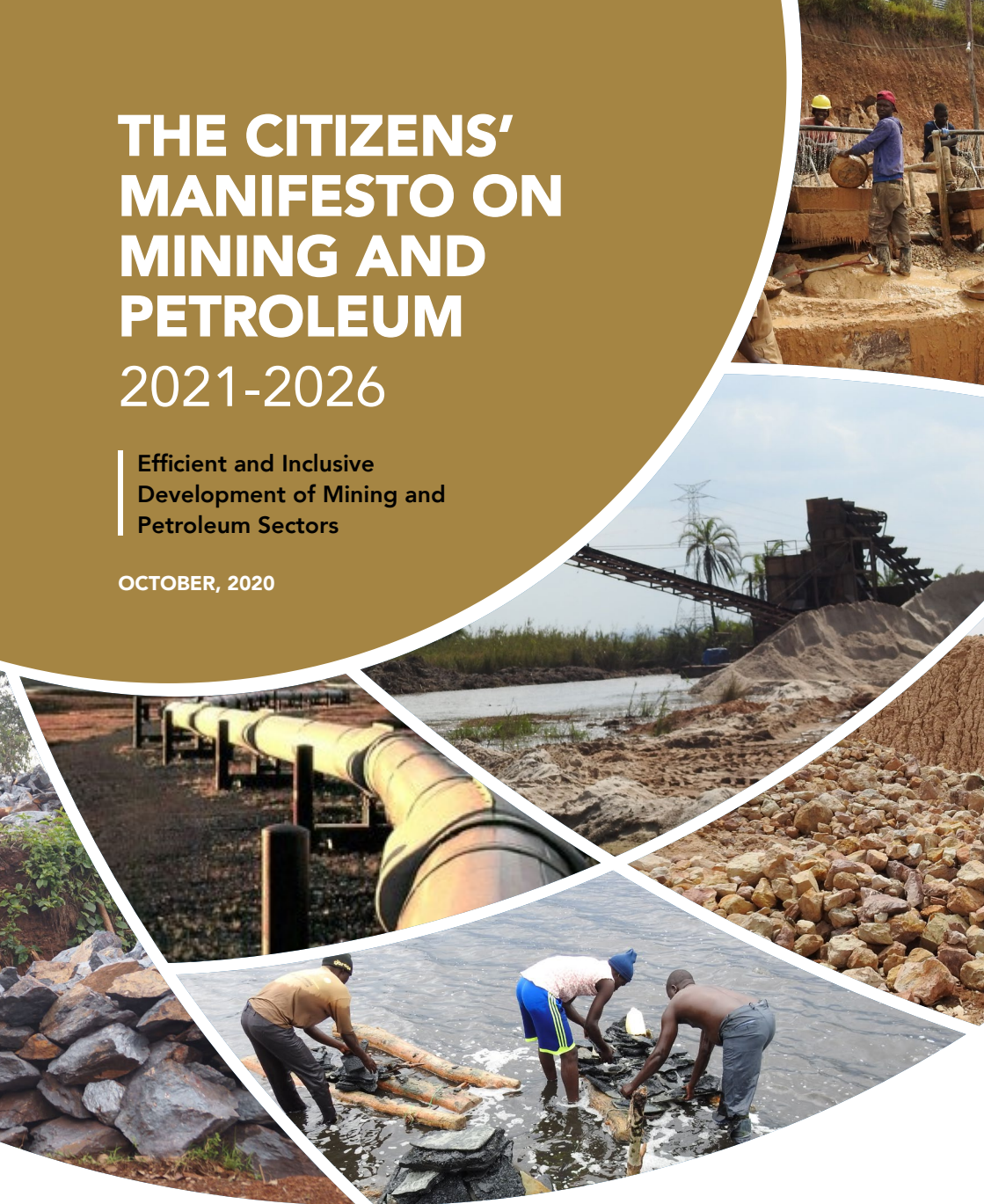


# THE CITIZENS' MANIFESTO ON MINING AND PETROLEUM 2021-2026

Efficient and Inclusive  
Development of Mining and  
Petroleum Sectors

OCTOBER, 2020



## **Acknowledgement**

Publish What You Pay Uganda (PWYP-U), Oxfam in Uganda, Action Aid International Uganda, Africa Centre for Energy and Mineral Policy (ACEMP) and Centre for Social and Environmental Rights (CSER) would like to thank the Uganda Association of Artisanal and Small scale Miners (UGAASM) as well as the different community representatives from the Albertine Region who provided invaluable input during the consultative processes.

We would also like to thank the Democratic Governance Facility (DGF) and the Finland Ministry of Foreign Affairs (through the Publish What You Pay International Secretariat) for their financial support to this process.

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## Abbreviations and Acronyms

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<b>AAIU</b>	Action Aid International Uganda
<b>ACEMP</b>	Africa Centre for Energy and Mineral Policy
<b>AGRC</b>	Albertine Graben Refinery Consortium
<b>ASMs</b>	Artisanal and Small-Scale Miners
<b>BCF</b>	Billion Standard Cubic Feet
<b>CDA</b>	Community Development Agreement
<b>CGT</b>	Capital Gains Tax
<b>CGV</b>	Chief Government Valuer
<b>COMESA</b>	Common Market for East and Southern Africa
<b>CPF</b>	Central Provident Fund
<b>CSO</b>	Civil Society Organisation
<b>CSER</b>	Centre for Social and Environmental Rights
<b>DGSM</b>	Directorate of Geological Survey and Mines
<b>DTAs</b>	Double Taxation Agreements
<b>EACOP</b>	East African Crude Oil Pipeline Project
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EV</b>	Electric Vehicle
<b>FID</b>	Final Investment Decision
<b>GDP</b>	Gross Domestic Product
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>IOC</b>	International Oil Company
<b>MEMD</b>	Ministry of Energy and Mineral Development
<b>MoFPED</b>	Ministry of Finance Planning and Economic Development
<b>MPU</b>	Mineral Production in Uganda
<b>MSME</b>	Micro, Small and Medium Enterprise
<b>NDP III</b>	National Development Plan III
<b>NOGP</b>	National Oil and Gas Policy
<b>OAG</b>	Office of the Auditor General
<b>OECD</b>	Organisation for Economic Co-operation and Development

<b>PAP</b>	Project Affected Persons
<b>PAU</b>	Petroleum Authority Uganda
<b>PFMA</b>	Public Finance Management Act
<b>PROBICOU</b>	Pro-Biodiversity Conservationists in Uganda
<b>PSA</b>	Product Sharing Agreement
<b>PRIR</b>	Petroleum Revenue Investment Reserve
<b>PWYP-U</b>	Publish What You Pay Uganda
<b>RCM</b>	Regional Certification Mechanism
<b>R&amp;D</b>	Research and Development
<b>UGX</b>	Uganda Shillings
<b>UNOC</b>	Uganda National Oil Company Limited
<b>URA</b>	Uganda Revenue Authority
<b>USD</b>	United States Dollars
<b>UWEP</b>	Uganda Women Entrepreneurs' Programme

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## Executive Summary

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This manifesto is a compilation of citizens' voices. It is a concerted appeal by Ugandans to the next cohort of political leaders in the 2021-2026 political cycle to strive to ensure that development and management of petroleum and mining industry resources is fair, just, inclusive and sustainable.

This manifesto has been developed by the combined efforts of Publish What You Pay Uganda (PWYP-U), Action Aid International Uganda, Africa Centre for Energy and Mineral Policy (ACEMP), Centre for Social and Environmental Rights (CSER), Pro-Biodiversity Conservationists in Uganda (PROBICOU) and Oxfam in Uganda.

These organisations conducted extensive consultations in the petroleum and mineral bearing areas of Uganda and documented the issues that Ugandans would like the country's political leadership in the next political cycle to address. This manifesto also includes national level issues that were jointly identified by the Civil Society Organisations mentioned above that need to be addressed urgently in order to guarantee that proceeds from exploitation of petroleum and mineral resources benefit all Ugandans.

