

THE INTERPLAY OF OIL AND DEMOCRACY IN UGANDA:

A Study on Threats to Democracy & Human Rights
in Uganda's Emerging Oil and Gas Industry

A joint study by Transparency International Uganda,
Human Rights Network Uganda and Civic Response
on Environment and Development

November 2014



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1

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About Transparency International Uganda (TIU)

Transparency International Uganda (TIU) is a national chapter of Transparency International (TI) a global coalition against corruption. TI Uganda was founded in 1993 and is registered as a non governmental organization with the Uganda NGO Board. TI Uganda works to create change towards a Uganda free of corruption and its effects. It has national jurisdiction and promotes good governance (transparency, integrity and accountability) with specific emphasis on education, health, water, private sector, extractive industry, and political corruption.

Its program areas include: Transparency and accountability in service delivery in education, health and production; Deepening democracy and political accountability; Transparency and accountability in public and private sectors and; Transparency and accountability in the extractive industries.

About Human Rights Network Uganda (HURINET)

Human Rights Network–Uganda (HURINET–U) was established in 1993 by a group of eight (8) human rights organizations, and was formerly registered as an independent, non–partisan and not–for–profit organization in 1994. The identity of HURINET–U lies with its diverse membership, which currently stands at 53 members. The vision of HURINET–U is to work towards: ‘A society free of human rights abuse’. The mission of HURINET–U is: ‘To foster the promotion, protection and respect of human rights in Uganda through linking and strengthening the capacity of member organizations’.

HURINET–U seeks to promote and protect human rights as provided for in the regional and international instruments that Uganda is party to and as provided in the constitution of Uganda. It seeks to encourage close collaboration and networking and optimum sharing of information and resources both human and material among human rights organizations in Uganda. HURINET–U is a host to a number of national civil society campaigns and coalitions including: Coalition on freedom of information; Uganda coalition on the international criminal court; coalition on ESCRs; coalition on police accountability and reform among others.

About Civic Response on Environment and Development (CRED)

The Civic Response on Environment and Development (CRED) is a research and advocacy organization that seeks to promote the relevancy of public policy and law to the needs of the people through advocating for a governance framework that upholds democratic principles, values of transparency and accountability, constitutionalism and rule of law.

CRED implements three programmes – The Law and Governance Programme seeks to balance the demand and supply sides of governance by promoting reforms that promote constitutionalism, rule of law, values of democracy, transparency and accountability; The Trade and Investment Programme seeks to promote fair trade and investment opportunities especially for small and medium enterprises; and The Human Rights and Environment Programme focuses on addressing issues that relate to recognition and observance of human rights at all levels of society.

The activities implemented include research and advocacy, community sensitization, legal advisory and strategic interest litigation. For more information, visit www.creduganda.org.



Table of Contents

Executive Summary	5
Introduction.....	6
Chapter 1:	9
Democracy not delivered to communities in the oil-affected region.....	9
Chapter 2:	15
Freedom of expression infringements against civil society advocates.....	15
Chapter 3:	20
Threats to parliamentary oversight powers in the oil & gas sector.....	20
Implications	26
Recommendations.....	27
Conclusion	28
References.....	31



Executive Summary

The discovery of natural resource reserves can affect a country in a multitude of ways depending on how the country reacts to, and manages the newfound resource. In many cases, this is influenced by the level of transparency within the operating environment as well as the accountability of relevant stakeholders. Results from resource discoveries like oil and mineral reserves are often most beneficial when democratic principles and human rights are respected and applied to the process of natural resource management.

In the case of Uganda, Article 244 of the Constitution vests natural resources reserves to be held by the Government *on behalf* of the Republic of Uganda. Therefore, the Government of Uganda manages the reserves *in trust of the citizens*. Meanwhile, the Government contracts oil companies to undertake physical extraction of the resource. Thereafter the profits are shared between the Government and the company through a contractual profit sharing agreement.

In this type of scheme when there is such a high diversity of actors with varying levels of power over the extraction process, as well as competing interests, the citizens are often marginalized since they are not directly a part of the extraction or revenue sharing processes. Thus, democratic processes must be utilized to proactively include citizens and rightfully engage all citizens in oil sector management to honor their role as critical beneficiaries of the oil returns.

Unfortunately, studies show that high value commodity extraction in a given country can have an inverse effect on the strength of a country's democracy. Due to a confluence of factors, governments are often tempted to instead limit democratic spaces, as well as democratic rights such as freedom of expression and access to information, in order to streamline the extraction process. The inverse relationship between oil discovery and the strength of domestic democracy has been studied extensively all around the world in a diverse set of countries.

This paper details this phenomenon as it is currently unfolding in Uganda. This paper connects three separate case studies that highlight a multi-tiered pattern of regression in democratic human rights protections related to Uganda's developing oil and gas sector. As the following chapters outline, groups expressing dissenting opinion have consistently been silenced in the past year of oil sector developments of the oil sector.

Each chapter concludes with recommendations to reverse this emerging trend and a summarized set of recommendations precedes the conclusion to provide suggestions so that this pattern of democratic regression can be addressed and changed for the benefit of all Ugandans.



Introduction

In 2006, commercially viable amounts of oil were discovered in western Uganda. This announcement was cause for celebration for a country that had not historically reaped substantial benefit from subsurface resources. Many marked this discovery as the catalyst for transformation in Uganda. Indeed, modest projections estimate the asset wealth of the oil and gas reserves to be 150 billion dollars.

This type of windfall will certainly alter the country's economy for several years to come. If properly managed, these resource endowments can help generate growth and contribute significantly to domestic development. Utilizing transparent and democratic resource management practices, many countries have harnessed natural resource windfalls effectively so that the resource positively affects the country. If not properly managed, high value natural resource endowments can also affect a country negatively. If the country of origin is not a strong democracy with robust institutions and a strong rule of law, or if democratic principles are not applied to natural resource governance practices, there is an increased risk for resource mismanagement and even possible conflict.

Fortunately, in the case of Uganda, there are strong laws dictating the democratic management of the country's oil and gas reserves.¹ Upon discovery of commercially viable reserves, the Government undertook a long-term project to create the necessary institutions to carry out extraction as well as develop guiding legislation. These laws and policies herald principles of democratic resource management as key to the development of the domestic oil sector. According to Uganda's Constitution, the Government is to manage minerals and oil on behalf of the Republic of Uganda. The Constitution states that Parliament shall enact laws regulating the extractive industries that will take into account, "the interests of individual land owners, local governments, and the central government."²

The above Constitutional ideals are expounded by the body of laws and policies governing extractive activities such as The National Oil and Gas Policy for Uganda, The National Land Policy, The Access to Information Act, The Upstream and Midstream Petroleum Acts, etc. For instance, The National Oil and Gas Policy of Uganda (2008) further reiterates the participatory nature of the extractive industries. One of the policy's founding principles is the "spirit of cooperation" and Objective X of the policy sets out "to ensure mutually beneficial relationships between all stakeholders in the development of a desirable oil and gas sub sector for the country."³ Therefore, the existing policies and laws mandate the Government to respect citizens as critical stakeholders in the extractive processes. Despite this promising rhetoric, there is emerging evidence that democratic principles and human rights are not being respected at multiple levels of the oil sector development.

This paper details three separate case studies that highlight a multi-tiered pattern of regression in human rights protection related to Uganda's developing oil and gas sector. As the following chapters outline, dissenting opinion, specifically expressed by groups ostensibly challenging government authority, has consistently been silenced in the past year of oil sector development. Studied from different vantage points—within the oil region, civil society, and Parliament—this paper finds that dissent has consistently led to punishment and persecution that silences whistleblowers and impedes multi-stakeholder engagement in the development of the oil sector.



The first chapter describes the affront to the citizens' democratic procedural rights to access information and express dissent during the implementation of the Resettlement Action Plan for persons affected by the refinery project in Kabaale Parish, Buseruka Sub County, Hoima District. The second chapter examines the intimidation and threatening treatment of NGOs advocating for justice in the oil sector and the narrowing democratic space for civil society critique and oversight. The final chapter details the set back in Parliamentary autonomy and MP's rights to debate and dissent as highlighted in the case of the expelled NRM "oil MPs."

