

**ESCAPING THE OIL CURSE AND MAKING POVERTY  
HISTORY**

**A Review of the Oil and Gas Policy and Legal Framework  
for Uganda**

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## ACKNOWLEDGEMENTS

As Uganda positions itself to join the club of oil producers and exporters, a number of questions have continued to linger in the minds of a population with a very brief history of relative peace and stability. While the availability of commercially viable oil resources present an opportunity for poverty reduction, the nexus between oil, conflict and democratic failures is also well documented in most poor countries especially in sub-Saharan Africa. The oil boom, however, need not be viewed a curse but a blessing. Prudently managed, oil can be highly beneficial to a country.

In this study we make a case that well managed oil resources like other natural resources will lead to socio-economic transformation and sustainable development of Uganda. The work on oil governance has just started and this research paper opens up the need for further inquiry and debate for deeper understanding of the oil governance. The purpose of this paper is to inform the on-going National Oil and Gas Policy-making process by providing to policy makers alternative policy ideas and options. The paper is also intended to promote public participation and oversight over the oil resources management and benefit sharing.

This research paper builds on ACODE's earlier research work that sought to strengthen the effectiveness of Parliament and members of parliament to perform their legislative, representation and oversight roles over the governance of the country's natural resources and the environment. We are grateful to the United States Agency for International Development (USAID) through the World Resources Institute (WRI) whose initial support enabled ACODE to undertake research on legislative representation of environmental issues.

This research work falls under the Environmental Democracy Programme of ACODE supported by USAID, Department for International Development (DFID), Ford Foundation and others whose invaluable contribution is acknowledged.

It is our sincere hope that this paper will trigger and sustain debate over prudent stewardship of Uganda's natural resources capital in order to foster sustainable peace and development.

## EXECUTIVE SUMMARY

The recent discovery of commercially viable oil deposits in the Abertine Graben region of Uganda (Lake Albert basin) raised hopes that the enormous revenues expected to accrue would make poverty history. At the same time however, the discovery has generated fear that the oil resources would turn out to be a curse rather than a blessing, especially if the anticipated revenues were not properly planned for and, more importantly, equitably and transparently utilized. Both the anticipation and the apprehension are well-founded. Examples abound and are reviewed in this paper, of countries which struck oil and either immediately nose-dived into misery or at best continued to wallow in the mire of economic stagnation, unfavourable terms of trade, dependency, unemployment and the attendant social unrest just as they did in their inglorious pre-oil days.

Nigeria, for example, Africa's largest oil producer and the fifth overall worldwide, is a classical study in poverty amidst plenty. With proven reserves of 30 billion barrels per day (bpd), Nigeria earned a whopping US\$ 340bn from 1965 to 2000 from oil. But by the year 2000, that country's income per capita was exactly what it was in 1965!. And what is more shocking, 70% of Nigerians were below the poverty, earning less than one dollar a day, compared to 36% in 1970. At the same time, easy petrodollars erased the need for accountability, bred dictatorship, distorted the social structure, laid a big chunk of the country to waste and reduced the Niger Delta to an ungovernable hell-hole.

Elsewhere in Africa, the discovery and exploitation of oil in Gabon literally wiped out Agriculture, industry and commerce and yet the oil has now run out, leaving the country in an extremely vulnerable position. In Angola, the bloated expectations from oil led to wanton expenditure on white elephant projects, resulting in an unmanageable national debt. To date, the bulk of the oil output is mortgaged as security for the loans recklessly incurred in anticipation of income from the "back gold". As for Equatorial Guinea, not only has oil bred an unaccountable government, but the bulk of the earnings therefrom have not been translated into incomes for the citizens, most of whom live in penury, but have been deposited on the personal account of the president - in Washington DC.

But as the paper demonstrates, things need not be so grim. There is nothing inherently cursed about oil. Norway has responsibly managed oil to bring about a sustainable, fully integrated economy and stable welfare society. Many Arab countries may not exactly be bastions of democracy and accountability, but they have posted impressive economic statistics and ensured a reasonable standard of living for their people. This, then, suggests that it is possible for Uganda to avoid the so-called oil curse, and translate the discovery of oil into positive and sustainable gains, and this paper sets out to initiate discourse on how this ought to be done.

The paper goes to some length to analyse the natural resource paradox, explaining how oil tends to create stagnation, economic decline and civil unrest, by distorting the interaction between the factors of production resulting in the (in)famous Dutch disease, how it promotes rent-seeking and corruption, increases the appetite for spending, undermines control of public spending, undermines industry and agriculture, lays the ground for oppression of women and, at the political level, breeds dictatorship, unrest, conflict and even civil wars.

The paper also makes a critique of Uganda's draft national oil and gas policy published in June 2006, demonstrating that changes need to be made to the policy to avoid the pitfalls that other sub-saharan countries have fallen into.

The paper further examines the legal frame-work governing the oil industry, pointing out the pitfalls and short-comings of the Petroleum (Exploration and Production) Act, Cap. 150, which was designed before a fully operational oil industry was anywhere in sight, and the other laws, including the 1995 Constitution whose 2005 amendment provides for petroleum but completely omits to make mention of natural gas, an equally important resource.

But this study is more than an academic discourse and, accordingly, it goes beyond highlighting case studies and abstractly exploring the possible consequences of oil production. The study also examines the concrete situation whereby the Banyoro, the community on whose land the bulk of the reserves have been proved to exist, are already up in arms demanding a sizeable share in the oil revenues, all this before a single drop of oil is extracted.

More importantly, the paper makes a wide range of specific legal and policy recommendations and, in particular, proposes a benefit-sharing mechanism to govern the anticipated revenues.

This way, it is hoped not only that the paper will trigger informed debate but that it will inform policy decision-making in relation to the burgeoning oil industry.

*“The gap between the promise of petroleum and the perversity of its performance in recent times is enormous. Study after study demonstrates that as a group, countries dependent on oil as their leading export have performed worse than other developing countries on a variety of economic indicators; they have performed worse than they should have, given their revenue streams; and poverty within their borders has been exacerbated rather than alleviated over the past two decades. Even more worrisome, the gap between the expectations created by oil riches and the reality produced is a dangerous formula for disorder and war. Countries that depend upon oil exports over time are among the most economically troubled, the most authoritarian, and the most conflict-ridden states in the world today” (Ian Gary, Terry Lynn Karl, “Bottom of the Barrel: Africa’s Oil Boom and the Poor”)*

## 1.0. INTRODUCTION

The recent discovery of commercially viable oil deposits in the Albertine Graben region which forms the northern part of the western arm of the Eastern African Rift Valley System will soon see Uganda joining the club of Organisation of the Petroleum Exporting Countries (OPEC). Uganda’s discovery of oil resources has also raised hopes and expectations among the citizens that, with the substantial revenues likely to be generated from the oil boom, the country will be able to escape from the fangs of biting poverty. On the other hand, the discovery of oil has also caused anxiety about how the citizens are going to share the benefits of the oil boom<sup>1</sup> and the fear that, if not well governed through an accountable, transparent and people-centred system that ensures equity in revenue sharing, the resource could become Uganda’s curse rather than a blessing.<sup>2</sup>

Petroleum geologists have determined that the Mputa and Waraga oil fields have volumes of between 100 and 300 million barrels of oil. In the Waraga field, a maximum of 12,050 barrels of oil can be produced per day.<sup>3</sup> According to Hardman’s Chief Executive Officer, the great news is the fact that flow tests from all the zones have exceeded the expectations of productivity.<sup>4</sup> Additional recent exploration findings by Tallow Oil Partners in Area 3A have revealed the existence of up to 500 million barrels of oil at the Kingfisher Well in Hoima. According Reuben Kashambuzi, the Commissioner for Petroleum Exploration and Production, production is now possible as the issue of commercial capacity has been settled.<sup>5</sup>

<sup>1</sup> Emmy Olaki “More oil is found: Hoima yields 500 million barrels,” New Vision, October 12, 2006.

<sup>2</sup> See, Grace Matsiko, “ Oil rush: 3 airports, army barracks built”, Daily Monitor, July 8, 2006.

<sup>3</sup> See, “Uhuru speech: Museveni outlines plan for oil”, The New Vision, Tuesday, October 10, 2006.

<sup>4</sup> See, Daily Monitor, July 5, 2006.

<sup>5</sup> See, Emmy Olaki, “Oil Production to start soon, 30 million barrels found”.  
The New Vision, August 31, 2006.

