



**global witness**

## **Uganda's petroleum legislation: Safeguarding the sector**

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## SUMMARY

The Government of Uganda (GoU) has recently introduced two petroleum bills to the Parliament. The Petroleum (Exploration, Development and Production) Bill 2012 (henceforth referred to as the Upstream Bill) was introduced on Wednesday February 8th. The Petroleum (Refining, Gas Processing and Conversion Transportation and Storage) Bill, 2012 (henceforth referred to as the Mid-stream Bill) was introduced on Tuesday February 14<sup>th</sup>. A third bill covering revenue management of the oil sector is expected, but has not yet been formally presented to Parliament.

Global Witness welcomes the introduction of the Bills and congratulates the Government on its efforts to bring in sound legislation to govern the industry. However, while the Bills display a number of positive aspects and some good detail, there are still big gaps. Many of the concerns raised in response to the last draft Bill in May 2010 are not addressed. *Tight ministerial control, absence of parliamentary oversight and a lack of guarantees on contract and financial transparency remain key features of both Bills.* The legislation will need to be carefully considered and substantive amendments made if it is to meet international best practice and provide a solid foundation for Uganda's petroleum sector.

The following areas should be considered as part of this:

### Process

The two Bills do not currently cover revenue management aspects of Uganda's petroleum sector. While the GoU has committed to introduce a Public Finance Bill, which will cover revenue management for the sector, it has not yet been formally presented to Parliament. Without the revenue management legislation, it is not possible for parliamentarians or other stakeholders to conduct a thorough analysis of the legislative framework governing the petroleum sector or understand its implications.

A consultation on a previous Petroleum Bill was carried out in October 2010. Since then, however, the legislation has been significantly altered, expanded and split into separate Bills. No public consultation on additional content for either the Upstream or Mid-stream Bills has taken place.

### Drafting

The two Bills differ from one another in crucial respects. There are areas in each Bill that could benefit from the adoption of language from the other. For example, standardising the information that the Minister responsible for petroleum activities (henceforth the Minister)<sup>1</sup> should provide to the public.

It is also important to note that cross border issues and agreements with neighbours, most notably the Democratic Republic of Congo which shares the *Albertine Graben*, are not dealt with in the legislation.

### Institutional governance

The Bills put significant power to control the relevant institutions, dictate future regulations and negotiate the terms of licences and agreements in the hands of the Minister. This risks politicising the management of the petroleum sector.

The legislation does not contain a significant oversight role for Parliament in overseeing these institutions.

A further concern is the lack of clarity on the relationships between different government institutions. The lack of detail on the establishment of a National Oil Company (NOC) is particularly troubling.

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<sup>1</sup> All references to the 'Minister' in this document refer to the office of the Minister with responsibility for petroleum activities, and not the incumbent or any other individual.

## **Bidding, licensing and allocation of oil and gas rights**

Positively, the Upstream Bill does provide for a competitive bidding process for companies to gain rights to access Uganda's oil and gas. However, this process is potentially totally undermined by the broad exemptions allowing the Minister to circumvent it by accepting direct bids. The Mid-stream Bill doesn't provide any detail, other than a passing reference of support for open and competitive bidding in the introduction.

There is a lack of clarity over the contractual basis for the relationship between companies and the GoU. Whilst licences are dealt with in some detail, 'agreements', and the relationship between the two, are not. It is simply not clear what kind of system for partnering with petroleum companies the Government intends to operate. Much of the detail is left to licences, further regulations and presumably 'agreements'. This leaves a lot to ministerial discretion with no role for Parliament.

There is no specific provision for 'pre-qualification' of companies on environmental and social grounds. Such a provision would help check companies' suitability and track record.

Whilst there is a process for public objection to the opening up of new areas this does not apply to the renewal of licence applications or the allocation of 'production licences'. In all cases the ultimate decision lies with the Minister.

The Mid-stream Bill does not detail the process by which companies are selected to construct petroleum and related infrastructure. Nor does it deal with the contractual relationship between the government and companies beyond licences.

## **Transparency and accountability**

The current drafts do not set out a role for the Parliament of Uganda. Parliamentary oversight of the oil industry is therefore missing.

The requirement for licensees to disclose information about their beneficial owners is welcome, but overall the Bills do not create the necessary framework for transparency in the petroleum sector.

Clauses on availability of information are inadequate for three reasons. Firstly, they contain commercial confidentiality clauses which are not defined, leaving scope for unnecessary secrecy. Secondly, whilst the Upstream Bill allows the Minister to make information available it does not oblige the Minister to do so meaning that information will not necessarily be public. Finally, the transparency requirements in the two Bills do not cover financial transparency relating to the sector. This means there is no guarantee that the Ugandan public will have information about the revenues generated from the industry.

A former draft version of the Upstream Bill seen by Global Witness contained a provision which allowed the Minister to make licence documents public. This clause has been removed from the latest version.

## **Environmental and social protection**

Several areas of the Bills refer to 'best petroleum industry practice.' However, the Bills do not refer to specific guidelines and principles in relation to best practice in the relevant areas. These could include: International Finance Corporation Performance Standards, The IMF's Guide on Resource Revenue Transparency, The Natural Resource Charter, Extractive Industry Transparency Initiative, The Citizens Checklist from the Global Witness Report, *Rigged: The Scramble for Africa's Oil, Gas and Minerals*.<sup>i</sup>

Whilst the Bills require companies to protect their sites and infrastructure, they are silent on regulating the conduct of private security firms contracted by companies; the relationship between companies and regular security forces; or any human rights issues arising from these relationships. The experience of the neighbouring DRC suggests that this is an area which needs to be addressed through Ugandan law.

Whilst the draft legislation does create an objection procedure for affected persons in relation to the opening up of new areas for exploration, this procedure does not apply throughout the oil sector development process. The inclusion of an objection procedure, and the complaints mechanism in the Mid-stream Bill, are a long way from best practice on consultation.

Fines levied on companies for violating environmental or social provisions in the Bill are insufficient to act as a successful deterrent.

### **Revenue management and financial transparency**

Neither Bill deals adequately with the crucial issues of revenue collection and management, financial transparency or oversight. This detail may be covered in future revenue management legislation. The Public Finance Bill had not been officially presented to Parliament at the time of print, however. Any analysis of Uganda's petroleum legislation will remain incomplete and partial without it.