These cases should not be seen in isolation but rather, as examples of a problematic trend. The concern is that this trend potentially mirrors the inverse effects that oil tends to have on the strength of a country's democracy. As analyzed by political scientist Michael Ross, "oil and minerals have strong antidemocratic effects."⁴ This holds true for African countries according to a study by the African Development Bank Group that found a negative association between oil wealth and democracy in a cross-country analysis of 52 African countries between 1955 and 2008.⁵

This trend is especially worrisome since democracy becomes even more important in the context of natural resource discovery. Due to the temptations presented by natural resource windfalls, protecting domestic democratic institutions becomes essential to a continuously thriving democracy. As researchers John C. Anyanwu and Andrew E.O. Erhijakpor state, "[n]ational democratic institutions provide a check on governmental power and thereby limit the potential of public officials to amass personal wealth and to carry out unpopular policies."⁶ If democratic institutions are weakened in the wake of natural resource discovery, the country is at risk of becoming a "rentier state" in which such a great proportion of national wealth derives from oil rents that normal democratic processes become distorted. As Anyanwu & Erhijakpor explain, "a few political elite collects the revenues from the oil export and use the money for cementing their political, economic and social power by controlling government and its bureaucracy."⁷

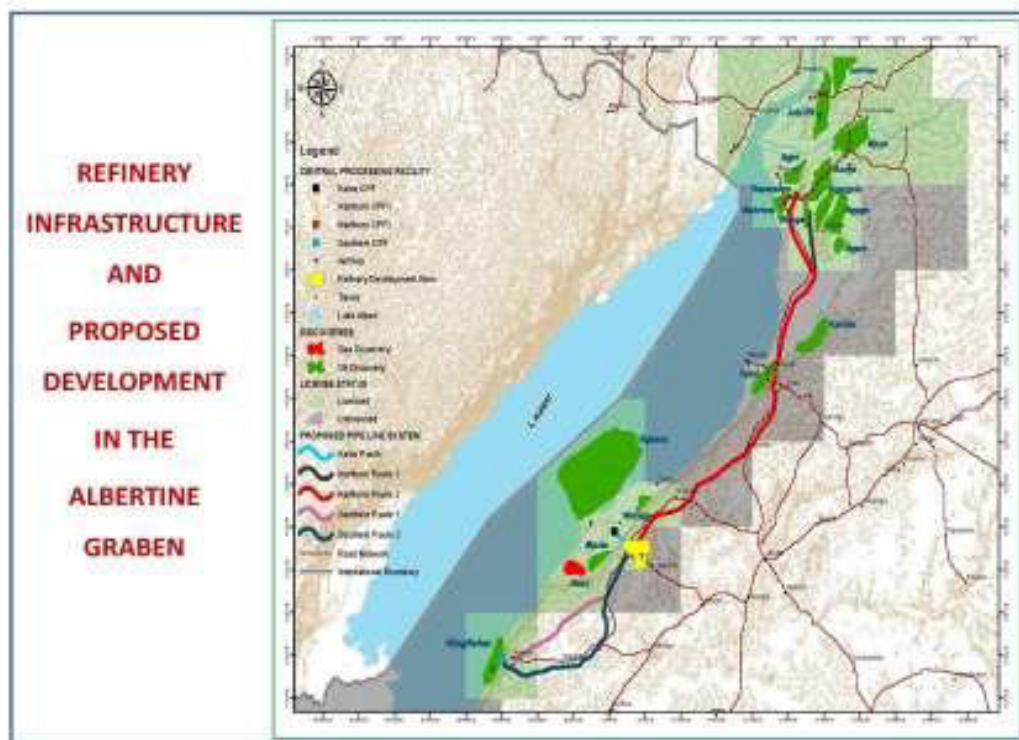
Without essential democratic protections in place, the transparent and accountable development of Uganda's oil and gas sector is in serious question. In fact, the entire rule of law in the country, "that protects the rights of citizens, maintains order, and limits power of government", may be in jeopardy.⁸ Open, accessible and free communication and dialogue between all actors in a resource extracting country is key to the peaceful and successful development of the extractive industries. Access to information and freedom of expression are critical rights enshrined in Ugandan law.⁹ These rights must be protected and reinforced in Uganda's developing oil and gas industry to ensure widespread participation and consensus building as well as democratic resource governance. It is within the best interest of the Government of Uganda to uphold these rights and create this type of open and enabling environment in order for oil to become a fortunate and merited gain for the country.

Freedom of expression and dissent ensure that all perspectives are heard and multiple opinions are taken into account on the issue of resource management. This kind of healthy debate and dissent allows for a more sophisticated and nuanced level of policy building based on a synthesis of all viewpoints. In order to most successfully manage the burgeoning oil sector, all stakeholders including governmental actors, civil society, citizens and private sector representatives, must be engaged equally. With this type of resource management policy, oil actually helps rather than hinders democracy. Economic studies show that when oil wealth is widely distributed among the citizenry of a country instead of being held centralized in government, oil can actually help stimulate democracy.¹⁰ It is to this end—to highlight this antidemocratic trend in order to bring awareness to the issue and encourage alternative practices—that this paper explores the interplay of oil and democracy in Uganda.



Chapter I:

Democracy not Delivered to Communities in the Oil-Affected Region



Source: www.petroleum.go.ug

Introduction

Discussion of an in-country oil refinery for Uganda began with the publishing of the National Oil and Gas Policy in 2008. This overarching policy outlined the intended plans for the exploration, development and production of the country's newly discovered oil reserves. In Objective 4 of this policy, the Government stated the intention to "promote valuable utilization of the country's oil and gas resources" through many actions including refinery development.¹¹ Despite some setbacks and delays, this intention has been carried through and the country is now deliberating between two final bids from companies to build a 60,000 barrel per day capacity refinery in Kaabale Parish, Buseruka Sub County-Hoima district, in the Albertine Graben.

13 villages containing 7,118 people inhabit the 29 sq km territory that the refinery project is set to overtake. Due to the vested interest the country now has in this piece of land, the Government of Uganda has decided to utilize its right to acquire land necessary for public use as prescribed in Article 26 of the Constitution to build the refinery.¹² Accordingly, the Government is lawfully obliged to undertake the subsequent compensation and resettlement process for these 7,118 individuals in the affected communities that are now being involuntarily displaced due to the government project.



To implement this compensation and resettlement process, the Government contracted a Ugandan company, Strategic Friends International (SFI) to complete a Resettlement Action Plan (RAP) report in 2012 to detail all social, economic and environmental implications and impacts of the proposed refinery.¹³ This RAP report, outlining important effects for many stakeholder groups, was presented solely to the Government of Uganda and has remained confidential with limited public access ever since.¹⁴ In 2013, SFI was contracted to implement the necessary compensation and resettlement of the 7,118 project affected persons (PAP) living in the intended refinery area, as stipulated in the RAP.

The proceeding RAP implementation has been mired with controversy. Contentious issues include the year of reference for land value compensation rates, the valuation of property and crops, and the practice of compulsory receipt signing prior to actual compensation. One of the most troublesome set of complaints that threatens the basic integrity of the RAP includes allegations of human rights violations and infringement of necessary due process and procedural rights for the project affected persons. According to a Global Rights Alert report, these rights violations include failure to provide key information critical to informed decision-making and use of coercion to force signatures under duress.¹⁵ According to lawyer and former secretary of the Uganda Law Society, Nicholas Opio, adherence to individual and group rights during the process of government land acquisition is a matter of constitutional importance.

“Compulsory acquisition is subject to the broad range of fundamental rights and freedoms in the bill of rights... it follows then the process of acquisition of land for the refinery must adhere to, respect, uphold and promote the individual and group rights of the affected community. However well intentioned and beneficial to the wider Uganda community would be a violation of Chapter Four rights in the Constitution. It will be a negation of the very foundation principles of our constitution order-which is unity, peace, equality, democracy, freedom, social justice and progress. Therefore, if the constitution is the grand norm, adherence to it dictates not just in spirit but in the letter, is an obligation we cannot wish away for the convenience of economic and other interests.”¹⁶

This section reflects on these issues of government respect for constitutional and democratic human rights and processes in the local context of oil sector development.

Use of Coercive Approaches

The lack of adherence to due process rights during the implementation of RAP is an issue of great concern that threatens the integrity of the process. Initially during the community awareness building sensitization process, individuals were made aware of the RAP process to be undertaken and of their purported rights to accept or reject the proposed rates of compensation. Nonetheless, it seems these rights were not fully realized during implementation. There is a large body of evidence testifying that implementers commonly used threats and coercive tactics in order to pressure individuals into signing in accordance with the compensation figure presented to them for their land and property. Many affected persons reported that as a means to dissuade them from registering complaints and appeals they have been told that if refusing to sign they would simply “go free” without any compensation at all, be sent to court or that the money meant for compensation would run out.¹⁷ As quoted in an August 2013 article in *The Observer*, Esther Abigaba, a resident of Kitegwa B village, affirmed these explicit threats: “When you refuse to sign, they threaten you that your land and property will be taken without compensation and ask whether you can fight with government.”¹⁸



The RAP process did include a grievance handling committee and mechanism to register complaints. According to Navigators of Development Association (NAVODA) Director Benon Tusingwire, there were four tables set up. At the first table, individuals would identify themselves. At the second table, they would be presented with their sum compensation offer. If they refused or dissented to that number, they would be told to go away because they were failing to comply.¹⁹ This reaction oftentimes sent people away before they got to the third table set up to address and register complaints. As Tusingwire describes, “many people were coerced to simply walk away before ever consulting the third table.”²⁰

