

Human Rights Risk Assessment Update

Tullow Oil Plc. Uganda

2014



In 2011 and 2012, NomoGaia conducted fieldwork in the Albertine Graben of Uganda, where petroleum exploration activities were ongoing by Tullow Oil Plc. Human rights risks were apparent at this early stage of oil development. NomoGaia notified Tullow of these risks. This document presents a summary of those risks and a review of Tullow's policy changes which aim to address them.



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INTRODUCTION

NomoGaia is a nonprofit think tank that works in the field of business and human rights. The generous donations of our supporters fund human rights due diligence fieldwork, including human rights risk and impact assessments of multinational corporations. As an independent research organization, NomoGaia owns and makes public all of the studies we carry out, methodologies we develop and pilots we conduct of corporate human rights due diligence.

In 2011 and 2012 NomoGaia conducted preliminary human rights risk analysis of the Tullow Oil Plc petroleum operations in the Albertine Graben of western Uganda. When fieldwork commenced, Tullow was the primary petroleum developer in the region, and its operations represented the core of oil and gas activities in the country.

However, in the course of NomoGaia's research, Tullow established partnerships with international petroleum companies Total S.A. of France and CNOOC Ltd. of China. Additionally, the Government of Uganda became directly involved in the sector, committing to build a refinery for the country's pending crude reserves and commencing the process of clearing land for industrial development.

These modifications in Uganda's oil and gas landscape would necessitate a much broader analysis of human rights risks and impacts, which NomoGaia lacked the resources to conduct. NomoGaia committed to withhold publication of initial findings while the terms of petroleum development were established and Tullow, with its partners, developed interventions to ensure that exploration and development aligned with the human rights standards laid out in the UN Guiding Principles for Business and Human Rights.

In 2014, Tullow re-engaged with NomoGaia and produced documentation indicating that conditions noted as human rights risks in 2012 were being addressed.

Although no fieldwork has been conducted to evaluate local (rightsholder) experiences and perceptions of these changes, NomoGaia feels that to publish 2012 findings without any recognition of the possible change in two years would be misleading. This document represents a desktop based follow-up to the Human Rights Risk Assessment of 2012. The document is divided into two sections: first, a summary of 2012 findings; and second, an update incorporating news reports and documentation from Tullow to represent its proactive steps to mitigate human rights risks identified in previous years.

It is NomoGaia's intention to continue to collaborate with Tullow and its partners in the future to conduct follow-up fieldwork and validate the findings in this report.

SUMMARY FINDINGS FROM 2012

Tullow was one of the first companies to begin modern oil exploration in Uganda and invested considerable resources in the country, both for project development and local infrastructure. However, Uganda was in many ways unprepared for the major industrialization of its petroleum sector, which posed challenges both for oil developers and for the rightsholders affected by development. In 2012, the Project's most significant human rights risks stemmed from four sources: (i) Land management and resettlement; (ii) Corruption; (iii) Increasing militarization of the zone; and (iv) Nondiscrimination.

Land management and resettlement

Land management and resettlement policies and practices established by the Government of Uganda were not respectful of human rights, complicating petroleum companies' efforts to explore and exploit resources appropriately. The Uganda People's Defense Force (UPDF) evicted residents from oil exploration properties in Buliisa held at the time by Hardman Resources, as well as in Kabaale Parish, where the state planned to develop a refinery. In 2011 and 2012 Tullow was at risk of causing or contributing to negative impacts on civil, political, economic and property rights, if alternate means of land acquisition were not established. More directly, Tullow negatively impacted the right to an Adequate Standard of Living when compensation for destroyed crops during 3D seismic surveys was delayed, resulting in lost incomes for hundreds of families in Buliisa. Government-set compensation rates were published late and indifferent to food price fluctuations associated with the region-wide crop shortage.

Corruption

Given the economic potential for Uganda associated with petroleum development, Tullow was under close public scrutiny between 2010 and 2012. The Government of Uganda, recognizing this, limited the public's access to the project, manning checkpoints with presidential security guards and directing western diplomats to avoid the area. Tullow did not express a position on the government's closed-door approach. However, NGOs that partnered with the company in the past experienced increasing restrictions in access to areas they used to visit freely. In 2012, Production Sharing Agreements (PSAs) were signed without parliamentary involvement and kept secret. The National Environmental Monitoring Agency (NEMA) was pressured by State House to reduce scrutiny of EIAs and was insufficiently funded to effectively monitor petroleum activities. Corruption charges surfaced in 2010 alleging that Tullow bribed ministers for exploration concessions. Later investigations found the evidence was crudely forged, but the allegations embodied a broadly held perception that oil deals were being kept secret deliberately.

Militarization

The oil zone abuts Uganda's border with the Democratic Republic of Congo (DRC). Persistent instability in the Ituri District of DRC, across Lake Albert from the project area, has triggered periodic intervention from Uganda. Longstanding hostilities exist between the two countries, which increased as both began oil exploration activities along a disputed border through Lake Albert and along the Nile. The President deployed UPDF forces as well as his personal military force, alongside plainclothes police. Atop the escarpment, under five km from the Kingfisher exploration area (to be operated by CNOOC) and 40 km from the Kaiso/Tonya development area, the military planned to clear 26 km² of farmland for a military base, signifying a major increase in troop presence, which has coincided with oil exploration activities. The right to Security of Person was at risk for the residents of Hoima and Buliisa.