Detailed recommendations for stakeholders are laid out in the text below. *However, given the importance and extensive nature of this legislation we recommend further consultation with all relevant stakeholders and clear amendments before passing the Bills into law.*

The top five Global Witness recommendations are:

- 1. Reduce direct ministerial discretionary control of the sector by:**
  - **Strengthening the independence of, and better defining, institutions and their roles.**
  - **Leaving less to secondary regulations and contracts, and ministerial discretion.**
  - **Clarifying what kind of system the GoU will use for partnering with international companies and provide further information about this process.**
- 2. Provide a strong role for Parliament in the management of the petroleum sector by giving them the explicit power in the legislation to approve new acreage, regulations, licences and contracts and play a greater oversight role. Consider other oversight bodies.**
- 3. Commit to making all documents relating to the petroleum sector public unless they fall within tightly and specifically defined exemptions.**
- 4. Commit the GoU to financial transparency in the management of petroleum revenues and bidding processes. Present revenue management legislation to be considered alongside these two Bills, before passing them into law.**
- 5. Commit to, and set out a process for, careful consultation with all relevant stakeholders at each stage of petroleum development. This could include licence allocation and renewal, drawing on the free, prior and informed consent model of best practice.**

## INTRODUCTION

Petroleum wealth has the potential to help raise millions out of poverty, but it also runs the risk of plunging Uganda towards the resource curse. A robust legislative framework which provides transparency and accountability in the management of the sector is a first vital step to ensuring that Uganda gets a fair deal for its resources and ordinary Ugandan citizen's benefit. As such, many stakeholders have a strong vested interest in promoting a solid legislative structure for the sector.

Every clause in this legislation is potentially crucial for the future management of the country's petroleum assets. Clause 184 of the Upstream Bill states that the act will take precedent over all other Ugandan laws. The GoU, Parliamentarians, civil society and international partners need to seize the opportunity to work together to strengthen the existing drafts. All actors should help ensure that there is sufficient space and capacity for thorough scrutiny and debate. The government must show the political will to support the process and make amendments where necessary in the long-term interests of the country.

The following analysis is intended to help inform debate on the recently introduced legislation. The Bills are currently being considered by the Parliamentary Committee on Natural Resources, which will have 45 days to look at each piece of legislation from the day of receipt. After this, the Bills will return to Parliament for second reading, and at this stage they can be passed into law.

Given the fast turn-around, this study is not exhaustive, nor is it a clause-by-clause analysis of the Bills with detailed recommendations for amendments. Rather it is intended to highlight the major areas of concern with reference to the relevant clauses. It was compiled with input from a number of legal experts with a detailed knowledge of the petroleum sector.<sup>2</sup> It is important to note that we have not had sufficient time to look at all relevant areas of Ugandan law that may relate to this area and these Bills.

## FULL ANALYSIS

### 1. Process

Whilst we agree with Parliament that the legislative framework should be in place before further deals are done and oil begins to flow, this necessity should not push the government, or parliamentarians, to rush the legislation into law. It is vital for the country's long term interests that these Bills go through the proper democratic process. This includes allowing sufficient time for parliamentarians to scrutinise the legislation thoroughly and for all relevant stakeholders, including ordinary Ugandan citizens, to have their say.

#### **Lack of revenue management legislation**

Whilst the two Bills do contain a limited amount of information about revenue collection and management the critical questions remain unanswered. Some of this detail may be contained in the new Public Finance Bill but stakeholders cannot know this until it is publicly available. *It is not possible to provide a full and thorough analysis of the legislative framework without also having seen the relevant incoming revenue management legislation.* We do not know for example whether the government will set fixed royalty and payment rates or whether these will be decided by individual contracts between government and companies. The current legislation does not address where payments will be made to or where they will be held; whether they will be made into one central account; or how that account will be audited or managed. Nor is it clear what level of transparency there will be

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This analysis was conducted with the input and support of the Essex Business and Human Rights Project (EBHR) at the University of Essex, UK.

over financial information relating to revenue generated from the sector. It is also possible that some of this information could be contained in model contracts, but this is not clear from the draft Bills.

Whilst a previous draft of the Upstream Bill (Schedule 4) detailed the division of incoming royalties amongst different levels of government, this latest version does not, although this detail is included in the draft Public Finance Bill. It is important to note that the term 'royalties' does not necessarily refer to all incoming revenues (signature bonuses, other taxes and so on).

These are huge issues which will dictate how revenue is shared, managed and used, but also how effectively the government will mitigate against corruption by providing public information about revenue. It is not a problem, per se, that these areas are not covered in the two Bills, as it is perfectly legitimate that they are covered in separate revenue management legislation. However, it does leave large areas of law uncovered. In our view, these two Bills should not be passed into law without first assessing how they fit with incoming revenue management legislation. Furthermore, the proposed revenue management legislation should go through a process of careful consultation and rigorous parliamentary scrutiny alongside the draft Bills.

### **Implementation and regulations**

Neither Bill provides a set date for commencement or a timeframe for the introduction of supplementary regulations. These will be up to the discretion of the Minister (Clause 1 both Bills, Clause 180 Upstream, 98 Mid-stream).

The Bills would benefit from clear timeframes for the above to provide clarity. This could be done in practice by setting a commencement date and stating that the Minister must have regulations in place before that date or delay commencement.

There should also be a clear process for the production of regulations and other documents such as model contracts and codes of practice etc, including parliamentary oversight, as they are likely to contain much of the detail in regards to the management of the sector. Arguably some of that detail should be contained in the Bills themselves. Given the importance of the secondary regulations and potentially other documents such as model contracts, where possible they should also receive broader consultation.

### **Recommendations:**

- **Ensure that Parliament is able to consider the new Public Finance Bill (which will cover revenue management) alongside the Upstream and Mid-stream Bills before they are passed into law.**
- **No further oil deals should be struck before these Bills are passed into law.**
- **Ensure revenue management legislation (including the new Public Finance Bill) addresses the issues and missing areas identified in this analysis relating to financial management. All pieces of legislation should go through a process of public consultation and parliamentary scrutiny.**
- **Establish a clear timeframe and process, within existing laws, for the introduction of secondary regulations and other key documents.**
- **Ensure any secondary regulations, and other key documents, also receive sufficient parliamentary scrutiny and where possible, broader consultation with relevant stakeholders.**
- **Free, prior and informed consent should be built into all key stages of petroleum sector development.**

## **2. Institutional governance**

There is confusion about the role of different institutions and coordination between them in the Upstream Bill. The Bill appears to state that the Minister, Petroleum Authority (henceforth Authority) and NOC are all responsible for exploration and production phases. There is a duplication and overlap of powers between the Authority, NOC and Ministry. Duplication is not inherently bad; however, the current draft Bill does not set out a clear and practical system for petroleum governance and important issues may fall through the gaps.

The Bill contains a clause which guarantees the independence of the Authority. A particular concern however, is that the Minister has direct appointing and instructive powers over it. Cabinet approves these appointments but Parliament does not. This gives the Minister a large degree of political control over the relevant institutions running the risk of excessive ministerial discretion. In the worst cases seen by Global Witness, this can lead to political capture and patronage of the kind that has characterised the resource curse in other countries. Control of the NOC is unclear.