It seems that the grievance mechanism in practice did not work as intended in acknowledging and respecting the right to appeal. This lack of effective grievance response, not to mention the explicit discouragement of submitting grievances, goes directly against international best practice. According to international standards, the government should not only refrain from deterring appeals but instead should actively provide assistance to affected individuals in accessing judicial and administrative channels to affectively air their grievances and pursue retribution.²¹



Local resident airing grievances with RAP at community meeting in Kabaale Parish, November 2013. SOURCE: Transparency International Uganda



These threats were especially harmful due to the information asymmetry between the implementers and affected persons. Many local individuals did sign the compensation offer out of fear due to the efficacy of the threats given the lack of information that affected individuals possessed. Refinery project affected persons have continually expressed frustration at their lack of access to information especially regarding land, property and crop valuation calculations.²² According to a Global Rights Alert report, “communities affected by the proposed refinery do not have adequate information about the process and their role in the RAP implementation. Instead they are spectators being ordered to obey orders from SFI and government agencies such as security and Ministry of Energy.”²³ This is affirmed by project affected persons themselves who have reported: “communication on RAP implementation and the flow of information is very poor. Information relating to the exercise is hard to get and this is denying people not only the right to information but the right to participation as well.”²⁴

This lack of information was exacerbated by the power differential at play wherein the implementers at the reigns held the power of the purse and the affected persons were in a high-risk situation of potentially losing all of their assets. The FAO Guidelines on Compulsory Acquisition of Land and Compensation warn about the effects of this differential exacerbated by lack of information issues, as “they [project affected persons] may not know their rights or how to safeguard them during negotiations with experienced officials who are supported with all the powers and resources of government.”²⁵ With such high stakes and such little information, many were pressured to sign despite their best interest. As Tusingwire describes, “if you stay quiet, you get exploited and that’s that.”²⁶ But an exploitative offer versus the specter of complete dispossession in the face of armed security personnel does not exactly leave an individual with full agency. According to a Global Rights Alert report, SFI implementers were regularly accompanied by armed undercover agents.²⁷ The report cites Benon Tusingwire as he described the implications, “The presence of armed men brings intimidation and villagers are less likely to ask any questions.”²⁸ Thus we cannot know how many of those people who signed were unsatisfied with the amount given but signed purely out of duress.

These coercive tactics undoubtedly created a hostile and fearful environment in the local context. This environment disabled open, multi-stakeholder collaborative decision-making processes where constructive dialogue could flourish and all actors could work together to cooperatively form decisions and move forward in accordance. The refusal to provide project affected persons with critical information and procedural rights is to deny the affected persons full agency and capability to engage in the process as empowered and efficacious stakeholders. In this way, an unnecessarily antagonistic precedent was set at the most basic level of the process characterized by a refusal to respect democratic principles of participation, equal access to information, and procedural rights to dissent and appeal.

This directly contradicts international standards including the International Finance Corporation Standards (IFC), from which the RAP was modeled. In IFC Performance Standard 5, “Land Acquisition and Involuntary Resettlement”, emphasis is placed on “ensuring the resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.”²⁹ Industry and international standards call for an inclusive process of empowered multi-stakeholder participation; “effective consultation is a two-way process”.³⁰ This “two-way process” involves “meaningful consultation” whereby PAPs are given full information and agency according to the World Bank Policy Objective on Involuntary Resettlement, another set of standards that purportedly guided the RAP process.³¹ Unfortunately, implementation in practice did not resemble these principles.



Hostile Response to Dissent and Due Diligence

In response to the reported RAP protocols, a number of civil society organizations organized under the Uganda Contracts Monitoring Coalition, came together to develop a tool to monitor the implementation process. One coalition member, CRED (Civic Response on Environment and Development), developed a grassroots monitoring plan to observe compliance with the stated RAP policies and adherence to involuntary resettlement best practices and international standards throughout RAP implementation. To this end, CRED along with NAVODA trained community monitors from the area to act as objective RAP observers monitoring compliance with stated policy as well as respect for human rights due diligence.

After the capacity building exercise, the monitors were sent into the communities to observe and gather information during the RAP. Reports from monitors illustrated many important implementation issues notably the use of intimidation, lack of attention to vulnerable groups, refusal to provide information and mishandling of individuals opting for resettlement. The resulting report, compiled and presented to the Petroleum Exploration and Development Department (PEPD) by CRED Director Bashir Twesigye, demonstrated that over 90% of the implementation failed to meet international best practices or comply with the relevant policies and standards. This was followed by a crackdown on all organizations involved in the process. Multiple organizations including the Civic Response on Environment and Development were summoned by the NGO Board thereafter. The Minister of Internal Affairs also summoned six organizations for a meeting in Hoima. This backlash is discussed more in depth in the next chapter.

There was also a direct and immediate crackdown on community monitors and an attempt to restrict all such oversight activities in the communities following the presentation of this report. The testimony of Tusingwire helps depict the Government reaction. In July, shortly after the report was presented to PEPD, Tusingwire was confronted by PEPD staff and security officials and accused of “undermining the construction of the refinery and working with a Kampala-based organization funded by foreign agents who are anti the Ugandan government.”³² At a meeting with the monitors the next day ordered by the PEPD and security officials, Tusingwire and the group of monitors were accused of “undertaking a subversive activity aimed at halting the construction of the refinery”.³³ Tusingwire was accused of hiring thugs to stop and undermine the process of the project.³⁴

Similar treatment was afforded to the monitors in the field as well as a group of local representatives, including some of the monitors, known as the Proposed Oil Refinery Affected Resident Association organized to advocate for the rights of the affected communities. According to one member, Odimu Emmanuel, the goal of the group was to try to “represent and sensitize people on how they can know their rights”.³⁵

Rather than being welcomed as important stakeholders in the process, the monitors and the individuals in the association faced ongoing harassment and threatening intimidation. The Government called the monitors a pressure group. In an interview with *The Independent* in October 2013, Robert Kasande, Project Manager, Refinery Development at the PEPD, accused the ‘group of 20’ of having an agenda; “I don’t know but this group of 20 has been consistently against what we have been doing... when people have an agenda it is very hard to convince them.”³⁶ Chris Opio, association secretary, admits to being interrogated with other members of the association by government officials for an entire day.³⁷ According to reporter Haggai Matsiko, the coordinator



of the committee was threatened by one security operative saying, “you want to jeopardise the funding of the refinery. This committee of monitors must be disbanded.”³⁸

This behavior is particularly egregious considering the RAP report itself recommends for ongoing witnessing by NGOs “to provide legitimacy to the process and protect the interest of the poor, illiterate land owners. It is also to ensure credibility to the process.” In this recommendation, the RAP submits to the need for objective monitoring and third party involvement in the process to ensure a balance of interests and a check on any abuse of power by any one actor. This is modeled after the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, which state that, “neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.”³⁹ This attempt to silence communities in organizing activities represents an infringement of basic rights to assemble and acquire access to information. There was nothing remotely illegal about the activity of these community representatives. Thereafter, the predatory government response was uncalled for and ungrounded.



Recommendations

In October 2013, at a National Dialogue Conference on the Implementation of the Resettlement Action Plan, Hon. Aston Kajara, Minister of State for Finance (Privatization) announced that the Government and Resettlement Action Plan Implementing Agency (RAPIA) were putting in place measures to address issues with the initial RAP process. These were “consultative meetings to sensitize the communities about oil, meetings with the communities and district leaders to disseminate the necessary information on the project and holding special meetings for women and other vulnerable groups to devise means of addressing their unique issues.”⁴⁰

The Government and Strategic Friends International, the consultant hired to carry out the RAP for the refinery affected communities, travelled to all affected villages throughout the next month to re-register and resolve all complaints that were not adequately attended to during the initial RAP implementation. This re-registration process was set to remedy the allegations from civil society and local residents themselves that project affected persons (PAPs) were not given full agency to register grievances. This re-registration was a very positive development in which the Government acknowledged an implementation error and took steps to correct it through the re-registration process.

The re-registration process attempted to resolve the unreported grievances in order to correct the implementation error and fully respect the procedural rights of the affected individuals left unsatisfied after the initial RAP process. This signals a positive development in the constructive working relationship between civil societies, Government and affected communities. It also signals an encouraging willingness from Government to respect human rights in the affected communities after all. Benon Tusingwire stated appreciation for the new turn, saying that “Government is back and we are very happy for this opportunity.”⁴¹

This changing dynamic is a very welcomed step in the development of a collaborative and positive working relationship between the affected communities and the Government. It is recommended that Government take all necessary precautions to reorient the established relationship with the affected communities in order to rectify previous offenses and empower all individuals. Specifically, Government should swiftly resolve the case of the residents that did not accept the compensation rates offered so that they can come to a settlement and the residents can be compensated in a joint agreement. Simultaneously, the process of resettlement for residents that opted for the resettlement option should be expedited as those who chose resettlement have still not been relocated.

