UNDERSTANDING TAX JUSTICE IN THE CONTEXT OF TRANSPARENT AND ACCOUNTABLE OIL MANAGEMENT IN UGANDA

Is Tax Justice in the Oil and Gas Sector a Myth or Reality in Uganda?

2012
IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acronyms and Abbreviations</td>
<td>4</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>5</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>6</td>
</tr>
<tr>
<td><strong>1.  INTRODUCTION</strong></td>
<td>8</td>
</tr>
<tr>
<td>1.1 History of Oil in Uganda</td>
<td>8</td>
</tr>
<tr>
<td>1.2 Emerging Oil Industry in Uganda</td>
<td>8</td>
</tr>
<tr>
<td>1.3 Taxation</td>
<td>9</td>
</tr>
<tr>
<td>1.4 Tax Principles</td>
<td>10</td>
</tr>
<tr>
<td>1.5 The Taxation Reality in Uganda</td>
<td>10</td>
</tr>
<tr>
<td>1.6 Research Goal</td>
<td>11</td>
</tr>
<tr>
<td>1.7 Specific Objectives of the Research</td>
<td>11</td>
</tr>
<tr>
<td>1.8 Research Methodology</td>
<td>11</td>
</tr>
<tr>
<td>1.8.1 Desk Review</td>
<td>12</td>
</tr>
<tr>
<td>1.8.2 Interviews</td>
<td>12</td>
</tr>
<tr>
<td><strong>2.  RESEARCH FINDINGS AND DISCUSSIONS</strong></td>
<td>13</td>
</tr>
<tr>
<td>2.1 Current Status of The Oil and Gas Sector in Uganda in Relation to</td>
<td>13</td>
</tr>
<tr>
<td>National and International Policies, Tax Systems, and Practices</td>
<td></td>
</tr>
<tr>
<td>2.2 Revenues and Taxes Linked to the Oil and Gas Industry</td>
<td>19</td>
</tr>
<tr>
<td>2.3 Harmful Tax Practices, Tax Crime and Tax Leakage in the Petroleum</td>
<td>24</td>
</tr>
<tr>
<td>2.4 Transparency and Accountability in Uganda’s Petroleum Sector</td>
<td>28</td>
</tr>
<tr>
<td>2.5 Analysis of The Tax Disputes Between Government and Oil Companies</td>
<td>29</td>
</tr>
<tr>
<td>2.6 Is Tax Justice in the Oil and Gas Sector a Myth or Reality in Uganda?</td>
<td>33</td>
</tr>
<tr>
<td><strong>3.  CONCLUSIONS</strong></td>
<td>34</td>
</tr>
<tr>
<td><strong>4.  POLICY RECOMMENDATIONS</strong></td>
<td>35</td>
</tr>
<tr>
<td>REFERENCES</td>
<td>37</td>
</tr>
</tbody>
</table>
ACRONYMS AND ABBREVIATIONS

CGT  Capital Gains Tax
CNOOC Chinese National Offshore Oil Corporation
CSID  Convention on the Settlement of Investment Disputes between States and Nationalsof other States
DRC Democratic Republic of Congo
FDI  Foreign Direct Investment
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
IBRD  International Bank for Reconstruction and Development
ICSID International Centre for the Settlement of Investment Disputes
IGG Inspector General of Government
ITA International Trade Agreement
KACITA Kampala City Traders Association
MEMD Ministry of Energy and Mineral Development
MFPED Ministry of Finance, Planning and Economic Development
NOC National Oil Company
OECD Organization for Economic Co-operation and Development
OPM Office of the Prime Minister
PAC Public Accounts Committee of Parliament
PAYE  Pay As You Earn
PEPD Petroleum Exploration and Production Department
PEPD Petroleum, Exploration and Production Department
PFA The Public Finance and Accountability Act 2003
PSAs Production Sharing Agreements
PSF Private Sector Foundation
RWI Revenue Watch Institute
SEATINI Southern and Eastern African Trade, Information and Negotiations Institute
TRIMS Trade Related Investments
TRIPS Trade Related Intellectual Property Rights
UCPA Uganda Consumers Protection Association
UIA Uganda Investment Authority
URA Uganda Revenue Authority
VAT Value Added Tax
WHT With Holding Tax
WTO World Trade Organization
ACKNOWLEDGEMENTS