A previous draft of the Upstream Bill provided for a 'Petroleum Directorate' within the Ministry as one of the governing institutions for the sector and to assist the Minister through the provision of technical expertise. However, the Directorate no longer appears in the latest draft. Its removal could help to streamline the institutions and avoid duplication and bureaucracy. That said, the decision to do away with the Directorate leaves near total control of the sector to the remaining Authority, NOC and Minister.

A previous draft of the Mid-stream Bill contained clauses which created a 'Mid-stream Petroleum Department' which had a similar function to the 'Petroleum Directorate' in the Upstream Bill. The current version no longer contains any reference to this Department. This leaves a similar situation for the governance of the mid-stream activities as with the upstream activities, with the Minister, Authority and NOC responsible for regulating the sector. As such the same concerns apply.

### **Ministerial control**

The Ministry and Minister are given broad powers in the proposed Bills. As above, the fact that the Authority receives direction from the Minister and that the Authority Board members are "appointed by the Minister with the approval of Cabinet" leaves the Authority susceptible to capture by the Ministry, threatening its independence.

The legislation establishes the Authority as a 'body corporate'. This raises a potential ambiguity as to whether it will have the same responsibilities as other arms of government.

Much of the detail is left to regulations, agreements and licences, which leaves the Minister with significant control over the management of the sector. Clause 180 of the Upstream Bill and 98 of the Mid-stream Bill, gives the Minister the power to produce regulations on a whole host of issues but doesn't make it obligatory for the post-holder to do this. This leaves a strong degree of discretion to the Minister and risks leaving potential gaps in regulation.

There are no provisions for a timeline for the introduction of these regulations. There are no provisions in the Bills for independent monitoring bodies, these should be considered as an option for an additional level of oversight for the sector.

### **National Oil Company (NOC)**

One of the most worrying aspects of the Upstream legislation is the creation of a NOC without sufficient detail on its relationship to the GoU or Parliament (Clauses 43-47).

It is therefore unclear whether it will operate entirely as an independent entity, or under close political or administrative control. The law does not state what functions it will perform exactly (although the new draft does now specify 'administering joint ventures contracts'), how it will be funded, or whether it will have the power to borrow on international markets against its interests in the petroleum sector. There is no detail on where its funds and profits will be held, what payments it is likely to receive, and whether it will publicly disclose the receipt of payments or details of its financial management. The law does not detail what information Parliament and the public will be able to access about its operation or precisely how it will be managed. In the current draft, less than two full pages are given to describe how the NOC will operate vis-a-vis the other institutions. The Mid-stream Bill, whilst referring to the NOC, is no clearer about its role in the sector (Clause 7).

It is debateable whether the creation of a NOC is advisable for Uganda. The creation of a NOC is potentially a

hugely costly venture which risks diverting revenue away from government budgets and public services, not just in the early years but potentially well into the future, if there is not transparency and strict parliamentary oversight of these bodies.

Oil companies, whether state-owned or private, domestic or international, require huge amounts of capital to be competitive. This capital could arguably be much better spent in the Ugandan context for example with investments in infrastructure, education or healthcare. The decision to create a NOC, which will presumably use state money at least initially, if not well into its future, is one of enormous financial consequence for a country. It should not, therefore, be taken without a broad-based consensus and strong evidence that there are petroleum reserves in Uganda that would give the NOC a strong basis on which to grow and be competitive and not a drain on state resources. If such a decision is made, then a whole host of measures to ensure that the NOC does not become a locus of corruption or inefficiency are needed. These are not laid out in the current law. For further information on possible safeguards see the IMF's Guide on Resource Revenue Transparency.

Under the current draft, the Minister has the power to issue instructions in respect of the management of the NOC and to stipulate the 'rules relating to the duty of secrecy of elected representatives and employees' of the NOC (Clause 47). Once again this gives the Minister a strong degree of control over another of the main petroleum institutions in Uganda. Most worryingly, it gives the post-holder the power to silence employees in an institution potentially responsible for managing huge state interests.

### **Parliamentary oversight**

One notable aspect of the current draft Bills is the absence of a role for Parliament. Cabinet does have a few rights, for example the approval for exploration licenses (Clause 59(1)). Some limited information will be presented to Parliament. That said, Parliament does not seem to play a role in the most critical areas such as deciding upon the opening up of new areas for exploration, licensing, contract allocation, transfer of licence and so on.

A number of countries, ranging from Azerbaijan, Bolivia, Liberia and Ghana, require parliamentary approval of major natural resource contracts, including petroleum agreements. Parliamentary approval would be a more robust check and provide a more directly democratic branch of government to be involved in the most important decisions.

### **Lack of clarity on financial management**

As mentioned above neither Bill provides any detail on financial management, including how oil revenues will be governed.

### **Recommendations:**

- **The legislation should provide Parliament with a far more comprehensive oversight role in the major decisions in the petroleum sector, such as over licensing, as is the case in other petroleum producing countries. Consideration should be given to whether there is a need for other oversight and monitoring bodies.**
- **The Upstream Bill should contain clearer definitions of the role of different institutions to avoid unnecessary duplication, overlap or risk of politicisation.**
- **Some of the direct powers held by the Minister in the current drafts of the Bills should be split to create a more careful separation of powers.**
- **Uganda should carefully consider whether it needs, or wants, a National Oil Company. If so, far more stringent and detailed provisions on its management structure and operation need to be included in the legislation.**

### **3. Bidding, licensing, and allocation of rights to oil and gas resources**

#### **Contracts and licences**

The Upstream Bill does not present a consistent vision of how laws, regulations, contracts, licences, and permits will all work together effectively and without unnecessary, inefficient, and confusing bureaucracy. The Bill does go into some detail about how the licensing system would work, but how it would interact with 'petroleum agreements' – which it refers to regularly – remains unclear.

From the law alone, it is not possible to tell what kind of system the GoU intends to use for partnering with oil companies for the exploration, development, and production of its resources. It could be any possible combination of licence, royalty/tax agreement, production sharing agreement, or otherwise.

International oil companies have a great amount of experience and expertise in negotiating agreements and huge resources to achieve their objectives. As such governments can find themselves at a disadvantage in one to one negotiations.

A regulatory framework which limited the scope for this kind of discretionary negotiation and which sets out a clear revenue collection regime (including minimum rates for each required payment) would be preferable. This should also clearly set out the requirements on companies when it comes to environmental and social safeguards. This could be achieved through a combination of legislation, regulation and model contracts, but clarity is needed in the legislation itself. Whilst the Bills do cover some of these areas, there is insufficient detail with many provisions being left to licences, further regulations and 'agreements'. This leaves a huge degree of uncertainty. The GoU could limit the number of different types of agreement in order to limit the administrative and bureaucratic burden.

