purpose”.

In 2014, the Supreme Court in the case of Uganda National Roads Authority vs Irumba Asumani and Peter Magelah, declared that the LAA was unconstitutional in so far as it did not allow for prior payment of compensation. Other jurisprudence has identified concerns related to standards of prompt, fair and adequate compensation (see Pyrali Abdul Rasul Esmail vs Adrian Sibbo (Constitutional Petition No. 9 of 1997)).

The law does not define the basis of compensation assessment nor the valuation method to be used to arrive at the compensation figure; however section 20 of the Act empowers the Minister, by statutory instrument to make regulations for the assessment and payment of compensation. No such regulations have been written since the enactment of the law in 1965.

### **The Land Act, Cap 227**

The Land Act under section 42 empowers the Government or a local government to acquire land in accordance with articles 26 and 237 (2) of the Constitution. The principles of computation of compensation in section 77 only provide guidance to District Land Tribunals on assessing compensation in case of a dispute relating to the amount of compensation to be paid. The section is not instructive to the valuer and the provision does not meet the standard of fair and adequate compensation (e.g. it provides that the value of the buildings shall be taken at depreciated replacement cost for the rural areas).

### **The Mining Act 2003**

Section 82(2) stipulates the need to compensate the land owner or occupier of land under which are minerals “reasonable compensation for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder’s operations; and shall on demand made by the owner of any crops, trees buildings or works so damaged...” This provision makes compensation for any disturbance of the land to the owner or occupier and for loss of any crops, trees, buildings only consequent upon “demand” and not an “entitlement” with or without demand. The Act lacks clarity on what constitutes “reasonable compensation”.

The Mining Act also sets a limitation clause to claims as compensation has to be demanded within one year from the date of occurrence of the act upon which compensation is based, otherwise the claim is not enforceable, “notwithstanding the provisions of any other written law” (Section 82(3)).

### **The Petroleum (Exploration, Development and Production) Act, No 3 of 2013**

The interest in land in a development area belongs to the land owners. The Government of Uganda, however, is vested with the interest in the petroleum in or under any land or water in Uganda. Subject to any law relating to acquisition of land, and section 135 of the same Act, a holder of a petroleum production licence may obtain a lease of the land or other rights to use it upon such terms as to the rent to be paid for the land... as may be agreed upon between the holder of a licence and the land owner.

A licensee should pay to the land owner a fair and reasonable compensation for any disturbance of his or her right and for any damage done to the surface of the land, any crops, tree, building or works”. The basis upon which compensation is payable for damage to the surface of any land is

the extent to which the market value has been reduced by reason of the damage, but without taking into account any enhanced value due to the presence of petroleum.

Payment of rent or compensation to a land owner for termination of his or her lawful occupancy is deemed to be adequate compensation for deprivation of the use of the land to which the rent or compensation relates. Land owners who are dissatisfied with any compensation offered by a licensee should have the dispute determined by the Chief Government Valuer.

**Livelihood assets and activities:** The loss of agricultural land and natural resources can result in landlessness, joblessness, and a loss of livelihood opportunities. The creation of jobs can benefit part of the community, but may create inequality within the community, and migrants often secure the majority of the employment or entrepreneurial opportunities.

**Culture and religion:** The land access can also result in the destruction and/or reduced access to cultural heritage which can lead to a loss of identity and a lower cultural status.

**Infrastructure and services:** If the resettlement process is not properly planned, households can lose access to public infrastructure and services. When not properly maintained, the provision of some services, e.g. water supply and sewerage, can result in serious sanitation and/or health issues in the resettlement towns.

**Housing and business structures:** An over-reliance on cash compensation for housing can result in the impacted households spending their compensation and not having enough resources to rebuild quality housing. In many projects, resettlement houses are hastily constructed resulting in substandard buildings that deteriorate rapidly.

**Land and natural resources:** The destruction of natural resources, often communally owned, is one of the neglected areas of resettlement planning. The loss of forests, pasture and fishing areas generally impacts vulnerable households the hardest resulting in a loss of sources of food and livelihood. A failure to understand and address individual and communal land tenure rights can result in land speculation, conflict, and/or the marginalization of vulnerable groups.

