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How compliant is Uganda with the key requirements of the Extractive Industries Transparency Initiative (EITI)?

This briefing sets out the Ugandan Government's commitment to implementing the EITI and measures the country's laws and practice against the key transparency requirements.

Oil represents a huge opportunity for Uganda but the development of the oil, gas and mining sectors is strongly associated with the risk of the 'resource curse' – the phenomenon by which natural resource wealth often results in poor standards of human development, bad governance, increased corruption and sometimes conflict. Strong transparency and accountability mechanisms are key to avoiding this fate. [The Extractive Industries Transparency Initiative](#) (EITI) is the leading global initiative designed to tackle this problem.¹

The EITI provides a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of government, companies and civil society working together. The Initiative currently has 48 implementing countries, 31 of whom are compliant with the [standard](#).²

The Government of Uganda committed to joining and implementing the EITI standard in its 2008 [National Oil and Gas Policy for Uganda](#)³ and in the 2012 [Oil and Gas Revenue Management Policy](#).⁴ Despite repeated public statements the Government has not yet taken any concrete steps towards actually joining the initiative.

The Government of Uganda has repeatedly cited the need to develop and harmonise its own legislation with the EITI before it moves to join the initiative. Privately senior Government officials have expressed reservations about joining the initiative stating that they would prefer to rely on national laws. With the [upstream](#),⁵ [midstream](#)⁶ and [revenue management](#)⁷ legislation now in place, Global Witness has put together a table to compare the laws and current practice in the oil sector against the key requirements in the EITI standard. We hope that this will help the Government of Uganda, its international development partners and civil society to realise the shared goal of a more transparent oil sector managed in line with the EITI.

It is important to note that the EITI is both a standard and a process. It provides a comprehensive framework for multi-stakeholder review and validation of extractive industry information and reports at a national level with support from the international secretariat and board. It also helps develop strong national institutions and processes. As such, enacting relevant national legislation is not a substitute for joining the initiative. That said national legislation should be harmonised with the requirements of the EITI standard regardless. Much of the standard is concerned with the quality of reporting and the process of validation. We have focused here on the tangible disclosures that the Government needs to make to be compliant with the standard.

Global Witness encourages The Government of Uganda to amend its policy and practice to bring it into line with the EITI standard and join the EITI as soon as possible. In order to join the EITI the Government needs to take four simple steps.

1. The Government is required to issue an unequivocal public statement of its intention to implement the EITI.
2. The Government is required to appoint a senior individual to lead on the implementation of the EITI.
3. The Government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.
4. The multi-stakeholder group is required to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.