Most important decisions are left to the discretion of the Minister (in consultation with the government appointed Authority), who has the power to enter into agreements on behalf of the GoU, approve licences and their content and introduce regulations by statutory instrument. Given the degree of control that the Minister exerts over the content of licences and potentially other contracts, if there is no tightly defined model licence, they are likely to differ in content from one another. This risks creating an incentive for companies to negotiate forcefully and to influence the Minister to ensure more favourable conditions for themselves, and possibly to water down liability and social and environmental protection measures.

An issue of particular note is that in the current draft of the Upstream Bill prices paid for Uganda's petroleum by oil companies and the well head rates may be decided by 'petroleum agreements' presumably PSAs, as well as by further regulations. In the previous draft the pricing was to be decided by further regulation only. The Minister is not obliged to make public full petroleum agreements under Clause 148 on Availability of Information and this kind of financial information is likely to fall within the commercial confidentially provision. It therefore seems that neither the public nor the Parliament will know what price international oil companies are paying for Uganda's oil.

#### **Allocation**

Clause 53 of the Upstream Bill provides for 'fair, open and competitive' bidding for new exploration acreage. This is nearly universally hailed as best practice and should be favoured in the absence of a clear reason not to use competitive bidding as it helps avoid corruption and ensure a better deal for Uganda.<sup>ii</sup>

However, Clause 54 appears to circumvent the bidding process by giving the Minister the power to receive direct applications for licences in 'exceptional circumstances' which include 'the promotion of national interest'. In practice this could provide a near total exemption to the bidding process, creating a twin track allocation process and a potential corruption risk. The Clause also gives the Minister the option to do the same for applications for areas adjacent to an existing licensed reservoir. There will be an inevitable level of interest in a block immediately adjacent to a proven reserve making it highly suitable for competitive bidding. Even the third exemption – an unresponsive bidding round – may reflect a failure of getting the right information out to the market unintentionally, or even intentionally, to ensure a certain company receives the acreage.

Whilst the introductory paragraph of the Mid-stream Bill refers to an 'open, transparent and competitive process for licensing', it does not set out a standard anywhere for competitive bidding, nor does it deal with procurement process. Refinery and pipeline construction often rely on hundreds of sub-contractors to complete the task creating a high corruption risk as with any construction project. As such it is crucial that procurement processes are open and transparent and that companies which are involved are carefully vetted to ensure that they are competent, trustworthy and that they are not a vehicle for the interests of corrupt government officials, their family members or associates. Some of this detail may be covered by Ugandan procurement laws.

## **Licences**

In previous drafts, the Upstream Bill allowed the Minister to make licences publicly available. The latest draft specifies that he can release 'details of licenses', but reference to full licenses has been removed. This matters because licences may contain crucial details on the contract between government and the company which will govern companies' activities in Uganda for years to come. The content of licence agreements will be decided by the Minister, without parliamentary approval. This will have bearing on future liability of a company as the Minister has the right to withdraw licences or refuse renewal or application for further licences if the company does not abide by the terms of the original licence.

In contrast, the Mid-stream Bill obliges the Minister to make full licenses available.

Both Bills could benefit from more specific details on the contents of licences and agreements. For example, a prohibition on the inclusion of specific 'stabilization clauses' (a clause which protects companies from the impacts of subsequent changes in law) in any agreements or licences. There should also be explicit requirements in both Bills for the Minister to include strict human rights and environmental safeguards and measures in licences. This is particularly important because the Upstream Bill does not guarantee that the public or Parliament will see the licences or agreements in their entirety (Clause 148 Upstream).

## **Pre-qualification of companies and the right to object to licensing**

The Bills fail to adequately address the issue of pre-qualification of companies to apply for licences and contracts when it comes to environmental, safety and human rights records (for example, in Clause 53, 57, 73 in the Upstream Bill, 10 Midstream Bill). More explicit language should be included by allowing the government, and potentially Parliament and citizens, to check companies' track record on environmental, social, tax and corruption issues before allowing them the right to apply for licences.

Global Witness welcomes the provision under Clauses 55 and 56 of the Upstream Bill and 12 and 14 in the Mid-stream Bill, which oblige the Minister to make exploration licence applications public and allow 'affected parties' (a term which is not defined, although the Mid-stream bill is more specific<sup>3</sup>) to lodge an objection. Clause 56(5) in the Upstream and 14(6) in the Mid-stream, which allow an aggrieved person to contest a decision by the Minister not to uphold an objection in the High Court are welcome additions to the current drafts. The Clauses do, however, contain a 'commercial confidentiality' exception, which again is not clearly defined and gives the Minister scope to withhold information.

The obligation to provide information and the right to object do not appear in later stages of the process such as renewal of licences and allocation of production licences. This means that citizens will not have the opportunity to object to the continuation or further issuing of licences even where a company's activities have caused problems in Uganda under a previous licence.

Clause 12 in the Mid-stream Bill is a much stronger, better clause for transparency and publication than the Upstream Bill. However, notice in a newspaper, and the limited ability to object to developments, are not enough to ensure that all stakeholders potentially affected are consulted or even aware of new acreage and licence applications, especially women and the most vulnerable. A more thorough and transparent process would be

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<sup>3</sup> It could be argued that all Ugandan citizens are affected and should therefore be eligible.

achieved through the application of the principle of free, prior and informed consent as a basis for all consultations.<sup>iii</sup> The results of these consultations could be reflected in licences, other agreements and mitigation and monitoring measures as well as compensation packages and Corporate Social Responsibility (CSR) programmes.

Although it does provide for a complaints mechanism (Clause 86) the Mid-Stream Bill does not seem to deal with the issues of consultation, community relations or compensation. This is a striking omission given that pipelines, refineries and associated infrastructure are likely to have a substantial impact on local people. As with other areas of the legislation, the Minister can exercise a high degree of discretion in deciding whether or not to investigate or uphold a complaint.

### **Renewal of Exploration Licences (Upstream Bill, Clause 63, 65) and Petroleum Production Licences (74, 85)**

There is no provision for parliamentary oversight or public objection to renewal of an exploration licence or the allocation or renewal of a production licence. There should be an explicit provision in both Bills to terminate licences where companies are convicted on corruption charges or where they have not lived up to their environmental and social obligations.

A copy of health, safety, environmental and human rights compliance should be required as a part of the application process for licence allocation and renewal. This is currently at the discretion of the applicant. The Minister should have the power and duty to deny further licences if a company is liable for environmental or human rights violations.

Clause 117 of the current Upstream Bill and Clause 58 in the previous draft of the Mid-Stream Bill appear to permit the takeover of companies' facilities by the government where '(c) the costs of the licensee have been fully recovered'. This Clause does not appear in the current Mid-stream Bill.