In all oil related infrastructure projects going forward, a set of guidelines should be set out for project affected person engagement that builds on the lessons learned in the RAP process. Individuals should be fully informed of their right to dissent and express their views. Individuals’ right to information should also be fully realized with all information requests being honored promptly. Dissenting views should be regarded as important contributions that are taken seriously by the Government. This stakeholder feedback should directly inform policy and action on the ground. Hereafter, the process of engagement with oil infrastructure project affected persons should be collaborative in nature with the local communities given maximum freedom to help guide the process side by side in partnership with the Government.



Chapter 2:

Freedom of Expression Infringements Against Civil Society Advocates

Background on Civil Society Participation in the Oil and Gas Sector

With the discovery of commercially viable oil reserves in Uganda, civil society organization (CSO) participation in the oil and gas sector has fundamentally increased. This vigilance is attributed to the increased need for government accountability in oil sector management and the resulting increased need of civil society monitoring due diligence. Due to the various vested interests involved in the oil sector, civil society is often able to provide the most objective situational analyses. Civil society also acts as an important representative and organizing force for the citizens of Uganda. This is crucial in order to balance the interests of the private sector and governmental actors active in the development of the country's oil sector. CSOs have therefore been at the forefront of ensuring that all activities carried out in the oil and gas sector are done in a transparent manner driven foremost by the citizens' interest for equitably shared national benefit.

CSOs have been instrumental in influencing the enactment of laws, the adoption of statutory instruments and the making of government policies that help create mechanisms for transparency and accountability in the country. For instance, in 2003, CSOs fronted the effort to develop the internationally praised Access to Information Act, 2005 (ATIA). The ATIA aims to foster government openness, transparency, accountability, and good governance by operationalising citizens' right to information.

CSOs have also organised to espouse these values in the development of the oil and gas sector. Civil society has worked hard to influence the development of all oil and gas legislation including the Petroleum (Exploration Development and Production) Act, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, and the Public Finance Bill. CSO coalitions like the Civil Society Coalition for Oil in Uganda (CSCO), the Coalition on Freedom of Information and the Anti-Corruption Coalition of Uganda play an important role in the effort to create a just and accountable oil and gas sector free of any form of corruption. Corruption most commonly occurs behind closed doors—in a manner that is hidden and highly secretive. CSOs are working instead to promote a model of good governance that incorporates all stakeholders in the shared democratic management of the oil and gas resources. Good governance demands accountability in the key sectors that affect livelihood and survival of the populace. It is thus important that multi-stakeholder involvement takes course at all levels of the oil exploitation process. In the bid to promote transparency in the oil sector, the Government of Uganda has expressed commitment to the Extractive Industries Transparency Initiative. Nevertheless, this can only be achieved if the Government accepts joint collaboration with CSOs.

In the wake of the developing oil and gas industry, civil society has many important tasks. For example, the environment is going to be affected by the activities that arise from the oil industry. Pollution is inevitably going to occur as a result of oil extraction. As a consequence, extraction has the potential to gravely affect agriculture, air, water and forests. This calls for publicly available environmental impact assessments to determine



the effect of oil activities on the environment. This can only be possible through checks and balances, which are best engineered by CSOs. Without CSO involvement and access to information related to environmental impacts, companies and the Government remain the only actors privy to that information. This represents an explicit conflict of interest, since both the Government and companies hold a financial interest in the profitability of the project that could be affected by the outcomes of the environmental impact assessments. Therefore, CSOs provide the objectivity critical to ensuring that all activities relating to oil production and refining are carried out in accordance with the established environmental procedures.

Similarly, civil society has an important role to play in the protection of human rights related to the developing oil and gas sector as well as in the monitoring of oil revenue collection. Revenues from the oil production represent a major potential vector for high-level corruption and embezzlement. Again, as an actor without explicit financial stake in the sector, civil society holds a unique position as an independent monitor and watchdog. Hence, civil society must be able to represent the rights and views of the citizens of Uganda on these issues vis-à-vis the Government and companies in order to ensure that revenues are managed lawfully.

Overall, civil society has an important role in influencing legislations, policies and management of the different sectors in the country. Despite the utility and importance of input from CSOs, overtime CSO advocacy and activity has been branded as being oppositional and attempting to sabotage government initiatives. Though CSOs have been adversely criticized, civil society continues to work to ensure an oil sector driven by citizen interest.

Government Response to Civil Society Activism in the Oil Sector

Relations between the Government and civil society first became tense around the issue of oil during the debate on the Petroleum (Exploration and Development) Bill (now the Petroleum Act, 2013). The Government developed measures to curtail the space within which CSOs were operating. These developments intensified the restrictive environment within which the CSOs were already operating. By enacting the restrictive Non-Governmental Organization Act, the Government felt it necessary to manage and control public meetings so that it would regulate all public meetings, especially those that concerned discussion of government affairs or business. Permission would therefore have to be sought to hold a public meeting and the discretion for grant of permission to hold such a meeting would remain in the ambits of the Government. The Government thus fronted the Public Order Management Bill (now the Public Order Management Act, 2013- POMA) with the aim of restricting the enjoyment of freedom of association by expanding the powers of the police as the responsible institution for granting permission to all intending persons who wish to hold a public meeting.

The POMA limits public political debate and as a result transparency, accountability and democracy are no longer assured. This law is also contrary to international human rights laws to which Uganda is a state party, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights because it limits the space within which civil and political rights, economic, social and cultural rights can be enjoyed. Nevertheless, it is the law in place and is now in full application.

Currently, the Government has come out more strongly to regulate CSOs



in a stricter manner with special focus on those working on oil sector issues. Many CSOs have been accused of frustrating government initiatives. The Minister of Internal Affairs, General Aronda Nyakairima, has stated that the government is investigating non-governmental organizations (NGOs) suspected to be involved in activities aimed at undermining Uganda's oil and gas industry. This has been viewed as an outright attempt to intimidate and antagonize CSOs for their outstanding activism and push for transparency and accountability in the oil and gas sector. Further, on July 24, 2013, the Minister stated that he would clamp down on the work of NGOs and CSOs that are not doing what they registered for in preference of other activities.

Government Reaction to Civil Society; “Rebels” and “Saboteurs”

This crackdown occurred in part as a result of community organising work that CSOs had undertaken in the oil region. The Government of Uganda went so far as to label CSOs working on the ground with local communities in the Albertine Region as “rebels” and “saboteurs” set on dismantling the government project.¹¹ This was especially true for organisations working to represent the rights of local communities during the refinery resettlement and compensation process. According to reporter Edward Ssekika, “enthusiasts within security agencies, government and SFI [Strategic Friends International] have now resorted to the use of coercive tools to silence the affected people who try to complain or even civil society organizations championing their cause...Hangi [Bashir Hangi, the communication officer in charge of the oil refinery project in the Petroleum Exploration and Production Department] castigates some civil society organizations like AFIEGO as saboteurs who are merely inciting locals to reject the process and ultimately slow down the refinery project.”¹² Multiple advocates working on the ground allege to have been deemed a “rebel” in order to silence them and turn popular perception against their

THE ROLE OF NON-GOVERNMENTAL ORGANIZATION AS ADVOCATES

NGOs can support affected owners and occupants by taking action to:

- Conduct surveys to determine community needs, undertake impact assessments and assist in data collection.
- Implement an education campaign to train people on the acquisition process, their rights in the process, how to contest unfair procedures, and how to dispute compensation determinations.
- Organize public meetings where community members can educate each other, voice their concerns, share their experiences and identify potential strategies.
- Help to develop effective communication procedures between the acquiring agency and affected owners and occupants.
- Help to identify viable, cost-effective alternatives to the project that avoid or minimize disruption to the community.
- Assist vulnerable people, including women, to make effective compensation claims.
- Implement mechanisms to redress grievances and resolve conflicts.
- Assist people to effectively advocate for themselves, or act as their advocates, in the appeals process or other conflict resolution procedures.
- Assist people to develop alternative options for compensation, relocation and the restoration of their livelihoods.

Source: “Box 13: The Role of Non-Governmental Organizations as Advocates,” *Food and Agriculture Organization of the United Nations. (2008). Compulsory acquisition of land and compensation. FAO Land Tenure Studies,*



work.¹³ During his work as a RAP monitor, Innocent Tumbwebaze was accused of conspiring with rebels.¹⁴ As one AFIEGO representative stated in an interview with *The Observer*, if anyone attempted to ask a question about compensation, they were called a rebel.¹⁵

Thus, instead of welcoming civil society organizations as partners and assisting advocates in pursuing the successful completion of the project, the Government took an adversarial stance. Many NGOs involved in advocating for justice during the RAP implementation were even summoned by the NGO Board and Minister of Internal Affairs to justify their activities. (See Appendix I) This is in direct contrast with international standards such as the FAO Guidelines on Compulsory Acquisition of Land and Compensation. These guidelines state that the Government should in fact “broaden the procedural rights of individuals and civil society organizations to take legal action on behalf of the affected communities or groups that do not have the resources or skills to take actions themselves.”¹⁶

The utilisation of specific labels such as “rebels” and “saboteurs” is no trivial matter. The use of such loaded language suggests a complete lack of respect for citizens and activists working to ensure adherence to basic principles of human rights. Colluding the identity of rights advocates and local representatives with violent rebels is an egregious affront to the organizations advocating for the basic rights of the citizens of Uganda. Yet, it is an effective means for silencing opposition, no matter how productive or constructive that opposition might be. Despite the merits of the questions or concerns raised, the labeling of the dissenting opinion as ‘rebellious’ can effectively shut down the conversation and disable the most basic democratic principles. This is a particularly troublesome tactic that directly threatens the rights of civil society to carry out their duties and to express dissent.