The manifesto targets all the operational political parties in Uganda and their candidates, as well as independent candidates who are vying for any of the following three major political offices: The Presidency, Members of Parliament and District Chairpersons. We believe that these three categories of leaders are in position to consider and implement the recommendations that are contained in this document at central and local government level.

Political parties are well positioned to address some of the biggest challenges associated with resource wealth, such as inflated citizen expectations, political short-termism and conflict.

We are aware that some political parties and candidates may have already developed their manifestos in preparation for the upcoming political campaigns. This manifesto merely intends to supplement those parties' or candidates' manifestos and offer more grounded alternatives in order for them to make realistic and practical commitments to their electorates.

We believe that the petroleum and mining industry is a critical area and every

political leader that aspires to serve in public office must commit to improve its performance given its potential to transform the lives of citizens at a large scale.

This manifesto representing citizens' voices from across petroleum and mineral rich areas is presented into three parts: Part One presents the issues and recommendations relating to the mining sector; Part Two is in regard to the petroleum industry and lastly, Part Three presents salient cross cutting issues, i.e. relating to both petroleum and mining, along with their accompanying recommendations. The recommendations and or proposed policy principles and policy commitments in this manifesto are summarized below:

### A. The Mining Industry

- Political leaders should stop political interference in the mining sector and establish a one stop centre for all mineral investments coming into the country.
- Regulate and where necessary, avoid tax holidays that are harmful and leading to revenue erosion in the mining sector.
- Cancel and reclaim all non-performing licences.
- Expedite review of the Mining Act 2003 to provide for open bidding with a sealed bid process and a decision made against an established criterion, such that the best bidder is granted mining rights.
- Allocate adequate financial and human resources for due diligence in the mining industry, to ensure that only technically and financially competent applicants are considered for mineral licences.
- For avoidance of conflict of interest, public servants and politicians should be barred from owning mining rights and/or be required to declare beneficial interest where these exist.
- Medium to large scale companies should be required by law to set up apprenticeship/internship programs for youth skilling, integration and employment within the company.
- Review duration of location licenses to extend them beyond the current two years.
- Decentralize and empower local governments to license artisanal and small-scale operations including operations for all development minerals.



- The medium to large scale mining companies should be required by law, to enter into Community Development Agreements (CDAs) with the host communities such that they supply the required goods and services so as to benefit from the resources within their community.
- Establish an ASMs Fund to provide affordable funding to ASM value chains.
- Reinstate the 5% royalty on gold mined within Uganda and 1% royalty on gold imported within the country.
- Adhere to and implement the Regional Certification Mechanism (RCM) as per ICGLR guidelines and ensure effective implementation of EITI.
- Local Governments in partnership with mining companies should establish weigh-bridges within their districts to take stock of all bulk minerals exiting their borders for purpose of verifying declarations by the companies and the royalties due to districts, communities and land owners
- A Minerals Enforcement Agency be created under the Mining and Minerals Act and adequately trained under the guidance of DGSM. It should be clearly answerable to the DGSM leadership.
- Undertake an Investigation into allegations of illegal mining, corruption, human rights violations, abuse of office among others by the Police Minerals Protection Unit against miners, license holders, mineral traders and exporters among others.
- Set up regional marketing centres and Minerals (e.g. for Gold) banking system/ mechanisms.

## **B. Petroleum Industry**

- Enact a stand-alone Petroleum Revenue Management law or put in place Petroleum Revenue Management Regulations to effectively manage petroleum revenues.
- Review sections 62-68 of the Public Finance Management Act, 2015 (PFMA) to remove restrictions on savings under the Petroleum Revenue Investment Reserve to only be invested outside the country.
- Amend the PFMA to provide a financing model for the Uganda National Oil Company (UNOC).

- Strengthen section 58 of PFMA by making it explicit that money flowing to the annual budget cannot be collateralized.
- Review PFMA, 2015 and adopt fiscal rule for Petroleum Fund withdrawals.
- Amend the Petroleum (Exploration, Development and Production) Act 2013 to include Parliamentary oversight on the recoverable costs and provide for technical oversight during negotiation and signing of PSAs.
- There is need to skill Uganda's negotiation teams and get external technical support. Hire negotiators with expanse of experience and a clean track record.
- Continuously strengthen capacities of relevant staff so as to improve their knowledge and understanding of key fiscal issues in the sector to reduce the existing loopholes.
- Develop a disclosure regime that makes contracts and associated documents easy to find, search, and use. This should include publication of electronic copies of contracts online with paper-based options available to the public.
- Review the Production Sharing Agreements (PSAs) to remove confidentiality clauses to ensure that the new PSAs do not contain the confidentiality clauses.
- Expedite the re-negotiation of existing harmful Double Taxation Agreements (DTAs) and undertake proper negotiations and due-diligence before signing new DTAs.
- Make it mandatory to publish all the reports on the oil-in-kind received by UNOC in a disaggregated manner indicating the source and time of receipt.

### C. Cross Cutting Issues

- Expedite the implementation of the National Content Act, 2020.
- Operationalize the National Content Development Fund and ring fence at least 30 percent of the Fund to youth enterprises.
- Facilitate the provision of gender focused Personal Protective Equipment (PPEs).
- Procure modern waste management equipment including standard Incinerators.

- Build the capacity of mining and petroleum host communities in the management of waste.
- Operationalize the ASM fund as provided for in the Mining and Minerals Policy, 2018.
- Establish specialized public Vocational, Business and Technical Training Institutions to support skills enhancement.
- Develop Community Development Agreements (CDAs) between mining companies and host communities to allow for supply of goods and services.
- Promote participation of women in extractives' sector activities.
- Mineral rights holders should be held liable for any contributions to social and environmental harm. The rights holder should pay appropriate compensation not only for certain disturbances, but any disturbance or negative environmental impact caused by mining operations.<sup>1</sup>
- Establish a Special Tribunal to hear and resolve disputes related to access to land and surface rights in mining and petroleum operations.
- Meet commitments under health, safety and environmental global and regional agreements and adopt adequate regulatory frameworks at the national level.

## Conclusion

We hope that this manifesto can be put to good use by any political party or candidate aspiring for political office in the forthcoming 2021 elections. We hope that it can guide political parties' or candidates' approach to unlocking the potential of Uganda's extractives sector. Beyond the political campaign period, we urge Uganda's next political leaders (2021-26) to use this manifesto to guide their policy formulation and resource allocation towards the extractives sector. After all, this manifesto represents the voices of Ugandans.

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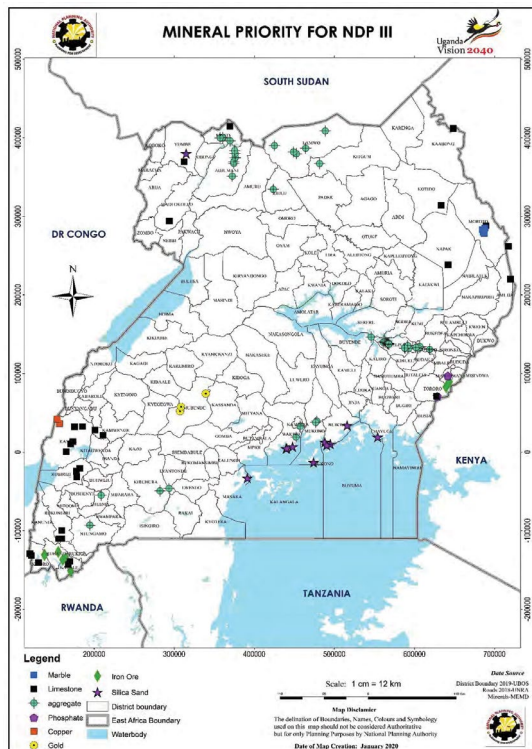
<sup>1</sup> For guidance, see Section 87 of the Zambia Minerals Act which outlines a mineral rights holder's liability for harm or damage caused by operations including harm or damage caused to the environment, biological diversity, human and animal health and socio-economic conditions.