While the discovery of oil deposits in Uganda is good news, the oil, underdevelopment, poverty, insecurity and democratic failure nexus is well documented in most developing countries that produce and export oil. This is especially the case with Africa countries. In the words of Gary and Karl, “The lived experience of most oil-producing countries over the past two decades tells a story that differs radically from the promise of petroleum. When taken as a group, all ‘resource-rich’ but less developed countries dependent on oil exports have seen the living standards of their populations drop quite dramatically.”<sup>6</sup>

The oil boom, however, need not be detrimental. Prudently managed, it can be highly beneficial to a country. A country such as Norway, for instance, has utilised its oil resources so well that it is ranked highest on the UN Development Program’s list of the best development performers, a clear indication that the problems often associated with petroleum are not inherent in the petroleum itself. Certainly, Uganda can use its oil boom to attain sustainable development and lasting peace by ensuring that oil revenues benefit the poor. The quality of public policy will determine whether or not this is successfully done. In the words of Gary and Karl, given the right incentives for making good policy choices, petroleum can be “black gold” rather than the excremental of the devil<sup>7</sup>.

The purpose of this research paper is to inform the on-going National Oil and Gas Policy-making process by providing policy makers with alternative policy ideas and options, thus contributing to the development of a good policy for Uganda. In this paper, we argue that a people-centred and knowledge-driven oil and gas policy will ensure equity in benefit sharing, prudent utilisation of resources, avoidance of economic distortion or ‘Dutch Disease’ and associated conflicts, and enhancement of democratic governance and economic transformation.

The paper is organised around the following sections: Section One is the introduction. Section Two is the background detailing Uganda’s oil exploration journey. Section Three focuses on the paradox of oil boom and negative experiences of African oil-producing and exporting countries. It explores why oil revenues have rarely been translated into poverty reduction and overall development. Section Four focuses on the draft National Oil and Gas Policy while section Five discusses the existing legal regime for oil governance in Uganda. Section Six discusses a possible oil benefit-sharing mechanism for Uganda, with a number of policy recommendation and proposed legal reforms.

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<sup>6</sup> See, Ian Gary and Terry Lynn Karl, “Bottom of the Barrel: Africa’s Oil Boom and the Poor”, A study by the Catholic Relief Service, June 2003, p. 18.

<sup>7</sup> Ibid., p.19



## 2.0. BACKGROUND

Sub-Saharan Africa is the fastest growing oil-producing region in the world, with production having risen by 36% in the past 10 years against a 16% rise worldwide. Analysts say that oil production is set to double by the end of this decade with the United States set to start importing 25% of its petroleum resources from Africa. It is estimated that over \$ 50 billion, the largest investment in African history, will be spent in Africa by end of this decade. The African oil boom presents a moment of great opportunity but also many challenges for oil producing countries. It is a moment of great opportunity because the amount of revenues available for poverty reduction is substantial. On the other hand, the dramatic development failures that have characterised most oil dependent countries indicate that the oil boom has not helped developing countries to fight poverty. Instead it has worsened the poverty situation. In Africa, oil has mainly benefited African privileged elites, oil companies and their shareholders and Western industrialised countries

### 2.1. The history of oil exploration in Uganda

Uganda, like many other Sub-Saharan African countries, has great expectations of experiencing an oil boom. The first significant oil exploration in Uganda was done by E.J Wayland, a government geologist who documented substantial hydrocarbon occurrences in the Albertine Graben in the 1920's. The Albertine region, which forms the northernmost part of the western arm of the East Africa Rift System, is the principle prospective area for oil reserves in Uganda. It stretches from the boarder with Sudan in the north to Lake Edward in the south, covering an area of 20,000 sq. km., and extends into the Democratic Republic of Congo.

The pace of oil exploration in Uganda was interrupted during the Second World War, resuming more seriously in the early 1980s with the acquisition of aeromagnetic data across the entire Graben region. Seismic data was first acquired in the area in 1998 and, subsequently, during 2001, 2003 and 2005.

Over the last decade, Uganda has made renewed efforts in oil exploration by licensing a number of prospectors. This effort seems to be yielding results with the recent breakthrough by Hardman Resources Company's discovery of huge petroleum deposits in the Albertine Graben region. Government has defined five Exploration Areas (EAs) in the region as follows:

- ❖ Exploration Area 1: 4,285 Sq. km;
- ❖ Exploration Area 2: 4,675 Sq. km;
- ❖ Exploration Area 3A: 1,991 Sq. km;
- ❖ Exploration Area 3B: 1,786 Sq. km;

- ❖ Exploration Area 4: 5,913 Sq. km; and
- ❖ Exploration Area 5: 6,040 Sq. km.

Exploration Area 1 was licensed to Heritage Oil and Gas Company (Heritage) and Energy Africa Limited (now Tullow Oil company) in July 2004. Exploration Area 2 was licensed to Hardman Resources Limited and Energy Africa Limited in October 2001. Exploration Area 3A was re-licensed to Heritage in September 2004. In September 2005, Neptune Petroleum Ltd. (now Tower Resources) acquired an exploration license over Exploration Areas 5. Exploration Areas 3B and 4 are yet to be given out.<sup>8</sup>



**Oil at last:** After almost 20 years of oil exploration, the chairman of Hardman Oil Company present to President Museveni evidence to confirm the existence of oil resources in Uganda.

Uganda's discovery of oil deposits comes at a time when foreign aid to Africa from the developed north is falling, with emphasis shifting to trade and foreign direct investment. To chart out a correct path for development and transformation, it is imperative for Uganda to make the best of the oil resources while they last and to avoid the negative effects that tend to be associated with oil resources.

### 3.0. THE 'OIL CURSE' PARADOX

Experience has shown that successful management of any oil wealth-based economy is strewn with significant challenges. Remarks by the Deputy Managing Director of the IMF capture the difficulties often posed by oil wealth:

*The experience of some developing countries in the management of oil wealth offer dramatic illustration of the problems that could be posed by resource riches. Typically, the exploitation of oil generates very large and sudden revenue inflows. This change alone creates significant challenges for developing countries, not least because their administrative systems are often not well-equipped to handle such flows. Throw in uncertainty associated with volatile oil prices, and you have an added layer of complexity that further strains an already overburdened system. At best, these circumstances challenge the most able policymaker on how to handle the new-found wealth. At worst, they present prime opportunities for outright corruption. (Remarks by the Deputy Managing Director of the IMF at the Regional Workshop on Transparency and Accountability in Resource Management in CEMAC Countries, Equatorial Guinea, Jan. 2005)*

<sup>8</sup> See, "Petroleum Potential of the Albertine Graben Uganda", Petroleum and Exploration Department, Ministry of Energy and Mineral Development, September 2006.

The difficulties faced in trying to manage oil wealth result from the very specialised nature of the knowledge and skills needed in the oil sector as well as the huge profit margins which lead to dependence on oil revenues. Consequently, political power and economic power created by oil tend to revolve around the same individuals who become the main beneficiaries of the oil resources and who, therefore, increasingly develop mutual interest in maintaining the status quo.

Over time, common features of what has come to be known as the “oil curse” have emerged, which include:

- (a) Increasing the chances of conflict in a country;
- (b) The tendency for the real exchange rate to become overly appreciated;
- (c) Exposing the country to volatility, especially in commodity prices, with the attendant adverse impact on growth;
- (d) Environmental costs. Oil operations damage the environment and have adverse effects on the livelihoods of the communities around the production areas;
- (e) The cash economy created by oil undermines those trying to work for longer-term and more sustainable development initiatives. People become disinterested in anything that does not deliver instant cash, with agriculture and industry as the prime casualties. The growth of an oil cash culture thus undermines real and sustainable development.

### 3.1. The Dutch Disease Syndrome

Jeffrey Sachs and Andrew Warner<sup>9</sup> have provided strong evidence suggesting that natural resource abundance often leads to lower economic growth through what is known as the ‘Dutch Disease’ syndrome. The hypothesis of the Dutch Disease syndrome is that countries with abundant natural resources tend to innovate at a slower pace than resource-poor ones. The reason for this is over dependence on the easy money accruing from natural resources, which undermines the linkages between the various sectors of the economy that usually serve to keep the economy strong and healthy.

Over dependence on oil revenues especially has a negative impact on industrialisation and agriculture by encouraging quick purchase of goods rather than their production. On the other hand, oil revenues tend to create a quick rise in sectors such as transport and construction which thrive on the easily available money from oil. This creates an economy that will be difficult to sustain once the oil revenues are depleted. A case in point is Gabon whose over dependence on oil destroyed the agricultural sector. With oil resources running out, the country is unable to feed itself and has to import food with little money to do so.

9. See, Indra de Soysa, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity?* In, Nats Berdal and David Malone (Eds.) *Greed and Grievance: Economic Agendas in Civil Wars*, Lynne Rienner Publishers, London, 2000.