Civil Society Participation and Likely Implications of Government Sabotage

Thus the conditions of operation for CSOs are quite tense. There is little doubt that the relationship between CSOs and government will continue to sour as the country moves closer to commercial oil production unless an agreement or resolution is reached. There is currently a proposed Non-Governmental Organizations Registration (Amendment) Bill that has been drafted to ostensibly tighten the current NGO Registration Act. Although the draft bill has not been publicly circulated, those with access report that government powers are greatly expanded in the new version while in contrast, the scope of NGO operations is greatly limited.

To the end of visualizing where such restrictive measures by the Government could potentially lead, one can look to the case of Nigeria. The Ogoni people in Nigeria have had a bitter experience. When the writer and activist Ken Saro-Wiwa acted out against local injustice, he was hanged along with eight others by the military regime in 1995. The crime was campaigning for equitable distribution of revenues from oil and for sustainable and environmentally sensitive exploitation.¹⁷

In light of the inverse effects that oil has had on the strength of democracy in other countries, the current government crackdown on civil society organizations working in the oil sector and the dismissal of vital rights is very troubling. In these circumstances, it must be noted that oil is a notoriously dirty business that deserves constant policing. CSOs can play a vital watchdog role as an independent monitor for sector activities. They should continue to do so amidst the harsh political climate. Those who may seek to violate individual rights and disallow oversight and investigation appear very likely to be hiding something.¹⁸



The role of CSOs in the oil sector is crucial for a well-governed sector that abides by the highest standards of transparency and accountability. The contrary would produce undesirable results. Where there is no CSO participation, it is much easier for malfeasance to occur and abuses of power to take place without an active monitoring agent in place.

If not prevented, corruption in the oil sector could unfortunately thrive to the benefit of few privileged individuals at the cost of the citizens. Without CSO participation, the sector will be managed completely by governmental and private sector interests. This unjustly excludes citizens as the ultimate stakeholders and legal owners of the oil. With the limitation of CSO participation, the oil and gas sector will not be managed to international standards based on the principle of widespread multi-stakeholder engagement in the sector. The independence and objectivity of civil society is important for eliminating corruption and enforcing foundations for transparency, accountability, and democratic governance of key sectors that touch the lives of citizens across the entire nation.

Recommendations

Uganda belongs to its citizens and the natural resources belong to Ugandans. The Government should merely be a trustee that holds natural resources in trust for the people.¹⁹ To this extent, politicians must manage the resources in the best interest of the people of Uganda. With this aim in mind, civil society and citizen participation should be encouraged, rather than opposed, in order to assist government in carrying out this mandate. Natural resources are therefore to be managed in accordance with the laws and, most outstandingly, the Constitution of Uganda as the grand norm.

The advancement of socio-economic, civil and political rights is the due administration of justice that all persons deserve for their wellbeing and development. Where the aforementioned is not satisfied, CSOs play an instrumental role that not only promotes but leads to the realization and enjoyment of rights in an equal measure as they may arise from the exploitation of the oil and gas resources.

For a sustainable oil and gas industry, CSOs must exist in a conducive and positive working environment and civic space that is respected by government. CSOs must be empowered to fulfill their role in a visibly transparent and objective manner that is free from accusations by government. A robust civic space must be protected to continue to enable constructive dialogue, debate, and oversight.

When the operational environment for CSOs is respected, civil society will again be able to work for the assurance of a transparent, accountable and democratic oil and gas sector, facilitated by the recognition and true implementation of rule of law.

The ability of civil society in Uganda to carry out its mandate is currently under threat due to a narrowing civic space for analysis, critique, and dissent. This narrowing space is due to repeated government threats and attempts to dissuade effective civil society activity in the oil and gas sector. The Government and civil society ought to come to round table recognition and acceptance of the fact that their roles are complementary in nature. In this light, the Government should be building CSO capacity instead of attacking its work. Likewise, CSOs should embrace government collaboration on monitoring projects and welcome joint work whenever applicable. The more government and civil society consult each other, the better the monitoring and oversight environment will become. Platforms should be set up to facilitate regular communication between government and civil society groups and coalitions working on oil to enable information sharing between the two groups. This will help build an oil and gas sector that is truly in the country's best interest based on multi-stakeholder engagement that emphasizes democratic rights to free speech and expression for true dialogue and debate.



Chapter 3:

Threats to Parliamentary Oversight Powers in the Oil & Gas Sector

Introduction

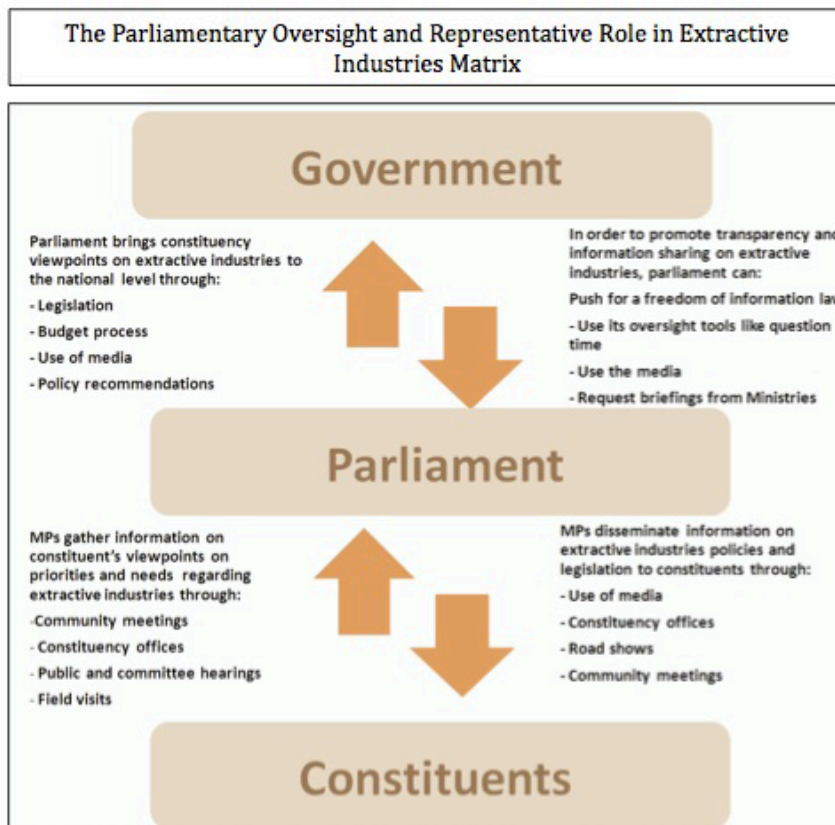
Hope and skepticism continue to build around Uganda's young extractive industry in the Albertine region, dubbed a rare bio-diverse area on the African continent.²⁰ The hope stems from the fact or the assumption that the proceeds that shall be or are already being realized from the oil industry will augment poverty alleviation, economic growth and ultimately sustainable development. Notwithstanding, there is also fervent skepticism based on the uncertainty of whether Uganda will be able to beat the so-called 'oil curse' that has engulfed other African countries. It is possible that this skepticism has found fertile ground considering the runaway corruption historically present in Uganda exacerbated by an increasingly eroding culture of constitutionalism and rule of law.

Pundits maintain that the oil curse, characterized by conflict, underdevelopment, and large-scale corruption is a direct consequence of weak institutions, ineffective mechanisms for transparency and accountability, and prohibitive restrictions on public participation.²¹ The enormous rents from the extractive industry, if not well regulated and scrutinized, can be a precursor to grand corruption. This will further harm the already alienated relationship between the citizens and their Government and could also increasingly enable the political system of patronage that currently exists.²² Whereas the risk of the curse cannot be fully eliminated, it is clear that in the context of a democratic system that boasts of strong checks and balances, the curse can be minimized and its potential damage diluted.

