

**RISKS, CHALLENGES AND OPPORTUNITIES OF UGANDA'S
DRAFT PETROLEUM (EXPLORATION, DEVELOPMENT,
PRODUCTION AND VALUE ADDITION) BILL, 2010**



**A Publication of Water Governance Institute
(WGI) with Support from the Open Society
Institute for East Africa (OSIEA)**

WGI Research Paper No.3, 2011



Cover Photos:

Left to Right: Oil drilling rig outside Buliisa town, Buliisa District: *Source: Taimour Lay, PLATFORM, UK*; Oil & Gas Flaring at Waraga Exploration site, Hoima District, Uganda: *Source: Robert Ddamulira, WWF-UCO* and Militias members in Nigeria as a result of oil conflicts: *Source: Pro-Natura International Nigeria*

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Citation:

WGI, (2011). Risks and Challenges of Uganda's Draft Petroleum (Exploration, Development, Production and Value Addition) Bill, 2010. WGI Research Paper No. 3, 2011, Kampala, Uganda.

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ACKNOWLEDGEMENT

We appreciate the Ministry of Energy and Mineral Development (MEMD) for reaching out to us civil society, among other stakeholders to provide comments on the draft petroleum (exploration, development, production and value addition) bill May 2010. We also appreciate the Petroleum Exploration and Production Department (PEPD) of the MEMD for the continued support they have rendered to us.

We wish to acknowledge civil society organizations, particularly members of the Civil Society Coalition on Oil and Gas (CSCO) that provided invaluable information and support to the analysis. We specifically acknowledge the team comprising Mr. Onesmus Mugenyi and Mr. Bashir Twesigye of Advocates' Coalition for Development and Environment (ACODE); Davidson Madira of Community Development and Conservation Agency (CODECA); Mrs. Robinah Kajwenge Manoba of International Alert; Mrs. Sarah Prinsloo of Wildlife Conservation Society (WCS); Mr. Ronald Busiinge of Earth-savers Uganda Chapter; Mr. Shem Byakagaba of Kitara Heritage Development Agency (KHEDA); and Mr. Robert Ddamulira of World Wide Fund for Nature Uganda Country Office (WWF-UCO) for their critical input in this analysis.

We also acknowledge the critical input of Professor Robert D. Langenkamp of Revenue Watch Institute (RWI); Professor Jenik Radon of Harriman Institute Columbia University, New York; Dr. Kent Moors, an independent USA consultant on Oil Governance; Ms. Eleanor Nichol of Global Witness, UK; Professor John Ntambirweki of Pentecostal University; and Dr. Louis Kasekende, the Deputy Governor, Bank of Uganda.

We appreciate the members of the Parliamentary Forum on Oil and Gas (PFOG) that accorded us audience to discuss the contents of the draft bill and provided useful information on how to take this analysis forward in Parliament.

We appreciate the staff of Water Governance Institute (WGI) for their commitment and dedication that led to the completion of this work.

Finally, we are grateful to the Foundation of Open Society Institute (FOSI) and Open Society Institute for East Africa (OSIEA) for the generous grant to Water Governance Institute that enabled this work to be conducted. We look forward to our continued cooperation and partnership.

ACRONYMS AND SYNONYMS

ACODE	Advocates' Coalition for Development and Environment
CODECA	Community Development and Conservation Agency
CSCO	Civil Society Coalition on Oil & Gas, Uganda
CSR	Corporate Social Responsibility
EIA	Environment Impact Assessment
FOSI	Foundation of Open Society Institute
GW	Global Witness
IOC	International Oil Company
KHEDA	Kitara Heritage Development Agency
MDGs	Millennium Development Goals
MEMD	Ministry of Energy and Mineral Development
NEMA	National Environment Management Authority
NOC	National Oil Company
OSIEA	Open Society Institute for East Africa
PA	Petroleum Authority
PEPD	Petroleum Exploration and Production Department
PPDA	Public Procurement and Disposal Act
PPP	Polluter Pays Principle
RWI	Revenue Watch Institute
SSEA	Sector Strategic Environment Assessment
WCS	Wildlife Conservation Society
WGI	Water Governance Institute
WWF-UCO	World Wide Fund for Nature Uganda Country Office

EXECUTIVE SUMMARY

Uganda discovered and continues to discover commercially promising oil & gas resources in the Albertine Rift Valley in western Uganda. A number of International Oil Companies (IOCs) are (were) involved in the exploration process, including Tullow Oil Uganda Operations PTY Ltd, Heritage Oil & Gas Ltd, Neptune, Dominion. It is anticipated that these and other IOCs will be involved in the development, production and value addition of the oil & gas resources.

For many Ugandans, there is hope that the discovery of oil & gas will result in economic transformation, growth, development and prosperity. However, there also skeptics that fear that the present governance system and culture are not in position to effectively address the significant challenges associated with the industry such as pollution, corruption and the much tooted resource curse; consequently leading to economic deterioration, insecurity and abject poverty for many. These perceptions, notwithstanding, it is important that government is able to:

- *Balance the contribution of the oil sector and other sectors of the economy such as agriculture, fisheries, processing and manufacturing in order to avoid the resource curse;*
- *Ensure that the revenues generated therein are managed properly, transparently and equitably to avoid the resource eroding democracy and accountability;*
- *Ensure that the right, transparent and effective institutions, policies and regulations are in place before oil & gas production commences;*

It is believed that it is for these important issues that Government of Uganda is now in the process of fast-tracking the alignment of its national laws and institutions to meet the requirements of the emerging oil & gas industry. This is because the earlier or existing laws and institutions are inadequate to meet the demands of the emerging industry. A new Petroleum (exploration, development, production & value addition) bill also known as the “Petroleum Resource Management Bill” is currently under development and the first draft has been released for public scrutiny and comment.

It is on this premise that Water Governance Institute (WGI), with a grant from Foundation Open Society Institute (FOSI) and Open Society Institute for East Africa (OSIEA), decided to conduct an analysis of the “Petroleum Resources Management Bill” with a view of identifying the gaps, risks, challenges and opportunities of the emerging law and make recommendations or suggestions for government consideration.

It was observed that:

- *the draft bill mainly covers five components, including licensing and regulation of exploration and development; petroleum management institutions; royalties; penalties; and decommission of oil & gas projects which are intertwined and difficult to extract and cross-reference from various parts of the bill. Some sections are detailed will others have important aspects treated lightly or completely lost in minor detail;*
- *The Bill erodes Parliamentary oversight;*
- *The bill is riddled with ambiguity on many issues, including definitions, technical and legal terminologies, which will complicate the enforcement of the law;*

- *Requires considerable strengthening in respect to a) institutional framework with much clearer roles of each of the institutions being created i.e. the Petroleum Authority, the National Oil Company and Petroleum Ministry; b) separation of powers and responsibility regarding environment, health, safety, licensing, enforcement and regulation in general; c) liability for waste management, pollution, violations, risks management, etc; d) jurisdiction over and liability of parent companies, especially foreign ones; e) concrete standards for licensing – the current standards are vague in respect to financial, technological, environmental, social and others aspects; f) compensation and involuntary resettlement of project-affected people, which is equitable and takes into account health and loss of livelihoods and property at real values; and g) clear, precise and specific language to avoid misinterpretation of the law.*

It is recommended that:

- *The bill is re-organized into more coherent parts that separate the issues of management of the industry from those of regulation and oversight. For example, it could be split into distinct parts or more manageable and defined bill like a) licensing and regulation of exploration and development operations; b) petroleum management institutions; and c) revenue management. This could allow more efficient implementation and easier understanding of the bill;*
- *Appointment of the Commissioners referred to in the Bill and the Board should be approved by parliament to enable it exercise its oversight role; and*
- *Ugandan law other than this Bill shall also be applicable to the petroleum activities. This applies unless otherwise warranted by another Act or international law or agreement with a foreign state.*
- *The principles for negotiation should be prescribed by the bill and not only in the agreements (PSAs). In addition, the principles enshrined in the oil & gas policy should be reiterated in the emerging petroleum (resource & revenue management laws.*

1.0. INTRODUCTION

Uganda has discovered and continues to discover commercially viable oil & gas deposits in the Albertine Rift Valley in the western part of the country. Up to 55 exploration wells have so far been drilled by a number of International Oil Companies, including Heritage Oil & Gas, Tullow Oil Uganda Operations PTY, Neptune, Dominion, among others. Of the wells drilled, about 92% have encountered commercially viable oil & gas resources. These discoveries have elicited a mixture of exuberance and trepidation.

For many Ugandans, there is hope that the discovery of oil & gas will result in economic transformation, growth, development and prosperity. It is also hoped that the country's image as the pearl of Africa will continue to shine and that oil revenues will spur the country's effort to meet the United Nations Millennium Development Goals (MDGs) by 2015 and 2020. However, for some others there is fear, anxiety and concern that the emerging oil & gas industry presents significant challenges that the country's governance systems are not in position to effectively handle; consequently, leading to economic deterioration, insecurity and abject poverty for many. For each of these categories of people, there are justifiable reasons for their perception depending on which education level, social-political and economic divide one belongs as well as the level of understanding of the hydrocarbon industry and Uganda's governance systems.

For the naïve, less informed and those well connected politically, the industry elicits great exuberance, opportunities and hope. Whereas for those that understand the industry, its potential benefits and risks and the limitations of the current governance systems in the country, the industry poses great trepidation. The latter is made worse by the so many countries in Africa that have demonstrated that it is a difficult and tortuous journey from the generation of oil wealth to its proper utilization. In too many countries, oil booms have bred corruption, underdevelopment, social conflict and environmental damage.