### 3.2. Oil wealth and corruption

The easy availability of oil revenues leads to corrupt practices, generally referred to as rent-seeking. Players in the oil industry provide financial inducements to political actors who, in turn, extend contracts and other favours to oil people in a vicious cycle of 'you scratch my back, I scratch yours' type of behaviour. According to Transparency International's Corruption Perceptions Index for 2004, oil-rich Angola, Azerbaijan, Chad, Ecuador, Indonesia, Iran, Kazakhstan, Libya, Nigeria, Sudan, Venezuela and Yemen etc., all have extremely low scores in managing the revenues accruing from oil due to corruption. The effects of corruption on the economy can be very far-reaching: growth may be stunted, production stifled since oil revenues make it easier to purchase things than to make them, and an oil political and economic oligarchy may emerge, creating fissures in society that will inevitably lead to bitter conflict.

### 3.3. Undermining democracy

Abundant revenues from an oil boom can give a government false confidence that it can survive without the approval of the population. Instead of seeking the population's views to resolve national problems, governments sometimes use oil revenues to purchase weapons to intimidate the population into acquiescence and to silence opposing views, thus nurturing authoritarian tendencies. In Nigeria, for instance, oil resources helped to sustain military rule in power in succession for a long time.

### 3.4. Oil and conflict

The lucrative profits associated with natural resources such as oil tend to create a situation where individuals as well as the population in general see them as a sure way of getting out of poverty. The scramble for natural resource revenues is, therefore, very intensive and those who can get their hands on the resources try to do everything they can to gain and maintain control of the resources, often using violent means. Even where conflicts are a result of political issues, once the belligerents gain control of natural resources, they increasingly depend on those resources to finance their activities and, eventually, the resources themselves may become the *raison d'être* of the conflict. The civil wars in Angola, Liberia, Sierra Leone and many other countries were perpetuated by the warring parties' attempts to stay in control of the resources in their areas of operation.

The oil boom may also generate conflict between different regions of an oil-producing country as they each vie for a larger share of the oil revenues. If the redistribution of oil revenues is not handled prudently and transparently, it can pit entire groups against each other in bitter conflict.

### **3.5. Impact of oil wealth on patterns of spending and growth of debt**

The sudden huge revenues from oil usually impact on the patterns of public spending. It is not uncommon for government to undertake huge projects that would otherwise not be contemplated without the revenues from oil. Such projects are made possible by easy availability of the oil revenues to the state and, additionally, are often contracted to foreign companies who, on their part, exaggerate the costs of the projects to be undertaken. The projects often become a haven of corrupt tendencies.

Additionally, the constantly fluctuating oil prices undermine control over public expenditure. The commitments made by governments when oil prices are high must be met even when revenues are less due to a fall in oil prices, inevitably leading to deficits in government accounts. Almost all OPEC member countries have incurred budgetary deficits year after year, with Algeria topping the list, followed by Iran, Indonesia, Nigeria, Saudi Arabia, Ecuador, Libya and Qatar.<sup>10</sup>

Such deficits inevitably lead to increased borrowing from financial institutions, raising the overall national debt. Borrowing is made easy by the fact that it is backed by the promise of oil and the expected revenues thereof. It is common for countries to commit the entire oil revenues for a specified number of years to come, thus mortgaging the future of their citizens.

### **3.6. Negative impact on work ethic**

It is also the case that the population has great expectations of how oil revenues can quickly improve their lives and solves their problems. Their traditional reliance on the fruits of their own hard work becomes increasingly undermined by such expectations, with catastrophic results once the oil is depleted.

### **3.7. Oil operations and the livelihoods of women**

Oil exploration and production have an adverse effect on the economic livelihoods of women. There is a marked invisibility of female economic activities in the activities of multinational oil companies, leading to the impoverishment of the majority of women in oil-producing areas, with the resultant increased impoverishment of children and, therefore, the entire oil-producing area. New oil activities generally provide economic activities that exclude women.

A study on the impact of oil activities on the economic livelihoods of women in the Niger Delta in Nigeria aptly demonstrates this trend. Chemical wastes dumped into the waterways has so much depleted or driven away fish that fish

<sup>10</sup> Ibid. p.22.



catchments can only be made deep into the waterways, and yet the women lack both the skills and the equipment to carry out fishing in deep waters. The result is that the women have to buy fish from middlemen and resell the fish in their communities, making less profit. And yet, when the communities carry out negotiations with oil companies to negotiate on compensation for employment opportunities lost, women's affected activities are not taken into consideration. In many cases, women are forced to resort to commercial sex to earn money, and there is a higher teenage dropout rate and early childhood marriages. Otherwise, "women were seen as irrelevant and insignificant in the policies and programmes of oil multinationals."<sup>11</sup> Men, on the other hand, get unskilled jobs in oil dredging, laying of oil pipes, as daily paid labourers or night security guards. They also get monetary compensation allocated to indigenous governing councils for exploration of crude oil, 'standby' payments in lieu of job loss, and youth training for skills. In many cases, men use the financial dividends to marry more wives, keep more concubines and purchase sexual services. The long term social effect of these trends is to lower even further the status of women and their economic autonomy.<sup>12</sup>

#### 4.0. AFRICAN CASE STUDIES

An examination of selected African countries that have experienced oil booms will help to point out what can easily go wrong if oil resources are not properly managed.

##### 4.1. Nigeria

Nigeria, Africa's largest oil producer and fifth largest oil producer in the world, is a classic example of the paradox of poverty amidst plenty. Nigeria has proven oil reserves of about 30 billion barrels and has earned USD 340 billion over a period of 40 years. Ironically, the oil boom has led to no significant improvement in the lives of the poor. More than 70 percent of the people still live on less than one dollar, 43% lack proper sanitation and clean water and the infant mortality rate is the highest in the world<sup>13</sup>. Oil earnings account for 83% of Federal Government revenue and approximately 40% of the country's Growth Domestic Product (GDP).

Nigeria's experience presents a clear case of oil dependence and poverty, underdevelopment and violence. In 1965, oil revenues per capita were about US\$33, while per capita GDP was \$245. In 2000, when oil revenues were US\$325 per capita, per capita GDP remained at the 1965 level.

<sup>11</sup> Francisca Isi Omorodion, *The Impact of petroleum refinery on the economic livelihoods of women in the Niger Delta region of Nigeria* in *JENDA: A Journal of Culture and African Women Studies*, Issue 6, 2004.

<sup>12</sup> Ibid.

<sup>13</sup> Ian Gary and Terry Lynn Karl, *Op cit.* p. 26.

This means that all the oil revenues – US\$350 billion in total – did not add to the standard of living of all Nigerians. And possibly, the discovery of oil could actually have contributed to a decline in the standards of living.

Nigeria's oil industry has been grossly mismanaged. Most political forces that have operated in Nigeria have been driven by the desire to capture oil revenue. In 1977, the Nigerian National Oil Company (NNPC) was created as a partnership agency with foreign oil companies. The NNPC receives 57 percent of total crude oil, most of which it exports. The revenue from the sale of oil is always deposited with the Central Bank of Nigeria and shared by three levels of government based on a constitutional formula.

Unfortunately for Nigeria, the petrodollars are always stolen and squandered since the country lacks instruments for fiscal stabilisation, accountability, transparency and intergenerational equity. According to Human Rights Watch, “..little of the money paid by the federal government to state and local governments from the oil revenue is actually spent on genuine development projects.” Accordingly, there seems to be virtually no control or proper audit over spending by local and state authorities. It is estimated that over USD 40 billion of government funds, 90% of which came from oil, was robbed by General Sani Abacha during his military regime in the 1990s.

The case of Nigeria epitomises the Dutch Disease at its worst. With the discovery of oil resources in the 1960s, the country overvalued the exchange rate which negatively harmed the agricultural and manufacturing sectors. Frequent moments of booms and busts have made it nearly impossible for government to plan or project spending levels. Twelve development schemes over the past decade have been launched and abandoned due to declines in oil revenues, with painful results.

The socio-economic disorientation in Nigeria has been accompanied by political decay characterised by political violence, abuse of human rights and the rise of banditry associated with kidnappings and ransom seeking. This has been especially so in the Niger Delta where most of Nigeria's oil is produced. The vicious cycle of activism and militancy linked to oil as spills and other environmental problems and poverty in the Niger Delta take their toll on the livelihoods of communities has been met by suppression and cruelty from successive military governments. Conflict has also emanated from the security forces and/or agencies hired to guard oil facilities as they contend with the local communities for contracts from the oil companies.

After decades of struggle to establish appropriate policies, the 1999 Nigerian constitution took a step towards the derivation principle. Currently, the 1999 Nigeria Constitution requires that no less than 13% of the oil resources be transferred back to the States producing the oil (the 13% oil derivation policy).

This has exacerbated the vulnerability of sub-national governments to oil price variations. For instance, 10% oil price shock (US\$ 2 per barrel) causes a 20% fluctuations in federal oil revenue.