### **Requirement for management of petroleum activities (Clause 165, Upstream Bill)**

This Clause does not discuss the responsibility of parent corporations for managing, overseeing or exercising due diligence in their management or oversight of the registered presence in Uganda. The Bill should ensure that parent companies are ultimately responsible for the actions and responsibilities of their subsidiaries when it comes to either due diligence over human rights and environmental impacts or for a limited number of financial responsibilities relating to human rights and the environment. This is an important issue where a parent can avoid liability for the actions of its subsidiary, a situation which has caused problems in other resource rich jurisdictions.

### **Recommendations:**

- **The Upstream Bill needs to contain far more clarity and detail on the type of system of agreements the GoU intends to operate with oil companies, and what those agreements will contain.**
- **The legislation should create a robust regulatory framework which limits the scope for companies to negotiate on key terms such as revenue rates and environmental and social safeguards.**
- **The legislation should include greater detail on the content of licences including specific prohibitions on stabilization clauses, and strict human rights and environmental safeguards.**
- **The legislation needs to contain far greater levels of oversight over the licensing and allocation process with a strong role for Parliament, and a possible role for independent oversight bodies.**
- **The principle of free, prior and informed consent should be applied to each stage of petroleum sector development including allocation, pre-qualification and renewal of licence. All stakeholders and affected communities should be included in this process.**

- The bidding process needs to be detailed far more clearly in the legislation, see the Natural Resource Charter and the Citizen Checklist in the Global Witness report ‘*Rigged*’ for international best practice in this area.
- Language on exemptions and direct application for exploration licences in the Bill should be amended to ensure that this is the exception not the norm.
- The language in the Upstream Bill on company liability needs to be altered to ensure that parent companies are responsible for the actions of their subsidiaries on Ugandan soil.

#### **4. Transparency and accountability**

##### **Transparency of information**

On transparency of information, the draft Bills (Clause 148 Upstream, and 76 Mid-stream) take a step in the right direction. The lists of items to be disclosed are relatively good, and do go some way towards meeting best practice. The clauses could also be interpreted to permit Uganda to disclose information from sub-contractor contracts between international oil companies and the major service providers.

The clauses do, however, suffer from several major weaknesses. These include a ‘data and commercial interests’ exemption which is not clearly defined and therefore creates a potentially significant loophole. The definition of commercial confidentiality should never extend beyond bidding strategies or proprietary technology.

The government does not commit to making ‘agreements’ or other documents like Environmental Impact Assessments (EIAs) public. This could mean that access to crucial information on Uganda’s petroleum industry continues to be withheld from the public and even Parliament. Importantly the Upstream Bill only *permits* the Minister to provide information, whilst in the Mid-stream Bill it *obliges* the Minister to provide certain information. The latter is stronger and Global Witness would recommend that the Upstream Bill is amended accordingly.

The lists of information to be disclosed are not exhaustive and subsequent clauses in both Bills severely restrict information. Clause 149 of the Upstream Bill indicates that unless a disclosure is agreed to by the third party, the Minister must keep all information submitted to him/her confidential and cannot reproduce or disclose – unless the category of information is specifically mentioned in this Act or Access to Information Act. It seems, therefore, that anything falling outside of the list would not be made public without express permission from the company.

In the previous draft of the Upstream Bill, licences were included in the list of documents that the Minister may make public. However, in the current draft they are not. The lists do not include EIAs, Social Impact Assessments (SIAs), inspection reports or other potentially important documents. Requiring additional documentation would be preferable.

An alternative would be to make all documents and information relating to the sector public unless they fall within a narrowly defined commercial confidentiality provision relating to bidding strategies or proprietary technology.

The Clauses do not address time frames either, so it is not possible to know when the Minister is to make information publicly available.

Another area of possible concern is the unspecified fee payable to access this information under the Clauses (Upstream 148(2), Midstream 76(2)). If set too high this could prove prohibitively expensive for the most vulnerable or journalists to access.

##### **Parliament**

The lack of a role prescribed for Parliament, already covered earlier, undermines parliamentarians’ abilities to play their part in the democratic process. It is not at all clear what information parliamentarians will have access to. For example, it’s unclear on whether they would be able to view documents like minutes from the Petroleum Authority Board meetings (Schedule 2 of the Upstream Bill).

## **Conflict of interest and disqualification**

Whilst there are provisions on conflict of interest and disqualification for public servants (for example Clauses 15, 19 Upstream Bill) there is scope for additional measures such as asset declaration and registers of interests for senior public servants (and NOC officials) to further mitigate against corruption. These should extend to all members of relevant authorities with sufficient decision making power or access to information to represent a potential corruption risk. These requirements should be ongoing throughout their tenure, and even beyond, to ensure that they do not benefit retrospectively. The government could also consider a restrictive covenant in the contract of employment to ensure that senior public servants do not move into lucrative positions in the private sector immediately after terminating their contract.

## **Beneficial ownership**

Clause 57(a) in the Upstream Bill on beneficial ownership is a welcome inclusion, and a similar Clause should be included to the Mid-stream Bill.

Disclosure of beneficial ownership is a mechanism to limit tax avoidance, corruption and anti-competitive practices. Information on the beneficial ownership of shares in petroleum contracts is important because it allows the government, and potentially others, to know if the company investing is a reputable partner. It also helps identify corruption where an individual is disguising their shareholding through a 'shell company', or a series of companies, in a foreign jurisdiction. It may also help tackle the practice of transfer pricing where companies disguise their profits by trading with affiliated companies, in order to avoid or evade tax.

Under the Upstream Bill, the name of any person that is the beneficial owner of more than five percent of share capital is required to be disclosed to the Minister (Clause 57(3)(a)(ii)) in an application for an exploration licence. In addition, an applicant must "give information on the financial status and the technical and industrial competence and experience" about itself as part of its application. The issues here are threefold: firstly, this information would only go to the Minister, not the public or Parliament, and is likely to fall within the commercial confidentiality provision in 55(c).

Secondly, there is a need for more specific and technical detail, and for financial requirements to be specified so the Clause is not open to abuse. This can be done either in the Bill or in secondary regulations.

Thirdly, five percent is still a relatively lucrative share of a prospective oil block for an entity to hold without disclosing its beneficial ownership.

Disclosure of assignments is also a strong step for ensuring effective regulation and taxation of licence holders (Upstream 148(d)). This would be even stronger if the initial beneficial owner information required to be disclosed to the Minister was also required to be disclosed to the public. The Bills should include a similar provision of beneficial ownership for new holders of an interest in the licence. They should also have to disclose their beneficial ownership to prevent people circumventing the Clause.