## PART ONE

# THE MINING SECTOR

### 1.0. Overview

Uganda has a favourable geological environment that hosts over 27 commercially exploitable mineral resources (See Figure 1). The mining sector has great potential of contributing to economic growth and poverty alleviation through mineral exports, local consumption, manufacturing, employment generation and diversification of the economy. Exploitation of minerals and materials will provide vital resources needed to fund the backlog of infrastructure investments and addressing Uganda's core macro-economic aspirations. The sector is projected to be a major driver in employment creation and GDP growth over the medium term mainly through value addition.



Source: National Planning Authority

The mining sector contributed as much as 30% of Uganda's GDP in the early 1950s, sunk to around 6% in the 1970s and was lower than 0.5% in 2010. It has recovered marginally since then, but remains quite insignificant in its contribution to the country's GDP. This weak performance is attributed to inadequate legal, institutional and policy framework, human resource constraints, unregulated artisanal and small-scale mining activities, inability to access international markets due to restrictive mineral traceability requirements and OECD and ICGLR standards, shrinking exploration funding from investors and a failure to access capital financing from local and regional commercial banks, among others. The government can sort out these challenges politically through political and financial commitments.

## **1.2 Key opportunities in the mining sector**

Uganda's mining sector sustains about 2 million people directly and indirectly<sup>2</sup> through formal and artisanal and small-scale mining operations. Artisanal mining accounts for more than 90% of metallic, industrial and building minerals production in the country.<sup>3</sup>

Uganda occupies a strategic position in East Africa, which gives it the advantage to export mineral products to South Sudan, the Democratic Republic of Congo, Rwanda, Burundi, Kenya, Tanzania and the wider COMESA region.

Uganda is blessed with some of the so-called 'battery minerals' - a group of minerals and metals from which key components in the manufacture of batteries are derived. These include Nickel, Cobalt, Copper and others. The ongoing Electric Vehicle (EV) revolution has caused huge demand for these minerals, fuelled by an increasing shift by the developed world towards green technologies.

Uganda has considerable Cobalt and Copper reserves in the Kasese area, as well as parts of Eastern and Northern Uganda. According to Bloomberg, the battery market will be worth 160 billion dollars by 2030. In fact, before the deadly Corona Virus struck, the price of Copper had been projected to rise by 60 percent to \$10,000 per tonne by 2025. Other projections saw the demand for Copper steadily rising by 2.3 percent for the next 20 years!

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2 Ministry of Finance, Planning and Economic Development; Budget Monitoring and Accountability Unit, Briefing Paper 2019

3 Bagabo, P., Mugenyi, O., Magara, S., and Twebaze, P., Contract Transparency in Uganda's Petroleum and Mining Sectors, Kampala: ACODE Policy Research Paper Series No.94, 2019 accessed on <https://www.acode-u.org/uploadedFiles/PRS94.pdf>

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*A stone quarry operated by Sajapa Technical Works in Lira District (PLEXII, 2020)*

As a potential producer, Uganda can, from the onset, enforce a minimum value addition rule or even go further and set up a production line for just one or two battery components. Miners and exporters will always argue that refining metals domestically is costly due to the high production costs, especially of electricity, but this is a deficit the Government can creatively fix.

Meanwhile, Uganda's construction sector continues to grow at an average of 6% per annum, gradually increasing the demand for sand, clay, limestone, marble, kaolin, stone aggregate<sup>4,5</sup> and other building materials or minerals. Agriculture, which provides a source of livelihood for 65% of Uganda's labour force<sup>6</sup> and

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4 Cathy Nyakecho, Directorate of Geological Survey and Mines, presentation to UNDP.

5 Hinton, J. (2009) National Strategy for the Advancement of Artisanal and Small-Scale Mining in Uganda, Report to Ministry of Energy and Mineral Development (MEMD), 144p.

6 UBOS (2017). Uganda National Household Survey. [http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/UNHS\\_VI\\_2017\\_Version\\_I\\_%2027th\\_September\\_2017.pdf](http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/UNHS_VI_2017_Version_I_%2027th_September_2017.pdf)

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constitutes 26% of the GDP,<sup>7</sup> will increasingly call for a range of agro-mineral inputs, such as phosphates, vermiculite and lime which are needed to enhance production, counter depleting soil fertility and maintain food security<sup>8</sup>.

Exploitation of Development Minerals (construction minerals and materials) in Uganda is largely done by artisanal and small-scale miners. Their activities sustain close to two million Ugandans across various value chains.

Development Minerals are essential to meeting demands of both the rapidly growing population and public infrastructure investments. Sectors such as plastics production, pharmaceuticals and oil-well drilling all rely on mineral inputs including salt, kaolin and bentonite, respectively.

However, commercial mining of Development Minerals especially sand, murram, clay and rocks (stones) has for a long time been unregulated. This was because of the exclusion of these materials from the definition of minerals in the Constitution. According to Article 244(5), the definition of “mineral” does not include clay, murram, sand or any stone commonly used for building or similar purposes.

As a result, the country continues to lose billions of shillings in taxes from unregulated exploitation of Development Minerals. Billions of shillings have also been lost to road constructors billing government for access to these materials only to pay a fraction of the same to unsuspecting landowners. In some cases, projects have been delayed as mining speculators, with the aid of lawyers, increase the cost of road and other infrastructural developments by demanding for hefty compensations for rocks and stones.

### **1.3. Sector Issues, Challenges and Recommendations**

Uganda’s 3<sup>rd</sup> National Development Plan (NDP 2020/21-2024/25) seeks to reduce the volume and value of imported iron and steel as well as inorganic fertilisers; increase the volume and value of refined gold exports and copper; increase investment into the exploration and processing of selected minerals; and ultimately create more jobs in the mining sub-sector. For the Government to achieve its aspirations in the NDP III, the following key issues should be addressed:

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7 Deloitte (2106). Uganda Economic Outlook 2016, The Story Behind the Numbers, 15p. <https://www2.deloitte.com/content/dam/.../Economic%20Outlook%202016%20UG.pdf>

8 UNDP, 2018: Baseline Assessment of Development Minerals in Uganda Volume 1

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### i) Rent-seeking

Rent-seeking occurs when an investing entity influences a Government so that it can be given special benefits at the expense of the country's citizens i.e. without creating any benefits or wealth to society. The mining sector is specifically vulnerable to rent-seeking due to the large initial capital investment by the developers; the supposed perception that the investing entity will eventually inject a lot of capital back into the economy as the mining project progresses; and weak government regulation. Rent-seeking undermines a resource-rich country's potential to maximise benefits from the exploitation of its mineral resources because it leads to inefficient allocation of resources and lost government revenue.

#### Recommendations:

- (a) Stop political interference in the mining industry and establish a one stop centre for all mineral investments coming into the country, located in the mother ministry- Ministry of Energy and Mineral Development (MEMD).
- (b) Regulate and where necessary, avoid tax holidays that are harmful and leading to revenue loss in the mining industry.

### ii) Passive Speculation

Passive speculation refers to title holders who apply for licenses with the intention of selling them later and, in the meantime, retain the licences without engaging in significant mining activities, thereby impeding development of the mining industry. Speculators pose as investors, fulfil the necessary requirements of the law to acquire mining concessions (Location, Exploration or Mining Licences) but with the sole purpose of vending the license to the highest bidder. These speculators sit on the license for years, in search of a buyer who can carry out actual mining. Speculation is not only locking away a huge chunk of the country's mineral potential, but it also discourages serious investors because of the exorbitant cost the investor must incur to acquire the license from the speculator.