Oil companies have made largely token attempts to endear themselves to the local populations by setting up development projects in host communities, often hiring youths from the localities to respond to community demands for employment. Additionally, the oil companies give out cash to local authorities as compensation for environmental accidents. But because the payments are not guided by any national policies, they are negotiated between the oil companies and various communities and, therefore, are often a source of conflict among the local people.

#### 4.2. Gabon

Gabon, with a population of 1 million, is an example of a country that has totally mismanaged its oil resources. Its fate amply demonstrates what can go wrong if a proper oil policy is not developed. Although the oil boom experienced since the late sixties has boosted per capita GDP to \$4,000, oil production has now gone down by a third to 268,000 bpd (barrels per day) from its peak in the mid-1990s. It is estimated that oil reserves could be depleted within a decade. Having grown to over-depend on oil which is now running out, Gabon is likely to face catastrophe in the near future.

The situation in Gabon has the following worrying features:<sup>14</sup>

- No local food production: only about 1% of the total land area is under cultivation.
- The agricultural sector's contribution to GDP is only 7%.
- Lavish spending by government officials.
- Scandals about hidden oil deals abound and use of Gabonese banks for massive money laundering linked to French politicians.
- No audit of Gabonese oil institutions had been done by the year 2002.
- No deposits have been made into the Fund for Future Generations set up in 1998.
- More than 50% of the population in the three major cities lack access to electricity and running water.
- Productivity in all other sectors has declined with the presence of easy money from oil. There was no major investment in other sectors apart from the oil sector.
- No strategy for a post-oil boom economy was put in place by the government.

<sup>14</sup> Ian Gary and Terry Lynn Karl, op cit p. 29.



### 4.3. Angola

Angola captures between 40 and 75 percent of revenues raised from petroleum. More than 40% of her oil is exported to the USA. The biggest oil company operating in Angola is Chevron Texaco, mainly in the oil-rich Cabinda enclave. Angola's national petroleum company, Sonangol, has been a commercial success. Its consultants are helping the neighbouring oil-producing countries to build capacity, most especially in oil negotiations with oil companies. Sonangol has also played an important role in the restructuring of national oil sectors in those countries.

However, Angola suffers from the usual problems facing other oil producing African countries:<sup>15</sup>

- An estimated 50% of state expenditure is not reflected in the official budget.
- A huge national debt of \$11 billion.
- Much of the oil output is pledged to pay back loans, so the country keeps seeking new loans, a practice that is mortgaging the country's future.
- The Angolan government has so mismanaged its substantial oil revenues that millions of Angolans continue to live without access to hospitals, clean drinking water and schools. A staggering US\$ 4.22 billion went unaccounted for between 1997 and 2002. Total social spending in that period was US\$4.27 billion.



Because of the bad experience of oil governance in other countries, civil society in Uganda is not waiting for the worst to happen. In this picture Community Leaders meet representatives of Hardman Oil Company to discuss issues of oil benefit sharing.

### 4.4. Equatorial Guinea

With a population of only about one million people, Equatorial Guinea produces 265,000 bpd, obtaining about \$1,000 annually per citizen. The oil revenues have resulted in a growth rate of 65% in 2001 and a per capita GDP of \$2,000. But the government's take in the oil resources is very low by international standards. The main challenge to the government is how to effectively collect its due share of oil revenues and manage the oil resources.<sup>16</sup>

The following features are a cause for concern:<sup>17</sup>

- The political situation in the country is characterised by repression, human rights violations, no accountability or transparency and virtually no civil society;

<sup>15</sup> Ibid., p. 32.

<sup>16</sup> Ibid., 39.

<sup>17</sup> Ibid.

- 57% of the population have no access to clean water;
- Lack of administrative structures capable of managing the oil sector;
- The national oil company, GEpetrole, lacks human resources and has had to hire Western consultants;
- Over \$300 million of oil earnings were deposited in a private bank in Washington DC on a personal account;
- Oil revenues account for 61% of government revenues and 86% of GDP;
- The country suffers from Dutch Disease: coffee and cocoa production has gone down from 60% to 6% in ten years; and
- The government has taken advances from oil companies on the strength of future oil production. Such loans have high interest rates and short maturity periods.

## 5.0. EMERGING CONFLICT OVER OIL IN UGANDA

The main contentious issues over oil are emerging from Banyoro region.

### 5.1. The Bunyoro Case

Bunyoro kingdom is demanding a share of the oil deposits found in Hoima, Kibaale and Masindi districts. The Banyoro insist that Bunyoro should take not less than 51% of the oil revenues. The Kingdom government is also seeking compensation from the government for the Waraga oil site in Hoima district, insisting that the area is a significant spiritual centre for the kingdom. The kingdom alleges that the government had tampered with their sacred shrine, which is still marked by vegetable oil-yielding *mikooge* (tamarind trees) planted by ancients. Waraga is said to be a centre for spiritual worship.

Bunyoro kingdom has set up certain mechanisms to push for its interests:

- A ten-man Citizens Oil Committee, with representatives from Kibaale, Masindi, Hoima and Buliisa, and 2 from the kingdom. The Committee is to fast-track Bunyoro's demands for at least 51% share in the oil revenues;
- A Ministry of Minerals and Industrial Development; and
- The Omukama of Bunyoro has, on Government request, nominated a delegation of three officials to the Uganda Government Petroleum and Gas Policy making process. The king directed the delegation to press for the kingdom's fair share, both as the owner of the land on which the oil wells are located and where drilling is going on, and also for a fair share for the kingdom as the place where the oil has been discovered. He also told the delegation to find from foreign embassies of oil producing countries how cultural institutions have been awarded shares from oil.

**Bunyoro accusations against the government revolve around the following issues:**

- The Banyoro feel that they have been cheated in the revenues generated from national parks and the forest reserves. Because of the perceived historical injustices the Banyoro suspect that the government has no good intentions for them in the current deal;
- There are also suspicions that there is a sinister scheme to take over *strategic* land in Bunyoro kingdom. There are allegations that top army officers have started buying or just helping themselves to huge swathes of the kingdom's land since oil was discovered in Bunyoro, often on the pretext of establishing military detachments on the shores of Lake Albert. The deals are being made with the connivance of local leaders;
- Suspicions about the unexplained deployment of heavy military personnel around the oil exploration wells in the region; and
- Allegations that government officials are already evicting people from their land. For instance, that a soldier has evicted more than 100 Banyoro in Bwora parish in Kibaale and an army officer has taken over the Omukama's land in Kyangwali in Hoima.

**Government officials' reaction**

- The oil exploration wells are national assets and have to be protected. Therefore the military presence is justified;
- Parliament is yet to make a law about sharing of royalties from mineral exploitation; and
- There is no ban on buying land. If land is available, people will buy it, wherever they find it in the country.

**Bunyoro's accusation against Hardman Resources Ltd.**

- Hardman has destroyed a historical site, Waraga. They say Waraga was inhabited by King Waraga, one of the oldest Bunyoro kings. (*Hardman says the site was named after the type of fish found in the lake*) and
- Hardman came to Bunyoro and started digging, without consulting the king, as if the Banyoro do not exist. (*Hardman says the responsibility of consulting the king is the work of the Ministry of Energy*).

**5.2. Other potentially contentious issues**

The PSA signed between government and Hardman

- Uganda is to receive 7.5% royalties from the gross petroleum production within the contract area;
- The licensee to retain 60% to cover the cost of exploration, development and production;

- o The remaining portion to be split between government and the licensee on a 70-30 basis, although the government can negotiate for a higher share. This means that out of every 100 barrels, the two oil firms will take 69.75 barrels while Uganda will retain 30.25 barrels; and
- o Under the licence, the two firms (Hardman Resources Ltd. & Tullow Oil Company) will pay US\$2.5 per sq. km. For land in the exploration area, a training fee of US\$12,000 every year and, once production starts, US\$500 per sq. km. There will also be a negotiated fee for the signature bonus.

The Banyoro demands and accusations help to demonstrate, fortunately at an early point in time, the danger of taking community concerns for granted and of not involving them and other stakeholders in the entire process. Public participation and information disclosure must be an integral part of oil exploration and production process to avoid future conflicts.

#### **6.0. A CRITICAL ANALYSIS OF UGANDA'S NATIONAL OIL AND GAS POLICY**

The government of Uganda is in the process of formulating a National Oil and Gas Policy to guide and govern petroleum exploration and production activities in the country. Accordingly, the draft policy is driven by the desire to create lasting value to society by ensuring a maximum return on investment in the Uganda oil and gas industry for investors, the government and people of Uganda, and to achieve growth, poverty reduction, and sustainable development.<sup>18</sup>

While the draft Policy contains good, extensive and elaborate policy positions, certain aspects of it need to be revisited and addressed. It is also important to point out that there are fundamental problems and challenges, not specifically connected to the draft policy, which desperately need to be addressed with or without oil:

- inefficiencies in government departments;
- shortage of public-spirited public servants;
- paucity in research and technology;
- lack of entrepreneurial skills;
- poor work culture; and
- lack of a saving culture.