Nondiscrimination

The Bunyoro Kingdom experienced discrimination first by colonial powers and then by the Ugandan central government. The right to buy land titles is restricted, and schools and medical facilities are understaffed and undersupplied compared to other regions of Uganda. Residents are ill-prepared to take jobs in the petroleum sector, lacking skills training and education. Simultaneously, minorities within the Bunyoro kingdom experience additional discrimination. Local leaders, who help petroleum companies hire unskilled workers, exclude residents of Alur or Congolese descent, in favor of ethnic Bunyoro residents. In 2012 Tullow had no policies or practices for hiring women, who are often singlehanded caretakers of large families. Women are generally not landholders, disenfranchising them from compensation for lost crops, despite being the primary cultivators. Freedom from Discrimination was at risk for Bunyoro, Alur and Congolese people, as well as for women.

POLICY AND PROCEDURE CHANGES FOR 2014

Land Management and Resettlement



Figure 1 Croplands affected by 3D Seismic - May 2011

Tullow recognized the negative impacts of its 3D seismic surveys in the months after crop damage began affecting rightsholders in Buliisa. Affected farmers blockaded project vehicles, demanding compensation. They were not met with violence or force.

Tullow began addressing compensation problems in June 2011, after the Government of Uganda considerably delayed providing 2011 compensation rates. In a “lessons learned” presentation at the May 2013 International Association of Impact Assessors conference in Calgary, Canada (later provided to NomoGaia in PDF form), Tullow estimated that 96 km² of cropland were affected.

Tullow paid US\$ 3.5 million in compensation to affected farmers. The company hired a land valuer and aimed to compensate at the highest possible rates (e.g. paying rates for mature plants, regardless of whether the cassava or bean plants were young). These rates may have rebuilt the company’s social license in the region. There are also indications that they positively impacted the Right to Housing, as new roofs were visible on several Buliisa houses in March 2012.



Figure 2 Housing improvements in Buliisa

However, impacts had already occurred in the seasons before compensation had been paid, during which local people struggled to buy food to replace their damaged crops. Some residents went eight months without compensation and say the money they received only purchased five months of food, because prices inflated as food shortages increased.

In recognition that future 3D Seismic surveys would necessitate management of associated human rights risks going forward, Tullow retains relations with professional land valuers. Tullow has committed to conduct timely compensation going forward. This has not, to date, been required. Since 2012, Community Liaison Officers (CLOs) have been involved in all land access processes. In 2011 and 2012, community relations personnel were not trusted by local communities, and no formal stakeholder engagement plan or follow-up was made available to NomoGaia. It is not clear whether current CLOs are accepted.

A grievance mechanism has been established, limited to compensation issues and formalized in July 2012. It is comprehensive of the various complexities in Runyuro land tenure that could give rise to complaints, and it makes note of the linguistic (though not literacy) needs of affected persons, committing to produce complaint cards in three local languages (initial versions were drafted in English, which is not locally spoken). Before the mechanism was formalized, less than 1% of payees (265 cases) had issued complaints to the company. Tullow did not provide data for usage of the grievance mechanism in the year after it was launched. The absence of data documenting changes in grievance rates makes it impossible to characterize the effectiveness of the mechanism as experienced by affected rightsholders. Persistent

media reports referencing problems with compensation suggest that its implementation and effectiveness may be limited.¹

Tullow has also established a Land Access and Resettlement (LAR) Steering Committee in association with partner companies Total and CNOOC, which, in late 2014, was developing Resettlement Action Plans (RAPs) and land tenure studies under IFC guidance. The LAR framework was not made available to NomoGaia for review. It will reportedly incorporate compensation for communal and customary tenure. Further research is needed to evaluate whether it addresses conflicting land tenure claims as they apply to ancestral lands (something the current grievance mechanism aims to do but has not been evaluated), including mapping tribal land holdings. This further review should examine how petroleum companies will navigate the state’s ban on Bunyoro land titling, instituted in 2012 and modified several months later.

Corruption



In 2013, in compliance with new SEC rules, Tullow published the value of all its payments to the Government of Uganda in taxes, wages and licenses. All of its ensuing annual reports have been equally transparent, and in March 2014 the company committed to publish all payments to both the Ugandan government and “other stakeholders.” This move toward transparency, coupled with Tullow’s open procedures to combat allegations that the company bribed ministers to receive oil contracts, helps to isolate Tullow from allegations of state corruption. Additionally, the company has budgeted to engage with civil society organizations and met no government resistance on this budget line for two years. This may be an indication that opacity is no longer a major state priority with regard to oil development.