While the Directorate of Geological Survey and Mines (DGSM) conducts due diligence on all mining companies applying for mining licences in the mining industry, it remains limited by resources to carryout conclusive due diligence and provide reports on every applicant. In most cases, it has been found that people without the required capacity have taken up the mineral rights. They sometimes



cannot utilise them and have left the exploitation of such minerals redundant. Cadastral management may be needed to decrease the negative effects of speculation, mainly by setting conditions for the validity of mineral licences.

#### **Recommendations:**

- (a)** Institute a mechanism to implement annual minimum investment requirements or minimum work obligations for mineral rights holders who apply for licenses.
- (b)** All non-performing licenses be cancelled and reclaimed by Government.
- (c)** Allocate adequate financial and human resources for due diligence in the mining industry to ensure that only technically and financially competent applicants are considered for mineral licences.
- (d)** Conduct open bidding with a sealed bid process and a decision made against an established criterion, such that the best bidder is granted mining rights.
- (e)** For avoidance of conflict of interest, public servants and politicians should be barred from owning mining rights and/or be required to declare beneficial interests.

### **iii) Technical Skills Development**

There is a lot of wastage of time, financial resources and effort especially by artisanal miners in their mining operations because their activities are not geologically informed. They rely on guesswork and end up investing money and resources in mining operations that are not productive. They also do not have the capacity to collect and interpret geological information of the areas where they work.

Many of the artisanal miners lack skills in proper mining techniques that are safe, productive and environmentally friendly. Gold miners in particular process their ores near swamps, rivers and streams using mercury, with the wastewater eventually ending up in nearby fresh water sources which can cause dire consequences to human life and biodiversity.

In addition, small scale mining companies face a challenge finding qualified and skilled manpower in the various aspects of the mineral value chain. Most of the skilled manpower are concentrated within DGSM.



*Gold miners at Katenga mining site in Buhweju washing gold ore using sluice boxes (PLEXII, 2018)*

### Recommendations:

- (a) Conduct a skills gap assessment study to ascertain the available and required skills in the mining industry in the country. From the study, DGSM should develop a database of available and missing skills in the country.
- (b) Recruit geologists and other technical staff including mining engineers to provide extension services to artisanal miners. These may include acquiring and interpreting geological information and technical trainings in mine planning, construction and management.
- (c) Publish available geological information in local languages and ensure it is easily accessible by artisanal and small-scale miners.
- (d) Invest in human capital through higher education, technical trainings and support, apprenticeship/internships, skilling and certification and transferable skills development.
- (e) Medium to large scale companies should be required by law to set up apprenticeship/internship programs for youth skilling, integration and employment within the company.

#### iv) Establish a stable, predictable and accessible mineral licensing framework

Currently, the Government follows the “first-come first-served” rule to grant mineral licenses. Due to limited geological information, the Government is limited to adopting an open-door, first-come, first-served licensing procedure, or to engage in direct negotiation with a limited number of interested applicants. This lack of information increases the risk for the companies and often makes it less likely that there would be enough bidders to foster strong competition.

In some cases, companies or individuals without the required capacity have taken up the mineral rights because they came first. Consequently, they have been unable to carry out the exploitation of such minerals, causing the Government to lose revenues that would be generated from the mining operations.

The current licensing regime also does not favour artisanal and small-scale miners mainly for two reasons. First, the lowest level of a mining license i.e. the location licence is costly to acquire with strict requirements for documentation, work plans and bank statements. Secondly, the location license is awarded for a period of two years, after which one must go through the same costly and lengthy renewal process to obtain a new licence. Moreover, the involvement of Local Government officials in the licensing process, who could help in background checking and establishing facts on the ground, is very minimal.

#### Recommendations:

- (a) Review the duration of location licenses to extend them beyond the current two years to 10 or 15 years (renewable).
- (b) All non-performing mining leases should be cancelled and readvertised for potential investors through a competitive process.
- (c) Ensure proper enforcement of exploration licences through consistent monitoring and forfeiture for non-compliance by licence holders.
- (d) Decentralise and empower local governments to licence artisanal and small-scale operations including all Development Minerals.
- (e) Review threshold mining licence issuance mandates. The Minister of Energy and Mineral Development should only issue licences for exploitation of strategic minerals and large mineral projects accompanied by Mineral Development Agreements; while the Director/Commissioner DGSM should be authorized to licence all other medium to large scale mining licences.

## v) Access to finance

Access to financing is a stumbling block to the development of the mining industry in the country, especially for artisanal and small-scale miners. Uganda's formal micro-finance and commercial banking sector has not taken steps to deliberately understand the mining sector and explore ways in which they can be supported with affordable financing. Unfortunately, Government-backed financing programs have also not taken steps to deliberately target artisanal and small scale miners as well as other players in the sub sector.

Although the government established a financing program to support local Micro, Small and Medium Enterprises (MSMEs) to invest in mineral development activities and provide the required services, the same MSMEs lack the required collateral to access these resources. They are therefore limited by financial resources to even provide the required goods and services to the mining companies.

Yet, the reality is that moving towards safe, scalable and equitable benefits for marginalized and mining-dependent communities requires capital and resources. This would enable artisanal and small-scale miners to invest in technologies that eliminate wasteful mining practices, increase their efficiency and productivity and ultimately lead to a creation of economically bankable and viable small and medium-sized enterprises.

### Recommendations:

- (a) Include small scale miners in the group of MSMEs that are eligible to access financing from on-going and future government financing programs.
- (b) The medium to large scale mining companies should be required by law, to enter into Community Development Agreements (CDAs) with the host communities to enable them supply the required goods and services, so as to benefit from the resources within their community.
- (c) Establish an ASMs Fund to provide affordable funding to ASM value chains.
- (d) Provide capacity building, financial literacy and technical support programs to ASMs and sector actors to enhance their capacity to access financing.



*An abandoned weigh bridge in an iron ore mining area in Kabale District. (PLEXII, 2019)*

#### vi) Address challenges in revenue generation and collection

According to the Office of the Auditor General's (OAG) report of 2019, the Ministry of Energy and Mineral Development collected UGX 10,503,398,902 in respect of mining royalties. However, a review of reports from the Customs and Excise Department of Uganda Revenue Authority (URA) indicated that Government should have collected UGX 70,193,258,898, in royalties, using the applicable rate of 5% from gold, tantalum and tungsten. The following weaknesses in the assessment of royalties are noted;

- The Ministry relies on declarations from the mining companies in form of monthly production returns, which are not independently verified.
- There is no permanent presence of Government Mines Inspectors to confirm production figures declared which creates a potential risk of under declaration of production by mining entities.
- The MEMD has not set up weighbridges on the major routes where bulky and expensive minerals such as pozzolana, limestone and other metals are transported.
- There is lack of coordination between the various Government institutions, and the failure to share the collected data. As a result, the Ministry of Energy and Mineral Development can not to institute a proper verification mechanism.

- Failure by the Local Governments to track or collect revenues from the exploitation of Development Minerals.

Meanwhile, the financing of DGSM remains inadequate. The Directorate received only UGX 263 million in the FY2018/2019, which slightly increased to UGX 663 million for FY2019/2020 and FY2020/2021. Consequently, the department was unable to recruit enough staff especially mine site inspectors to monitor production volumes at different mine sites across the country which leaves a huge gap in determining the amount of mineral ores produced and consequently affecting revenue collection from royalties by Government.

### Recommendations:

- (a) Reinstate the 5% royalty on gold mined within Uganda and 1% royalty on gold imported into the country.
- (b) The Ministry of Energy and Mineral Development should address all the weaknesses in the assessment and collection of royalties from the mining industry.
- (c) Adhere to and implement Regional Certification Mechanisms (RCM) as per ICGLR guidelines and ensure effective implementation of EITI.
- (d) Support the MEMD should urgently recruit and deploy enough mine site inspectors to track volumes of mineral production.
- (e) Expedite the review of the Mining Act, 2003 to provide for the regulation of the exploitation of Development Minerals and subsequent collection of the resultant revenues.
- (f) Support Local Governments to establish weighbridges in partnership with mining companies within their districts to take stock of all bulk minerals exiting their borders for purpose of verifying declarations by the companies and the royalties due to districts, communities and landowners.
- (g) Amend the Public Finance Management Act, 2015 to cater for the fiscal collection and management of mineral revenues alongside petroleum revenues.