Although the country seems to have made progress on economic diversification, the emergence of oil production presents Uganda with great challenge that includes the following:

- a) Balancing the contribution of the oil sector and other economic sectors of the country, particularly agriculture, processing and manufacturing industry, thus avoiding the much tooted "Oil Resource Curse";
- b) Billions of petrodollars will flow into the government treasury. The question is whether or not these revenues will be managed properly, transparently and equitably. Ugandans are too familiar with corruption, mismanagement of public funds and poor development outcomes that have riddled the country and the tragedy of many African states' squandered oil wealth. This has led to oil governance commonly being described as "dark as its appearance".
- c) The more than 2.0 billion barrel oil finds in the Albertine Rift Valley has generated enormous international interest in the country's oil & gas potential. It is estimated that by 2015, Uganda could be producing more than 350,000 barrels of oil per day, along with significant amounts of associated gas. It is predicted that government revenues from oil and gas could exceed the tune of US\$20 billion over the production period 2012 -2030. It is also known that oil wealth tends to erode democracy and accountability.

Therefore, Uganda's challenge in general will be to ensure that the right institutions and transparent and effective policies are in place before oil & gas production starts.

The country is now in the process of fast-tracking the re-alignment of its national policies, laws and institutional frameworks to address the emerging oil & gas industry, because the original framework in place is insufficient to meet the needs of the industry. A new Petroleum (exploration, development, production & value addition) bill also known as the "Petroleum Resource Management Bill" is currently under development and the first draft has been released for public scrutiny and comment.

It is on this basis that Water Governance Institute (WGI), with a grant from Open Society Institute for East Africa (OSIEA), commission a study to analyze the draft Petroleum Resource Management Bill and provide opinions and comments.

This report, therefore, presents the risks, challenges and opportunities of the emerging Petroleum (Exploration, Development, Production and Value Addition) law. It summarizes a large quantity of information in the draft bill in excerpts and text boxes and presents it in a manner that is designed to help the reader, who most times is a non technical specialist, to understand the content of the emerging law. It also aims at linking with already existing national laws that could have a direct or indirect bearing with the emerging petroleum law. In addition, the report aims at making well-grounded recommendations that will lead to the development of an appropriate petroleum resources management law for Uganda.

The draft bill consists of eighteen (18) parts. The analysis mainly focused on those sections, articles and clauses of the draft bill that were contentious, thus leaving out those that were to large extent not contentious. Therefore, it should not be surprising to find inconsistent flow of sections, articles and clauses in this report.

2.0. GENERAL COMMENTS

While we recognize the many positive aspects of the draft Bill, it would appear that the proposed legislation requires additional work in order to meet the policy objectives of the National Oil and Gas Policy and citizen expectations.

(a) The bill in its current form addresses among other things:

- i. Licensing and regulation of exploration and development
- ii. Petroleum management institutions
- iii. Aspects of royalties.
- iv. Penalties.
- v. Decommissioning of oil & gas projects

The above five aspects are intertwined and very difficult to extract and cross-reference from the various parts. Some sections are handled in-depth, whilst other important aspects are treated superficially, or are lost in minor detail. It is recommended that the bill be re-organized into more coherent parts. In particular the bill needs to clearly and rigorously separate issues of management of the industry from regulation and oversight.

(b) There are too many purposes for one Act. This makes determining priorities and identifying prospective conflicts difficult. There are conflicts between sections and provisions and the separation into a number of Bills would solve this potential problem, notwithstanding that conflicts between Acts must also be resolved. It is, therefore, further recommended that this resource management bill be split into distinct parts, or into more manageable and defined bills. For example;

- Licensing and regulation of exploration and development operations;
- Petroleum management institutions; and
- Revenue management

This could allow more efficient implementation and easier understanding of the bill.

For example, the *Text box 1* below refers to the long title and purposes of this Bill, with examples of how this could be separated and refined:

Text Box 1: Long Title:

“An Act to give effect to article 244 of the Constitution; to regulate petroleum exploration, development and production; to establish the Petroleum Authority of Uganda; to establish the National Oil Company; to regulate the licensing and participation of commercial entities in petroleum operations; to create a conducive environment for the promotion and exploration of Uganda's petroleum potential; to provide for efficient and safe petroleum activities” This could be part of an independent Bill, making it easier for interpretation, clarity, etc—it also makes it clear and limits needless conflicts. In addition, it can permit setting priority between laws;

“..to provide for an open, transparent and competitive process of licensing; to provide for the refining, transportation and storage of petroleum and for the processing of gas; to provide for the cessation of petroleum activities and decommissioning of infrastructure” This could also be an independent Bill and its provisions should be an independent requirement. The alternative is to have distinct parts that deal with these different aspects in detail i.e.

- a) Regulation should be separate and independent from management;
- b) *Regulation and licensing should be separate and not under the same Petroleum Authority;*
- c) Restoration should also be an independent arm;

(c) Separation of various aspects of the bill and the potential for additional bills would be in addition to the anticipated revenue management bill, which would cover the royalty and oil revenue funds in more detail. This “Resource Management bill” should therefore not stipulate the detail of revenue sharing, but seek to establish the principles and the stakeholders. The revenue management bill could thus look at the equity issues and the percentage share for the various stakeholders. There could also be envisaged various supporting or additional acts to which this Bill should reference, including reviews and amendments of other existing Acts under the remit of appropriate line Ministries and on which oil activities impact. This should include:

- Decommissioning of industrial activities and restoration of derelict land, which would not necessarily be targeted to the ministry of energy or to oil and gas activities;
- Waste management regulations pertaining to (the oil and gas) industry;
- Drilling in protected areas and other sensitive environments. This is not mentioned in this draft bill, despite the reality that this refers to the majority of the country’s oil

& gas resources. There is a need to refer to the protected area laws which should be reviewed to incorporate extractive industry in general and oil and gas specifically;

In reality, we cannot be certain that the other government institutions with mandate that would affect the oil & gas industry will move swiftly to review and amend their existing legislation to take account the emerging oil and gas sector in time to prevent unnecessary impacts and risks. This makes it necessary for this draft bill to trigger the process by referring to other potentially supporting legislation, so that the other relevant sector legislation fast-tracked the integration of the oil & gas issues prior to further petroleum activity, and thus ensuring that areas of risk can be (are) properly identified. The bill attempts this by requiring that *“Every licensee and every person exercising or performing functions, duties or powers under this Act in relation to petroleum activities shall take into account, and give effect to the environmental principles prescribed by the National Environment Act and other applicable laws”*. However, it should go further to ensure that there is no net loss of environmental resources, including socio economic, human and natural resources. It should also include the “Polluter Pays Principle (PPP)”, which should not be cost-recoverable and other key principles in the oil & gas policy and other Acts. Similarly, Corporate Social Responsibility (CSR) should not be optional and cost recoverable, but mandatory.

The bill requires considerable strengthening in regards to:

- i. Structure of the petroleum institutional framework with a much clearer statement of the roles of each of the institutions being created (including the Petroleum Authority, the National Oil Company and the Petroleum Ministry),
- ii. Separation of powers and responsibilities regarding environment, a) health, b) safety, c) regulatory in general, d) licensing, and e) enforcement.
- iii. increased strength of liability for waste management, pollution, violations, risk management, etc
- iv. jurisdiction over and liability of parent companies, especially foreign companies
- v. Concrete standards for issuing licenses. The current standards are vague in respect to a) financial, b) technological, c) environmental, d) social, and e) other aspects.
- vi. Solid compensation and involuntary resettlement system, which is equitable and takes care of health and loss of livelihood as well as property compensation at real values need to be put in place.
- vii. Clear, precise and specific language to avoid different interpretations.

The Bill erodes Parliamentary oversight. Appointment of the Commissioners referred to in the Bill and the Board should be approved by parliament to enable it exercise its oversight role.

The bill is riddled with ambiguity on many issues, including definitions, technical and legal terminologies, which will complicate the enforcement of the law. Some of the phrases used are not properly defined and when they are defined, they lack clarity, are scattered within the text and must be grouped in the definitions sections. For example, the definitions *“good petroleum industry practice” (Part I: clause 4)* of the draft bill) is vague and references a non-existent standard¹. This could result in conflicting interpretations. A more appropriate

¹. Ref. Prof. Jenik Radon. Comments on the draft Petroleum bill 2010 dated 18 June 2010. P7.

standard would be “best practice in the application of the highest and best technology and management practice acceptable elsewhere in the world and one that does not negatively affect society, the economy and lead to net loss of biodiversity”.

3.0. DETAILED COMMENTS

3.1. PART I - PRELIMINARY

Clause 2 (b) of the draft bill refers to creating a “conducive environment for the efficient management of petroleum resources.” The term “*Conducive environment*” also used in many other sections of the draft bill is ambiguous and needs to be more comprehensively explained. It should refer to a well-managed and efficiently run industry that is transparent and accessible to public scrutiny, not simply an industry run to maximize production and profits at the expense of other sectors and stakeholders, as it presently implies. This definition should be included in the definition section of the bill.

In the same section, transparency and accountability of public and private institutions should be considered. Transparency should be the cornerstone of democratic oil and gas development and include:

- a) Access to information.
- b) Sustainable production of a finite resource can be ensured through the application of generational equity and by investing oil revenue in alternative renewable energy resources. This is another important purpose which needs to be clearly promoted by this bill, ensuring that efficiency of production nevertheless allows for maximizing the benefits of oil to current and future generations of Ugandan society. This can be achieved through the correct and appropriate application of economic instruments and environmental sustainability precepts.
- c) Environmental principles have been included, with reference to the applicable laws. However, this should go further to ensure that there is no net loss of environmental resources, including socio economic, human and natural resources. The wording “take into account” in the draft bill requiring licensees to take into account the environmental principles is weak and should instead read “*should comply with*” the environmental principles. Enshrined in this act should be the stipulation that in accordance with the principle of “Polluter Pays Principle” i.e. the cost of damage caused to the environment should not be cost-recoverable, but should remain the liability of the developer. Where the National Oil Company is involved in high risk activities, its liabilities should be clearly stated.
- d) A related aspect, of Corporate Social Responsibility (CSR), should clearly be applied to ensure that the developer is responsible for ensuring that any residual impacts must be compensated for by funding appropriate interventions. CSR should not be seen as merely a ‘gesture’ or “penitence” to the communities affected.
- e) In addition to the environmental principles, other key principles in the oil and gas policy and other Acts should be considered. Recommend transparency and accountability to be identified as clause 4.
- f) This preliminary part of the Bill should reference other important laws and regulations which relate to or impact upon this Act.
- g) Many definitions are scattered throughout the bill. It is recommended that all definitions from each part be included in the initial interpretation section for ease of cross-referencing and that their interpretation should be rigorous.