Non - Compliant



Partially Compliant / Not Yet Clear



Compliant

EITI Standard Requirement	Law/Regulation	Practice
Establish a multi-stakeholder group with representation from government, companies and civil society to oversee the oil sector and validate the data. Requirement 1	There is no requirement in any of the relevant Ugandan laws or regulations for the establishment of such a group.	Uganda has not established a multi-stakeholder monitoring group for the oil or mining sectors or a <i>regular</i> forum in which civil society stakeholders can engage in extractives issues.
Require companies to disclose the payments they make to the government according to agreed EITI standard, disaggregated by payment type, government agency and by project. This should include social payments. Requirement 4	The Government of Uganda does not require companies to publish this information. Under EU and US laws , companies listed or registered in those jurisdictions, will soon be required to disclose payments, disaggregated by payment type, recipient and project. These laws cover a significant percentage of the world’s extractive companies.	Companies do not disclose this information under Ugandan law. Since 2012 Tullow Oil has voluntarily disclosed all payments made to the Ugandan Government, in line with mandatory EU standards. ⁸ All three companies currently operating in Uganda will be required to publish this data under the EU and US laws . However companies which receive licences in the future may not be covered by these laws. ⁹
Disclose all payments received by government according to the agreed EITI standard, disaggregated by payment type, including payments to and from state owned enterprises, origin and project, so that company and government data can be reconciled. This includes state share of production, payments in kind, infrastructure provisions and barter arrangements. Requirement 4	The Public Finance Management Act (PFMA) requires that annual and semi-annual reports of the Petroleum Fund, be tabled before parliament including details of “the actual inflows and outflows of the Petroleum Fund” and “the source of petroleum revenue”. ¹⁰ But it does not require that payments be disclosed in line with EITI standards or disaggregated by payment type, origin and project. The Government’s share of oil will also be recorded in the Petroleum Fund. ¹¹	The Ugandan national budget contains only a single figure for payments received from oil. ¹² This data is not disaggregated in line with EITI standards. It is not therefore possible to compare company payments with Government receipts – one of the central purposes of the EITI.
Disclose subnational payments and transfers Requirement 4.2	The PFMA states that local governments will receive 6% of petroleum royalties and “cultural or traditional institution(s)” 1%. ¹³ However, it is not clear if the share of petroleum royalties paid to local governments and these institutions will have an individual reporting line in the national budget.	The Government does currently provide a detailed budget for local governments. ¹⁴ However, there is no guarantee that the Government will publish disaggregated revenue data. If royalty figures are not published separately of other oil revenues, it may not be possible to know if local governments are receiving their fair share – which could lead to mistrust.
The National Oil Company (NOC) should publish details of all revenues and payments in line with the EITI standard (see above). This should include financial transfers between the NOC and other government entities, revenue collected on behalf of the government, (including revenues from the sale of the state’s share of oil production) and any expenditure on social services, public infrastructure or fuel subsidies executed by the NOC.	The Upstream Law states that the NOC will be incorporated, under the Companies Act, 2012. ¹⁵ It requires that the NOCs audited accounts be reported to an annual general meeting. ¹⁶ It is not made clear if this information will be made public. The Companies Act 2012 requires all companies to keep audited books of account. ¹⁷ Only public companies must annex these to their filed annual returns. ¹⁸	The Uganda National Oil Company was registered as a limited company on the 12 Jun 2015 (no.202803) ¹⁹ As the NOC has been incorporated for less than a year it has not filed an annual return. However there is no requirement for the account information filed to The Uganda Registration Services Bureau or the AGM to conform with the EITI standard.