## **Whistleblower protection**

There is no whistleblower provision in either Bill. This is of particular concern in relation to Clauses 33 and 150 in the Upstream Bill and 78 in the Mid-stream Bill which prohibit public servants from disclosing information about the sector even if it is in the public interest – i.e. cases of corruption or negligence. Whistleblower protection is vital in ensuring that matters of public interest come to light.

### **Information required by the Minister**

Clause 173 in the Upstream Bill and 93 in the Mid-stream Bill allow the Minister to demand information relating to the petroleum sector from anyone who has it. Whilst this has obvious advantages for the government, it could also be interpreted to obligate journalists or NGOs to hand over information which could jeopardise sources. It would be valuable to insert an exemption or safeguard.

## Recommendations:

- **The Minister should be obliged to make all information relating to the oil sector public unless it falls within narrowly and clearly defined exemptions.**
- **The exemption for ‘commercial confidentiality’ should be clarified and sharply limited. Both Bills should also explicitly state that financial benefits to the GoU and the Ugandan people arising from these contracts must be disclosed to the public. This can be done either through a yearly report by the Government, some other regular disclosure by a third party or, preferably, through the disclosure of the entire contract. The two existing Bills would also benefit from a firm commitment to financial transparency which is currently missing.**
- **The legislation should provide a clear oversight role for Parliament, and a right to information.**
- **Additional safeguards against corruption, such as asset declarations and registers of interest, should be considered for senior government officials in the oil sector.**
- **The beneficial ownership provisions (Clause 60 Upstream Bill) should be tightened and included in all relevant sections of legislation.**
- **Whistleblowers should be protected.**

## 6. Environmental and social protection

Whilst both Bills refer to ‘best petroleum industry practice’ in several clauses there is no reference to internationally recognised principles and guidelines. These could include but not be limited to initiatives such as The International Finance Corporation Performance Standards, The IMF’s Guide on Resource Revenue Management, The Natural Resource Charter, The Extractive Industry Transparency Initiative, the Citizens Checklist from the Global Witness Report ‘*Rigged.*’ Subsequent regulations, licences and agreements should also draw on these ‘best practice’ guidelines.

The Bills give very wide powers to different Ugandan authorities (Minister, Authority, etc) and leave the regulation of some of the most important issues, such as the regulations for drilling operations or environmental assessments, to subordinate legislation and code of practice to be prepared by the Authority. As a result, even where the Bills succeed in mentioning most of the important issues that should be regulated in this industry, they are silent as to how this should be done.

It is worth noting that some of the specifically mentioned areas that the Minister may regulate for, including health and safety conditions, have been removed from the current draft of the Upstream Bill (Clause 180). Similarly the list of areas for which the Minister may introduce regulations has also been altered in the Mid-stream Bill (Clause 98). That said the Minister has the power to regulate any area under the Act.

Overall, the proposed legislation takes some important steps towards protecting people and the environment. However, there are areas which could be improved with a view to ensuring greater monitoring and protection. Some of these are detailed below.

Under Clause 9 of the Upstream Bill the Minister is not explicitly responsible for environmental considerations. This means it is unclear who is.

Clause 4 of both the Upstream and Mid-stream Bills requires companies to ‘give effect’ to relevant environmental laws but does not stipulate that companies should comply with the legislation. It is not clear what “give effect to” means and whether it obliges a company to fully comply with these laws. Furthermore, many areas are left to further regulations, and therefore the discretion of the Minister who has the power to introduce them (Upstream 180, Mid-stream 98).

Clause 4 of both Bills is far more substantial than in the previous drafts and deals far more effectively with the issue of waste management. Global Witness also welcomes the introduction of the new role for NEMA (National Environment Management Authority) in granting licences and making regulations included here.

Two of the most serious omissions within the Bills relate to the lack of mention of human rights or oil spills. Best practice would suggest that human rights should be considered throughout, but it's not mentioned once. While the legislation does deal with pollution and waste management, the word 'spill' does not appear in the Mid-stream Bill. This illustrates the fact that the issue of spillages is not adequately dealt with by this piece of legislation.

Under Clause 140 of the Upstream Bill and Clause 67 in the Mid-stream Bill on emergency preparedness against deliberate attacks it is unclear who is responsible for cleanup, or for any clean up costs. This area could be particularly pertinent for the Mid-stream legislation given the possibility of attacks on pipelines.

### **Environmental and Social Impact Assessments and reporting**

Whilst Clause 48 (3) of the Upstream Bill provides for an evaluation of the impacts of petroleum activities on the environment and the social impacts in new areas, it is not clear who will carry out these evaluations nor the details and standards to be applied.

The requirement above does not seem to apply to 'reconnaissance permits', licences or renewal of licences.

The field development plan required of the company by the Minister under Clause 71(3)(h) of the Upstream Bill does require information on 'the necessary measures to be taken for the protection of the environment', but once again there is a lack of detail here. Companies should be required to carry out, or at least fund, detailed environmental and social impact assessments, within rigorous guidelines set by the government. These should cover each stage of the licensing and procurement process and every new project and piece of construction. These should be conducted by independent experts and approved by the relevant government authority. Licences could then contain conditions to be met and mitigation measures to be carried out by the company. Failure to reach these standards should result in termination of the company's licence.

Global Witness is concerned that Clause 129 of the Upstream Bill could excuse the licensee from liability for environmental damage if the company took steps to clean up pollution. None of the limitations on liability in Clause 129, particularly on liability on cleanup, should apply to the licensee.

In the Mid-stream Bill a company is required to submit a detailed report on why venting and flaring was necessary. However, it is likely that this would fall within confidentiality requirements (Clause 39, Clause 76). This will mean that these reports will be unavailable for review by the public or media organisations who may seek to verify the facts. It is unclear whether Parliament will have access to them.

Under Clauses 145-146 of the Upstream Bill and Clause 74 in the Mid-stream there is no requirement to record spillages and accidents. Even if these were recorded, they could come under the confidentiality clauses (148, 76). It is important that there is full transparency here to allow people to make informed judgments and decisions about ongoing exploration and production

### **Cancellation of Licences**

Under Clause 29 of the Mid-stream Bill, the Authority may force an operator to cease operations for violating the terms of the Act. Positively, this includes safety grounds. However, there is insufficient detail on environmental and social protection in the Bills to make Clause 29 an effective sanction for companies which commit environmental and human rights violations. If the Bill otherwise better addressed human rights and environmental protections, this Clause would give a great deal of protection to the Ugandan people.

The Authority's right to force an operator to cease operations for violating the Mid-stream Bill (Clause 29, Mid-stream Bill) reinforces the need for a similar provision in the Upstream Bill. The Minister can suspend or cancel a licence where there is a default (Upstream 87(1))

Under Clause 31 of the Mid-stream Bill the Minister does not explicitly have the power to cancel a licence for safety, health, environmental, or human rights violations. The Minister does, however, have the right to force the

licensee to cease operations for a violation of the Act. The Minister also has the power under Clause 19 of the Bill to include conditions in the licence, but it does not specifically stipulate environmental and social monitoring and mitigation. Clause 19 would, therefore, benefit from an explicit reference to human rights, environmental and safety compliance.