- h) The interpretation of “good petroleum practices” would be better stated as: “*good, safe, healthy and environmentally protective and sound practices when conducting petroleum activities which are the best and highest technological, environmental, health and professional practices that can be applied, no matter where in the world, it being understood that protection of health, safety and environment are of the utmost concern and are of the highest priority in conducting such practices*”;

It is important to note that the statement “*similar circumstance*” is not a real standard. It is certainly not a legal standard and is effectively a low denominator. Consideration of the circumstances of the US Gulf of Mexico and the Amazonas in Ecuador where such concerns were determined by a mathematical risks calculation and not “build to not fail” were fairly good attempts, but not good examples. Whilst international opinion has changed in the aftermath of the Gulf of Mexico oil disaster, it would be unwise to prescribe lower environmental and risk management conditions.

3.2. PART II - PETROLEUM RIGHTS

This part should be entitled “rights and obligations” and identify the various stakeholders and their rights and obligations under this act. The section should also clearly state who these rights and obligations are vested in, to include government, citizens and developers/investors.

Additional rights of the people should include, but not be limited to:

- Rights of ownership (covered – but normally this right creates basis for additional rights);
- Rights to information;
- Right to participate;
- Right of an individual to undertake legal action where these rights have been violated;
- Additional rights as enshrined in international provisions and the constitution, including customary rights.

We recommend that this section outlines the rights of the citizens in their individual and collective capacities and state how these rights will be protected.

Clause 5 under “Vesting of Petroleum Rights” in the draft bill provides that “*The entire property in, and the control of, petroleum in its natural condition in, on or under any land or waters in Uganda is vested in the Government on behalf of the Republic of Uganda*”. This is in contravention of Article 244 of the Constitution of the Republic of Uganda that vests minerals in the Republic of Uganda on behalf of the people of Uganda. We recommend addition to definitions section of the term “Republic of Uganda” to stipulate that this means the people of Uganda.

Clause 6 of the draft bill provides for prohibition of petroleum activities without authorization (*Ref Text Box 2*). Instead of what is provided in the draft bill, the economic penalties should be more of a deterrent with higher potential fines to ensure that activities do not commence prior to licensing.

Text Box 2

6. Prohibition of petroleum activities without authorization

- (1) Petroleum activities in, on or under any land or waters in Uganda or subject to Ugandan Jurisdiction, shall not be conducted without an authorization, license, permit or approval issued in accordance with this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction-
- a) if an individual, to a fine not exceeding ten thousand currency points or imprisonment not exceeding ten years or both; and
 - b) If a body corporate, to a fine not exceeding one hundred thousand currency points.

It is important to note that the currency points stated in the bill are not in accordance with standard formula used in the Ugandan courts where 1 currency point is equivalent to 2 months imprisonment. Under this framework “equivalent prison terms” are not practicable, especially where there are complex company ownership structures that can prove problematic. Advice needs to be sought to ensure that directors, owners or management of companies with complex ownership structures can be held accountable for the activities of their company’s activities. Offenses should also result in the loss of the Investment in question.

Offenses and penalties are treated in conjunction with rights in this section (i.e. Part II: Petroleum Rights). We recommend offenses be covered in Part XVI, together with penalties and issues of damage and liability must be much more clearly stated and should have their own section.

Clause 7 in the draft bill provides for agreements with government and oil companies or persons representing companies to perform petroleum related activities (*Ref: Text Box 3*). This provision also covers Production Sharing Agreements (PSAs).

Text Box 3:

7. Agreements with Government

The Government may enter into an agreement, relating to petroleum activities and consistent with this Act, with any person with respect to the following matters:

- a) the grant of a licence;
- b) the conditions for granting or renewing a licence;
- c) the conduct by a person, of petroleum activities on behalf of any person to whom a licence may be granted; and
- d) Any other matter incidental or connected to the matters in paragraph (a), (b) and (c).

We recommend that this clause include checks and balances in the awarding of contracts and ensure that agreements are subject to scrutiny. It would also ensure that these documents must be made public. Clauses in the previous Petroleum and Exploration Act (1985) give more detail and should be included here. Placement of this clause on agreements with government should be under licensing in part IV of the draft bill.

We recommend that Ugandan law other than this Bill, including provisions relating to licenses, consents or approvals required according to the legislation shall also be applicable to these activities. This applies unless otherwise warranted by another Act or international law or agreement with a foreign state.

3.3. PART III -INSTITUTIONAL ARRANGEMENTS

This section in the draft bill provides for an institutional framework to be established that includes a Petroleum Authority (PA) (clauses 9 - 41), National Oil Company (clauses 42 – 48) and a Ministry. It also stipulates the respective functions of these institutions and the manner in which officials in the institutions will be appointed and their specific roles and responsibilities. However,

- i. Numerous questions remain on the establishment of the National Oil Company (NOC). For instance:
 - How is the company to be established under the companies Act, when it is a government parastatal?
 - Who will its directors be and how will they be appointed?
 - Who are the shareholders and beneficiaries?
 - How does the president appoint commissioners to a company, or are the commissioners referred to in the draft bill part of the Ministry? If the latter is true, then there are Public Service Appointment procedures that need to be complied with.
- ii. The Institutional framework established under the Oil & Gas Policy (2008) is not adhered to in this draft Bill. The oversight role and ultimate authority of the Ministry are not defined. It is also not clear whether the Ministry referred to in the draft bill is the Ministry of Energy and Mineral Development (MEMD) or a completely different Ministry all together (e.g. the Ministry of Petroleum). Recent public statements of government officials have alluded to the Ministry of Petroleum, which is not reflected in the draft bill. Functions established as the responsibility of the Petroleum Authority under the Oil & Gas Policy, are assumed as functions of the National Oil Company in the draft Bill. These potential contradictions should be addressed and the role of the company needs to be very clearly stated to ensure that there is no overlap or source of misunderstanding.
- iii. The draft Bill does not clarify which institution is to deal with conflicts that may arise between the different institutions of government i.e. Ministries, authorities, departments, commissioners, and NOC.

This Act should have a distinct section which clearly outlines the relationship and responsibilities of the different institutions included under this Bill, or establish a separate Bill which deals with issues of petroleum management institutions and their structures. This Bill should establish how institutions are required to report out and how checks and balances and oversight are ensured. Much more specific detail is needed on the operationalization of these institutions, with the National Oil Company (NOC) given as much detail as the Petroleum Authority and the Ministry of Energy and Mineral Development (Ministry of Petroleum, whichever case may be) obligations and duties clearly stated.

The proposed law in its current form is restrictive. For example, the benefits of a company acting for the state are not clear.

Under clause 9, “establishment of the Authority”, the draft Bill suggests that the Authority can acquire, hold and dispose of moveable and immovable property, but does not specify what type and kind. This should be rectified, and the holding of property treated with great

caution as the same clause also refers to the potential for the Authority to sue and to be sued; therefore there is a clear need to limit the Authority's liability.

The Bill identifies the functions of the Authority (clause 10) as: *"to monitor and regulate exploration, development and production, processing, transportation and storage of petroleum and gas processing in Uganda"*. As noted previously, the licensing authority should be separated from the regulatory authority to prevent real and apparent conflicts of interest and to promote clarity of purpose. The regulatory and enforcement authorities would be free to exercise their clear authority to enforce the law and not be swayed by the obligation to bring in fees and income. The actions identified in this clause are both regulatory and licensing in nature and should be separated (more detail can be submitted).

Under clause 35 "finances of the authority", the draft Bill allows for the authority to borrow funds *"...from any source as may be required for meeting its obligations or for the discharge of the functions of the Board under this Act"*. If this constitutes government borrowing, this would need prior approval by parliament and should be a source of public scrutiny. It is important to note that borrowing from a private oil company would constitute a conflict of interests.

"Appointment of Commissioners", clause 43, states that *"the president shall appoint commissioners"*. The draft bill needs to clarify the institutions to which these commissioners are to belong. If, as assumed, this refers to the Ministry posts, these clauses should be detailed under a section on ministries as outlined above and would be at the discretion of the ministry in accordance with the public service regulations. Furthermore, detailing of functions of a commissioner in the draft bill is inconsistent with the current provisions in the policies. Such functions should be stated as ministry functions, to be delegated as appropriate. In order to allow parliamentary oversight, the Commissioners should be approved by parliament. Although this appears to be outside the norm it is necessary to scrutinize these individuals given the sensitivity of the industry.

Clause 46, "the Petroleum Utilization Plan" states that *"The Commissioner for Petroleum Processing, Transportation and Storage shall prepare a Petroleum Utilisation Plan which shall a) outline future utilisation of petroleum and the development of required facilities; b) be the guiding tool for the planning and structuring of major facilities for petroleum utilization; and it shall take into consideration the plans and policies of the Government in other related sectors"*. This clause appears to be redundant in this context and may be unenforceable in practice without further clarification. Clauses should state what the plan is intended to achieve and what the Ministry responsibilities are in relation to the achievement and enforcement of this plan. In effect, it should be a ministry function and would be better included under a resource management Act.