Therefore, there is a convergence of thought that Uganda can escape the scourge of the resource curse through the adoption of an acceptable management and governance platform for the oil sector that is accountable, transparent and participatory. This should be made manifest through strong civil society oversight mechanisms over the sector, a strong legal framework, and widespread citizen participation buttressed by 'well-informed, inclusive national conversation' in governance of the extractive industry.²³

The above three central aspirations can best be guaranteed by the presence of a robust, Parliamentary arm of government. Therefore, the role of Parliament in oil governance in Uganda is going to be very central in determining the question of whether Uganda will survive the oil curse or not. Over and above the Parliament, the three aspirations can also be strengthened by other stakeholders including but not limited to multinational corporations (directly involved in the industry), the media, political parties, civil society organizations (CSOs) and, most importantly, the judiciary. This part of the paper discusses the notion of parliamentary oversight in the oil sector in Uganda. It details the three main functions of Parliament in this quest but also notes that Parliament has to be facilitated enormously to build its capacity in the often technical extractive industry aspects.





(World Bank Institute, 'Parliamentary Oversight of the Extractive Industries Sector')

Situational Overview of Uganda's 9th Parliament: Beacon of Hope or Angels of Doom?

The role of Parliament cannot be deciphered in isolation from the general body politic – and more so given the low ratings of confidence and trust that confront the Ugandan Parliament at least as manifest in 2013. The Parliament has had a history of “squabbles between what pundits call a ‘domineering’ Executive and the ‘belligerent’ Legislature.”²⁴ Accusations of bribery in the State House (hereafter the “House”) to decide matters in favour of the Executive remain rife.²⁵ The luxurious and some would say pompous conduct exhibited in the House in 2013—demonstrated by the acquisition of luxuries such as iPads (allegedly to cut photocopying costs) while primary schools go without facilities as well as the exorbitant millions handed out to MPs to acquire cars when the roads are potholed—has not endeared this very body to the public. To the public, it has often come off as a Parliament under siege by the Executive with members behaving like ‘voting machines’, or a ‘hired mob’ possessing an unquenchable thirst for money.²⁶

A recent history of the Parliament's dubious and questionable activity includes: actions during the hasty passage of the contentious Public Order Management Bill (POMB), 2011, which stifles freedom of assembly and expression; the passage of the Anti-Homosexuality Bill; the controversial approval of General Aronda Nyakairima to be a Minister for Internal Affairs, a position supposed to be fulfilled by a civilian as prescribed in Article 208 (2) of the 1995 Constitution yet filled by Nyakairima, an active military personnel at his time of approval; and the story of the MPs on the Committee of Public Service and Local Government forging a report in the Kampala City Authority power struggles. These stories have all been taken by observers to



support the perception that the Legislative is a people under an Executive spell save for the independent minded MPs within the NRM, the independently elected MPs and members from the opposition parties. At the onset of writing, Uganda boasted of a 'chameleon' Parliament—by no means deemed trustworthy by citizens but still not easily dismissed as a weakling institution. The pertinent question is whether, even with all the above limitations, it can rise above occasion and provide the much-desired leadership demanded by extractive industry activity in Uganda.

Since Parliament is the epitome of representation, one is right to conclude that stifling debate on extractive industry governance within Parliament—using both legal and illegal tactics—indirectly stifles popular participation in the governance of oil. This infringes on the public trust doctrine as enshrined in the Constitution of the Republic of Uganda. As such, the political atmosphere should allow debate however critical as long as it is held within the prescribed democratically acceptable legal confines that govern the country. Widespread multi-stakeholder participation in oil sector governance should come without intimidation. Unfortunately, this is not the case as has already been exhibited by the threatened closure of non-governmental organizations working on accountability and transparency in the oil sector.²⁷

Criminalizing Dissent in Parliament; Implications for Extractive Industries Governance?

The discovery of oil and the ensuing debate on the issue has been followed by quite a repressive approach to freedom of expression and speech in Uganda. The struggle for space to express oneself has faced a bigger challenge within the Parliament and more ironically within the ruling party, NRM. Members that do not tow the party line on particular issues, especially under the Parliamentary Forum on Oil and Gas, have been dubbed all sorts of names including 'firebrand comrades,' 'rebellious trio', as well as 'rebel' and 'errant' MPs by the system. Interestingly, to the public they have emerged as critical thinkers and independent minded authors of truth. To the public, it seems that the fight for accountability and transparency in Parliament is turning into a witch-hunt for those standing up against corruption, social injustice and conformism. The NRM struggle to silence these critical MPs has even pitted the party against the Speaker of Parliament, Rebecca Kadaga, who has been targeted for her "continuous independence while steering House business", which has at times bruised the egos of the Executive.²⁸

In 2013, the NRM expelled four members—Theodore Ssekikubo, Wilfred Niwagaba, Mohammed Nsereko and Barnabas Tinkasiimire—over allegations of "indiscipline" which was interpreted by many as the explosion of a "simmering conflict within a ruling party whose leadership has grown more intolerant of critical voices within the ranks."²⁹ Additionally, they were accused of "forming cliques/factions and intrigue contrary to Rule 4 (a) of the NRM code."³⁰

Subsequently, the former Prime Minister of Uganda, Amama Mbabazi, who also doubles as the Secretary General of the NRM party, wrote to the Speaker of Parliament directing her to implement the decision of the Parliament and declare their seats vacant since they had been elected into parliament on the NRM ticket. As such, since they had been expelled from the party, they ceased to be MPs of that party and resultantly had no locus to be in Parliament. The Speaker's refusal to execute the directive unleashed a legal battle between the expelled MPs, the Executive, and the NRM party challenging their expulsion from the party. The NRM party sought



and was granted an injunction against the four MPs barring them from accessing the premises of Parliament pending the disposal of the Court petition. The injunction was however quashed by the Supreme Court in September 2013. This case is pending in the Constitutional Court. The four maintain that their biggest crime is/was to “educate and sensitize the masses and the Parliament about the country’s oil transactions”.³¹

Theodore Ssekukubo and Wilfred Niwagaba are members of the Parliamentary Forum on Oil and Gas (PFOG), a critical group of legislators pushing for transparent management of the emerging oil and gas sector. According to *Oil in Uganda*, Sekukubo was charged, among other things, for being chairman of PFOG, which is “opposed to the NRM position on oil”.³² In an address to Parliament, Museveni singled the two out for exercising their right to dissent in Parliament. “What they are doing is an unforgivable sin. It is sacrilege. To stand here and use the forum of Parliament which I created for you, through sacrificing blood, is unacceptable.”³³ Mr. Museveni said this regarding the small group of MPs who had voted against the Government’s proposals for structuring and regulating the oil industry.

It is noteworthy that to label the healthy exercise of Parliamentary dissent and debate as ‘sacrilege’ brings into question Mr. Museveni’s idea of the purpose of Parliament in the first place. If Museveni does not support these activities in Parliament, the question arises how the elected body will carry out its all important oversight duties—especially in relation to the country’s oil and gas sector.

Clearly, the NRM, following the President’s lead, has adopted a strategy of isolation and alienation toward any MP that goes against the majority party position on oil. In a complete reversal of the foundational purpose of Parliament as an institution, speaking one’s mind independently and countering that of the majority within the party has been dubbed an intolerable indiscipline that could lead to expulsion from the party. The isolationist approach by the NRM has been very vehement on matters of oil and gas. Ironically, the move to stifle the oil debate and the attacks on the four expelled MPs has heightened the debate in the public on how the extractive industries should best be governed.

The Oversight Role of Parliament

The oversight role of Parliament is critical—particularly in relation to the executive branch of government—in policy formulation and implementation of matters of extractive industry governance. According to the Global Organization of Parliamentarians Against Corruption, oversight connotes the

*“Duty of parliamentarians to require the Executive Branch to follow the rules related to financial operations, and for the government to openly report to Parliament on its exercise of the Executive’s powers and public resources granted.... It includes the review of all sources of revenue and expenditures, including tax expenditures (preferences); legislation and other parliamentary rules related to government budgeting, debt management, expenditure operations (including for example as related to procurement and provision of grants), and financial reporting”.*³⁴

In 2013, the vibrancy of the 9th Parliament in re-asserting its oversight role was manifest in its imposition of a moratorium on granting of new oil exploration licenses until all necessary laws to regulate the young industry had been enacted. This level of autonomy and independence must be maintained and regularized as the country



continues to develop its oil sector.

The oversight role cannot be separated from the pursuit of accountability within the extractive industries. The Parliament, as the author of the laws governing the extractive industries, is best placed to follow up on the implementation of these laws. This can only occur if the actions of the Executive and companies engaged in oil activities are monitored and checked in allegiance with the laws. The Parliament has to ensure that there is financial, environmental, social and legal accountability.

Tools for Parliamentary Oversight

In other jurisdictions where oversight has been emphasized as a necessary precursor to resource extraction there have been various tools of oversight that have been developed to keep a strict scrutiny over the process. These tools include:

1. Question Time: Using this tool, Parliament invites technocrats and government officials from the relevant agencies to answer questions prepared in advance. The mechanism can only work best if the Members of Parliament understand that oversight is a central role of Parliament and is not oppositional in nature. Hence even an MP from the ruling party has a right and obligation to question his own party-in charge of the country on issues arising around extractive activities from their constituency. There is need to change the mindset of the ruling MPs who seem to believe either deliberately or erroneously that 'oversight' is an exclusively oppositional role. The above mechanism has to be complemented by a vigorous media presence that ensures information flow to the public emerging from the Parliamentary debate.