## **vii) Overhaul the Police Minerals Protection Unit**

There have been consistent reports against the Police Minerals Protection Unit (PMPU) accusing them of extortion, human rights violations, corruption and other injustices. This Unit is not adequately performing its role of supporting the enforcement mandate of DGSM. The Unit is not answerable to the MEMD and appears more focused on enriching themselves at the expense of artisanal mining communities and the country.

### **Recommendations:**

- (a)** A Minerals Enforcement Agency be created under the Mining and Minerals Bill, 2019. It should be adequately trained and placed under the guidance and supervision of DGSM.
- (b)** Undertake an investigation into allegations of illegal mining, corruption, human rights violations, abuse of office among others by the Minerals Protection Unit against miners, license holders, mineral traders and exporters, among others.

## **viii) Set up regional marketing centres**

The draft Mining and Minerals Bill, 2019 proposes the establishment of mineral buying and auctioning centres across the country. This will guarantee artisanal and small-scale miners transparent and competitive selling prices and, to their advantage, cut out the middlemen who buy their minerals at prices much lower than the market price. The mineral buying and auctioning centres will ensure that the taxes and revenue realized from the mining sector will be collected by the responsible authorities, in the process minimizing current revenue leakages. Similarly, the government needs to establish a Minerals Banking System for precious minerals like Gold.

### **Recommendations:**

- (a)** Establish mechanisms and expedite the setting up of Minerals Buying and Auctioning Centres.
- (b)** Set up mechanisms to establish a Minerals Banking System especially for gold managed and controlled by the Central Bank through the establishment of gold banking centres in all the gold mining regions of Uganda.



## PETROLEUM (OIL & GAS) INDUSTRY

### 2.0. Overview

Uganda is a resource rich country with an estimated 6.5 billion barrels of oil, of which 1.4 to 1.7 billion barrels is recoverable<sup>9</sup>. The country has also discovered 500 billion cubic feet of natural gas<sup>10</sup>. With less than 40% of the Albertine Graben explored, total reserves are expected to increase with further licensing and exploration of the remaining 60% of the Graben. Figure 2 shows the petroleum fields in Uganda.

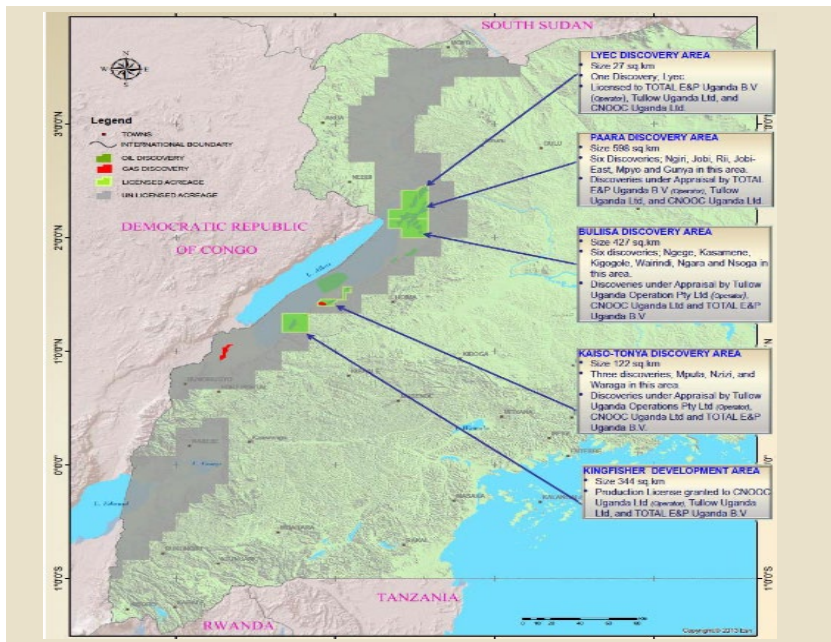


Figure 2: Petroleum Fields & Occurrences in Uganda.

Source: Ministry of Energy and Mineral Development, Uganda.



The Lake Albert Development Project is projected to produce about 230,000 barrels of oil per day for a period of 20-30 years<sup>11</sup>. So far, 21 discoveries have been made, of which, 9 production licenses have been issued. In order to increase its petroleum resources, in 2017, Government completed the first competitive licencing round in which three exploration licences were awarded. The second international open bidding licensing round for five blocks in the Albertine Graben is also underway. These blocks are Avivi (1026 Sq.Km); Omuka (750 Sq. Km); Kasuruban (1285 Sq. Km); Turaco (635 Sq. Km) and Ngaji (1230 Sq. Km).<sup>12</sup>

As Uganda nears the production and development phase, Government has embarked on the construction of key infrastructure including the Hoima International Airport and different oil roads.

Acquisition of land for the construction of the 1,443 Km, 24-inch heated East African Crude Oil Pipeline (EACOP) from Hoima in Uganda to Tanga in Tanzania is in progress. Of this, 296 Kms of the pipeline will be within Uganda.

Government has also signed the Project Framework Agreement (PFA) for the oil refinery project, which includes a 211 Km multi- products pipeline from Kabaale in Hoima to Namwambula in Mpigi that was signed between Government and the Albertine Graben Refinery Consortium (AGRC) in April 2018. However, all these projects await the Final Investment Decision (FID) that is expected by the end of 2020.

The planned Hoima refinery is expected to produce 30,000 barrels per day on commissioning to reach a maximum production of 60,000 barrels per day in subsequent phases. The production phase, expected to cost about US\$20 billion, presents a huge opportunity for Ugandans through local content.

Sustainable Development of petroleum resources by attaining equitable value is expected to spur economic growth and development for the country, through creation of employment, technology transfer and business opportunities.

As Uganda readies for FID, it will require a well-designed and properly administered fiscal regime. This should determine how the petroleum revenues are shared between the Government on behalf of citizens and the International Oil Companies (IOCs) who are the providers of capital, technology, and expertise in the petroleum sector.

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11 <https://eprcug.org/press-media/eprc-in-the-news/595-why-oil-prices-may-increase-in-2018-and-implications-for-uganda>

12 [www.uiogs.com/licensing-round:view](http://www.uiogs.com/licensing-round:view) 30th October, 2020, @8:40 am.

## **2.1. Petroleum policy, legal and Institutional framework**

Under the Constitution, minerals and petroleum resources are vested in the Government on behalf of the citizens of Uganda. Besides the Constitution, the petroleum industry in Uganda is governed by many laws and policies including but not limited to; The National Oil and Gas Policy 2008; The Petroleum Revenue Management Policy, 2012; Petroleum (Exploration, Development and Production) Act, 2013, Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act, 2013 and the Public Finance Management Act, 2015, among others.

These laws and policies define what amounts to petroleum revenues and the way petroleum revenues are collected, appropriated and accounted for. The aforementioned laws also create institutions charged with different mandates such as the Petroleum Authority of Uganda (PAU), the Directorate of Petroleum in the Ministry of Energy and Mineral Development and the Uganda National Oil Company (UNOC).

However, the institutional and regulatory environment in the petroleum industry remains weak and prone to abuse, which creates a significant risk for the industry.

## **2.2. Petroleum Revenue Management**

Government revenues from the petroleum industry include royalties, profit oil share, income generated through state participation, taxes, bonuses, duties, among others. The Public Finance Management Act, 2015 ring fences petroleum revenues to finance infrastructure and development projects to support other productive sectors of the economy such as agriculture, tourism, manufacturing, education etc.