The proposed institutional structure in brief could be as follows;

- i. **The Ministry** that will be responsible for:
 - Setting policy guidance;
 - Decision-making and upholding of regulation. It is important to note that the role of the Ministry (in this case referring to MEMD) is stated in the Oil & Gas Policy 2008, section 7.4.2. However, this needs to be formalized in the draft bill and whether or not it will be the MEMD or Ministry of Petroleum needs to be clarified.

ii. **Authority that will:**

- Provide oversight;
- Carry out management of the industry in accordance with the guidance set by the Ministry

Given the highly sensitive nature and the inherent opaque dealings of the oil & gas industry, we recommend that:

- The industry should be subjected to the highest level of public scrutiny;
- The directors should therefore be approved by parliament. There is already precedence in the public service commission;
- The board of directors' role should be restricted to governance issues.
- A part should be inserted which separates and clarifies the management functions of the authority.

iii. **National Oil Company**

- The law must clearly establish the nature of this company whether or not it is a private or public company. The type of company and its legal framework and structure must be detailed. Under current provisions of the draft bill, the NOC is to be registered with the Registrar of Companies. This may not be the most appropriate form of institution, since the draft bill appears to portray the NOC as a public company. In such a case, registering the NOC as a corporation may be preferable, which should then be created by an Act of parliament;
- In the event the NOC is registered as a corporation, it should undertake all oil business, on behalf of government, under the direction and authority of both the Petroleum Authority and the Ministry. In this case, the NOC should not have any mandate to make decisions on behalf of government;
- It should be clear that the NOC should operate as a commercial entity and be subject to all the laws of Uganda. The provisions should not be left to the discretion of a minister, but should be clearly elaborated and be held publically accountable;
- Details of ownership (wholly state, or public-private-partnership, etc) to be determined and detailed
- Functions of the NOC need to be determined;
- Management functions and the appointment procedure for officers and directors of the NOC need to be determined;
- The relationship of the NOC with the Ministry, the Petroleum Authority and with other private oil companies needs to be determined;

3.4. PART IV – LICENSING

This section in the draft bill provides for opening up new operational areas (clause 49; also refer *Text Box 4*) and awarding of reconnaissance permits (clauses 50 -55), petroleum exploration license (clauses 56 - 63), petroleum production license (clauses 64 - 77), and activities that may require license such as refining, transportation, storage or conversion of petroleum or gas into another product or bi-product.

Text Box 4

49. Opening up of new areas

(1) The Minister shall, before opening up of areas that have not been previously licensed with a view to allowing petroleum activities, ensure that an evaluation of preliminary geological, geophysical and geochemical data is conducted.

(2) In the evaluation under subsection (1), an assessment shall be made of the impact of the petroleum activities on trade, industry and the environment, and of possible risks of pollution, as well as the economic and social effects that may result from the petroleum activities.

(3) The Minister shall make a public announcement of areas to be opened up for petroleum activities and shall, in the announcement, make the impact assessments conducted under subsection (2) available to the public, affected local authorities, government agencies and associations or organisations which are likely to have a particular interest in the matter.

(4) Interested parties may, within a period of not more than 3 months after the public announcement made under subsection (3), present to the Minister, in writing, their views on the intended petroleum activities.

With reference to *Text Box 4*, there is a need to clarify who does the assessments to determine areas for licensing. Ideally, government (at ministry level) should undertake this and it should be subject to Strategic Assessment. The Bill should establish the criteria that will be used to establish new areas for exploration and production. A balance between natural resources, including other environmental goods and services, human and economic resources will be critical. The law should stipulate that there should be a preliminary environmental impact study to assess the impacts of opening up areas for licensing. The petroleum exploration license should be made public (including any conditions) and should require the approval of any private parties over whose land exploration is to take place plus full compensation. Companies entering a bid must be required to show proof of technical, financial and professional qualifications. The minimum qualifications to ensure competence should be detailed.

Issuance and cancellation of licenses should be the mandate of the Ministry, on the advice of the Authority, in order to have clear separation of duties and ensure transparency. The role of the Authority must be further clarified. The role and authority of NEMA in environmental aspects should be highlighted.

“*Joint and several liabilities*” have been stated in some clauses of the draft bill. However, it is important that for clauses where this application is necessary it be stated instead of being applied selectively.

Under *Clause 62*, item 2 state that “*the Minister shall not renew a petroleum license where the licensee has violated the provisions of this Act or a condition of the license*”. The licensee should include, for this purpose, the owners and ultimate owners, who should be barred from holding license again, and not be allowed to create new companies to circumvent the law.

Any announcements of areas for licensing (*Clause 65*) should be done competitively or in accordance to the Public Procurement and Disposal Act (PPDA). The provision for the Minister to stipulate that the licensee shall enter into agreements with other licensees should be further explained as to the purpose of this provision.

The criteria and restrictions for a production license (*Clauses 68 & 69*) should include a requirement for an environmental impact assessment to be completed prior to licensing and

proof of funds for restoration and decommissioning and to indemnify against accidental risk and accident, including valid insurance policies and guarantees from all parent corporations specifically regarding violations of health, safety and environment laws and regulations.

Clause 80 refers to the right of any person to object to the grant of a license. The bill does not clarify how such licenses are to be made widely known to the public. Currently, the EIA's are by law, public documents on submission to NEMA. However, there is no way for the public to know when an EIA has been submitted. The Bill should establish clear requirements for publicizing any intent to issue a license and allow a period for public comments.

Granting, duration and renewal of licenses to construct or operate a facility (*Clauses 85, 86 & 87*) should stipulate that the license shall be cancelled upon breach of conditions or law. This should be clarified as to specific action, procedure and penalties for minor and major breaches.

The transfer of license or permit under this Act, Clause 88, item 4, establishes that "*the Minister should not unreasonably withhold consent*". This takes away the authority of the minister and should preferably state that **the Minister should withhold consent where he/she has reason to believe that the public interest is likely to be prejudiced**. Furthermore, the transfer of any license or permit should stipulate that **a fee will be charged based on the profit made for the transfer of the license (i.e. capital gains tax)**. This is a valuable asset and taxes must be paid on the sale or transfer of interest from one party to another. Transferees must meet the same standards as anyone seeking a license.

Clause 89, "*Work practices for licensees*", deals with safety aspects of the petroleum industry. It talks of the industry being required to take reasonable steps to safeguard personnel. The draft bill is wholly inadequate in establishing liability in the event of noncompliance. Legal instruments for ensuring that the industry pays for any infringement are critical. The liability of the NOC needs equally to be established. Reference is needed to a **Pollution Fund** where accidental damage is caused. This fund should be established herein or under the revenue bill. Direct fines and penalties for non-compliance must also be established. The term '*reasonable*' needs to be defined with its legal basis established and should be taken to mean **the highest and best standards in the world**. Otherwise, British Petroleum (BP) could have stipulated that they took '*reasonable*' steps to ensure there were no discharges of petroleum in the Gulf of Mexico. The Ministry needs to investigate clauses which would clearly stipulate the standards which will be applied and refer to other law (environmental law) where necessary.

The Bill deviates from the Oil & Gas policy by providing avenue for flaring and venting. Other than for reasons of safety and emergency, the bill should clearly establish that no flaring or venting will be permitted, in line with current international standards. In addition, the conditions that would allow for safety and emergency flaring or venting should be clearly stated. Otherwise, gas must be produced and sold on the local market (primarily to the power plant currently under consideration). This would contribute significantly to reducing power tariffs on the national grid, allow for rural electrification to be realized, reduce the population pressure on forest resources for firewood and would contribute to mitigating against climate change and its associated effects/ impacts as a result of deforestation and forest degradation. Refer also clause 104, part IV. Penalties indicated

under this section are wholly inadequate for international firms. Liability also needs to be established.

“Cancellation of licenses” (*Clause 91*) accords the Minister powers to “...cancel a licence, approval or permit granted under this Act- a) where the Minister is satisfied that a licensee or permit holder is not operating in accordance with the conditions of the licence or the provisions of this Act or any regulations or directives issued under this Act” (*Refer Text Box 5*). This cancellation right should be accorded to other regulatory authorities for non-compliance with environmental, health, land, human rights and safety laws. Clauses under this section should require mandatory cancellations, particularly for supply of incorrect information and weakening of the company’s financial ability to the extent that its ability to ensure security is questioned.

Text Box 5: Cancellation of licences and permits

- a) Where the breach-
 - i. inflicts significant damage on public or private interests affected by the breach;
 - ii. lasts for a considerable period of time;
 - iii. takes place repeatedly; or
 - iv. Causes the Minister to have strong reasons to believe that the licensee or permit holder may not be able to fulfill his or her obligations under the licence or this Act.
- b) Where the application for a licence or permit contained incorrect information or where information of significance had been withheld which would have precluded the grant of the licence or permit if it had been made available to the Minister at the time of application is brought to the attention of the Minister;
- c) If the security which the licensee is obliged to provide under section 179 has become significantly weakened, or if the company or other association holding the licence is dissolved or enters into debt settlement proceedings or bankruptcy proceedings.

Clause 92 “Consequences of cancellation, surrender of rights or lapse for other reasons” in the draft bill provides for revocation of a license or permit, surrender of rights or lapse of rights for other reasons stating that this does “*not entail release from the financial obligations under this Act, regulations issued under this Act or specific conditions attached to the licence, approval or permit*”. It also states that “*Where a work obligation or other obligation, including decommissioning has not been fulfilled, the licensee or permit holder shall pay the amount which fulfillment of the obligation would have cost the licensee, if the work had been completed*”. It further states that “*the amount payable shall be prescribed in the agreement made under section 7*” of the draft bill.

However, the amount payable should be stated explicitly in the bill and not the agreements (Production Sharing Agreement as the case is for Uganda) and payments for any additional damage which has taken place, resulting in cancellation or caused due to cancellation, should be specifically provided for in the bill. This further strengthens the need for a decommissioning fund and a Pollution Fund, which must be taken off on an annual basis and should not be cost recoverable. Cost recoverable expenses, if they are of non-technical nature, should have a cap imposed upon them to ensure that government ministries are not over-charged by the oil company.

This section notwithstanding, there is need for more consideration of the implications of cancellation.

3.5. PART V -DEVELOPMENT AND PRODUCTION OF PETROLEUM

This section in the draft bill provides for field development and its associated plans, approval and application (i.e. production, petroleum storage, royalties & restrictions) (*Refer Text Box 6*).