### **Health and safety**

Whilst there is some obligation on companies to comply with health and safety provisions in many areas of the legislation (for example Clause 85(2) Upstream Bill, Clause 65, 94 Mid-stream) this only extends to the employees. These provisions could be extended to communities surrounding the petroleum facilities.

### **Cessation of petroleum activities**

While the law does provide for a decommissioning fund nothing in the Cessation of Petroleum Activities section requires the provision of funds to be set aside for the payment of negative human rights and environmental impacts that run past the end of decommissioning. The amount to be put aside by the licensee is to be decided by the petroleum agreement as per Clause 110 (5) of the Upstream Bill; this may well also fall within the commercial confidentiality provision. This will mean that neither the public nor the Parliament will know how much companies are putting aside.

The decommissioning plan in Clause 109 of the Upstream Bill and 44 of the Mid-stream is not clearly defined. It is not uncommon for governments to require companies to put in place plans for compensation for local communities as part of decommissioning. This could take the form of providing local services where infrastructure once stood for example.

### **Militarisation and human rights**

There is nothing identifying limits or requirements of private military security companies hired by the licensees in either Bill. This is of concern given the well-documented militarization of the oil region and a company's obligation under this draft legislation to provide security for the facilities (Clause 140 (1) Upstream Bill, Clause 67 Mid-stream Bill). The Bills would benefit from obligations and safeguards to mitigate against human rights violations perpetrated by private security firms employed by licensees. They should also include provisions to ensure that licensees are liable for the actions of those firms, and also members of the regular military where they are shown to be acting on the behalf of the company in question. Payments to any regular armies or security payments should be fully transparent. Experience from the DRC and Sudan would support these safeguards. For further information see Global Witness report, *Oil and Mining in Violent Places, 2007*.<sup>iv</sup>

### **Land Rights**

Clause 132 (2) of the Upstream Bill states that where the consent of a landowner is 'unreasonably withheld', a term which is not defined in this law, the Minister may override the owner's rights and allow the company to proceed. This provision risks seriously undermining the rights of landowners. The Bill also states that the increased value of land as a result of the discovery of petroleum will not be considered as part of a compensation package, which raises questions about the benefit to local people. The Bill is also silent on the conditions of property expropriation.

The distance between company operations and peoples living and working environments is also an area of concern. In both 132 (b)(1) and 132 (h) the distance in meters seems a small distance in relation to the proximity of the activities described.

Meanwhile the Mid-stream Bill seems to be almost silent on the issues of community relations, land rights, compensation, consultation, and so on. Whilst many of these issues are dealt with by the Upstream Bill, mid-stream activities have high impacts on affected communities and potentially on the environment. Given that some of the detail on these issues will be dealt with by licences and agreements for some mid-stream activities,

which differ from those that are awarded in the Upstream Bill, it is equally important that they contain strong provisions.

### **Compensation and claiming for damages**

Clauses 62 and 63 in the Mid-stream Bill are important for people who are affected by accidents or other instances, or those that may be in future. There is one outstanding concern where a licensee has been ordered to pay compensation and fails to do so. The Bills should ensure that victims could claim against royalties or otherwise whilst the government dealt with the company in question.

It is worth noting that whilst the Mid-stream Bill does contain a complaint mechanism (Clause 86), a similar provision does not appear in the Upstream Bill.

### **Insufficient penalties**

Throughout the proposed legislation there is reference to fines for different infringements. These are stated in *currency points*, which according to Schedule 1 of both Bills translate to 20,000 Shillings, roughly US\$8 at today's exchange rate. When maximum fines are translated into dollars they are all less than US\$1 million. When put into the context of internationally operating oil company costs, these amounts are negligible. As such it is questionable as to how much of a deterrent these fines will prove. A review of the impact of such fines would be advisable. It may turn out to be financially beneficial for a corporate entity to take the fine of one hundred thousand currency points because they reap a greater amount by violating the law. Requiring imprisonment for individuals within the corporation who are responsible for the violation may give a greater incentive not to violate the law. Revocation of licence or agreement is far more significant penalty for a company and should be considered. For example under Clause 4 of both Bills which relate to waste management, where a company only risks a fine of five thousand currency points for failing to abide by waste management procedures, a practice which risks huge potential environmental harm.

### **Additional**

The Bills grant wide powers to different Ugandan national authorities to authorise licensee's petroleum-related activities in places where those activities would not usually be permitted.

Clauses 158 of the Upstream Bill and 82 of the Mid-stream Bill – obstruction of licensee – could have the affect of banning peaceful protest if it interfered with petroleum related activities.

### **Recommendations:**

- **The GoU and parliamentarians should include more and better measures to protect people and the environment in line with specified best practice guidelines and principles. The legislation, or at least the regulations, need to specify in far more detail the standards that will be applied across the board from Environmental Impact Assessments (EIAs) to decommissioning plans.**
- **The principle of free, prior and informed consent should be included at each stage of the petroleum development process, including careful consultation with all relevant stakeholders.**
- **The Bills should explicitly refer to human rights.**
- **The issue of private security firms, and the relationship between companies, the national military and other stakeholders should be considered and oversight provisions put in place.**
- **The cap on fines should be raised and penalties should be extended to termination of contracts in order to provide a successful deterrent. Companies should face the possibility of losing their licences for environmental and human rights violations.**
- **More careful consideration needs to be given to 'spills' in general, and cleanup costs in the wake of deliberate attacks.**

## **7. Revenue Management**

As mentioned earlier the absence of petroleum revenue management legislation makes it impossible to conduct a thorough analysis of the legislative and regulatory framework for the petroleum sector. There are a great many critical areas missing from the Bills in regards to revenue management. This is not a problem per se as this information could be contained in a revenue management bill or similar. Our recommendation is that these two Bills are not passed into law until a draft of the revenue management legislation has been considered by all relevant stakeholders. The following analysis relates to the two Bills before Parliament and identifies some of the gaps and areas which are not covered.

## **Financial Transparency**

Financial transparency in the management of petroleum revenues is vital to avoiding corruption. While the draft legislation refers to transparency over information from agreements, licences, field development plans, and assignments, notably absent is revenue transparency. As a bare minimum, and if the GoU is to keep its promise of working towards the principles of the Extractive Industries Transparency Initiative (EITI), it should require the disclosure of all regular payments by companies and receipts by government. The absence of a commitment to financial transparency is a gaping hole in the legislation and leaves the Upstream Bill out of line with international best practice.