The ring fencing of petroleum revenues is meant to ensure that benefits from the industry are shared with the entire population and its impacts are felt even after the resource has been depleted. Part VIII of the Public Finance Management Act 2015, particularly sections 55-75, provide clarity on how petroleum revenues are collected and invested to support development.

The effective implementation of this legislation is crucial in avoiding revenue loss and financial mismanagement, but also in ensuring that the industry contributes to the country's social economic growth and development.

## **2.3. Critical challenges in the Petroleum Industry**

The development of the petroleum industry has come along with several governance

issues such as fiscal management of royalties from petroleum, reimbursements of royalties to cultural institutions and Local Governments and environmental management since petroleum is found in ecologically sensitive areas.

Uganda can pick a lesson from other successful petroleum producing countries on how best to handle the petroleum industry. The critical lessons include: a widely shared commitment to stability and growth; a capable and empowered cadre of technical advisers and specialists; strong social constituencies able to moderate and inform political debate; and widespread popular buy-in to spending priorities.

#### **2.4. Key opportunities in the petroleum industry**

Uganda plans to commercialize her petroleum resources through use of crude for gas and power generation, construction of a refinery and a crude oil export pipeline. These plans require key infrastructure projects such as construction of an international airport at Kabaale in Hoima, construction of the East African Crude Oil Pipeline Project (EACOP), construction of multi-purpose product pipeline, roads, feeder pipelines, etc.



All these infrastructure projects present enormous opportunities for Ugandans to partake. The petroleum industry is expected to create at least 160,000 jobs. These jobs are categorized into categories: the basic and entry level; trade and crafts; the technicians; as well as engineers and managers. The bulk of the jobs will be in the trade and crafts and the technicians' categories.

In addition to employment, the petroleum sector presents Ugandans with enormous business opportunities. The development and construction phase is expected to attract at least \$20 billion dollars in capital inflow as well as the attendant business opportunities. If responsibly managed, the petroleum industry has great potential to spur economic growth and lift millions of Ugandans out of poverty.

## ***2.5. Critical Issues, citizens' concerns and recommendations for the Petroleum Industry***

### ***(i) Weak and inadequate policy, legal and institutional frameworks***

Petroleum exploitation is still in infant stages. As such, the legal framework is still being tested and ultimately has loopholes which need to be addressed. For instance, though the Petroleum Revenue Management Policy, 2012 and Public Finance Management Act (PFMA), 2015, ring fence petroleum revenues to finance only infrastructure and development projects, the nature of infrastructure is not specified. This has created confusion on what should constitute infrastructure development given the fact that it is a wide concept.

Part VIII of PFMA contains provisions for the management of petroleum revenues including how the revenues are collected, managed and invested. Though some these provisions are robust, some sections lack detail, while others are unclear. If ambiguities and loopholes are not addressed, it could pose a big challenge in operationalizing of the law and eventual revenue losses. Since 2015, no regulations have been made to streamline how petroleum revenues are managed.

Another loophole with the PFMA is that it does not provide for financing of UNOC. The issue of financing of UNOC has also been raised by the Office of Auditor General and other oversight authorities. This may undermine UNOC's mandate or it may end up consuming beyond the budget from the anticipated revenues it is supposed to generate.

The PFMA, 2015 also lacks a proper legal framework on how revenues generate by UNOC shall be managed, which exposes the collected revenues to mismanagement. The law focuses only on revenues from IOCs and is silent on revenues from UNOC.

## Recommendations:

- (a) Enact a stand-alone Petroleum Revenue Management Law as was done in Ghana<sup>13</sup> to effectively manage petroleum revenues for the benefit Ugandans.
- (b) In the alternative, expedite the enactment of Petroleum Revenue Management Regulations.
- (c) Amend the PFMA, 2015 to provide a financing model for UNOC to taking into consideration of the financing requirements and the sustainability of its mandate.
- (d) Review section 74 of the PFMA, 2015 to introduce a clause that provides for criminal liability of any government official who contravenes the section.
- (e) Review section 58 of the PFMA, 2015 to make it explicit that money flowing to the annual budget cannot be collateralized.

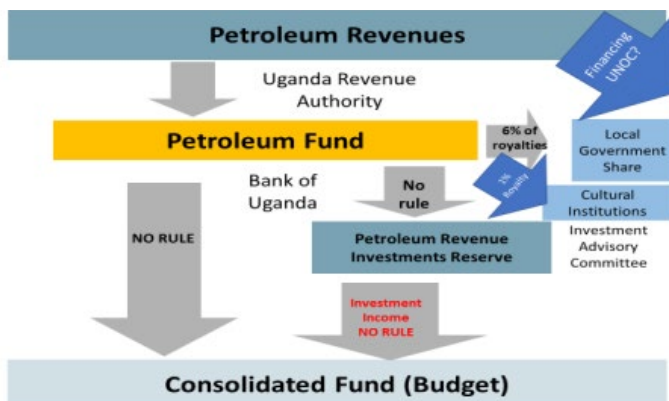
### (ii) Absence of a fiscal rule in the utilisation of the Petroleum Fund

Section 58 of PFMA, 2015 provides guidance on the withdrawal of funds from the Petroleum Fund. It requires that withdrawals from the Fund must be approved by an Appropriation Act of Parliament under the warrant of the Auditor General. Furthermore, this section guides that funds can only be withdrawn from the Petroleum Fund to either the Consolidated Fund or the Petroleum Revenue Investment Reserve (PRIR) for purposes of annual budget support or for investments, respectively.

However, there is not any form of cap or ceiling on how much should be transferred to the Consolidated Fund or Reserve Fund. This poses a risk of Parliament appropriating all the realised funds for budget support and thus depriving the future generations as illustrated below.

13

Pauline Anaman, John Darko (2018), Is Ghana's Petroleum Revenue Management Act (PRMA), 2011 (ACT 815) An Effective Public Finance Management Tool for Public Investment and Consumption Smoothing? Accra.



Source: Adopted and modified from Revenue Watch Institute (RWI), 2014

Section 58 further restricts the utilization of petroleum revenues and ring-fences the same for: investment in infrastructure and development projects if withdrawn for budget support; and, to the Petroleum Revenue Investment Reserve for investment. It has been, however, noted that to this date, Parliament has never allocated funds nor have the balances ever been transferred to the PRIR. The continued depletion of the Petroleum Fund without transfer to the PRIR poses a risk to the industry.

#### Recommendations:

- (a) Review the PFMA and adopt a fiscal rule for Petroleum Fund withdrawals.
- (b) The appropriation from Petroleum Fund should clarify on exact sources of funds transferred to the Uganda Consolidated Fund, and their purpose, and also clarify on the infrastructural projects to be financed by withdrawals from the Petroleum Fund.
- (c) Expand the scope of infrastructure development finance from the Petroleum Fund beyond roads and energy.

#### (iii) Lack of oversight and strict verification of recoverable costs

Under the various PSAs, International Oil Companies are entitled to recover costs incurred in undertaking petroleum activities. However, if not properly verified, there exists a high possibility of oil companies claiming costs that would not otherwise qualify either because they are ineligible, misallocated or inflated.

For instance, in 2016, the Auditor General rejected recoverable costs of up to UGX 290 billion as ineligible expenses of oil companies. Section 61 of the PFMA, 2015 requires the Minister to table before Parliament, the estimated petroleum revenue as well as semi-annual and annual reports on the performance of the Petroleum Fund with regard to; amount of revenue transferred to the Consolidated Fund; inflows and outflows of the Petroleum Fund; values and volume of petroleum produced and the source of funds. The gap lies in Parliament's lack oversight on recoverable costs. The Office of the Auditor General audits the recoverable costs and submits its report to Parliament though this happens after development plans have been approved and costs have been incurred by the oil companies.