**The living environment:** If the resettlement is not planned properly with adequate environmental buffers, the result can be that residual residents remain, or resettled houses are built, too close to project infrastructure, and thus having a poor living environment with impacts from dust, noise, blast vibrations, etc.

The extent of resettlement impacts depend on the magnitude of the displacement, the characteristics of the project and its mitigation measures, as well as the characteristics of the community (Vanclay 2002). The impacts are usually assessed using a standard risk assessment process where the risks are categorised by contrasting the likelihood of the risk occurring with the consequences of that risk (Vanclay et al. 2015). For each risk, consideration is given to how to prevent the risk occurring, and what to do should the risk arise.

Most projects implement a risk management system where a multidisciplinary team, including management, technical, environmental and social staff identify the impacts and associated risks. The risks can be identified through experience with similar projects, benchmarking, specialist studies, industry best practice, expert judgement, as well as in participatory workshops with community groups.

### **Stakeholder Engagement, Participation, Disclosure and Capacity Building**

Each project should obtain broad community agreement for the project. Thus, the approach to stakeholder engagement should be described in the RAP. The project team can negotiate individually with impacted households, or a group agreement can be negotiated.

It is recommended that for each project a Resettlement Committee comprising representatives from the proponent, government, affected communities, host communities, community organizations and NGOs is established to consult and agree on the resettlement process and packages with the relevant stakeholders. It is important that these members are representative and have a legitimate mandate from the community, and seek inputs and approval from the stakeholders they represent. The project can support the process by ensuring that the impacted communities have independent advice and by providing capacity building to support them to elect suitably-qualified representatives. The Resettlement Committee should be chaired by a competent chairperson with authority from all parties.

The discussions on the resettlement packages should generally follow the spirit of free, prior and informed consent with the full disclosure of project plans and the establishment of clear agreements on the compensation measures, with sign-off from the community and government representatives.

It is important that the resettlement team allow the Resettlement Committee sufficient time to discuss these key issues and come to a decision in their own time about what they would choose, rather than forcing an artificial decision. The more ‘ownership’ (responsibility for decisions) the Resettlement Committee has, the greater the likely success of the resettlement process. Sometimes there will be differences of opinion between the Resettlement Committee and the project team. The resettlement staff may need to seek approval from the project management to increase what is being offered. For the negotiation process to work properly, there must be some capacity in the resettlement team to negotiate, implying some flexibility in constraints.

Each resettlement management plan is disclosed to the community, prior to project implementation, in a language and manner that is easily understandable by the affected persons.

### **Grievance Management and Dispute Resolution**

Despite best efforts to arrive at fair just and equitable compensation in a project involving involuntary resettlement, there shall always be a few dissatisfied project affected persons (PAPs).

Proponents are encouraged to create and use local, targeted and accessible bodies and mechanisms to deal with grievances, at least as a first step. This reduces the problem of complaints being immediately funneled into court systems which often have a reputation for being slow, backlogged and expensive. Property constituted, a grievance mechanism would involve representation from amongst the affected community; some government representation from institutions not directly involved in the land acquisition and other independent experts. This needs to be accompanied by clear communication channels and proactive measures to improve the legal literacy of affected people.

PAPs shall have the right to seek redress of any grievances that might arise in the course of planning and implementing land acquisition and resettlement and to receive timely, affordable and effective means to obtain attention to the issues of concern raised.

In each project, a robust procedure for registering, investigating and addressing project-related complaints will be put in place and the procedure will be explained to the PAPs during consultations. The mechanism should be accessible-in terms of:

- physical location, it should be close to the affected people;
- communication and transportation;
- and language, literacy, and education levels.

The first tier will be the project implementing team level. PAPs will have the right to appeal if they remain dissatisfied with the resolution of their grievance on the part of the project team implementing the RAP. The second tier entails appeal to a Grievance Redress Committee (RRC). If PAP is not satisfied with the outcome of the case at this level, it will be sent to the Sub-county level. Should the complainant remain dissatisfied at this level, he/she has a right to seek redress through the judicial system.