Text Box 6

98. Field Development Plan

- (1) Where a licensee intends to develop a petroleum field, the licensee shall submit to the Minister for approval, a plan for field development and operation.
- (2) The plan shall contain a production schedule, an account of economic aspects, resource aspects, technical, safety related, commercial and environmental aspects, as well as information as to how a facility may be decommissioned and disposed of when the petroleum activities have ceased.
- (3) The Field Development Plan shall also contain information on facilities for the transportation and storage of petroleum up to off-take points.
- (4) A Field Development Plan shall, in addition, provide information about what other applications for authorisations required by law have been submitted to the relevant authorities.
- (5) Where the development is planned in two or more stages, the plan shall, where possible, comprise the total development.

99. Approval of Field Development plan

- (1) The Minister may limit the approval of a field development plan to individual reservoirs or stages of development.
- (2) The licensee shall not commence substantial contractual obligations and construction work until the field development plan has been approved, except with the consent of the Minister.
- (3) The licensee shall inform the Minister of any significant deviation or alteration of the terms and preconditions on which a field development plan has been submitted or approved and any significant alteration of facilities or use of facilities.
- (4) The Minister may, on the recommendation of the Authority, approve the deviation or alteration of the terms and preconditions on which a plan has been submitted or approved and any significant alteration of facilities, or shall require a new or amended plan to be submitted for approval.

Considering clauses 98 and 99 of the draft bill, it would be important that the field development plan be based on the national oil development plan, which is subjected to a Sector Strategic Environmental Assessment (SSEA). It must also be subjected to an approved Environmental Impact Assessment (EIA) and a public hearing prior to implementation as required by the National Environment Management Act 1995 [Articles 19(3), 8(c) & third schedule], since the interventions may or are likely to or will have significant impacts on the environment. The EIA must also consider cumulative and secondary impacts.

Similarly, deviation or alteration of any plans from those originally stipulated in the granting of license should warrant a new EIA and the approval of deviation should be dependent on the approval of that EIA. Reference to “*significant changes*” should be further explained as to what constitutes “significant” and how this will be determined and by whom.

Clause 105 in the draft bill requires the licensee to measure the weight of the petroleum extracted and sold. Companies have been known to cheat in these measurements. For example, the USA recently (2011) realized that energy companies by omission or commission failed to pay up royalties owed to the government since 2000 (Patrick

Corcoran, 2011)². This was largely blamed on US government's reliance on voluntary disclosures from companies regarding pricing and revenue information. A similar situation was reported in Alaska. It is, therefore, important that an independent mechanism to verify companies' claims and monitor activity is put in place. In addition, the penalties for non-disclosure or falsification of pricing and revenue information should be clear or tantamount to paying triple the amounts that would otherwise have been due to government.

Clause 106 (1) of the draft states that “...*the licensee shall pay royalty to government on petroleum extracted in the form of crude oil and natural gas to be stipulated in accordance with the petroleum agreement.*” While this seems good in the sense that it enables government refine and sale its crude directly to the market and cushioning it from price and revenue under-declarations by oil companies, it exposes government to increased liabilities associated with direct trading of oil on the market and competition with its partner International Oil Companies (IOCs). The clause further suggests that royalty on petroleum will be stipulated in the agreements (in Uganda's case, the Production Sharing Agreements-PSA's). This should not be the only case. We recommend that the principles for negotiation of royalties should be prescribed by the bill and not only in the agreement or PSA.

Clause 106(4) in the draft bill states that “*Royalty shall be shared between Central Government; and Regional Governments and Local Governments in an area where petroleum is discovered, in the manner prescribed in Schedule 4*”. While some framework for sharing of the royalty is provided in the PSAs, this framework should also be reflected in the draft bill and the details stipulated in the Revenue Management Bill that is still under draft and the agreement. This notwithstanding, the framework referred to in the Oil & Gas Policy (2008) should be reiterated in the Revenue Management Bill. One may want to know whether or not:

- a) Royalties would be paid to owners of land where petroleum activities are taking place, like the case in USA? The current compensation and involuntary resettlement of oil project-affected people in the Albertine Grabben does not provide for rent/royalty payments to displaced persons/ households for land taken for oil activities, but claims temporary land-take (not outright purchase of land) with future hope of the displaced persons/ households repossessing their land. However, there is no evidence or provision for this repossession of land by the affected people. This is a recipe for disenfranchisement of the affected people and future source of conflict.
- b) Cultural institutions and host communities have been considered for the allocation of royalties? Some PSAs suggest royalty payment frameworks for local governments, cultural institutions and host communities, however, this is lacking in detail.
- c) Sectors likely to be negatively impacted by the advent of the oil industry such as agriculture, forestry, fisheries, processing tourism and manufacturing will be compensated. We recommend establishment of revenue sharing fund to enshrine the priority of funding negatively impacted sectors and other crucial sectors for development.
- d) The investment will be targeted to protect against inflation and other affected sectors of the economy?

² . Patrick Corcoran on April 18, 2011: Despite Whistleblowers, Energy Companies Cheat U.S. on Royalties. <http://www.fairwarning.org/2011/04/despote-whistleblowers-energy-companies-cheat-u-s-on-royalties/>

The draft bill does not mention Corporate Social Responsibility issues and costs, yet companies are expected or usually invest in CSR at their own discretion as a public relations intervention. However, the risk with CSR is that the companies may be perceived as having replaced government in providing social services and development in the local communities. The other risk is that companies may inflate the actual CSR investment. Provision for Corporate Social Responsibility (CSR) should be enshrined in this law. CSR standards and guidelines should be detailed and regulations should stipulate percentages, amounts and required areas for CSR expenditure (i.e. to be targeted towards, and seek to provide redress for, any potential negative impacts. It is often urged that once CSR is enshrined in the law, then it would become cost-recoverable. However, this should not be the case; CSR should remain not cost-recoverable even, if it is enshrined in the law. This is intended to ensure standards that the CSR provided is meaningful to society, the economy and the environment.

It is important to add a clause on identification and guidelines for negotiation of PSAs and other forms of contract. In addition, commitments made in the Oil for Development Agreement should be disclosed and reiterated in the bill.

Under clause 109 of the draft bill provides for the “*Coordination of activities across license boundaries*”, where it states that “*Where a petroleum reservoir extends over more than one licence area with different licensees, efforts shall be made to reach agreement on the most efficient co-ordination of the petroleum activities in connection with the petroleum reservoir as well as on the apportionment of the petroleum reservoir*”. This also applies to the reservoirs that are trans-boundary in nature with more than one state. It is, therefore, important that a clause on trans-boundary reservoirs be added to allow for efficient coordination of activities as well as the apportionment of the reservoir within and across national boundaries. Joint petroleum activities should be considered to avoid any trans-boundary conflicts. In the case where the reservoir traverses two or more country boundaries, Article 109 clause 5 “*Where consensus on agreements is not reached within a reasonable time, the Minister may determine how joint petroleum activities shall be conducted, including the apportionment of the reservoir*” may not be practicable, because it would require consensus of the countries sharing the reservoir. An additional clause reflecting multi-national consensus being reached needs to be included in the bill.

Clause 111(1) under “Postponement of development or production” in the draft bill states that “*The Minister may in consultation with the Authority and the licensee postpone petroleum development or production of a field.*” This clause is welcomed as allowing for sustainable production to potentially delay early development of field for purely financial short-term gain.

Clause 112, “Natural resources other than petroleum resources” states that “*A petroleum production licence shall not preclude the granting to a person other than the licensee, the right to undertake exploration for and production of natural resources other than petroleum, provided it does not cause unreasonable inconvenience to the petroleum activities conducted by a licensee under the petroleum production licence, including scientific research.*” This clause is unacceptable, because it gives precedence/priority to petroleum activities over any other natural resource and socio-economic activities. It is also a recipe for conflict between parties exploring/exploiting different natural resources in the same area. This is against the principles of sustainable natural resource management and is

insensitive to Sector Strategic Environment Assessment (SSEA). We recommend the removal of the term “unreasonable inconvenience” and to put all resources and services and other socio-economic activities on an equal footing for consideration under law i.e. the pros and cons of the different investments should first be assessed objectively in their individual merits.

3.6. PART VI- SUPPLIES AND PRICING

This section provides for the supply and pricing of petroleum products to the market and for national requirement (*Refer Text Box 7*). However, clauses 115, 116 and 117 present a significant problem i.e. the ability for the Minister to direct the licensee to make deliveries to cover national requirements could be seen as disguised nationalization. This should be more clearly specified, including under what conditions this could be done and what rates government would pay. It would be preferable that government pay market rates.

Text Box 7:

115. Supplies to cover national requirements

(1) The Minister may direct the licensee to make deliveries from licensee’s production to cover national requirements and may further direct to whom such petroleum shall be delivered.

(2) The price paid for the petroleum delivered, under this section shall be determined in accordance with section 117 with the addition of transportation costs.

116. Supplies in the event of war, threat of war or other crisis, etc

(1) In the event of war, threat of war, natural disaster or other extraordinary crisis, the Minister may, with the approval of Cabinet, direct a licensee to place petroleum at the disposal of Uganda.

(2) Section 117 shall apply correspondingly, unless the particular situation warrants otherwise.

(3) In the event of a situation under this section, the Minister shall, in consultation with the Minister responsible for finance and the licensee, determine the price.

117. Pricing of petroleum

The market price for petroleum produced in accordance with this Act shall be arrived at through an impartial, fair and transparent method determined by the Pricing Committee in a manner prescribed by regulations.

The bill refers to establishment of market prices by a pricing committee (*clause 117*). First of all, this pricing committee has not been reflected anywhere in the bill and its composition specified. Secondly, the criteria for setting this price should be stipulated. A mere mention that “*The market price for petroleum produced in accordance with this Act shall be arrived at through an impartial, fair and transparent method....*” is not adequate. This clause 117 is susceptible to misinterpretation and could be open to abuse in order to unfairly control and distort prices. In any case, such price would not constitute a market price, but a controlled one not determined largely by supply and demand.