#### **Recommendations:**

- (a)** Government should strengthen the audit and cost verification function. This will include adding oversight on the cost verification by PAU.
- (b)** Revise the Petroleum (Exploration, Development and Production Act), 2013 to include Parliamentary oversight on the recoverable costs. The ad hoc committee that approves oil development plans should report to Parliament before approving the plans.
- (c)** Ensure adequate cost control and monitoring to factor in time to disallow costs before they are incurred

#### **(iv) Inadequate negotiations skills and limited technical capacity of key institutions and individuals.**

The revenue streams provided for in various laws and PSAs include signature bonuses, royalties, profit oil, taxes as well as other non-tax revenues such as surface rents. The PSA signed with Tullow Oil in 2011 in respect to Exploration Area 2 provides a good example of a poorly negotiated agreement that almost cost the country a significant amount of revenue. Under clause 23.5 of this Agreement, the company was exempted by the Minister of Energy and Mineral Development (signing on behalf of the Government of Uganda) from payment of Capital Gains Tax. This led to loss of much needed revenue by the Government.

Another challenge relates to limited technical capacity of Uganda Revenue Authority (URA) and other relevant agencies to accurately assess and compute the correct tax obligations by IOCs. In the short run, measurable audit results very often come from limited scope audits concentrating on technical issues. Common adjustments are on Withholding Tax (WHT), Capital Gains, output pricing, categorization of costs,

finance costs and treatment of social expenditure. In all these examples, the scope for error very much depends on the legislation and limited technical expertise of the assessors.

#### **Recommendations:**

- (a) Enforce technical oversight during negotiation and signing of PSAs.
- (b) Update the Accounting Procedures to negotiate revisions to the Accounting Procedures for the existing PSAs to rid them of weaknesses in accounting procedures for ongoing contracts that could put government revenue at risk.
- (c) Skill Ugandan negotiation teams and also source qualified external technical support. Only negotiators with expanse of experience and a clean track record should be hired.
- (d) Continuously strengthen capacities of relevant petroleum sector staff so as to improve their knowledge and understanding of key fiscal issues in the sector to reduce the existing loopholes.

#### **(v) Weak contract transparency and disclosure**

Uganda adopted the PSA model, where the country signed contracts with IOCs for exploration, development and production of petroleum resources. However, these PSAs have deliberately been kept secret with less oversight from independent bodies like Parliament, civil society and the general public. The Agreements contain confidentiality clauses that prevent contract disclosures. This limits public scrutiny of the contracts and is an impediment to ensuring transparency and accountability in the petroleum sector.

#### **Recommendations:**

- (a) Develop a disclosure regime that makes contracts and associated documents easy to find, search, and use. This should include the publication of electronic copies of contracts online with paper-based options available to increase accessibility for communities lacking internet access.
- (b) Review the existing PSAs to remove confidentiality clauses and ensure that new PSAs do not contain confidentiality clauses as well.



## **(vi) Political interference in the technical aspects of petroleum management**

Government allocated different roles and responsibilities to various institutions PFMA, 2015, for the management of the Petroleum Fund. Specifically, the Uganda Revenue Authority is charged with the responsibility of collecting and depositing all oil revenues in the Petroleum Fund held at the Bank of Uganda.

The Uganda National Oil Company's mandate is to receive and record the petroleum funds received in form of petroleum as an asset of the Petroleum Fund. Sometimes institutions are by-passed while making critical decisions. For instance, it is reported that the recent (2019) CGT stalemate was resolved by the President and it is not clear whether the executive actions were guided by law or advice from the relevant institutions.

Political compromises raise red flags and negate effectiveness of the fiscal regime. This weakens the fiscal architecture when fiscal matters are negotiated and determined by politicians. It is a recipe for biased decisions that could cost Uganda enormous benefits from the petroleum sector.

### **Recommendation:**

- (a)** Institutional fiscal regime should be respected and applied indiscriminately as per the laws of Uganda.

## **(v) Harmful tax practices, tax crime and tax leakage**

World over, the petroleum industry is prone to harmful tax practices. Some of these practices include tax treaty shopping, where companies decide to incorporate or be headquartered in specific jurisdictions to take advantage of Double Taxation Treaties/Agreements.

For instance, Heritage Oil and Gas Ltd, one of the first international oil companies to operate in Uganda, claimed to be headquartered in Mauritius to avoid payment of Capital Gains Tax that accrued from the sale of its assets to Tullow. Such practices by IOCs that include waivers and exemptions, undeclared hedge funds, transfer pricing, tax fraud and aggressive tax planning, among others, result in a lot of revenue losses from the petroleum industry.

Such harmful tax practices all thrive in a climate of secrecy, inadequate legal frameworks, poor enforcement, and weak inter-agency co-operation. To overcome these activities requires greater transparency, more strategic intelligence gathering and improved efforts to harness the capacity of different government agencies to

work together to detect, deter and where necessary, prosecute offenders.

The Income Tax Act provides for transfer pricing provisions without paying due regard to aspects of transfer pricing applicable to petroleum activities. Whereas the Income Tax Act overrides the PSA, the existence of compensation provisions under the PSAs makes the tax law override an illusion. Both the Income Tax Act and PSAs are silent on the leasing aspect as applied in petroleum activities and yet such an important area needed to be jealously guarded as it has high potential of being used by the IOC to erode the taxable income by way of aggressive tax planning.

#### **Recommendations:**

- (a)** Expedite the re-negotiation of existing harmful double taxation agreements and undertake proper negotiations and due diligence before signing new DTAs.
- (b)** Strictly enforcement all tax laws to prevent loss of revenue.

#### **(vi) Strengthening implementation of EITI in Uganda**

In August 2020, Uganda formally joined the Extractive Industries Transparency Initiative (EITI). This requires Government and IOCs to disclose all agreements and contracts. Under the EITI framework, companies publish information on their payments to Government and the latter publishes its receipts from the companies. In turn, this is expected to enhance transparency and ensure oil revenues benefit the citizens. For proper implementation of EITI, there is need to review petroleum and mining laws to align them with EITI principles.

#### **Recommendations:**

- (a)** Review the PFMA to make it mandatory to report in a disaggregated manner on a project by project basis.
- (b)** Review PFMA to make it mandatory to publish all the reports on the oil-in-kind received by UNOC in a disaggregated manner indicating the source and time of receipt.

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## CROSS CUTTING ISSUES

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### 3.0. Introduction

This final part presents major issues that cut across both the mining and petroleum sectors in Uganda. These have been grouped under Human Rights, Gender and Social Inclusion; National Content and Participation; Access to Land; Health Safety and Environment Management; Research and Development; and Civil Society Participation.



*Photo: Courtesy of ActionAid International Uganda*

### **3.1. Practical Cross-Cutting Issues, Challenges affecting both the Mining and Petroleum industries and Recommendations.**

#### **(i) Human Rights, Gender and Social Inclusion**

Development of the petroleum and mining industry demands huge infrastructural developments, majorly land-based, which presents far reaching social economic implications on the livelihoods of host communities. In the petroleum industry, this has involved massive land acquisition for the East African Crude Oil Pipeline Project (EACOP), Central Processing Facilities (CPFs), feeder pipelines, roads, the refinery, etc.

Because most Ugandans depend on land for survival, such large-scale infrastructural developments create direct competition with land users resulting into tension and anxieties within communities. In some cases, this has sparked off land grabbing or delayed and unfair compensation, human rights violations, environmental degradation, disruption of social systems, pollution and others.

This is further exacerbated by limited community participation in decision making. It is important to note that the gender disparities in access to and control of land in the patriarchal system in Uganda, has positioned women and young people at the centre of such rights violations.

In the mining industry, structural barriers such as social, cultural and financial constraints continue to restrict women from full participation. In the mines, the nature of work women engages in, exposes them to dire working conditions and exploitation characterized by meagre pay, sexual harassment, unhealthy environments, domestic violence and exposure to hazardous substances such as mercury, among others.