Non - Compliant



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<p>Requirement 3.6 and 4.2</p> <p>The government should keep a public register of licences and licence holder(s). This should include the name of the licence holder, coordinates of the licence area, date of application, date of award, duration of the licence and in the case of production licences the commodity being produced.</p> <p>Requirement 3.9</p>	<p>The Upstream Act requires that the Minister keep details of licences in a Petroleum Register.²⁰ It states that exploration and production licences should contain: date of application, coordinates of the licence area, date of award and any additional conditions on which the license is granted.²¹</p> <p>There is no requirement for the register to be published. However, the law states that information from the Register “may” be made available to the public in accordance with the Access to Information Act 2005 (ATIA).²² Concerns have been raised by NGOs about the implementation of the ATIA.²³</p>	<p>The Ugandan mining sector has an online cadastre that provides detailed information on mineral licenses across Uganda that is easily and publically accessible.²⁴</p> <p>While the Government does provide some limited information on licences on its PEPD website here there is no such public register of licenses for the oil sector.²⁵</p>
<p>Allocation / Licencing process - The government is required to disclose:</p> <ul style="list-style-type: none"> • A description of the process for transferring or awarding licenses. • The bid criteria including the technical and financial selection considerations. • A list of companies that bid for contracts. <p>Requirement 3.10</p>	<p>The Upstream Law contains a commitment in its preamble to “provide for an open, transparent and competitive process of licensing”.²⁶ It details the process for awarding licenses. Including a clause that allows the Minister to circumvent the bidding process in certain circumstances.²⁷</p> <p>The Upstream law does provide a list of the criteria that will be used for judging bids.²⁸</p> <p>The Upstream Law states that only notice of applications for licenses will be published.²⁹</p>	<p>Contracts to date have been allocated on an ad-hoc basis with little transparency or oversight.³⁰ The current allocation round is as an open bidding process. On the 1st of July 2015 the Government published a list of companies that expressed an interest in bidding.³¹ The 10th of August 2015 is set as the date for the “display of qualified applicants”.³²</p> <p>The technical and financial criteria that will be used in the selection process have not been shared publically.</p>
<p>The EITI recommends that governments keep a publicly available register of the beneficial owners of companies that bid for, operate or invest in extractives industries, including the identity(ies) of their beneficial owner(s) and the level of ownership.</p> <p>Requirement 3.11 (a)</p>	<p>The Upstream Law requires that applicants disclose information about beneficial ownership as part of their applications during the bidding process. There is no guarantee this information will be made public. Neither does the law provide detailed guidance on the definition of beneficial ownership.³³</p>	<p>In practice the Government has not published details of beneficial owners to date.</p>
<p>The EITI encourages the disclosure of primary resource contracts such as Production Sharing Agreements (PSAs). This should include addendums, annexes and amendments.</p> <p>Requirement 3.12 (c)</p>	<p>The upstream law does allow the minister to make the “details of all agreements” public in line with the ATIA.³⁴ The PSAs contain confidentiality clauses which prevent their disclosure unless both parties agree.³⁵</p>	<p>The Government of Uganda has repeatedly refused to publish PSAs, citing confidentiality clauses in the contracts. All three companies currently operating in Uganda have told Global Witness that they would not oppose the disclosure of their PSAs. It remains to be seen if the new model PSA will contain similar clauses.</p> <p>Several of the PSAs have been leaked into the public domain.³⁶</p>

Recommendations

In order to bring its oil sector into line with the EITI the Government of Uganda should:

1. Immediately establish a multi stakeholder group that involves the Government, companies and the full, independent, active and effective participation of civil society. The group should develop a work plan to oversee the sector and validate the data and reports which are disclosed.
2. Disclose all payments received from the extractive sector in line with the EITI standard by type, origin and project. Including all sub-national transfers of oil revenue made between government departments, and state owned entities.
3. Pass regulations that require all companies operating in Uganda's extractive sector to publicly disclose all payments made to governments in line with the EITI standard by type, origin and project.
4. The Petroleum Register should be made public and include information on the licence area, date of application, date of award and duration of the licence.
5. All primary resource contracts, including PSAs, should be published, along with any addendums, annexes and amendments.
6. Information on the ultimate beneficial ownership, as defined by the FATF guidance,³⁷ of all companies bidding, operating and investing in the extractive sector, should routinely be collected and kept on a publically available register.
7. The National Oil Company (NOC) should be required to publish details of all revenues and payments received in line with EITI standards, including: financial transfers between the NOC and other government entities, revenue collected on behalf of the Government, including revenues from the sale of the state's share of oil production, and any expenditure on social services, public infrastructure or fuel subsidies executed by the NOC.
8. Allocation Process: The Government should publish the bid criteria including financial and technical criteria for bids, and a full list of companies that bid for licenses, as well as those that are successful.
9. Join the EITI.