We recommend that this pricing committee (if absolutely necessary) should be defined in the bill and its composition stipulated. Its role should not be controlling the market prices, but rather advisory to government and industry on whether or not to hoard, keep a reserve or release petroleum products into the market as a bid to influence prices.

3.7. PART VII - CESSATION OF PETROLEUM ACTIVITIES

Clause 118 (1) under “Decommissioning Plan” states that “*A licensee shall submit a decommissioning plan to the Authority (a) before a petroleum production licence or a specific licence to install and operate facilities expires or is surrendered; or (b) before the use of a facility is terminated permanently.*” It is important to note that a decommissioning plan should be included in any application for exploration and development and should form a specific part of the initial approval conditions (clause 118). Failure to submit a decommissioning plan should prevent a license from being issued. The decommissioning plan should be kept current with any changes corrected in respect to new internationally accepted and correct practice. The amended of the decommissioning plan should not be left to the preserve of the licensee, because this could be abuse. Other stakeholders should be involved in the review/ critique of the proposed amendments.

A Decommission Fund should be constituted at the establishment of petroleum exploration and production facilities and contribution into the decommissioning fund should commence from the day of licensing and continue through the life of the project (clause 119), according to a schedule and amounts determined in the consent conditions; according to levels of impact and decommissioning costs anticipated. In addition, at all times, the amount deposited should be sufficient to enable clear up of any impacts which have occurred to date, particularly to ensure that early termination of license does not allow this clause to be negated. An appropriate percentage should be taken annually. The minimum percentages should be stipulated in the bill.

Clause 121(10) of the draft bill states that “*Where any amount remains in the decommissioning fund after the decommissioning plan has been implemented then such funds shall be treated as profit generated under the terms and conditions of the license and applicable law.*” This seems alright, however:

- Any disposal of decommissioned facilities should follow the Public Procurement and Disposal Act (PPDA) guidelines;
- Any transfer of previously decommissioned facilities for onward use by another investor should use the investment law and guidelines;
- Liabilities and size of fines in this section are not adequate as a deterrent. Criminal liability must be considered in respect of offenses. Clause 124 (3) calls for joint and several liability for all financial obligations. This must be universal requirement for all provisions within the Bill;
- The takeover of facilities once costs have been fully recovered, while it is advantageous to government, is not normally an acceptable clause [i.e. clause 126, subsections (1) & (3)] to oil companies. This is likely to be contested by the oil companies. It has the effect of tempting governments to take over oil investments once oil companies have recovered their costs or for whatever other reason considered justifiable by government. It also has the effect of tempting oil companies to inflate operational costs, under-declare oil production and undermine their initiative (drive) to make a reasonable profit. This clause may discourage investment and would be seen as a disguised ploy to nationalize oil investments. This section needs to be more carefully analyzed.

3.8. PART VIII – STATE PARTICIPATION AND NATIONAL CONTENT

Clause 127(1) of the draft bill states that “*The Government may participate in petroleum activities under this Act through a specified share of a licence, permit or contract granted under this Act and in the joint venture established by a joint operating agreement in accordance with the licence and this Act.*” However, state participation in petroleum activities should specify the institution that shall participate in such agreements. If this institution is to be the NOC, then its mandate and function needs to be specified as such under this operation. This clause also means that the government will also have exploration, production and marketing liabilities. These are potential avenues for revenue loss by government. If the government can achieve its goals through taxation, service contracts and other controls, it may prefer not to have these liabilities.

Clause 129 under “Training requirements to be included in a licence” of the draft bill (*Refer Text Box 8*) provide for training of local employees of the licensee, maximizing knowledge transfer to and employment of Ugandans.

Text Box 8

129. Training requirements to be included in a licence

- (1) A licence shall include a clearly defined training programme for the local employees of the licensee, which may be carried out in or outside Uganda and may include scholarships and other financial support for education.
- (2) A licence shall include, a commitment by the licensee to maximise knowledge transfer to Ugandans and to establish in Uganda management and technical capabilities and any necessary facilities for technical work, including the interpretation of data.
- (3) Every licensee shall pay an annual training, research and development fee prescribed by regulations.

130. Training and employment of Ugandans

- (1) The licensee shall, within twelve months after the grant of a licence, and on each subsequent anniversary of that grant, submit to the Minister for approval, a detailed programme for recruitment and training of Ugandans.
- (2) The programme shall provide for the training of Ugandans in all phases of petroleum operations.
- (3) Where a programme under subsection (1) or a scholarship proposed to be awarded under this section has been approved by the Minister, it may not be varied without the permission of the Minister.
- (4) Every licensee shall pay an annual training, research and development fee prescribed by regulations.
- (5) The licensee shall submit to the Minister a report on the execution of the programme under this section.
- (6) The licensee shall give preference to the employment of Ugandans with the requisite qualifications, competence and experience required to perform the work.

This requirement of the licensee is critical for the development of local technical knowledge, capacity and integrating local content into the industry. However, the training and research programmes that the licensees should contribute to or set up should not be cost-recoverable. This could form part of CSR, that is non-cost recoverable. Otherwise, the funds should be paid to the Ministry of Education for proper dispersal on government approved training courses.

3.9. PART IX - USE OF LICENCE AS SECURITY

Clause 131 (2) states: “*The Minister may, in special circumstances, permit the financing to include activities not related to the licence*”. The “special circumstances” under which the Minister can permit the financing to include activities not related to the license need to be spelt-out clearly. Also, the activities that can be permitted under these circumstances need to

be defined clearly. Otherwise, the clause accords the Minister a lot of influence on the companies' leverage to access funds, can result in introduction of activities not entirely related to the overall purpose of the license and is a recipe for corruption and political influence pedaling.

3.10. PART X - LIABILITY FOR DAMAGE DUE TO POLLUTION

This section of the draft bill defines pollution and pollution damage (clause 132), describes the application of the liability (clause 133) and allocation (clauses 134 & 135) and claim (clauses 136, 137 & 138) of liabilities. However, liability for damage needs to be coordinated with the environmental laws and consideration should be given to inserting it only in the environmental laws, which should operate independently under its own ministry.

The term "pollution damage" (clause 132) is defined in the draft bill as "*damage or loss caused by pollution as a consequence of effluence or discharge of petroleum from a facility including a well*". While the term "pollution" is defined as "*any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause a contravention of any condition, limitation or restriction which is subject to a licence under this Act.*"

The definition of "pollution" and "pollution damage" needs to be all encompassing. It should mean: Any damage or loss, both long term and short term, including future livelihood, caused, arising out of, or resulting from pollution as a consequence of, or arising out of or resulting from, any effluence or discharge or waste of petroleum or gas or any bi-product or any material used in, from or by a facility including a well. Other definitions in this section also need to ensure that they specifically include both direct and indirect impacts.

Under clause 133 under "Application of Part" of the draft bill provides for liability for pollution damage from a facility when the damage occurs in Uganda or affects a Ugandan vessel or a Uganda facility in adjacent areas. It states that "*The Minister may, notwithstanding the provisions of this Act, by agreement with a foreign state, issue rules relating to liability for pollution damage caused by petroleum activities under this Act*" and that the rules made under this section shall not restrict the right to compensation according to this Act in respect of any injured party under Ugandan jurisdiction.

The term "in adjacent areas" is ambiguous and improper as all impacts should be included and where they occur is irrelevant. This is important because pollution impacts may be migratory and traverse many national boundaries. It is, therefore, necessary to clarify the term to mean national and trans-boundary pollution. This will allow pollution affected (likely to be affected) nationals and neighbouring states to negotiate and stipulate the terms for pollution damage compensation.

This also calls for a Refundable Pollution Fund to be established to meet the claims for pollution damage compensation under the legal provision. Specific funds should be

deposited annually to cater for any pollution damage under the Polluter Pays Principle enshrined in other national laws. In the event that the costs to be paid more than exceed the pollution fund saving, then additional funds shall be taken from the polluter. Refunding should be on the basis that no pollution has occurred by the end of the license.

Clause 134 talks of liable parties and extent of liability (*Refer Text box 9*). It needs to be clarified that any parent companies, as well as the licensee should be strictly liable for all direct and indirect pollution damage, without regard to fault. The licensee shall have the burden of proof beyond reasonable doubt that a matter does not constitute pollution damage and for the avoidance of doubt, any matter that has been determined to constitute pollution damage in any jurisdiction of the world shall constitute pollution damage in Uganda (or alternatively specific reference can be made to other jurisdictions). It must also be clear that whether there are one or more licensees, all management and directors can be held responsible for negligence or irresponsibility, as they are jointly and severally liable (likewise with compensation payments and note that interest should be charged on overdue amounts).

The demonstration of inevitable events of nature, exercise of public authority and similar force majeure as sufficient to reduce liability is very risky (*clause 134, subsection 5*). This should be far better clarified. Operators should be well aware of the likelihood of inevitable acts of nature and can plan for them through better technology and prevention mechanisms. This lack of liability should only be for totally unpredictable and unforeseeable acts of nature (i.e. those that have not historically occurred, nor are considered likely to occur within the lifetime of the facilities in this area). Thus, this would not include flooding, earth tremors and movements, change of course or volume of water bodies. Proof of insurance against these acts should be part of the application for license.

Liability is said in the draft bill to be regardless of fault (*clause 135 & 136*), which is correct (*Refer Text Box 9*). However, damages and penalties should be stated and these should be severe and appropriate and include for criminal penalties.

Clause 136 (1) states that “Liability of a licensee for pollution damage may only be claimed in accordance with this Act” (*Refer Text Box 9*). However, we recommend that this claim be also under the jurisdiction of environmental, health and safety laws.

The draft bill states that liability for pollution damage cannot be claimed against any person who has performed tasks in connection with petroleum activities, or manufactured equipment (*Refer Text box 9*). This should be removed as all parties should be responsible for their actions.

