



# Is Uganda Ready for Oil Revenues?

## RECOMMENDATIONS

- Oil production in Uganda should wait until a law is in place that regulates the collection, management and application of oil revenues.
- Involve all stakeholders, especially grassroots communities, in the law and policymaking process. Make a multi-stakeholder group a legal requirement of the monitoring process, although the current law and the proposed bill have no such stipulation.
- Parliament should reject any unconstitutional attempt to curtail media freedom. The 1995 Constitution guarantees rights to information and freedom of expression, which are strong pillars for achieving transparency and accountability of oil revenues.
- All stakeholders – policymakers, policy implementers, legislators, civil society, academia and the private sector – should endeavour to acquire and upgrade their skills in order to be able to effectively manage oil revenues.
- The new law should ensure the independence of institutions such as the Bank of Uganda and the Petroleum Authority. Anti-corruption agencies such as the courts, the judiciary, the police and the inspectorate of government should be allowed to handle corruption cases without executive interference.

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## EXECUTIVE SUMMARY

Following the discovery of substantial petroleum deposits in Uganda, expectations are high that oil revenues will lead to economic prosperity and improved standards of living. However, if not handled properly, oil revenues can exacerbate the resource curse. Overcoming the resource curse requires laws and institutions that foster transparency and accountability. Most of the required institutions provided for in the Oil and Gas Policy of 2008 are not yet in place, and whether the proposed institutions will function effectively and independently is not clear. Despite revenue transparency being touted as a key policy objective, to date no bill for the management of oil revenues is in place, and the law does not guarantee access to information for effective participation. Moreover, as oil extraction is new to Uganda, insufficient capacity exists among key stakeholders generally. It is hoped the recommendations made in this briefing will go some way in improving the current state of affairs.

## INTRODUCTION

Today Uganda is home to about 2.5 billion barrels of oil, with more to be discovered in the near future.<sup>2</sup> With this development, a \$4.6 billion oil refinery is to be constructed in Kabale-Buseruka, Hoima district. The construction works will begin in 2012, for commissioning in 2015. The oil discovery has raised public concern over whether the new resource will yield lasting benefits to present and future generations. There is great concern over the need to create an enabling legal, policy and institutional environment that fosters revenue transparency, ensures macroeconomic stability, and encourages effective contract bargaining and the fair awarding of concession agreements.

As a landlocked country, Uganda currently spends an estimated \$600 million per year on petroleum imports, and about 23% of its

population lives below the poverty line. However, by 2018, Uganda is projected to produce 350 000 barrels of oil,<sup>3</sup> which will yield an initial increase of \$75–\$100 per capita oil income per year.<sup>4</sup> Willing investment partners abound, such as China, Libya, South Africa and Iran.

#### DO THE CURRENT AND PROPOSED LAWS AND POLICIES MEASURE UP?

The key laws and policies regulating the petroleum sector are the 1995 Constitution, the Oil and Gas Policy of 2008 and the Petroleum Exploration and Production Act of 1985. The Income Tax Amendment Act (ITA) of 2010 was recently enacted primarily to cater for taxation of petroleum operations.

Scrutiny of the relevant revenue provisions reveals that the Petroleum Exploration and Production Act of 1985, imposes a duty on oil companies to pay royalties based on the petroleum production licence or agreement, and an annual charge upon the granting of a licence. The ITA provides for the taxation of petroleum and natural gas production, the mode of taxing petroleum companies that prevents them from transferring their interests to other parties. The ITA also lays down accounting principles to be applied when taxing contractors and cross-boundary shared petroleum resources. Section 4 defines what is meant by petroleum revenue, but leaves out aspects that should fall within the large sphere of what constitutes oil revenues.<sup>5</sup>

The Oil and Gas Policy of 2008 commits to ensuring that adequate revenues are collected and used to create lasting value for the entire nation by formulating a law to regulate the payment, use and management of oil and gas revenues, and establishing the necessary institutional framework for collecting and managing these revenues. The policy also mentions participating in the processes of the Extractive Industries and Transparency Initiative (EITI). However, since the Oil and Gas Policy was passed in 2008, no institutions have been put in place, there is no comprehensive law to regulate the collection, management and utilisation of oil revenues, and the Ugandan government has not exhibited any

willingness to sign up to the EITI.