2. Committee Hearings: These can be strengthened further by increased Parliamentary attention to committee findings reports which in the past have been mere lamentations gathering dust. Such committees could be very instrumental in conducting inquiries into any specific issues that may arise in the extractive industries. The new Parliamentary Committee on Human Rights is very important because it can investigate whether the various stakeholders in the industry adhere to the necessary requisite human rights standards in the execution of their work. In the same vein, Parliament should consider setting up a specific committee on extractive industries (C.E.I.). Such a committee would be supported by a technical group of experts on the extractive industries from across the Government and civil society. The committee could work in co-ordination with other committees of Parliament such as the budget and internal affairs committees to address cross-cutting issues in the extractive industries and provide comprehensive oversight.

Parliamentary vigilance is most notably necessary at the crucial stages of contract negotiation between the Government and the stakeholder multi-nationals undertaking particular obligations such as extractions and also during resource revenue management and budgeting planning.

Monitoring and evaluating government efficiency and effectiveness in all the aforementioned levels of extractives will only be possible if there is transparency based on a legal framework that facilitates access to information relating to governance of the extractive industry in the country. Access to information enhances public participation in the management of the industry and provides for inclusion of people's aspirations in relevant industry processes and outcomes. This ultimately builds a community that can seek accountability from the various stakeholders tasked with different roles in the industry.



Recommendations

The Need for Parliamentary Capacity Building

As the young oil sector in Uganda takes root, attention must also be accorded to enhancing the capacity of Parliament in the sophisticated and highly technical sphere of extractive industry oversight. Capacities need to be built in spheres of extractive industry legislations and regulations, governance and management of the sector.

Accessibility to accurate, timely, simplified information

The above should be complemented by a deliberate transparency-guided executive approach to extractive industry activity. The Executive must be committed to transparency, as a principle predicated on the practice of providing necessary timely and accurate information, to inform the debates and decisions of the Parliament and the respective parliamentary committees. The centrality of information in the oversight role of the Parliament cannot be repealed.

Respect for the principle of separation of powers

The respect for the principle of separation of powers is also critical in the development of the extractive industry. The Parliament must be respected as an independent legislative body with due diligence procedural rights to dissent. This is especially important considering that Uganda's parliamentary system includes a mixture of cabinet ministers who double as members of the legislature while at the same time manning as representing the Executive. The manifest conflict of interest is already a potential stumbling block for their mandate and obligation as oversight members to be subsumed in their allegiances to the Executive. The Executive must respect the rights and roles of Parliament as an autonomous body necessary for providing effective checks and balances and critical oversight for the positive development of the extractive sector.



Implications

As demonstrated by these case studies, the inverse effects of high-value commodity extraction on the strength of a country's democracy is not just a textbook theory but a reality that is being realized on the ground in Uganda. This theory is unfortunately applicable in the case of Uganda's developing oil and gas sector as the democratic rights of groups expressing dissent and challenging government authority have been penalized and persecuted at multiple levels.

Without essential democratic protections in place, the transparent and accountable development of Uganda's oil and gas sector is in serious question. In fact, the entire rule of law in the country, "that protects the rights of citizens, maintains order, and limits power of government," may be in jeopardy.³⁵ Human rights abuses in isolation should be seen as a dangerous and slippery slope that can lead to more widespread human rights infringements if not acknowledged and prevented. Due to the antidemocratic influence that resource extraction can have on a country, the instances highlighted in this paper should be taken as serious red flags that could all too easily be replicated if the roots of these abuses are not addressed and altered.

As demonstrated by the above case studies, the developing oil sector is of critical importance to many different stakeholders in Uganda. However, if such antidemocratic patterns continue, the oil sector will be dominated by a few vested interests at the expense of the interests of citizens. The continuing strength of Uganda's democracy depends on transparent, open, and inclusive management of the oil and gas sector to prevent the country from becoming a classic rentier state. It is imperative that all actors—government, companies, civil society and citizens—work together on equal footing to ensure that oil extraction in Uganda is successful and beneficial for all.

A number of countries have learned the hard way from their mistakes in the early stages of oil extraction. Nigeria, which is now an EITI compliant country recovering millions of dollars in previously uncaptured oil revenues, was once one of the most infamous and egregious cases of oil sector malfeasance and human rights injustice. Uganda is fortunate to be a relatively "late" discoverer of oil in that it has many best and worst practices to learn from.

The path to successful democratically managed natural resource extraction has been clearly set by leading countries committed to transparency, accountability and multi-stakeholder inclusion. Uganda does not have to forge its own path through uncharted territory. There are clear best practices and components for success that have been proven time and time again by countries like Botswana and Ghana who have committed to extractive industries free of corruption. The implications of not doing so, as demonstrated by the human rights abuses presented in these case studies, are real and could be easily replicated if the necessary safeguards and protections are not put in place as prescribed in the recommendations below.



Recommendations

- The pending legal case representing the rights of individuals in Kaabale Parish who refuse the compensation offered during the RAP process must be seen before court and resolved expeditiously taking into account the procedural faults of the RAP process and the lack of opportunity for negotiated solution.
- The citizens of Kabaale Parish opting for resettlement should be resettled as a matter of urgency to the agreed upon resettlement location as it is nearly one year later and residents still await resettlement unable to cultivate their land or engage in their livelihoods as per the restrictions of the RAP.
- Government should develop an explicit national policy on protocols for involuntary resettlement procedures to be followed due to extractive industry activity that can be used as guidance in future oil, gas and mining project development by both Government and project investors that follows international best practice on forced evictions and involuntary resettlement.
- Civil society organizations should work to improve the legal literacy of communities in the oil region with a particular emphasis on land rights so that oil-affected communities can protect themselves against unlawful land grabs as well as malfeasance during resettlement activities.
- Bilateral donors and investors financing extractive industry infrastructure projects in Uganda should explicitly require that international best practice guidelines for involuntary resettlement and forced eviction be met as a term of contract.
- Civil society organizations advocating for justice in the developing oil and gas sector must no longer face intimidation through summons from the NGO Board and Ministry of Internal Affairs as a tactic of generating fear and obedience within civil society. Government must respect the rights of NGOs and protect civic space for debate and dissent.
- Government should not attempt to restrict NGO space for operations through the tabled Non-Governmental Organizations Registration (Amendment) Bill but instead should respect NGOs as critical stakeholders and maintain the full scope of their legal rights of operation.
- Bilateral donors should take note of these antidemocratic trends and directly advocate to government for the protection of dissenting opinion within the oil region, civil society and Parliament.
- Civil society organizations should constructively engage government in their work and reduce the antagonistic relations between the two parties by inviting government stakeholders to discussions and initiating constructive dialogue to reach shared solutions whenever possible.
- Parliamentarians must strengthen their oversight role in the extractive industries by increasing their formal oversight roles as it pertains to oil revenue management in the Public Finance Bill currently tabled before Parliament and priority amendments to the petroleum legislation.
- Separation of powers must be respected in regards to the autonomy of Parliament especially regarding unlawful influence of the executive in Parliamentary matters so as to protect the robustness of the Parliament as a vehicle for critical debate.
- Parliamentary protocols for suspension and expulsion must be stringently followed to reduce the risk of ad hoc suspensions or penalties due to the expression of dissenting opinion, which in practice should be welcomed as necessary for normal Parliamentary functioning.



Conclusion

The discovery of natural resource reserves can affect a country in a multitude of ways depending on how the country reacts to, and manages the newfound resource. In many cases, this is influenced by the level of transparency within the operating environment as well as the accountability of relevant stakeholders. Results from resource discoveries like oil and mineral reserves are often most beneficial when democratic principles and human rights are respected and applied to the process of natural resource management.

In the case of Uganda, Article 244 of the Constitution vests natural resources reserves to be held by the Government on behalf of the citizens of Uganda. Therefore, the Government of Uganda manages the reserves in trust of the citizens. Meanwhile, the Government contracts oil companies to undertake physical extraction of the resource. Thereafter the profits are shared between the Government and the company through a contractual profit sharing agreement. In this type of scheme when there are so many different actors with varying levels of power over the extraction process, as well as competing interests, the citizens are often marginalized since they are not directly a part of the extraction or revenue sharing processes. Thus, democratic processes must be utilized to rightfully engage all citizens in the oil sector management to honor their role as critical beneficiaries of the oil returns.



As demonstrated by these case studies, the developing oil sector is of critical importance to many different stakeholders in Uganda. It is imperative that all actors—government, companies, civil society and citizens—work together on equal footing to ensure that oil extraction in Uganda is successful and beneficial for all. The Government is advised to embrace a multi-stakeholder approach to oil sector management so that the country’s commitment to democracy is strengthened, rather than weakened, through the oil extraction process. Citizens and civil society are also encouraged to take on a cooperative spirit towards the Government in this endeavor in order to create an open and amenable working relationship among all stakeholders.