Text Box 9

134. Liable party and extent of liability

- 1) The licensee is liable for pollution damage without regard to fault.
- 2) Where there are several licensees under one licence and one of them is the operator, claims for compensation shall initially be directed to the operator.
- 3) Where any part of the compensation is left unpaid on the due date by the operator, it shall be paid by the licensees in accordance with their participating interest in the licence.
- 4) Where there are several licensees and one of them fails to pay its share of the compensation, the amount due shall be allocated proportionately between the other licensees.
- 5) Where it is demonstrated that an inevitable event of nature, act of war, exercise of public authority or a similar force majeure event has contributed to a considerable degree to the damage or its extent under circumstances which are beyond the control of the liable party, the liability may be reduced to the extent it is reasonable, with particular consideration to-
 - a) The scope of the activity;
 - b) The situation of the party that has sustained the damage; and
 - c) The opportunity for taking out insurance on both sides.
- 6) Where the pollution damage is from a facility located in an area outside Uganda, the party who has approval from the competent authority to conduct the activities to which the facility is connected is regarded to be a licensee.

135. Liability to be regardless of fault

- (1) Where pollution damage occurs in a petroleum activity and the activity has been conducted without a licence, the party that conducted the petroleum activity is liable for the damage, regardless of fault.
- (2) The same liability rests on any other person who has taken part in the petroleum activity, and who knew, or should have known, that the activity was conducted without a licence.

136. Claiming of damages

- (1) Liability of a licensee for pollution damage may only be claimed in accordance with this Act.
- (2) Liability for pollution damage cannot be claimed against-
 - a) any person who by agreement with a licensee or his contractors has performed tasks or work in connection with petroleum activities;
 - b) any person who has manufactured or delivered equipment to be used in petroleum activities;
 - c) any person who undertakes measures to avert or limit pollution damage, or to save life or rescue values which have been endangered in connection with the petroleum activities, unless the measures are performed in conflict with prohibitions imposed by a public authority or are performed by a person other than a public authority regardless of express prohibition by the operator or the owner of the values threatened;
 - d) Any person employed by a licensee or by a person referred to in paragraphs (a), (b) or (c).
- (3) Where a licensee has been ordered to pay compensation for pollution damage, but fails to pay within the time stipulated by the judgment, the party that has sustained damage may bring action against the party that has caused the damage to the same extent as the licensee may bring an action for recourse against the party causing the damage.
- (4) A licensee may claim compensation from the party causing pollution damage to the licensee to the same extent as the licensee may bring action for recourse against the party causing the damage.

3.11. PART XI – SURFACE AND SUBSURFACE RIGHTS AND COMPENSATION

Clause 139 (v) of the draft bill under “Restrictions and Rights of others” states that “*where the consent of the landowner is unreasonably withheld, the Minister may authorise the licensee to exercise all or any of the rights under the licence on the land subject to such conditions as the Minister may deem fit*” (Refer Text Box 10) This goes against the Constitution of the Republic of Uganda (1995). The Constitution Article 237(2a) and the Land Act 1998 provide clear grounds on which government can acquire land from the people of Uganda. Article 237(2a) states “*Government or local government may, subject to*

Article 26 of the constitution, acquire land in public interest and the conditions governing such acquisition shall be as prescribed by Parliament.” Article 26(2) further states that “no person shall be compulsorily deprived property or any interest in or right over property of any description except where a) the taking possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health.”

Text Box 10:

139. Restrictions and rights of others

(1) A licensee shall not exercise any right under a licence:

- a) without the written consent of the relevant authority, upon any land dedicated or set apart for a public purpose or for a place of burial, or upon land over which a right for mineral exploration, mine or a right to cultural site has been granted;
- b) without the written consent of the land owner-
 - i. upon any land which is the site of or which is within two hundred metres of any inhabited, occupied or temporarily unoccupied house or building;
 - ii. within fifty metres of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or on which agricultural crops are growing;
 - iii. upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or upon any land which is the site of or which is within one hundred metres of any cattle dip-tank, dam or water used by human being or cattle,;
 - iv. where the consent of the land owner is unreasonably withheld, the Minister may authorise the licensee to exercise all or any of the rights under the licence on the land subject to such conditions as the Minister may deem fit;
- c) in a national park or wildlife reserve without the written authority of the Uganda Wildlife Authority;
- d) in a forest reserve without the written consent of the National Forestry Authority;
- e) upon any land reserved for the purposes of a railway track or within fifty metres of any railway track, without the written consent of the railway administration concerned;
- f) upon any land within, or within two hundred metres of, the boundaries of any township, without the written consent of the local authority concerned;
- g) upon any street, road, public place or aerodrome without the written consent of the Minister or other authority having control of the street, road, public place or aerodrome;
- h) in fish breeding areas without the written consent from the department responsible for fisheries.

Oil and gas investments do not fall under the listed conditions that would warrant compulsory land-take. Article 26(2b) of the constitution further states that “*the compulsory taking possession or acquisition of property is made under a law which make provision for i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and ii) a right of access to a court of law by any person who has interest or right over the property.*” Therefore, oil companies do not have the right to compulsorily take land from people, displace them or restrict a landowner from erecting any building or structure on the land as intimated in Clause 140(2) of the draft bill.

The distances stipulated in clause 139 (b) of the draft bill should be reviewed and may not be adequate to ensure safety (*Ref to Text Box 10*).

Clause 139 (c) to (h) restrict the licensees’ from exercising any right in national parks or wildlife reserves, forest reserves, upon any land reserved for railway track, upon any land that is 200metres from the boundary of any township, upon any street, road, public place or aerodrome and fish breeding sites without written consent from the relevant authority (*Refer Text Box 10*). We recommend that access to National Parks, forest reserves, fish breeding sites and close to townships should be prohibited – consent should only be given after a

public hearing, and in case of the company ensuring public safety and no net loss of biodiversity.

Clause 143: Compensation for Disturbance or Rights, etc provides a framework for a licensee to pay a landowner “*fair and reasonable compensation for any disturbance of his or her rights and for any damage done to the surface of the land due to exploration or development operations*” (Ref Text Box 11). The meaning of “fair and reasonable compensation” needs to be clearly defined. In addition, the clause suggests monetary payments as compensations, which is more likely than not to disenfranchise the affected people or communities.

Text Box 11

143. Compensation for disturbance of rights, etc

(1) A licensee shall, on demand being made by a land owner, pay the land owner fair and reasonable compensation for any disturbance of his or her rights and for any damage done to the surface of the land due to exploration or development operations, and shall, at the demand of the owner of any crops, trees, buildings or works damaged during the course of the operations, pay compensation for the damage; but-

- a) payment of rent to or compensation to a land owner for termination of his or her occupancy under section 133 shall be deemed to be adequate compensation for deprivation of the use of the land to which the rent or compensation relates;
- b) in assessing compensation payable under this section, account shall be taken of any improvements effected by the licensee or by the licensee’s predecessor in title, the benefit of which has or will ensure to the land owner; and
- c) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage occurred has been reduced by reason of the damage, but without taking into account any enhanced value due to the presence of petroleum.

(2) Where the licensee fails to pay compensation under this section, or if the land owner of any land is dissatisfied with any compensation offered, the dispute shall be determined by law.

Any compensation to be offered to the affected households or communities should be fair and adequate as the constitution provides (Article 26, 2b). Ideally, it should not be monetary, but one that will ensure peoples’ livelihoods is not lost and is as they originally were or better. It would be better that the compensation involve land-for-land, house-for-house, etc. Also, the use of this land stipulated in clause 139 (b) by resident communities should be allowed during petroleum operations, unless if it is proved to interfere with the petroleum activities, should it be prohibited. Otherwise, even the prohibition should result in compensation of the affected people or communities for denied access to their lands. In India, landowners are now being given a share of profits for commercial activities on, or affecting the use of, their land.

Economic and social costs of relocation (displacement or involuntary resettlement) should be included in the compensation. Any health impacts arising from the petroleum operations or involuntary displacement must also be compensated. Compensation should include the value of land itself and its future value to the community should also be considered. Rates of compensation should be based on market rates. Cultural and heritage sites should be included in any calculation of compensation, with the Department of Museums and Antiquities consulted as to the local or national value of such sites.

If there are disputes over compensation, any delay in resolving the disputes should necessitate the developer not having access to the land, until the matter is settled to the satisfaction of all parties. This is important to prevent legal disputes, which may take years to be resolved and ensures that the company does not bypass this clause. Often times, community members lack sufficient funds to pursue legal cases in court. Therefore, a court or *pro bono* arrangement needs to be put in place to assist affected communities pursue legal cases with the companies to its logical conclusion.

3.12. PART XII – HEALTH AND SAFETY

This section in the draft bill provides for petroleum activities to be conducted in a manner that enables high level of health and safety (Clause 144). It stipulates the need to identify the hazards and risks associated with petroleum exploration and exploitation activities and precautions to be undertaken i.e. safety precautions (clause 145), general requirement for emergency preparedness (clause 146), emergency preparedness against deliberate attacks (clause 147), safety zones (clause 148), suspension of petroleum activities (clause 149), requirement to submit safety documentation (clause 150), qualifications of persons involved in petroleum activities (clause 151) and constituting a commission of inquiry concerning a serious accident (clause 152) in accordance to the Commissions of Inquiry Act.

The draft Bill accords licensees' the obligation to prevent exposure of persons to hazards "*as far as reasonably practicable*" (clause 144). These standards are unclear and not adequate. What is reasonably practicable? Uganda should be employing the highest international standards for the health and safety of its people. The loss of life in Texas caused by British Petroleum (BP) was considered at the time to be according to "reasonably practicable standards". Is this the example, Uganda should emulate? There are now much higher standards in use internationally that should be integrated in the draft bill.

Clause 146(1) under "General requirements for emergency preparedness" in the draft bill states that "*A licensee and any other participant in petroleum activities shall, at all times maintain efficient emergency preparedness with a view to dealing with accidents and emergencies which may lead to loss of life or personal injury, pollution or major damage to property*". This clause should not only call for "efficient emergency preparedness", but also preparedness sufficient to deal with all foreseeable risks. A general clause like this has proven inadequate in most parts of the world, including the United States of America. Therefore, more specific standards need to be set forth for the various risks.