For our present purposes, we shall confine our discourse to what is set out in the draft policy, beginning with its professed objectives.

<sup>18</sup> Draft National Oil and Gas Policy, June 2006.

## 6.1. Objectives of the Oil and Gas Policy

The Oil and Gas draft policy has laid down a number of objectives that the policy seeks to achieve. In this section we critique some of the the objectives that were found lacking or were not providing a clear policy direction.

1. To ensure efficient and effective management of Uganda's oil and gas resources;

This is a lofty ideal that will nevertheless require intensive training and expansion of the staff to be in charge of managing this sector. Uganda's experience with public bodies (parastatals) clearly shows a serious deficiency in this area.

2. To encourage transparency in the management and operations of the industry;

For the sake of avoiding the pitfalls mentioned elsewhere in this paper, which have dogged many oil producing African countries, this objective should go beyond merely "encouraging" transparency. It should propose frameworks that will ensure that there is transparency in fact. Such frameworks could include direct involvement of Parliament for oversight, involvement of civil society and communities in policy and decision-making to promote participation, information disclosure etc.

3. To ensure that revenues from the oil and gas sector are properly managed and utilised to create new wealth;

The policy ought to demonstrate exactly how this is to be achieved. A careful reading of the policy does not reflect this. The policy especially does not indicate what type of new wealth will be created from oil revenues.

4. To encourage early production after commercial discoveries;

Since oil resources are associated with many challenges, the objective of early production after commercial discoveries may undermine the country's ability to cope if the necessary framework has not been put into place.

5. To control the production rates such that any production reservoirs are not damaged or destroyed;

6. To encourage as much participation in the petroleum industry as possible;

It is understood that this objective is set against the government's intention to see the private sector people's activities boosted by the petroleum industry. However, they may not be able to do this effectively unless some of the oil revenues are ploughed into the development of such activities. The objective should indicate this. Given that the oil industry is not labour intensive and requires highly specialised skills, it is not likely that many Ugandans will directly participate in it. However, they can benefit from linkages.

7. To ensure that the government receives returns commensurate to the production rates giving due consideration to the recovery of oil company investments at a profit;
8. To ensure that oil and gas activities are undertaken in a manner that conserves the environment;

The policy acknowledges that the oil and gas industry will affect the wildlife, biodiversity and economy of the Lake Albert ecosystem as well as the corridor in which the pipeline will pass, (Section 7.2.4 (pp. 41-42)). It proposes to mitigate environmental damage through control of air pollution, keeping access roads at minimum and using bitumen to surface the roads, control measures against the release of chemical wastes and spills into Lake Albert and rivers that drain the basin. The policy also says that a disaster preparedness response mechanism will be put in place to respond to any oil spills in the Lake Albert basin and pipeline corridor.

The challenge, however, is how to ensure that oil companies are held accountable when they damage the environment, and are made to clean up the development areas at the completion of their contracts. Additionally, attempts to have an effective disaster preparedness mechanism in Uganda have not been very successful. As such, the policy should in clear terms show how Government intends to respond to potential disasters in respect to oil spills or fire outbreaks.

## **6.2. Principles guiding the policy**

The draft Policy has developed principles to guide petroleum exploration and production. While this is in itself commendable, we find gaps and weaknesses in the principles that need to be addressed. The weaknesses are discussed below.



- *Efficient resource management*

The principle seeks to reduce the costs of operations and maintain high standards of productivity. However, given that Uganda clearly lacks the technical capacity to influence and provide oversight over the way the oil companies carry out their activities, it would be useful for the policy to specifically indicate the steps being taken to address this area.

- *Shocks from fluctuating oil prices*

The policy acknowledges the problems resulting from very high prices (wasteful spending) and very low prices (extreme insecurity), and lists (8.1) possible options as mechanisms to manage the shocks resulting from fluctuating oil prices. The policy specifically indicates that government will establish a Uganda Petroleum Fund whose role will be 'to ensure effective oil and gas revenue management and to contribute to overall price stabilisation.'

While this is a positive proposition, it is important for the policy to set out exactly how the Fund will be managed and controlled to ensure transparency, accountability and good management and, in particular, to ensure that it does not suffer from interference of political officials. Although the policy proposes legislation to ensure proper systems of financial management and accountability of oil revenues, the experience of Uganda indicates that legislation has not necessarily resulted in respect for proper systems of financial management. The stakes will be very high for the oil industry and the temptation not to respect proper financial guidelines is likely to be even higher than usual.

- *Oil revenues to boost growth and development*

The principle also stresses ensuring that petroleum revenues are used to boost balanced growth and sustainable development of the economy. But this is such an important aspect of economic development that the policy should spell out proposed means of achieving these two most highly sought after achievements but which many developing countries have failed to realise. In particular, using oil activities to develop other sectors is going to be a very crucial issue in the economy. The option therefore is to develop benchmarks for the key sectors under the Poverty Eradication Action Plan (PEAP).

- *Creating lasting benefits to society*

The policy stresses the issue of creating lasting benefits to society. We should, therefore, examine ways of using oil resources to *transform* the economy, especially by using oil revenues to invest heavily in research, science and technology.

Consider David Landes' remarks in his book, *The Wealth and Poverty of Nations*: *In OPEC countries, the torrent of wealth has not produced an economic transformation. Easy riches have led down the path of self-indulgence and laziness. Rich Arab nations have traded black gold for money and sent the money back to the countries that paid it; they have purchased shares in the enterprises of advanced industrial nations; they have built handsome homes, hotels, palaces, etc. BUT, they have not developed an advanced economy. They have purchased the skills and services of others rather than learned to do things for themselves. They import just about everything.*

The draft Policy proposes that exploration and production should be gradual and spread out so that the current generation does not deplete resources at the expense of future generations. It is important for the policy to specify that government should set a ceiling, publicly known, on how much oil the country will produce, how many barrels per day (bpd).

Additionally, the policy rightly proposes that the country should avoid pressure to speed up production in order to accelerate revenue generation or rapid returns to investment by companies. This is important in a sense that Government should be able to provide the necessary oversight over oil companies to balance their profit interests and the long term interests of the country. Unless the temptation by the investors to reap back their investments in a short time is well managed, Uganda may run out of oil before its development goals.

- *Transparency and sustainability*

As indicated in this paper's background discussion, lack of transparency has been the problem of many oil producing African countries and has been responsible for the dismal economic benefits from the huge oil activities in many of those countries. It is, therefore, heartening that, in cognisance of this problem, the Policy calls for openness and complete access to information as well as disclosure of revenues received from the oil/ gas, according to generally accepted accounting principles and international financial reporting standards.

Section 8.2 (p.45) proposes possible ways to ensure transparency. Among these, it is noted that in order to improve the level of transparency and accountability, PSAs should include commitments on transparency issues. The policy also correctly notes that "appropriate transparency and accountability systems are only effective if information is readily available."

We note with concern the Solicitor General's statement in August 2006 that the government will not avail the oil exploration agreements to members



of parliament because the agreements are confidential.<sup>19</sup> This would seem to undermine the government's claim to be committed to transparency and accountability, reiterated in the draft Policy as indicated above. The Policy further acknowledges that corruption is still widespread in Uganda, and the oil and gas sector could fall prey to the practice (pp. 45/46). It is, therefore, clear that the Solicitor General's statement is not in tandem with the spirit of the Policy.

- *Competitiveness and productivity*

The policy rightly calls for open bidding as a basis for licensing to ensure that the most efficient, the best qualified and the most reliable suppliers are licenced. It rightly commits government to promote healthy competition among licensees (Section 6.2.4 p.24). The country should borrow a leaf from the example of Libya where oil bids were recently opened on live television. This promotes public accountability and builds public confidence in the way government is managing their resources in trust.

- *Protection of the environment and biodiversity*

The policy highlights the fact that the environment and biodiversity are neatly balanced for mutual benefit and survival and accepts responsibility to maintain this balance. To its credit, the policy recognises (Section 7.2.4) that oil activities all over the world interfere with this balance, both through normal activities and through accidents such as spillages.

The policy needs to be specific and propose actual frameworks for dealing with environmental issues resulting from the exploitation of oil reserves. It should do more than *discourage* bad practices and *promote* good practices. It needs to recognise that wherever there is oil exploration, there are drastic effects on the environment. Therefore, the policy should be strong on the regulations to be followed as regards pollutants and toxins. Government must in addition scrutinise oil companies' in-house guidelines and operating manuals to ensure that they are in line with what Uganda expects.