Drafting of the Petroleum Exploration, Development, Production and Value Addition Bill of 2010 (hereafter referred to as the Petroleum Bill of 2010) is complete, but it has not been tabled before parliament. The bill is a slight improvement on the outdated Petroleum Exploration and Production Act of 1985. Section 73 of the bill requires payment of an annual area fee according to the acreage held under a licence area that is cancelled if the fee is not paid. Section 86 also introduces an annual fee for gas refining, gas processing and petroleum transportation and storage facilities. The licensee must pay royalties to the government on crude oil and natural gas extracted. However, no suggested or minimum levels are set for the production share, bonus bids, royalties, tax payments, training budgets or land rents. According to the bill, many of these key elements will be determined on a licence-by-licence basis (Sections 106 and 159).

In terms of revenue sharing, the bill requires that ‘the paid royalty is to be shared among central, regional and local governments in an area where petroleum is discovered’, with Schedule IV prescribing 85% for the central government and 15% for the regional and local governments. The bill provides neither the rationale for this percentage, nor an estimate of the amount. Another criticism is that the bill does not provide for any sort of progressive revenue collection, whereby the state’s share of benefits would increase as the project’s profitability rises; a situation that denies a nation the ability to capture a larger share of rents from oil in times of commodity price booms without regularly renegotiating the contracts. Finally, there is also fear that since the bill allows licensees to use their share of the licence as security to raise funds (Section 131), it creates a risk that the country’s resources will be mortgaged to foreigners.

#### ACCESS TO INFORMATION AND PARTICIPATION AT A CROSSROADS

To attain transparency and public accountability of oil revenues, all stakeholders should participate in the process. Participation can only be effective

if people can access relevant information to enable them to engage authorities from an informed point of view. However, access to information is not guaranteed by the Petroleum Exploration and Production Act of 1985, although the state has the power to obtain information or data about exploration or development operations from any individual or institution (Section 57). Yet, according to Section 59 of the act, ‘no information furnished or information in a report submitted ... by a licensee shall be disclosed to any person who is not a government minister or an officer in the public service, except with the consent of the licensee.’<sup>6</sup> To release such information is an offence punishable by a fine of up to five million shillings or two years’ imprisonment or both a fine and imprisonment.

The 1995 Constitution grants every citizen the right of access to information in the possession of the state, except where the release of the information is ‘likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person’ (Article 41). Section 5 of the Access to Information Act of 2005 echoes the above constitutional provision. However, information that is perceived to put a third party at a contractual or commercial disadvantage is restricted (Section 27(c)(1)), but the law does not specify what information is deemed confidential and commercially disadvantageous.

The Ugandan media is instrumental in relaying information to the public, but is currently threatened by a proposal to amend the Ugandan Press and Journalist Act of 1995. The amendment introduces stringent restrictions on establishing and licensing media houses and would give the Media Council power to deny licences to media houses whose material may affect adversely ‘national security, stability, or unity’, foreign relations or sabotage the economy,<sup>7</sup> which will stifle the capacity of the people to participate from an informed point of view. Even before the bill is passed, government has already closed some radio stations without according the affected a hearing.<sup>8</sup>

Section 156 of the Petroleum Bill of 2010 may provide relief, as it states that the minister must provide the public with: (a) details of

all agreements, licences and any amendments to the licences or agreements whether or not terminated or valid; (b) details of exemptions from, or variations or suspensions of, the conditions of a licence; (c) the approved field development plan; and (d) all assignments and other approved arrangements in respect of the licence. However, this disclosure is still subject to confidentiality of data and commercial interests of third parties/extractive companies, and all data submitted to the government by a licensee shall be kept confidential and shall not be reproduced or disclosed to third parties by any party. If the government is to disclose such information, the licensee must consent and vice versa. According to Section 158 of the Petroleum Bill of 2010, the licensee is at liberty to pass on this information freely to: (a) its home government or any department, agency or instrumentality by law; (b) a recognised stock exchange on which shares of the licensee or its affiliated companies are traded; (c) financial institutions, professional advisers, arbitrators and experts; and to (d) *bona fide* prospective assignees of a participating interest. Even then, what information is regarded confidential is not clear.