It is not clear where different payments and fees relating to the petroleum sector will be made to and how they will be managed and by whom. Clause 154 states that payments are to be made into an account designated by 'the party receiving the payment,' which suggests that payments will be made to different government authorities. The Clause does not state if this is multiple accounts or one account, whether it/they will be independently audited, and what information about revenues received will be available to Parliament and the public. Financial transparency of this kind is absolutely crucial to avoiding corruption and ensuring good financial management. Preferably all incoming revenue would be paid into one independently audited account with detailed financial information about all revenue receipts and expenditure being made publicly available in a clear and accessible format.

Similarly where signature bonuses are mentioned in Clause 153 of the Upstream Bill it states that they will be clarified in regulation. Signature bonuses, due to their nature, are often associated with bribery and corruption as they tend to be large, discretionary, one of payments and, as such, it is crucial that they are managed with complete transparency. Global Witness has noted in the past that these do not appear in national budgets in other oil producing countries. A large signature bonus does not necessarily equate to a good partner in the petroleum industry. Transparency and oversight, coupled with a thorough assessment of companies' competence and track record is crucial.

## **Petroleum Authority accounts**

There are commitments in the Upstream Bill to report to Parliament on the accounts of the Authority (Clause 42). While positive, it is not clear how much information this will make available given that we do not know exactly what revenue the Authority will be responsible for and what will pass through the accounts. In the previous draft the funds of the Authority would include fees payable under the act. This provision has now been dropped (Clause 34).

Whilst there are provisions for the auditing of the Authority's accounts, it is imperative that an audit is carried out according to credible international standards such as those of the International Accounting Standards Board. It would be preferable if the accounts were audited by a reputable, independent third party. This standard should be applied to all accounts holding Ugandan petroleum revenue. Whether this is already covered by national audit laws should be investigated.

## **Taxation**

The taxation of the petroleum sector is not fully addressed in the Upstream Bill (or the Mid-stream Bill). Some payments, like royalty, annual fees, and signature bonus are cited, but the actual rates are not set; nor are

general taxation or petroleum-specific taxation, like petroleum sharing arrangements, addressed. This is a critical outstanding issue. It is not uncommon for fiscal provisions to be addressed in the general tax code, but careful attention to how they interact with the provisions and structure set up in this Bill will be especially important.

The Minister has the power to set annual charges and fees payable under this Act according to Clause 180 (ab). Under Clause 151 (1) the licensee shall pay well head royalties as stipulated in a petroleum agreement. And under Clause 120 of the Upstream Bill and 40(3) of the Mid-stream Bill the pricing of petroleum shall be decided by regulation or by petroleum agreement.

As such it appears that taxes, fees and royalty rates shall be decided by a mixture of further regulations and individual agreements between companies and the government. Unless these rates are set as standard in further regulations and/or model agreements then companies are likely to be able to negotiate different rates. It seems likely that this information will fall within the commercial confidentiality provision under Clauses 148 and 76 respectively, and as such will not be available to the public or Parliament making it difficult to analyse deals and revenues. The solution to this problem would be to publish all agreements, or to set fixed rates across the sector.

### **Related-company transactions**

These are agreements between affiliated companies. The Upstream Bill does mention transactions among affiliated companies, but the Clauses need to be strengthened in how they will function in practice.

Clause 169 of the Upstream Bill allows the Minister to consent to transactions with affiliated companies. A condition for the consent is that such consent does not result in less tax revenue for Uganda. This is an extremely important provision to help prevent the practice of transfer mis-pricing where companies will disguise profits by trading with affiliated companies in overseas jurisdictions and therefore lessen their tax burden. This practice can cost revenue authorities billions of dollars in lost revenue every year. However, the drafting of the Clause is unclear. This leaves doubt as to whether the Ministry could review and provide consent for all affiliate company transactions. It may be more effective to have a simple, clear fiscal regime that relies on very few taxation instruments to successfully collect revenues. The current provision would likely be incredibly difficult for Uganda to prove in a dispute.

### **Commodity-backed loans**

Commodity backed loans and lending are not discussed as part of the legislation. This is a crucial area for regulation. Other governments with significant petroleum resources have been able to raise huge sums of capital by using petroleum as collateral, leaving subsequent governments and ultimately the population to repay them.

Clause 37 of the Upstream Bill gives the Authority the independent power to borrow with the approval of the Minister. There is no mention of this power in relation to the NOC. If different bodies are allowed to borrow on international markets this must be done with a high degree of transparency and the approval of Parliament, a failure to regulate debt could have potentially devastating impacts for Uganda.

### **Revenue sharing**

The Bill does not discuss revenue sharing, Schedule 4 in the previous draft of the Upstream Bill which detailed revenue sharing between different tiers of government has been removed from the current draft. It is now to be covered in the Public Finance Bill.

Further to this, there is no information in the Upstream Bill about where revenue will be held or how it will be used. It goes without saying that these are absolutely crucial areas in the management of the petroleum sector and ones which warrant significant national debate.

#### Recommendations:

- Revenue management is an absolutely critical area of petroleum legislation not covered by these Bills. This analysis highlights many gaps that should be filled either in the current draft legislation or in separate legislation.
- At the very least the Bills should commit the government and relevant institutions to the principle of financial transparency.
- These Bills do not cover revenue expenditure, or sharing.

## CONCLUSIONS

Whilst these Bills represent a good start, much remains to be done to ensure that a sound regulatory framework – the foundation for Uganda’s future petroleum sector – is in place before further deals are done and revenue begins to flow. There is a window of opportunity now for the Government of Uganda, its Parliamentarians, civil society and international partners to work together to produce a strong legislative framework which reflects best practice and mitigates against corruption, mismanagement, and environmental and social harm. This is a vital first step in ensuring that Uganda and its people maximize the benefit from the country’s finite petroleum reserves.

There must now be a thorough process of consultation on the legislation, including the revenue management legislation, with input from all relevant stakeholders. There is clearly a need for re-drafting and amendments to shore up the legislation. The Bills, once they have been amended should go through full and thorough parliamentary scrutiny, and the Government should show willingness to make amendments where necessary.

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<sup>i</sup> Report can be found here: <http://www.globalwitness.org/library/rigged-scramble-africas-oil-gas-and-minerals>

<sup>ii</sup> Further information can be found in the Global Witness’ report Rigged <http://www.globalwitness.org/library/rigged-scramble-africas-oil-gas-and-minerals>

<sup>iii</sup> The International Finance Corporation upgraded its performance standard to include free, prior and informed consent as a right for indigenous people in 2011. A number of UN agencies for example the Special Rapporteur for the Right to Food have recommended that this right be extended as a principle for consultations with all local communities whose livelihoods will potentially be affected by investment projects.

<sup>iv</sup> Report is available here: <http://www.globalwitness.org/library/oil-and-mining-violent-places>