Section 7.1.7 (p.19) states that the responsibility of maintaining a clean and healthy environment and the required safety during production is the responsibility of both government **and** the oil companies, whose roles **could** be coordinated by NEMA.

The government and the oil companies must not be equal partners because this can lead to each passing the buck to the other. One must clearly have the upper hand and the authority to ensure that the lesser partner enforces the regulations.

<sup>19</sup> *New Vision*, 9 August 2006.

The Constitution of the Republic of Uganda states clearly in Article 39 that, “Every Ugandan has a right to a clean and healthy environment.” Therefore, the government has the responsibility to oblige any economic player to ensure this.

- *Cooperation*

The recognition that relations between government, oil companies, communities and all other stakeholders should be based on cooperation and trust points such relations in the right direction. The policy indicates that the system of cooperation will be extended to communities in the producing regions and any pipeline corridor.

We feel strongly that this should start immediately in order to avoid misunderstanding and suspicion. People in oil producing areas need to be brought on board from the outset so that they are not fed with rumours and misinformation likely to undermine any move made by the government and other actors in the oil industry.

- *Capacity and institution building*

The importance of capacity building for the country’s ability to benefit from oil activities cannot be overstated, as indeed the draft Policy makes very clear. Section 6.1.10/11 (p.21) takes cognisance of this and commits government to using oil revenues for training and skills development. It also makes a commitment to provide appropriate training to government personnel in the fields relevant to the oil sector.

Unfortunately, African countries have often created capacity among its human resources only to lose them to greener pastures, especially given the high marketability of the specialised skills required in the oil industry worldwide. The policy is silent on this issue and yet it should pronounce itself on the problem and indicate how this can be mitigated (especially through retention measures, special remuneration packages and other incentives).

- *Conflict resolution and transformation*

Conflict and corruption are mentioned almost in passing Section 8.2 (pp.45/46), and yet they are at the heart of the bad performance of many, if not most, public enterprises in Uganda. Conflict is also the biggest challenge in a country such as Nigeria where the host communities have been at loggerheads with the oil companies and the government. A sound conflict management and resolution mechanism is needed.



**Oil and Gas Exploration in Progress:**  
Gas testing tanks in action.

- *Demands by local community*

It is not clear from the policy how the oil companies are to handle demands by the local community, what relations there will be between the two and what role the government will play in such relations.

- *Impact of oil activities on women*

The policy does not lay down propositions for mitigating the impact of oil activities on the livelihoods of women. The section on the impact on employment opportunities and patterns (Section 7.2.3 on pp. 40/41) needs to address the plight of women and the impact of oil activities on their economic activities. In the background to this document, we pointed out the impact of oil activities on the livelihood of women in the Niger Delta, Nigeria.

- *Roles of departments*

The policy envisages and specifies roles for the following organs (pp. 15-17):

1. The Ministry of Energy & Mineral Development through the Petroleum Exploration and Production Department (PEPD)
2. The National Petroleum Authority
3. The National Oil Company
4. Cabinet
5. Parliament

The roles of the proposed organs are quite numerous and extremely technical. In addition, there are other institutions which will be involved in specific aspects of the industry, for example the National Environment Management Authority (NEMA), Uganda Revenue Authority (URA), Uganda Wildlife Authority (UWA),

### The Auditor General and the Local Governments.

The question is whether the country has the requisite expertise to ensure that those roles are carried out efficiently with maximum benefit to the country, and without duplication or unseemly institutional conflict. There is a real likelihood that the multiplicity of institutions could create unnecessary bureaucracy in the whole system and delay the decision-making process, creating frustration.

- *Technology transfer*

The government should insist on specific time frames within which the oil companies must have trained Ugandans to become experts in some crucial areas in the oil exploration and production sector. It is important to ensure that over a specified period, there will be Ugandans who are experts in all areas of oil exploration and production at all levels so that the country does not have to rely on expatriates for certain specialized skills as often happens in many spheres. This calls for the strengthening of section 7.2.3 of the Policy.

- *Planning of resultant urban centres*

Urban centres, even in oil prospecting areas, will spring up through private individual efforts. It is necessary for the government, through the policy, to ensure that the urbanisation triggered around the oil activities does not lead to the development of slums and, even more importantly, that in the post boom period, Uganda does not experience the phenomenon of ghost towns. Strict guidelines and regulations may be needed to control in-migration and settlements in the oil field areas.

- *Revenue sharing*

The policy recognises that Uganda has poor monitoring and control mechanisms, Section 8.3 (p.46). And yet the proposals about revenue sharing need good and strong mechanisms to ensure that the policies are adhered to and respected. One of the proposals of how to ensure proper monitoring and control is to ‘develop clear Petroleum Sharing Agreement documentation (p.47).’ This is more reason why the PSA documentation must not be kept secret from the public. In a later section of this paper, we set out specific proposals on benefit-sharing.

## **7.0. THE LEGAL REGIME GOVERNING THE OIL SECTOR: TOWARDS AN ENABLING LEGAL FRAMEWORK**

The relationship between policy and law cannot be overemphasised. While policy formulation lays down the ideals, intentions and aspirations, in this case, of the Government, legal provisions actualise those ideals and aspirations by laying down the rules and institutional framework that ought to facilitate

the implementation of the policies and realisation of the goals and objectives underpinning them. Put differently, legal provisions ought to be developed out of policy positions.

In the case of petroleum and natural gas, the basic laws governing the sector are the 1995 Constitution and the Petroleum (Exploration and Production) Act, Cap 150. Of course, other laws of general application do apply to the sector, for example the National Environment Act, the Local Governments Act, the Land Act and others.

The Petroleum (Exploration and Production) Act was assented to on 13<sup>th</sup> June 1985. Section 72 of the then Act (since omitted), provides that it would come into force on such a day as the Minister would appoint. The Act remained a dead letter law up to 2000, in the sense that not only was the Act not brought into force, but in fact there was no petroleum exploration or production going on. The petroleum (Exploration and Production) (Commencement) Instrument, 89/2000, made by the Energy and Mineral Development Minister under section 72 aforesaid, on 16<sup>th</sup> November 2000, provided that the Act “shall be deemed to have come into force on 27<sup>th</sup> September 1985.”

The Constitution of the Republic of Uganda 1995, Art. 237 thereof, vested all land in the citizens in accordance with the tenure systems stipulated therein. Government was to hold in trust for the people all natural lakes, rivers, wetlands, forests, national parks and other ecologically important areas. Minerals and oil were not so reserved to the Government. Art. 244 of the Constitution specifically dealt with minerals. The Article did not envisage minerals as Government property, except that clause (2) required that they be exploited taking into account the interests of individual landowners, local governments with the Central Government.

The Constitution (Amendment) Act, 11 of 2005 was a fundamental departure in as far as the oil regime is concerned. It replaced Article 244. Under the new Article 244:

- (i) All minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. In effect, the Government is not just a trustee but an owner of the minerals and petroleum.
- (ii) The old general provisions enjoining parliament to legislate on the exploitation of minerals, sharing of royalties, payment of indemnities and restoration of derelict lands were retained but made to apply to petroleum as well.

(iii) For the first time, petroleum is constitutionally provided for. The old article 244 had only dealt with “minerals” without defining them, (but see Article 244 (3), meaning that one had to borrow the definition under the Mining Act. The Mining Act, now Cap.148, had specifically defined minerals to exclude petroleum, clearly envisaging a different legal regime for the latter. The Petroleum (Exploration and Production) Act, defined petroleum. The above Constitutional Amendment adopted wholesale the definition under the latter Act. Note that whereas that Act has separate definitions for petroleum and natural gas, the 2005 Constitutional Amendment did not adopt the definition for natural gas, with the result that natural gas is not constitutionally provided for. This is a glaring omission, considering that currently government policy lumps petroleum and natural gas together.

It should be noted that the petroleum (Exploration and Production) Act was enacted at a time when worldwide, natural gas was not looked at as a viable source of energy. Indeed, it was seen as an inconvenient associate of petroleum. Accordingly, while section 31 prohibits wasteful or environmentally damaging oil field practices, subsection (2) and (3) empower the holder of a petroleum exploitation license (the licensee) to flare (i.e. destroy by fire) the natural gas encountered during operation. He may ordinarily do so with the written consent of the Minister, but in an emergency, he needs not even seek such consent.

In recent years, natural gas has emerged as a cheap and highly viable source of energy, and laws regulating its exploitation need to be urgently developed. We would propose that the Petroleum (Exploration and Production) Act be amended in this regard, instead of enacting a totally new statute on natural gas.