These few case studies should remain an exception to the rule rather than the rule itself when it comes to the protection of democratic human rights in oil sector development in Uganda. While oil extraction has been studied to negatively affect democracy, this is certainly not inevitable or unavoidable. Uganda is by no means destined for an “oil curse” and this paper does not attempt to argue so. Rather, this paper attempts to highlight a pattern of democratic regression early enough to prevent it from becoming a norm. Blowing the whistle early on such negative activities brings attention to the issue so that it can then be acknowledged and corrected.

A number of countries have learned the hard way from their mistakes in the early stages of oil extraction. Nigeria, which is now an EITI compliant country recovering millions of dollars in previously uncaptured oil revenues, was once one of the most infamous and egregious cases of oil sector malfeasance and human rights injustice. Uganda is fortunate to be a relatively “late” discoverer of oil in that it has many best and worst practices to learn from. The path to successful democratically managed natural resource extraction has been clearly set by leading countries committed to transparency, accountability and multi-stakeholder inclusion. Uganda does not have to forge its own path through uncharted territory. There are clear best practices and components for success that have been proven time and time again by countries like Botswana and Ghana who have committed to extractive industries free of corruption.

Likewise, Uganda can learn from the worst cases. In this sense, it is the hope that this paper brings attention to the heightened risk for a weakened democracy during oil extraction so that stakeholders are made aware and work to instead strengthen Uganda’s democracy over the coming years with that information in mind. It is indeed true that oil can be a blessing to Uganda, as long as transparency, accountability and integrity are embraced and applied to the burgeoning oil sector.



Appendix I:

Summons letter to Civic Response on Environment and Development

TELEGRAMS:

TELEPHONE: General line 4258355
Permanent Secretary 4231103/4231063 4231103
Fax 4231063
Under Secretary 4232645

Website: www.mia.go.ug
Email info@mia.go.ug

In any correspondence on this

Subject please quote No. S.5914/2346



THE REPUBLIC OF UGANDA

MINISTRY OF INTERNAL AFFAIRS

JINJA ROAD,
P. O. BOX 7191. KAMPALA – UGANDA.

Date: 14th /6/ 2013

The Executive Director
Civic Response on Environment and Development (CRED),

P.O.Box, Kampala.


Tel: 0772848801

RE: INVITATION TO MEET THE COMMITTEE TO THE NGO BOARD

The Committee to the NGO Board sitting on the 10th day of September, 2013 at 10:30am invite you for a discussion regarding the operations of your organisation. You are advised to come with all your relevant documents regarding your activities and the Board members.

VENUE : NGO Board Room

Please keep time.


Okello Stephen,
For:
Secretary, NGO Board



(Endnotes)

¹Relevant legislation includes: The National Oil and Gas Policy for Uganda, The Petroleum (Exploration Development and Production) Act 2013, Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013, The Oil and Gas Revenue Management Policy, and The Public Finance Bill [tabled before Parliament as of October 2014.]

² See the Constitution of the Republic of Uganda, 1995; objective XIII which provides that; the State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. See also article 244 (1) of the Constitution which provides that; Subject to article 26 of this Constitution, the entire property in, and the control of, 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.

³ See The National Oil and Gas Policy for Uganda (2008) pg. ix

⁴Ross, M. "Does oil hinder democracy?" World Politics, Issue 53. April 2001. Pp. 325-361. Retrieved from: <http://www.maxwell.syr.edu/uploadedFiles/exed/sites/ldf/Academic/Ross%20-%20Does%20Oil%20Hinder%20Democracy.pdf>

⁵Anyanwu, J. & Erhijakpor, A. "Does oil wealth affect democracy in Africa?" African Development Bank Group Working Paper Series No 184. November 2013. Retrieved from: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Working_Paper_184_-_Does_Oil_Wealth_Affect_Democracy_in_Africa.pdf

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹See the Constitution of the Republic of Uganda 1995, Chapter 4. See also Access to Information Act, 2005.

¹⁰Tsui, K. "More oil, less democracy?: Theory and evidence from crude oil discoveries." University of Chicago Job Market Paper. November 11, 2005. Retrieved from: <http://www.webmeets.com/files/papers/ERE/WC3168/tsui-kevin-wc3.pdf>

¹¹Ssekika, Edward. "Oil refinery: compensation rates get complicated." The Observer. August 13, 2013. Retrieved from: http://www.observer.ug/index.php?option=com_content&view=article&id=26945:oil-refinery-compensation-rates-get-complicated&catid=38:business&Itemid=68

¹² *Ibid.*

¹³Tusingwire, B. (2014, November 07). Interview by K Brophy.

¹⁴Ssekika, Edward. "Oil refinery: compensation rates get complicated." The Observer. August 13, 2013. Retrieved from: http://www.observer.ug/index.php?option=com_content&view=article&id=26945:oil-refinery-compensation-rates-get-complicated&catid=38:business&Itemid=68

¹⁵ *Ibid.*

¹⁶ Food and Agriculture Organization of the United Nations.(2008). Compulsory acquisition of land and compensation. *FAO Land Tenure Studies*, Retrieved from <ftp://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>

¹⁷ Scare tactics against oil NGOs suspicious (Editorial) the Daily Monitor; available at <http://www.monitor.co.ug/OpEd/Editorial/Scare-tactics-against-oil-NGOs-suspicious/-/689360/2016246/-/12hsqsxz/-/index.html> (accessed 20 December, 2013)

¹⁸ *Ibid.*



¹⁹See the Constitution of the Republic of Uganda, 1995; objective XIII which provides that; the State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. See also article 244 (1) of the constitution which provides that; Subject to article 26 of this Constitution, the entire property in, and the control of, 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. See also Section 4 of the Petroleum (Exploration, Development and Production) Act No 3, 2013.

²⁰The discovered resources in the Albertine Graben are currently estimated at over 3.5 billion barrels of oil with half of it adjudged recoverable. The developer in Uganda's emerging oil and gas industry include Tullow Oil, China's state-owned CNOOC and Total.

²¹ See Ben Shepherd, *'Oil in Uganda: International Lessons for Success'*, February 2013

²²*Ibid.*

²³ *Ibid.*

²⁴See Yasiin Mugerwa, *'2013: Another turbulent year for the Ninth Parliament'*, Daily Monitor, 2013. Also accessible on <http://www.monitor.co.ug/News/National/2013--Another-turbulent-year-for-the-Ninth-Parliament/-/688334/2126110/-/view/printVersion/-/yel5sb/-/index.html>

²⁵ Various committees have been set up by Parliament to investigate bribery claims of members of parliament notable among which include the oil bribery scandal in 2011, where it was alleged that Ministers Amama Mbabazi, Hillary Onek and Sam Kutesa had taken bribes/commission from a foreign oil company to represent their interests in the oil and gas industry in Uganda. The investigation found no credible claims. Another is the investigation into allegations that MPS were bribed to vote against a committee report that was recommending the termination of a contract of UMEME, Uganda's electricity distribution company. Some of these allegations have been made without an aorta of evidence throwing the parliament into a goose chase in the process wasting the tax payers' money and in the process turning the parliament into 'a smear house of reputations.' See also Daniel Kalinaki, *'Let's not turn Parliament into a smear house of reputations'*, The Daily Monitor, 2013.

²⁶ *Ibid.*

²⁷See Francis Mugerwa, *'Uganda's Oil Milestones in 2013'*, The Daily Monitor, December, 24, 2013 <http://www.monitor.co.ug/News/National/Uganda-s-oil-milestones-in-2013/-/688334/2123278/-/view/printVersion/-/14ur1yh/-/index.html>. These threats came from the Minister of Internal Affairs, General Aronda Nyakairima.

²⁸ Isaac Imaaka, *'NRM plots to throw out critical MPs'*, The Daily Monitor, October 31, 2013.

²⁹ Francis Mugerwa, *'Uganda's oil milestones in 2013'*, The Daily Monitor, December 24 2013

³⁰ Id.

³¹See Daily Monitor, *'We are proud of our crimes, MPs say'*, 2013

³² Nalubega, Flavia. "Ruling party expels rebellious 'Oil MPs.'" *Oil in Uganda*. April 17, 2013. <http://www.oilinuganda.org/features/governance/ruling-party-expels-rebellious-oil-mps.html>

³³Young, Nicholas. "Museveni lashes civic critics and foreigners, praises oil scientists." *Oil in Uganda*. December 14, 2012. <http://www.oilinuganda.org/features/civil-society/museveni-lashes-civic-critics-and-foreigners-praises-oil-scientists.html>

³⁴<http://gopacnetwork.org/> Accessed on 15th January 2014.

³⁵Anyanwu, J. & Erhijakpor, A. "Does oil wealth affect democracy in Africa?" African Development Bank Group Working Paper Series No 184. November 2013. Retrieved from: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Working_Paper_184_-_Does_Oil_Wealth_Affect_Democracy_in_Africa.pdf



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