### **Cut-off Date**

The project declares a cut-off date complying with national legislation when all the assets have been surveyed and communicate this to the owners and users of the assets and wider community so that any further development is prevented on the project. People building assets or planting crops after this cut-off date will not be eligible for compensation or resettlement benefits.

A key risk for land acquisition and resettlement projects is speculation and opportunistic behaviour – where local people or other speculators acquire information on where the project is planned and they buy land and/or build structures and/or plant trees or crops in order to gain compensation and/or resettlement benefits. Speculation in land is very common in projects and can increase costs, delay the project, and cause conflicts in the community as speculators buy-out local people for low amounts and then seek to sell at much higher prices to the project. The extent of opportunistic behaviour, for example planting crops, can be considerable and careful management through the mechanism of the cut-off date is needed to keep it under control.

## **Census and Surveys, Baseline Data Collection and Management**

When the project design and footprint are sufficiently clear each Project undertakes a baseline data collection exercise. This consists of administering a census and household questionnaire with all households affected by land acquisition (both displaced, those who remain behind in case of partially affected communities and host populations) through visits to each household and speaking directly with all adult males and females who reside in the household. In addition, focus group discussions, key person interviews and other qualitative research methodologies are applied to gather data and establish the demographic, socioeconomic and cultural baseline against which project impacts will be assessed.

Baseline studies through field research capture information on the complex livelihood strategies that people often have, including a combination of farming, gathering, livestock rearing, occasional off-farm employment, and record the full spectrum of income earned by displaced people and the variety of tenure and usufructary rights that exist in a location, including share cropping arrangements, business income, rental income, wages etc. This entails recording and understanding the interests that women, fishermen, migrants, pastoralists and other socio-professional groups hold in land and other assets including the natural resources they collect and/or use, the output they derive from the affected assets and their associated livelihood activities.

Special attention is required to include those who may not be present at the time of the census but whom residents testify are fellow members of the household, such as seasonal migrants. Information should also be gathered regarding secondary users of the land and natural resources upon which the household depends who may or may not reside all year in the area, such as those with customary rights to draw water, gather firewood, or pasture livestock at certain times of the year.

Each project acquiring land will also conduct an inventory and survey of all affected land, annual and perennial crops such as trees, housing and other built assets such as business structures, community infrastructure, domestic associated structures, utilities such as water supply and sanitation facilities, religious, historical or archaeological, cultural and sacred assets and sites, commons and communal property such as water bodies, fuel wood.

The relevant authorities grant their authorization of the census and household surveys prior to the field research.

Baseline data collection is to be undertaken by suitably qualified and experienced social scientists (this can include sociologists, anthropologists and social workers) and surveyors which may include, registered land and building surveyors and agronomists as applicable.

The survey process is to be overseen by the Resettlement Committee, other representatives of the affected communities and households, community leaders and witnessed by civil society organisations to ensure the fairness and impartiality of the process.

The gender-disaggregated data on the present economic and socioeconomic conditions, assets and resources of the displaced and host populations are captured and stored in a secure database. The analysis of the data and the database is outlined in the resettlement management plan.

Census and property inventory data remain valid for a period of maximum 24 months before acquisition of the land and implementing the resettlement, after which they require updating in order to reflect any changes in the project footprint, socio-economic conditions and impacts.

### **Conclusions**

Gender issues should be addressed in all phases of programs that deal with land rights and natural resource management including program design, consultations and implementation of program activities. There is need to undertake continuous monitoring and evaluation of project activities to ensure that the after effects do not impact on grassroots women negatively by putting them in a worse off condition than they were before the start of the project. Equality in governance needs to be realized between women and men in participation in land issues. Without specific affirmative measures to rectify the discriminatory practices of the past, recognition of equal rights between men and women remains a theory for the many women who cannot afford to buy land or

housing. There is also need for continuous equal education programs for women and men, legal assistance programs, gender training for program implementers and program beneficiaries. On land ownership by women, other programs, such as community resource management, agricultural production and marketing development, and enterprise and credit development, need to use a specific gender lens to improve land ownership and access for women.