The Act creates a potentially problematic relationship. Clause (1) vests petroleum and minerals in the Government, yet clause (3) talks of catering for the interests, *inter alia*, of individual landowners, when exploiting mineral ores and petroleum. It envisages a relationship where government owns oil under a person’s land and licenses another to exploit the oil “over the head of the landowner.” Unlike the regime for minerals under the Mining Act, the petroleum regime does not require petroleum exploiters to acquire ownership of the development areas by way of leases or other title-conferring interests, though they may opt to do so under section 40 of the Act. All one needs is a licence which, traditionally and legally, is not a form of tenure. There is, therefore, need for an elaborate law setting out the limits of the rights of each (Government and the landowner), and how the exploitation is to take care of those respective rights and interests.

To be sure, section 38 and 39 reserve surface rights to the “lawful occupier.” Section 38 (1) of the Act requires the holder of a licence to seek the consent of the lawful occupier of the land, before he can exercise the rights enshrined in



the licence. The same provision, however, empowers the Minister to override the occupier and allow the licensee to exercise his rights where the consent is “unreasonably withheld”. There are two problems in this. Firstly, the “lawful occupier” is not defined. Where, for example, a licence is granted on registered land being at the same time occupied by customary tenants, it is not clear whose consent is to be sought. Secondly, if a Minister is to authorise the holder of a licence to exploit petroleum on land occupied or held by another person “subject to such conditions as the Minister may deem fit”, this makes a mockery of the fundamental right to property which is protected under Article 26 of the Constitution, notwithstanding that Article 244 (1) which vests minerals in the Government states itself to be subject to Article 26.

It is also clear that under section 40 and 41, ordinary occupants of land in which petroleum is discovered can be bullied out of their land rights against their will, as long as they are offered compensation, which need not be determined by them but by arbitrators. The history of the practice of arbitration in this country has not been a rosy one and, indeed, arbitrators in Uganda rarely satisfy all parties involved.

Ultimately, not only do these provisions create the potential for conflicts, but they do not cater for other “non-surface” rights which ordinarily accrue to a land owner. Of course the holder of a Petroleum Production Licence can avoid all this by acquiring an exclusive right to use the land (i.e. a lease). It is suggested that, as with the mining law, petroleum production licence holders should be required to obtain leases.

On environmental issues, it should be noted that the Act was enacted before the era of proactive environmental legislation, or at least before it caught on in this country. Fortunately, the drafters of this law were mindful enough of the devastating effect of oil pollution to impose on holders of petroleum production licences the obligation to carry out their activities in a “proper, safe, and workmanlike manner in accordance with good oil field practices and, in particular, to control flow of petroleum, gas or water into the development area and its environs and to prevent other like hazards (section 31).” The licensee is further required to “prevent the pollution of any water, well, spring, stream, river, lake, reservoir, estuary or harbour (as if Uganda has any) by the escape of petroleum, salt water, drilling fluid, chemical additive, gas or any other waste product or effluent.” Of course the Act does not provide for such things as environmental impact assessment requirement, but since the provisions of the Uganda Environment Act apply to can always be invoked, this may not be a particularly serious shortcoming.

The real problem may lie in expecting the oil companies to altruistically safeguard the environment, an expectation that conveniently overlooks the ruthlessly selfish drive that informs the operations of the oil multi-nationals. A study of how the oil companies have polluted the Niger delta demonstrates the futility of relying on licensing conditions to combat environmental degradation. We suggest that alongside the above mentioned environmental obligations of the oil companies, a pre-determined portion of the government revenues from oil should be set aside to address environmental issues. Alternatively or in addition, the oil companies should be required to contribute to a fund for the purpose. A unit can also be set up in NEMA to deal with the specific problem of oil pollution. These measures, along with continuing environmental education, should be able to substantially address environmental concerns.



**Water Wastes of burnt Oil Well in the area of Exploration:**  
Unless there is a strong policy and legal framework in place, the Oil Company may leave behind a land that is environmentally destroyed.

The other troubling provision of the Act is the prohibition against disclosure of information contained in section 59. Under the said section, it is provided that no information furnished by a licensee in a report submitted pursuant to the Act shall be disclosed to any person who is not a Government Minister or an officer in the public service save with the consent of the licensee. Sub-section (2) gives some exceptions. Section 59 is the statutory expression of the a long running but largely unjustifiable tendency in Africa of deliberately shrouding the oil industry in mystery – of treating key facts about oil as state secrets. This paper has gone to some length to make the case for transparency and accountability as a necessary prerequisite to ensuring sustainable benefits from the oil boom. Indeed, it is now accepted that the sure way to ensure that the revenues from oil are applied towards genuine national needs is not only by insisting that government should be manifestly accountable to its people in respect of its revenues and expenditures, but also by pursuing the “publish what you pay” policy, so that by disclosing what they have paid to the government under the PSAs or by way of royalties, signature bonuses, licence fees or otherwise, oil companies empower the ordinary people to double-check information provide by the government and seek explanations from a point of knowledge. In light of the provisions of the 1995 Constitution guaranteeing the right of access to information in the possession of the state, and of the Access to Information Act, which operationalised the Constitutional provisions aforesaid, the provisions of section 59 are obsolete law, and unconstitutional.



There may of course be some categories of sensitive technical information which needs to be kept confidential, but all in all, the harm done by a blanket prohibition on disclosure of information is greater than the benefits of secrecy.

Under section 49-51, royalties are payable to the Government. However there is no provision in the Act for payment to the local authorities or the communities where petroleum production is to take place. This is partly explained by the fact that the Act preceded decentralisation, but this is no excuse for failing to provide for the rights of the communities.

Essentially, as its name suggests, the Act was intended to and actually deals with the upstream aspects of the petroleum industry – that is to say the exploration, and extraction portion of the oil business. It was not intended to deal with downstream activities, not to mention the broader macro-economic and social implications of the oil boom and its aftermath. Consequently, it would perhaps be unfair to criticise the Act for not addressing such concerns as the distorting effect of an oil boom on the economy (“Dutch Disease”), the rights of the communities which happen to be settled in the development area, distribution of benefits, tail-end and post-abandonment problems, political implications of the oil bonanza and like matters. While the Act, by putting in place the basic regime for exploration and production, lays the groundwork, it must be supplemented by other laws dealing with specific questions. As a matter of fact, one has to go beyond the laws and consider such things as cultural mindsets, type and quality of education the populace has been exposed to, history, the geo-political situation, global petroleum demand, supply and prices cycles and other global trends – matters which may not be directly addressed through legislation.

Hence, while legislation may go a long way towards putting in place structures and institutions for the enforcement of accountability and transparency and, by so doing, combat corruption and diversion of revenues, it may not be possible to legislate honesty or to outlaw greed. In other words, there is a limit to what the law can do.

One aspect that needs to be immediately addressed in clear and unambiguous terms is the issue of benefit sharing. The failure to satisfactorily address this issue has caused much trouble in Nigeria as highlighted above. The Nigerian experience demonstrates that not only do you have to put in place a revenue sharing arrangement, but you have to ensure that the revenues are properly used, in a manner that benefits the people. There is, therefore, need to develop an elaborate benefit-sharing regime for Uganda, complete with safeguards to ensure that the people do share in the benefits in a meaningful way.

## 8.0. RECOMMENDED AREAS FOR LEGISLATIVE ACTION

In a nutshell the existing legal regime for the management of the petroleum industry has been overtaken by realities and leaves a lot to be desired. It may not be enough to merely amend the relevant laws without fully revisiting the entire regime to take into account the needs of the day. Now that the existence of oil is a proven fact, there is need for legislation that goes way beyond regulating exploration and upstream production operations, to cover the full range of challenges that arise in an oil economy. A new Petroleum ( Exploration and Production) should be put in place.

The Act should address itself to the need for the following:

1. An elaborate institutional framework for the oil sector. In this regard, we associate ourselves with the proposals in the draft oil and gas policy for the setting up of three separate institutions to manage the sector, namely; an oil and gas policy making and monitoring body (a directorate within the Ministry), a separate and autonomous regulatory body (a National Petroleum Authority or Commission) akin to the National Forestry Authority (NFA), and a business arm (Uganda Oil and Gas Company). The roles of each should be clearly defined to avoid overlapping of roles and institutional bickering. At this point, it needs to be pointed out that the framework proposed in the draft policy would have the directorate and the Authority/Commission duplicating each other's roles. The relationship between Uganda Revenue Authority and the Finance ministry should provide a workable template.
2. Provisions dealing with natural gas which, as already pointed out, is not provided for in the present law.
3. Provisions dealing with transportation of crude (including law on construction, maintenance and securing of pipelines), refining, marketing (local and export).
4. Provisions addressing tail-end operations, decommissioning and abandonment.
5. The provisions dealing with land ownership and use. These need to be brought into line with the Constitution and the Land Act. In this regard, one can borrow heavily from the Mining Act, even though the latter Act is not without problems, for example on the question of mining in national parks and other gazetted areas.
6. Legal provisions need to be put in place for the regulation of payment of compensation for damage to livelihood caused by oil operations so that those adversely affected are compensated and protected by law.