Figure Error! No text of specified style in document.3 - Truck full of ballot boxes, leaving Hoima days before the 2011 election

Without fieldwork, it is not possible to gauge perceptions of corruption. The 2012 PSAs, leaked and reviewed by Global Witness in 2014, have been analyzed in the public sphere as highly beneficial to central government while offering few safeguards for socially and environmentally affected citizens. Tullow and its partners are endeavoring to bridge the gap by operating in compliance with the IFC Performance Standards. Additionally, Tullow has established strict operating standards for suppliers including evaluations of corruption risk and detailed environmental and social performance questionnaires. Successful bidders for contracts with Tullow can be subject to environmental, social and financial audits, though Tullow produced no documentation that any audits had occurred. Both the 2011 involvement of Saracen in mercenary deals with Somalia (against international sanctions)² and the 2014 forced evictions on behalf of oil waste management company McAlister, should have triggered such audits in order to comply with supplier standards.³ Follow-up fieldwork should evaluate whether Performance Standards and supplier guidelines effectively obviate weaknesses in PSA contracts and the low capacity of state agencies to manage social and environmental risks as they pertain to human rights.

Militarization

Since HRRRA fieldwork was conducted, Tullow has become a signatory to the Voluntary Principles on Security and Human Rights (March 2013). Company policy now prohibits use public security forces in any land acquisition processes.



Figure 4 - Newly established military camp outside Hoima - March 2011

¹ <http://allafrica.com/stories/201411280386.html>

² <http://www.nytimes.com/2011/01/21/world/africa/21intel.html>

³ <http://allafrica.com/stories/201411260326.html> ; <http://allafrica.com/stories/201410290147.html> ; <http://www.voanews.com/content/land-eviction-breeds-violence-in-oil-rich-hoima-uganda/2460974.html>

The private security companies (PSCs) with which it works, Saracen and G4S, are signatories of the International Code of Conduct (ICOC) for private security contractors.

Uganda is a challenging environment for evaluating PSC compliance with ICOC human rights standards, as state forces are rarely prosecuted for abuses, and, as such, no criminal records are associated with a variety of human rights violations. Saracen Uganda's human rights record includes illegal incursions into the DRC and breaches of UN sanctions in Somalia. Saracen has been accused by its own workforce of paying unlivable wages and providing inadequate meals, resulting in a 2013 strike action.

Additionally, human rights risks associated with government involvement in the petroleum sector require further investigation. Petroleum companies have been advised that state abuses of human rights for construction of a refinery and other petroleum installations do not fall under the purview of the private sector. Experience has shown that rightsholders and activists rarely take such nuanced approach to complicity. In Myanmar, Total faced international litigation for the human rights abuses committed by state forces in the maintenance of a pipeline that predated Total's operations. In Nigeria, Shell faced international litigation for the wholly state-mandated execution of anti-oil activists. In Indonesia, ExxonMobil faced international litigation for the crimes committed by state forces against rebel groups in the vicinity of oil operations. Even when legal ramifications are unlikely, project risks are associated with human rights risks. Newmont Gold has seen a US\$ 5 billion mine project in Peru stalled for several years, because anti-mine protests 24 km from the mine site were violently repressed by state forces. When defining the scope for potential complicity in human rights abuses, a broader lens more effectively manages both human rights and corporate risk.

Neither Resettlement Action Plans nor the Land Acquisition Strategy were available to NomoGaia in 2014. As such, it is unclear the extent to which these policies ensure that the military, while inevitably a presence in the area, will have no role in resettlement for oil-related installations. The police arrest of at least one protester evicted for McAlister's waste treatment plant blurs the line between project activities and state-led petroleum activities and may undermine the stark divide between oil-related land management and state-enforced land acquisition. Events like those at the waste management site, where land acquisition disregarded customary land uses, resulting in forcible evictions to support the investor, undermine rights-respectful development of petroleum.



Figure 5 - Military movements in Kasese

Nondiscrimination

No documentation was made available to NomoGaia indicating policy changes that would address discriminatory hiring, cultural discrimination in landholdings, or state-sponsored discrimination against the kingdoms of the oil-rich regions. A series of violent attacks against state forces in Kasese and Bundibungyo districts in the summer of 2014 were linked to ethnic strife and oil revenue sharing. They were violently quashed.⁴

SUMMARY

Tullow and partner companies are aware of challenges in operating with respect for human rights in western Uganda. Policies and development plans underway are designed to mitigate potential negative impacts and maximize positives. Implementation challenges across a multitude of ethnic and geographical regions will require close monitoring by project staff. NomoGaia is hopeful that follow-up fieldwork will find the existing and planned interventions effective for safeguarding the rights of affected Ugandans in petroleum development areas.

⁴ <http://www.reuters.com/article/2014/07/07/us-uganda-security-idUSKBN0FC17S20140707>; <http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=647251&CatID=1>; <http://www.redpepper.co.ug/rwenzururu-king-wants-cultural-leaders-represented-in-parliament/>; <http://chimpreports.com/wordpress/?p=142>; <http://www.redpepper.co.ug/rwenzururu-king-speaks-out-on-rwenzori-attacks/>