## THE INSTITUTIONS

The Oil and Gas Policy of 2008 provides for the establishment of institutions to manage oil activities: an oil and gas policymaking and monitoring body (Directorate of Petroleum in the Ministry of Energy and Mineral Development), a regulatory agency (the Petroleum Authority of Uganda, a transformed Petroleum Exploration and Production Department) and a separate commercial entity (the National Oil Company – NATOIL).

The policy still recognises the relevance and importance of other government agencies and ministries:

- The Ministry for Justice and Constitutional Affairs is supposed to guide the formulation of petroleum legislation, including the petroleum revenues management law.
- The Ministry for Finance, Planning and

Economic Development is supposed to ensure macroeconomic stability and participate in the petroleum licensing process, administering oil agreements and formulating petroleum revenue legislation. The ministry should also administer the collection and utilisation of oil and gas revenues in line with the relevant laws, and be responsible for ensuring proper management of the revenues collected. Finally, the ministry is responsible for developing and harmonising accounting standards in the oil and gas sectors, including aligning them with the EITI principles.

- The Ministry of Local Government is responsible for integrating oil and gas activities into local governments' plans and programmes.
- The Central Bank (Bank of Uganda) acts as the government's financial adviser and, where appropriate, as an agent in financial matters. It ensures that oil and gas activities do not impact negatively on monetary policy and macroeconomic stability. The Bank also participates in the management and administration of the Petroleum Fund.
- The Uganda Revenue Authority is to administer the collection of revenue from oil and gas activities in line with the established laws.
- The National Planning Authority's key role is to lead the strategic national planning for incorporating oil and gas activities effectively into the national economy.

Most of these institutions have not been streamlined to match the capacity and expertise required for effective handling of oil revenues. The proposed departments to be set up in the Ministry of Energy and Mineral Development are not yet in place, and whether – once set up – they will be independent and free from political interference remains to be seen.<sup>9</sup> Warning signs include presidential directives issued to government agencies that are followed to the letter without any technical evaluation, and

past cases of state agents invading enforcement agencies (such as the Court of Uganda).

In conclusion, Uganda's recent oil discoveries raise both expectations and concerns. As the country gets ready to start production, the focus should be on creating an enabling legal, policy and institutional environment, in order to ensure that oil yields lasting benefits to present and future generations.

## ENDNOTES

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- 2 Wafula W, '2.5 billion barrels of oil discovered', *The Monitor* (Uganda), 3 September 2010.
- 3 Kasita I, 'Oil output to reach 350 000 barrels by 2018, says Tullow', *The New Vision* (Uganda), 22 February 2010.
- 4 Revenue Watch Institute, Extractive Industries, <http://www.revenuwatch.org/our-work/countries/uganda/extractive-industries>.
- 5 Article 1(ii) of the São Tomé and Príncipe Model Oil Revenue Management Law of 2004 defines oil revenue to include any direct or indirect oil-related payment owed by any person to the state, payments related but not limited to: signature bonuses, production bonuses, rents, proceeds from sale of assets, taxes, fees, duties and customs taxes, net profits of state owned oil companies, crude oil sales ... all payments generated from commercial production of hydrocarbons.
- 6 The Petroleum Exploration and Production Act of 1985, Section 59.
- 7 *The Monitor* (Uganda), 'Professional journalist bodies condemn Press Bill', 17 March 2010.
- 8 Moses K, 'Cbs radio closure: Genocide and the paradox of media freedoms', 20 February 2010, <http://forgottendiaries-uganda.blogspot.com>.
- 9 United Nations, 'Uganda: Police invasion of high court thursday', 8 March 2007, press release, <http://www.scoop.co.nz/stories>.

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