7. Section 59 needs to be done away with. Instead, a more relaxed approach should be adopted whereby only information relating to novel technologies is protected from disclosure. The licensing process, PSAs, revenue receipts, payments out (for example to local governments and communities) should be easily available.
8. An elaborate framework for benefit distribution should be provided for in the Act.
9. Provisions for an oil fund - the Uganda Petroleum Fund - to be monitored by a wide range of stakeholders, including civil society, which should act both as a stabilisation fund to absorb price shocks and as a source of future funding to sustain the economy after the oil boom. The Fund should preferably be sequestered overseas or in the Bank of Uganda, with strict restrictions on withdrawal. For example it can be provided that withdrawal may only be done after a proven need to address a substantial price shock in the economy, otherwise the bulk of the deposits, which should be made into the account at regular specified intervals, should remain there, to be applied after the oil bonanza has come to an end or when income from oil will have so reduced as to be insignificant as a percentage of the national income. In this regard, one could look at the ample of Sao Tome which has put in place such a fund, with strict provision for a single annual withdrawal, with a complicated four-signature procedure and with power to the public to monitor activity in the account. The law should restrict the government's freedom to spend the oil earnings and borrow against future income.
10. Provisions on cross-border oil deposits.
11. Elaborate environmental controls and safeguards, including imposing obligations on the oil companies to contribute to a fund to cater for redressing oil-related environmental problems and on the Government to use some of the revenues to address oil related environmental problems, such as oil pollution. The oil legislation in this regard needs to be brought into line with the National Environment legislation.

Other matters like fiscal stabilisation to absorb global price shocks, benefit sustainability plans aimed at intergenerational equity (to ensure that there is life after oil) and the full range of policies to address the macro-economic implications of the discovery and exploitation of oil may be addressed through other laws.

## 9.0. POLICY RECOMMENDATIONS

A creative oil governance mechanism for Uganda should be underlined by the following considerations:

- The overall strategic role of oil in the economic development of the country, especially its contribution to economic transformation.
- Enhancing overall political accountability.
- Transparency in the management of oil resources. Seriously examine the merits and demerits of the policy of PWYP (Publish What You Pay) as a mechanism to enhance transparency and control of oil revenues. Mandatory audit by the State audit chamber and an international auditing firm. The results of the audits to be made public.
- Building the requisite technical expertise for responsible management of oil revenues.
- Direct linkage between oil revenues and raising the standard of living of ordinary Ugandans and poverty eradication. A percentage of the oil revenues should go directly to poverty eradication, stipulating what percentage for which areas (e.g. education, agriculture, health, rural development).
- Mitigating the damage to the environment attendant to oil exploration & production activities.
- Engendering the oil industry activities.

### 9.1. Benefit-sharing mechanism

In order to mitigate conflict, the government should work out strategies to ensure that the people who live in the oil-producing areas actually benefit from the oil. We, therefore, propose that the government should work out an oil revenue sharing arrangement. There are generally two options for oil revenue sharing:

An **arrangement of 'lump-sum' payments** to the regions can ensure that the transfer system is relatively immune to oil price fluctuations. This arrangement is justified on the grounds that the regional governments perform essential public services that should not be affected by oil price fluctuation.

In a **revenue-sharing arrangement**, only a fraction of the oil production would accrue to the producing region (s); the bulk goes to the central government. Additionally, this type of arrangement exposes the producing region to the swings in oil prices; this is likely to affect minimum public service provision, which the region caters for through the shared oil revenues. It, therefore, imposes a considerable degree of uncertainty on the oil-producing region. This is likely to lead to more demands and, possibly, conflict. In Nigeria, the oil producing regions are dissatisfied with their shares of the oil pie, while the poorer, albeit more populous, regions are also dissatisfied with the arrangement.

*Example: The 1999 Nigeria Constitution requires that no less than 13% of the oil resources be transferred back to the oil-producing States (the 13% oil derivation policy). This has exacerbated the vulnerability of sub-national governments to oil price variations. For instance, a 10% oil price shock (US\$ 2 per barrel) causes a 20% fluctuation in federal oil revenues. But the impact is not uniform in all states. Lagos, which has a share of non-oil revenue, is protected against the volatility of oil prices, while oil-producing states see their resources decrease sometimes by more than a third.*

This problem, however, can be addressed through an Equalisation Fund from which funds could be drawn to cater for any shortfalls resulting from oil price fluctuations.

## 9.2. Control and monitoring of oil revenues

Given Africa's experience with mismanagement of oil revenues, it is important from the outset to put in place a joint government-civil society petroleum oversight committee comprising government officials and people from civil society. All oil revenues must fall within the scope of this committee.

Example of Chad: College de Controle et de Surveillance des Ressources Pétrolières. Composed of: a judge, the director of Treasury, two members of parliament, a official from the central bank, four members from civil society.

Example of Sao Tome: A petroleum oversight organisation, independent of the government and parliament, with monitoring and ombudsman functions, with strong powers to investigate, obtain information and coordinate with the AG and State prosecutor.

### 9.3. Transparency

The government should seriously examine the merits and demerits of the policy of PWYP (Publish What You Pay) as a mechanism to enhance transparency and control of oil revenues. This should be supplemented by the policy of PWYE (Publish What You Earn). Together, these two should help to create confidence in the public that oil revenues are being managed openly and transparently, thus breaking the experience in Africa where oil revenues are treated as a state secret, which leads to mismanagement and embezzlement of oil revenues and leads to conflict. Therefore, the government must desist from non-disclosure clauses in production sharing agreements (PSAs). Only the highest levels of transparency in the oil sector will discourage theft and embezzlement of oil revenues. Additionally, all government officials with a financial interest in the oil sector must declare that interest. Failure to do so must be penalised.

### 9.4. No oil-backed loans from Export Credit Agencies

There must be tight regulations to stop the government from undertaking oil-backed loans, that is using oil reserves as collateral for foreign commercial borrowing. The government must not contract loans from Export Credit Agencies (ECAs) because:

- ECAs aggressively cater for their national interests (to the disadvantage of the oil-producing country).
- Most ECAs are not required to meet minimum development or social standards for projects they finance.
- ECA loans have extremely high interest rates.

### 9.5. Capacity building

In order to strengthen the government's capacity to negotiate with oil companies, capacity building of the state institutions concerned with oil must not lag behind oil operations. For instance, institutions tasked with supervising the social and environmental impacts of oil activities must have the capacity to do so from the start of oil operations.

### 9.6. Mitigating Dutch Disease

Oil revenue utilisation must be directly linked to production in other sectors, such as agriculture and manufacturing. This could be in the following manner:

- Use oil revenues to promote strategic and specific aspects of the Programme for Modernisation of Agriculture.
- Use oil revenues to support strategic and specified aspects of the manufacturing sector.
- Use oil revenues for export diversification (also important for a post-oil boom economy strategy).



### **9.7. Outlaw private banking of oil revenues**

The law must prohibit the depositing of oil earnings in private bank accounts or any other bank account not officially authorised.

### **9.8. Advocate for a Pan-African oil agency**

The policy should advocate for the creation of a Pan-African agency to monitor and analyse the performance of the oil sector in African oil-producing countries and its contribution to poverty eradication.

### **9.9. Ethical conduct for security firms in oil areas**

The government should ensure that the employment of local people to provide security at oil facilities does not result in abuses by those hired or in violent conflict between and within communities for the right to the contracts. All security firms engaged must be held to ethical conduct and respect for human rights and must act in a lawful manner.

### **9.10. Engendering the oil industry activities**

The policy must pronounce itself on the strategies to be adopted to mitigate the adverse effects of oil exploration and production on the economic livelihoods of women.

### **9.11. Oil as an agent for economic transformation**

The policy should be clear on the overall strategic role of oil in the economic development of the country, especially its contribution to economic transformation.

## **10. CONCLUSION**

In this oil research paper, we have set out the challenges confronting oil producing countries in sub-Saharan Africa by giving case studies of Nigeria, Angola and Equatorial Guinea. We have also critiqued the draft National Oil and Gas Policy under formulation as well as the legal framework. We argue that the oil Dutch Disease and conflict nexus associated with oil producing countries are not a given since there are examples such as Norway which have utilised their oil revenue for transformation and sustainable development. We also propose a creative oil revenue sharing mechanism suitable for Uganda. Our hope is that this paper ushers in constructive debate and discussion over the oil and gas resources in order to inform a relevant policy and legal regime that will ensure that the hopes and expectations of the citizens of Uganda are met and that poverty becomes history in our country.

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