Women therefore, bear a disproportionate share of social, economic, and environmental risks<sup>14</sup> involved in mining as compared to men. The mining industry is male dominated which pushes women to low-rated jobs, compromises their access to mineral rights and decision making foras.

Even with efforts to support women to acquire mineral rights, the huge capital investment required in terms of skilled labour, equipment and materials constrain their investments in the industry. This is in addition to the high mineral rights application costs, EIAs development and compliance costs on mitigation measures

for negative impacts and adherence to occupational safety and health rules. These costs and other barriers hinder women participation in the industry.

Though Uganda's National Gender Policy provides a framework for gender-sensitive development, this is yet to be achieved in the mining industry. There is also increasing child labour in the mines associated with health challenges, school dropouts, drug abuse and teenage pregnancies.

#### **Recommendations:**

- (a)** Enforce the Children Act as amended and ban children from working in the mines.
- (b)** Mining and petroleum industry actors should put in place and implement a zero-tolerance policy to violence against women amongst staff and ensure gender inclusion in contracts.
- (c)** Support miners/people involved in mining or petroleum operations to form trade unions to enhance collective bargaining.
- (d)** Promote mechanisms and systems to support petroleum and mining communities development.

#### **(ii) National Content and Participation**

The petroleum and mining industry present enormous opportunities for local content through employment and business opportunities such as provision/supply of goods and services among others.

However, many challenges continue to lock out many Ugandans particularly from the host communities. These include limited skills and competences, limited information, inadequate funds to take up the tenders and other business opportunities and inability to fulfil high standards set by the IOCs, among others.

To promote national participation, government enacted the Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016, among other laws. The National Content Regulations ring fence 16 categories of goods and services to be exclusively provided by Ugandans, Ugandan entities and companies. However, if the above challenges are not addressed, the good laws and regulations could easily remain on paper.

The degree to which these groups can benefit from the oil industry's social economic

opportunities is dependent on the development of targeted policies, institutions and programmes by both the public and private sectors.

### Recommendations:

- (a) Expedite the implementation of the National Content Act, 2020.
- (b) Petroleum Authority of Uganda (PAU) should strictly enforce the National Content Regulations, 2016 and ensure recruitment practices are aligned to the same.
- (c) Develop project-based Labour Management Plans (LMP) that ensure recruitment practices are aligned to National Content Regulations.
- (d) Develop project-based procurement and supply chain management plans that ensure capacity development, adherence to standards.
- (e) Operationalize the National Content Development Fund and ring fence at least 30 percent of the Fund to youth and women enterprises.
- (f) Operationalize the ASM Fund as provided for the Mining and Minerals Policy for Uganda, 2018
- (g) Establish specialized public Vocational, Business and Technical Training Institutions (BTNET) and provide scholarships and bursaries to scale up skills development.
- (h) Develop Community Development Agreements (CDA) model between mining companies and host communities to allow for supply of local goods and services.

### (iii) Access to Land

As stated above, infrastructure projects in petroleum and mining operations are land based and thus require large chunks of land. This creates conflicts between mineral rights holders who want to acquire surface rights for mining operations and landowners. The issue is exacerbated by the fact dispute and compensation mechanisms for surface rights provided for in the Mining Act, 2003 are insufficient.<sup>15</sup>

In the petroleum industry, land has remained a thorny issue over the years. Some

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15 Ministry of Energy and Mineral Development (2016), Final Edited Draft Green Paper on Minerals and Mining policy for Uganda, Kampala.

of the crucial land issues in the petroleum industry include unfair and delayed compensation, land grabbing fuelled by speculation, displacements, delays in resolving land disputes and many others. These have the potential to delay or even disrupt the progress of the sector.

A significant number of mineral leases on former public land now under the ownership of Local Governments and District Land Boards were awarded without due process. There was no negotiation for the acquisition of surface rights through compensation of local governments and creation of Lease Agreements over use of such land for mining projects. Access to land for mineral development has been a source of conflict between land owners and mineral rights owners due to lack of proper guidance on land acquisition for mineral development.

#### **Recommendations:**

- (a)** Establish a Special Tribunal to handle land-related conflicts arising out of petroleum and mining operations.
- (b)** Review the land laws to provide for personal liability of mineral rights holders for any contributions to social and environmental harm. The rights holder should pay appropriate compensation not only for certain disturbances, but any disturbance or negative environmental impact caused by mining operations if and when they arise.
- (c)** Undertake deliberate efforts to document customer land and issue customary landowners with Certificates of Customary Ownership (CCO).
- (d)** Review all Mining Leases currently on public land to establish circumstances under which these mining leases were granted and where, if it is discovered that due process was not followed, compel the license owners to compensate and enter proper lease agreements with Local Governments.

#### **(iv) Health, Safety and Environmental Management**

Mining and petroleum operations tend to come with health and safety challenges for the workers and can leave a heavy environmental footprint in the project areas. In the case of petroleum, poorly planned seismic tests and drilling activities, flaring of gas, oil spills throughout the entire supply chain and accidents can be highly pollutant, affecting land, water, biodiversity and air.

In mining, the most common negative environmental impacts include landscape alteration or degradation; and air, soil and water pollution especially with exposure to harmful chemicals such as mercury. The significance of these threats and risks cannot be overstated, and it is critical that the country enacts laws and policies that will ensure that these risks are minimized. Improving the environmental performance of the industry, including artisanal and small-scale mining, is vital to safeguarding human health and safety.

Though petroleum and mining operations require developers to conduct Environmental and Impact Assessments (EIAs), often, mitigation measures are never put in place or adhered to. The health, safety and environmental management challenges are further compounded by low levels of compliance monitoring, lack of performance bond frameworks, inadequate financial and human resources, etc.

#### **Recommendations:**

- (a)** Domesticate and implement international and regional conventions on health, safety and environment.
- (b)** Review the Mining Act, 2003 to introduce environmental bonds and/or decommissioning fund for mining operations.
- (c)** Provide adequate financial resources to National Environment Management Authority (NEMA), District Environment Officers and other environment related agencies to enable them execute their mandate.
- (d)** Small Scale, Medium and Large-scale companies should be compelled by law provide gender focused Personal Protective Equipment (PPEs).
- (e)** Strictly enforce the Polluter Pays Principle.
- (f)** Ban the use of mercury in gold mining.
- (g)** Procure modern waste management equipment including standard incinerators.

#### **(v) Weak investment in specialized petroleum and mining research and development**

Research and development world over is the backbone of the petroleum and mining industry. As exploration and production activities continue to expand, Uganda must establish beneficial and efficient regulations that will ensure the development of a strong local petroleum and mining industry.



The growing demand for innovation and the increasing technological challenges faced by the industry make it clear that fostering national investments in research and development is vital. Investments in research and development can stimulate technology development, increase competitiveness of the country in the global market and enhance partnerships between government and private investors.

#### **Recommendation:**

- (a)** Establish enabling laws and policies and provide adequate resources to support the establishment of demand driven mining and petroleum specific research, development and innovation initiatives and programmes.

#### **(vi) Limited civil society access to communities**

Despite the legal protection, civic space mainly for Civil Society Organizations (CSOs) in Uganda continues to shrink. This is due to the enactment of laws with claw-back clauses such as the Public Order Management Act (POMA), the Non-Governmental Organizations (NGO) Act, 2016 and the attendant regulations with unjustified restrictions and sanctions that interfere with the work of CSOs.

CSOs working on sensitive issues such as revenue transparency, land, governance and human rights increasingly face restrictions and threats from security agencies and other state actors because their work is perceived as promoting “foreign interests” or “sabotaging,” Government programmes. Provisions in POMA that require notifying police before any meeting, inhibit proper operation of CSOs.<sup>16</sup>

#### **Recommendations:**

- (a)** Repeal or amend laws that restrict Civil Society Organizations’ operations.
- (b)** Establish mechanisms and support to Civil Society Organizations to contribute to the design, content and implementation of petroleum, pro-poor mining sector development plans, policies and strategies.

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