

COUNTRY REPORT: UGANDA

Environmental Provisions in the New Oil Bills (2012)

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Introduction

In 2006, the Government of Uganda announced that there were commercial oil reserves in the Albertine Graben along the border between Uganda and the Democratic Republic of Congo. More discoveries have been made and the preparations are underway to exploit these oil resources. The Government of Uganda has tabled three Bills to regulate exploration, production, refining, processing and transportation. The three Bills are the *Petroleum (Exploration, Development and Production) Bill (2012)*, *Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Bill (2012)* and the *Public Finance Bill (2012)*. The Bills contain some environmental provisions.

Background to Oil Exploration and Production in Uganda

Exploration activities in Uganda are concentrated in the Albertine Graben, along the western border of Uganda and DRC. The Albertine Graben is one of the richest biodiversity hotspots in the world. Seven of the country's ten national parks and over 20 forest reserves are located in the Albertine Graben. The area is also home to internationally recognized water-bird species, the Murchison Falls-Alberta Delta Wetland System Ramsar site, and 53 species of fish.

The *National Oil and Gas Policy of Uganda (2008)* requires laws to operationalize the policy. As a result, the following three Bills have been drafted and presented to Parliament.

The Petroleum (Exploration, Development and Production) Act (2012)

The Bill provides that one of its purposes is to operationalize the *National Oil and Gas Policy of Uganda* by ensuring public safety and protection of public health and the environment in

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petroleum activities. Under section 4, the Bill requires compliance with environmental principles. Thus a licensee or a person who performs functions, duties or powers under the Bill is required to give effect to the environmental principles prescribed by the *National Environment Act* and other laws.

Section 5 of the Bill vests property in, and the control of, petroleum in the Republic of Uganda. Under section 6, petroleum activities are not to be conducted without an authorization, license, permit or approval. Section 4(3) empowers the National Environment Management Authority (NEMA), in consultation with the Petroleum Authority of Uganda (PAU), to grant a license for the management, production, transportation, storage or treatment of waste arising out of petroleum. A person is prohibited from carrying on any of the activities mentioned above without a license.

Part III of the Bill establishes institutions for managing petroleum activities. Under section 9, the Minister responsible for Petroleum Activities is empowered to grant and revoke licenses; and initiate, develop and implement oil and gas policy. Under section 10, the Bill establishes the Petroleum Authority of Uganda (PAU). Its functions are to enforce the requirements in a license or regulations; to protect the health and safety of workers and the public; to promote efficiency, economy and safety on the part of licensees; and to ensure the efficient and safe conduct of petroleum activities. The PAU is empowered to give to the licensee directions to ensure proper and optimal production of petroleum and to encourage best conservation practices. Section 18 establishes the Board of Directors of the PAU. One the members shall have experience in any of health, safety and environment matters.

Section 48 empowers the Minister to open up areas for petroleum activities. The Minister is required to ensure that an evaluation of preliminary geological, geophysical and geochemical data is conducted. An assessment has to 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. Section 48(3) requires the Minister to make a public announcement of areas to be opened up for petroleum activities and in the announcement to publicize the impact assessments to the public, affected local authorities, government agencies and associations or organisations which are likely to have a particular interest in the matter.

Section 69 makes provision for the application of production licenses. The holder of a petroleum exploration license shall have exclusive right to apply for the grant of a petroleum production license over that area which has been shown to contain petroleum. Section 71

requires that an application for the grant of a petroleum production license shall be accompanied by a report on the petroleum reservoir; a field development plan and information such as safety measures including measures to deal with emergencies and for the protection of the environment.

Section 73 provides that the applicant will submit an acceptable field development plan and petroleum reservoir report to the Minister. A petroleum production license shall not be granted unless the development plan takes proper account of best petroleum industry practices and safety factors. A petroleum production license requires the licensee to carry out an environmental impact assessment.

Section 85(1) requires a licensee to carry out petroleum activities in a proper and safe manner and in accordance with the requirements of the applicable law, regulations and conditions and best petroleum industry practices. This same provision requires the licensee to take all reasonable steps to secure the safety, health, environment and welfare of personnel engaged in petroleum activities including controlling waste or discharge into the surrounding environment and preventing damage to petroleum bearing strata in any area not covered by the license.

The licensee is required to prevent water or other matter entering any reservoir through the wells, except when in accordance with properly approved plans and best petroleum industry practices; and to prevent of the pollution of any water well, spring, stream, river, lake or reservoir. If pollution occurs, the licensee has to treat or disperse it in an environmentally acceptable manner and warn persons of the possible hazards.

Under section 103, a petroleum production license 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 and scientific research, provided it does not cause unreasonable inconvenience to the petroleum activities.

Section 96 requires a licensee to use approved methods acceptable to the PAU for storing of petroleum. Petroleum shall only be placed or kept in an earthen reservoir as a temporary measure during an emergency, or for test purposes in a remote area, subject to the prior consent of the Authority.