Clause 148 in the draft bill provides conditions for safety zones (*Text Box 12*). While it is correct to establish safety zones surrounding every facility carrying out petroleum activities (*Text Box 12*); the need to extend the safety zones stipulated in clauses 148(2) should not prejudice or violate other laws. First and foremost, the need to extend the safety zone should not arise, since it is assumed that during the establishment of the facility, the issue of accidents and emergencies would have been considered. This clause could result in superfluous encroachment of community land in the name of expanding the safety zone.

Text Box 12

148. Safety zones

- (1) There shall be a safety zone surrounding every facility carrying out petroleum activities, unless otherwise determined by the Authority.
- (2) The Authority may in cases of accidents and emergencies, establish or extend the safety zones under subsection (1).
- (3) The extent of zones referred to in subsections (1) and (2) shall be determined by the Authority except that where a safety zone extends across the border line with another state, the Authority shall consult the Minister.
- (4) The Authority may direct that –
 - a) a zone corresponding to the safety zone shall be established in reasonable time before the placing of facilities as mentioned in subsection (1); or
 - b) There shall be a safety zone around and above abandoned or dumped facilities, or parts of the facilities.
- (5) Unauthorized vessels, vehicles, crafts, fishing gear or other objects shall not be present in zones mentioned in subsections (1), (2), (3) and (4).

Clause 149(2) of the draft bill states that “*Where special circumstances exist, the Minister may order that petroleum activities be suspended to the extent necessary, or may impose particular conditions to allow continuation of the activities*”. This statement is rather vague. The “special circumstances” and “particular conditions” need to be explicitly defined/specified i.e. under what circumstances would Minister Order petroleum activities to be suspended or what conditions would allow the continuation of petroleum activities?

We recommend that in addition to the clauses on health and safety incorporated, a clause stipulating the company’s duty to communicate potentials risks and hazards to affected communities should be included.

3.13. PART XIII - INFORMATION AND DOCUMENTATION

This section in the draft bill attempts to provide a framework for information disclosure (*Refer Text Box 13*). However, there are number of contradictions and redundant provisions.

For example, while the draft bill attempts to be in conformity with the Access to Information Act 2005, the confidentiality clauses in the bill that states that “*all data submitted to the Government by a licensee shall be kept confidential and shall not be reproduced or disclosed to third parties by any party under this Act except- a) in the case of disclosure by the licensee, with the prior written consent of the Government; or b) in the case of disclosure by the Government prior to the relinquishment of the area to which they relate, with the prior written consent of licensee*” is a contradiction to the Constitution of Uganda Article 41(1) which states that “*Every citizen has a right of access to information in possess of the state or any other organ or agency of the state except where release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person*”. This provision is further enshrined in the Access to information Act 2005 that states that “*This access to information is not affected by any reason the person gives for requesting access or the Information Officer’s belief as to what the person’s reasons are for requesting access*” (Article 6: Access to Information Act, 2005).

Text Box 13:**156. Availability of information to the public**

(1) The Minister shall, subject to confidentiality of the data and commercial interests, and in accordance with the Access to Information Act, 2005, make available to the public-

- a) details of all agreements, licences and any amendments to the licences or agreements whether or not terminated or valid;
- b) details of exemptions from, or variations or suspensions of, the conditions of a licence;
- c) licences;
- d) the approved field development plan; and
- e) All assignments and other approved arrangements in respect of the licence.

(2) The information referred to in subsection (1) shall be available to any person upon payment of the required fee, as prescribed by regulations.

158. Confidentiality of data

(1) Except as provided under this Act and the Access to Information Act, 2005, all data submitted to the Government by a licensee shall be kept confidential and shall not be reproduced or disclosed to third parties by any party under this Act except-

- a) in the case of disclosure by the licensee, with the prior written consent of the Government; or
- b) in the case of disclosure by the Government prior to the relinquishment of the area to which they relate, with the prior written consent of licensee.

(2) Consent under subsection (1) (a) and (b) shall not be unreasonably withheld or delayed.

(3) The provisions of subsection (1) shall not prevent disclosure by a licensee -

- a) to a licensee to an affiliated company, its home Government or any department, agency or instrumentality by law;
- b) to a recognised stock exchange on which shares of the licensee or its affiliated companies are traded;
- c) to financial institutions and professional advisers and arbitrators and experts appointed under this Act;
- d) to a bona fide prospective assignees of a participating interest;
- e) to a corporation with which the licensee is conducting bona fide negotiations directed towards a merger or consolidation, upon fifteen days prior written notice to the Government identifying the parties to which disclosure will be made.

In addition, the back and forth transfer of responsibility between government and the licensee in clause 158 to offer consent for disclosure stifles information disclosure. This is further complicated by Articles 28, 30, 31, 32, 33, 35 and 36 of the Access to information Act 2005. These are Articles that are likely to be cited by both government and oil & gas industry to justify the denial for information disclosure, despite the fact that Article 41 of the Access to information Act 2005 places “the burden proof” on the government information officers to prove that they are complying with the law. The impression created by the Access to Information Act and therefore the emerging petroleum law is that the only information that cannot be readily disclosed is that held under a) Cabinet records and its committees; b) records of court proceedings before the conclusion of the case.

In addition, the requirement for a payment in order to access information negates the spirit of information disclosure, especially when the amount to be paid is not clearly stipulated in this draft bill and the Access to Information Act (2005) and its associated regulations. The requirement for a payment could be used to institute payments that would be prohibitive and unaffordable to the general public as a means of stifling disclosure.

The fact that the draft bill accords the licensee liberty to disclose information to an affiliated company, home government, stock exchange and corporation seeking a merger with the company [clause 158 (3)], but cannot disclose within the host country, undermines the

intention of national laws³ and government of preventing information disclosure, because such information is usually public information in the home country of the company. From these sources, it is possible to make the information available locally, thus making clause 158 (1), (2) & (4) in the draft petroleum bill redundant. This also applies to clause 165 under Part XVI “Offences” of the draft bill.

The following parts of the draft bill XIV - Recovery of Payment, XV - Coordination of cross-boundary Petroleum Activities, XVI – Offences, XVII – Miscellaneous Offenses, and XVIII – Transitional were not found to be exceedingly contentious, because their revision is dependent on the revision of the preceding sections critiqued. Therefore, the researcher did not labour much to contend them.

4.0. RECOMMENDATIONS

- The Petroleum (Exploration, Development, Production and Value Addition) bill, 2010 also referred to as the “Resource Management Bill” needs to be split into distinct parts, or into more manageable and defined bills;
- There is a need to refer to the protected area laws and other national laws directly or indirectly affecting the oil & gas industry which should be reviewed to incorporate extractive industry in general and oil and gas specifically;
- There is need for a definition interpreting “**the Republic of Uganda**” to mean the people of Uganda;
- There is need for a rights and obligations’ section that, in addition to the rights and obligations of government and industry, it stipulates the rights and obligations of the citizens in their individual and collective capacities and state how these rights and obligations will be protected;
- There is need to include in the “agreements with government” checks and balances in awarding contracts and ensure agreement are subject to public scrutiny. It is also necessary to include in this section as much or more detail as is contained in the previous Petroleum (Exploration and Production) Act (1985).
- It is important that provisions relating to licenses, consents or approvals in other Ugandan Laws are applicable to the proposed Petroleum (Exploration, Development, Production and Value Addition) law. This should apply unless otherwise warranted by another Act or international law or agreement with a foreign state.
- The draft bill should have distinct sections clearly defining the relationships, roles and responsibilities of the different institutions involved in the industry or have a completely different bill that deals with the issues of petroleum management institution and their structures.

³ . Access to Information Act 2005 and the emerging Petroleum law.

- The draft bill accords the Minister responsible for petroleum unchecked power to license and create oil regulations. This creates the potential for ineffectiveness and conflict of interest. This power has to be nipped and controlled.
- In respect to royalty payments we recommend that the principles for negotiation should be prescribed by the bill and not only in the agreements (PSAs). In addition, the principles enshrined in the oil & gas policy should be reiterated in the emerging petroleum (resource & revenue management laws).
- If the pricing committee mentioned in clause 117 of the draft bill is absolutely necessary, it should first be integrated in the bill and its composition clearly defined. Its role should not be to control market prices, but rather to advise government and industry on whether or not to keep a reserve, hoard or release petroleum products into the market to influence the prices.

5.0. CONCLUSION

The draft petroleum (exploration, development, production & value addition) bill, although it has some good provisions, it is also riddled with gaps, contradictions and ambiguity as cited above. There are contradictions and vagueness in other national laws that by default are being reflected in this emerging law. It is, therefore, important that the lacunae and bad elements of the emerging law are purged. It is for this reason that we are contributing our analysis and opinions on the emerging petroleum law.

We appreciate the Ministry of Energy and Mineral Development for reaching out to us civil society, among other stakeholders to provide comments on the draft petroleum bill. However, we would appreciate, if this consultation could be extended to include host and community based organizations, project-affected (directly or indirectly) communities, local government officials, the academia, cultural and spiritual institution and local leaders this Bill progresses through parliament. This consultation should be culturally appropriate and should include necessary interpretation and translation.

We would be very grateful, if the Ministry could also consider the inclusion of our suggestions and comments in the final drafting.

REFERENCES

1. Income Tax Act, Cap. 340.
2. Patrick Corcoran on April 18, 2011: Despite Whistleblowers, Energy Companies Cheat U.S. on Royalties. <http://www.fairwarning.org/2011/04/despite-whistleblowers-energy-companies-cheat-u-s-on-royalties/>
3. Petroleum (exploration, development, production and value addition) draft bill May 2010, Government of Uganda
4. Registration of Titles Act, Cap. 230.
5. The Access to Information Act 2005
6. The Company's Act Cap 110
7. The Constitution of the Republic of Uganda 1995.
8. The Land Act 1995 and Amended Land Act 2010
9. The Mining Act 2003.