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- ³ *The National Oil and Gas policy for Uganda 2008. Objective 6(h)(iii) and Objective 7.2.6.1(b)(xiv)*. Available at: http://www.petroleum.go.ug/uploads/resources/17.NATIONALOILANDGASPOLICYFORUGANDA_.pdf [Accessed: 5th May 2015].
- ⁴ *The Oil and Gas Revenue Management Policy 2012. Point 6.5 and Appendix 1E: Governance*. Available here: http://www.petroleum.go.ug/uploads/resources/18.RevenueOilRevenueMgtPolicy_.pdf [Accessed: 5th May 2015].
- ⁵ *The Petroleum (Exploration, Development and Production) Act 2013*. Available at: <http://www.petroleum.go.ug/policies/view/7/The-Petroleum-Exploration-Development-and-Production-Act-2013> [Accessed: 5th May 2015].
- ⁶ *The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013*. Available at: <http://www.petroleum.go.ug/policies/view/6/The-Petroleum-Refining-Conversion-Transmission-and-Midstream-Storage-Act-2013> [Accessed: 5th May 2015].
- ⁷ *The Public Finance Management Act 2015*. Available at: http://www.finance.go.ug/index.php?option=com_docman&Itemid=7&task=doc_download&gid=434 [Accessed: 5th May 2015].
- ⁸ TULLOW OIL PLC (2014) *2014 Annual Report & Accounts*. Available at: http://www.tullowoil.com/Media/docs/default-source/3_investors/2014-annual-report/tullow-oil-2014-annual-report-and-accounts.pdf?sfvrsn=4 [Accessed: 5th May 2015].
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- ¹¹ *The Public Finance Management Act 2015. Section 57(4)(5)(6)*. Available at: http://www.finance.go.ug/index.php?option=com_docman&Itemid=7&task=doc_download&gid=434 [Accessed: 5th May 2015]
- ¹² Government of Uganda. *Budget Speech 2014/15. Annex 1b: medium term fiscal framework*. Available at: http://budget.go.ug/budget/sites/default/files/National%20Budget%20docs/Budget%20Speech%20%202014_15.pdf [Accessed: 5th May 2015].
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- ¹⁴ Uganda Budget Information. *Your Local Budget Tool*. [online] Available at: <http://www.budget.go.ug/> [Accessed: 5th May 2015].
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- ¹⁸ *The Companies Act, 2012. Section 135* <http://www.ulrc.go.ug/ulrcsite/download/file/fid/311> [Accessed: 5th May 2015].
- ¹⁹ Uganda Registration Service Bureau online search portal - <https://212.88.116.202/ursb/> [Accessed: 14th July 2015].
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- ²¹ *The Petroleum (Exploration, Development and Production) Act 2013. Section 59 & 76*. Available at: <http://www.petroleum.go.ug/policies/view/7/The-Petroleum-Exploration-Development-and-Production-Act-2013> [Accessed: 5th May 2015].
- ²² *The Petroleum (Exploration, Development and Production) Act 2013. Section 151*. Available at: <http://www.petroleum.go.ug/policies/view/7/The-Petroleum-Exploration-Development-and-Production-Act-2013> [Accessed: 5th May 2015].
- ²³ A recent report by the Hub for Investigative Media, a Ugandan organisation founded to enhance transparency in Uganda via the application of the Freedom of Information act, states that "On the government side, there are several gaps that have hindered the proper implementation of this law". The report can be accessed here: <http://him-ug.org/index.php/our-journal>
- ²⁴ <http://www.flexicadastre.com/uganda/>
- ²⁵ *The Petroleum Exploration and Production Department*. [online] <http://www.petroleum.go.ug/> [Accessed: 5th May 2015]
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³⁴ *The Petroleum (Exploration, Development and Production) Act 2013. Section 152.* Available at: <http://www.petroleum.go.ug/policies/view/7/The-Petroleum-Exploration-Development-and-Production-Act-2013> [Accessed: 5th May 2015].

³⁵ *Contract Kanwatanya.* Available at: <https://www.globalwitness.org/reports/good-deal-better/> [Accessed: 5th May 2015].

³⁶ *Global Witness A Good Deal Better.* Available at: <https://www.globalwitness.org/reports/good-deal-better/> [Accessed: 5th May 2015].

See Also Platform *Contracts Curse: Uganda's oil agreements place profit before people.* Available at: <http://platformlondon.org/publications/contracts-curse-uganda-oil-agreements-profit-before-people/> [Accessed: 5th May 2015].

³⁷ *FATF Guidance Transparency and Beneficial Ownership* Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> [Accessed: 5th May 2015].