Section 97 provides that a licensee shall not flare or vent petroleum in excess of the quantities needed for normal operational safety without the approval of the Minister on the

advice of the PAU. Facilities shall avoid gas venting or flaring under normal operating conditions. Flaring or gas venting for operational safety shall require the written consent of the PAU.

Section 97(4) provides that in the case of an emergency, the licensee may gas vent or flare without the consent of the PAU. However, where the licensee shall ensure that the gas venting or flaring is kept at the lowest possible level and submit to the Authority a technical report detailing the nature and circumstances that caused the emergency situation.

Decommissioning Plan

Section 109 requires a licensee to submit a decommissioning plan to the Authority before a license expires or is surrendered. The PAU may issue directions and shall stipulate a time limit for implementation. The obligation to carry out the direction applies even where the direction is made, or is to be implemented, after the expiry of the license.

Section 126 makes provisions for liability of a licensee for pollution. Where pollution damage occurs during a petroleum activity and the activity has been conducted without a license, the party that conducted the petroleum activity is liable for the damage, regardless of fault. This liability rests on any other person who has taken part in the activity, and who knew, or should have known, that the activity was conducted without a license.

Under section 132, a licensee requires the written consent of the relevant authority for activities on any land dedicated for a public purpose or burial, or over which a mining lease, an exploration license or a right to cultural site has been granted. Written consent is also required for actions within two hundred meters of any inhabited, occupied or temporarily unoccupied house or building; or for any land within fifty meters which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of agricultural crops or on which agricultural crops are or have been recently grown; or within one hundred meters of a cattle dip-tank, dam or water used by human beings or cattle.

The Bill requires written consent from Uganda Wildlife Authority for activities in a national park or wildlife reserve, and a written consent from the National Forestry Authorities for activities in a forest reserve.

Under section 133, a landowner of an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of the land in so far as the grazing or cultivation does not interfere with petroleum activities.

Under section 134, a landowner or licensee with a license other than one under the Bill, shall retain the right to movement and other activities where the subsurface activities do not interfere with an exclusive right, or with petroleum activities in the area.

Section 137 provides that petroleum activities shall enable a high level of safety. A licensee shall evaluate the risks to the health of persons employed; and as far as reasonably practicable, prevent the exposure of the persons. Section 138 requires that an operator shall ensure the safety of any person employed or otherwise present at or in the vicinity of any installation; and protect the environment and natural resources, including taking precautions to prevent pollution; and ensure that relevant persons are informed of those precautions.

Section 139 requires a participant in petroleum activities to maintain emergency preparedness. He or she shall ensure that necessary measures are taken to prevent or reduce harmful effects, including to the extent possible, to return the environment to the condition it had been in before the accident occurred. The licensee is required to maintain security against attacks against facilities and have contingency plans to deal with such attacks; and shall support relevant authorities in emergency and security drills and participate in such drills. Section 140 requires establishment of a safety zone surrounding every facility.

The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill (2012)

The Bill intends to provide for health and safety. Section 2 recognizes the need to ensure public safety and protection of public health and the environment in midstream petroleum operations. The Bill reproduces similar environmental provisions as the *Petroleum (Exploration, Development and Production) Act (2012)*. Section 4 requires compliance with environmental principles; section 13 requires application for a license to refine, process, convert, transport and store gas and oil; section 27 provides for work practices for licensees; section 39 provides restrictions on flaring or venting; section 44 requires a decommissioning plan, section 60 specifies liability for damage due to pollution and section 65 and 66 provide requirements for health and safety.

The Public Finance Bill (2012)

One of the objectives of Bill is to establish a legal framework for the collection, allocation and management of petroleum revenue in a responsible, transparent and accountable manner. Section 63 requires that the operational management of the Petroleum Investment Reserve be governed by the principles of transparency, accountability, intergenerational fairness and equity and in accordance with the principles of portfolio management, to avoid prejudicing the reputation of Uganda.

Conclusion

The *Uganda Oil Policy (2008)* requires updating the oil laws in Uganda to bring on board among other things international best practices in areas like Improved Oil Recovery (IOR) and Health, Safety and Environment (HSE) standards. It recognizes the need for Uganda to participate in the Extractive Industries and Transparency Initiative (EITI) to ensure transparency. One of the objectives is to ensure that oil and gas activities are undertaken in a manner that conserves the environment and biodiversity. Relevant strategies include: ensuring necessary institutional and regulatory frameworks to address environment and biodiversity issues relevant to oil and gas activities; the presence of the necessary capacity and facilities to monitor the impact of oil and gas activities on the environment and biodiversity; promoting environmental protection in oil and gas activities; requiring oil companies and their contractors/subcontractors to use best practices in ensuring environmental protection and biodiversity conservation; and requiring oil companies and any other operators to return all sites on which oil and gas activities are undertaken to their original condition as an environmental obligation.

Whilst the Bills include environmental provisions, they are still weak in areas related to the processes of environmental impact assessments and strategic environmental assessment for oil and gas activities; environmental monitoring and audits of oil and gas activities; ensuring and monitoring compliance of oil and gas activities with environmental guidelines; and recognition of international performance standards in the oil and gas sector on environmental sustainability.