This publication was produced jointly by SEATINI-Uganda, Tax Justice Network-Africa and Oxfam. We extend our appreciation to the following for their contributions towards the production of this research: Mr Henry Bazira, Johannes Chiminya, Ms Jane Nalunga, Ms Nelly Busingye Mugisha, Ms Regina Navuga and members of the Tax Justice Taskforce. This document has been produced with financial assistance from European Union through Democratic Governance and Accountability Programme (DGAP). The contents of this document are the sole responsibility of SEATINI-Uganda, Tax Justice Network Africa (TJNA) and Oxfam and can under no circumstances be regarded as reflecting the position of the European Union.
IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?

EXECUTIVE SUMMARY

Uganda has discovered commercially viable petroleum reserves in the Albert Rift Valley in the western part of the country. The current reserve estimates are to the tune of 3.5 billion barrels of crude oil and they are expected to increase. The oil and gas sector is a new sector to the Ugandan economy and has come at a time when the country lacks adequate policy, legal and institutional frameworks to meet the demands of the emerging industry in terms of taxation, revenue management, investment, employment, balancing economic growth and development, environmental protection, accountability, democracy and overall governance. Consequently, a number of conflicts, gaps and challenges of implementation and leadership have emerged in respect to investment, environmental and social safeguards and taxation of the sector. In a bid to stave-off the emerging problems, government initiated a process of revising the existing legal and institutional frameworks. Among the laws that have been quickly revised include those dealing with public finance and petroleum resource extraction and management. Other laws are pending amendment or enactment.

Despite the efforts, government continues to experience contestation and conflicts with international oil companies over taxation attributed to the ambiguity inherent in the existing laws and the Production Sharing Agreements (PSAs) signed with oil companies that have remained confidential. These disputes have resulted in very expensive arbitration cases outside the country that is diminishing the country’s treasury.

Taxation is an age-old practice that is acceptable worldwide. It is a practice that is enshrined in Uganda’s Constitution – allowing therefore, the country to tax its citizens. There are principles upon which taxation in any country must be enshrined to ensure that a fair and just taxation system is in place. It is such principles that all States try to achieve. In reality, however, the principles are variously achieved from nation to nation. It is on this basis that SEATINI-Uganda commissioned a desk research to understand Uganda’s tax system in the context of the emerging oil and gas sector, highlight cases of tax injustice and tax leakage, encourage public awareness and the need for change in the country’s tax regime and collectively increase transparency and accountability in the sector. The specific objective upon which the study was based was to examine the status of the oil and gas sector in relation to tax systems, policies and practices in Uganda; analyse current tax disputes between government and oil companies; and finally make policy recommendations for best practices for oil management in relation to tax justice going forward.

It is clear that the taxation disputes between government and oil companies are undermining the country’s treasury and revenue-base; have diminished public confidence in the country’s ability to govern the oil companies; and are bringing into question the viability and benefits of the country’s petroleum resources to the national economy and the wellbeing of citizens.
Uganda is inexperienced in matters of oil and gas production, yet it is working with highly experienced international oil companies. The chances of being taken advantage of are high, because there are practices in the industry that are considered legal, but have the potential of causing harm on the country’s economy and its development as a whole such as transfer pricing, tax havens, aggressive tax planning, etc.

It is important that the country builds technical, technological, human and financial capacity to be able to monitor and effectively govern the oil and gas industry. It should be in position to ensure balanced economic growth to avoid the much touted resource-curse syndrome. It is important to have a public interest and accountability framework that will act as the independent watchdog of the industry and inform government appropriately and promote transparency and accountability in the sector.
1. INTRODUCTION

1.1 History of Oil in Uganda

Evidence of crude oil presence in Uganda has been around for many years. The first attempt to explore for oil resources in Uganda was conducted by E. J. Wayland of the African-European Investment Company in the 1920s in the Butiaba, Kibiro and Semliki areas of the rift valley. During the 1945 to 1980 periods, petroleum exploration stagnated, initially due to World War II and later due to the political instabilities and uncertainties that prevailed in the country. Exploration in Uganda was resumed at the beginning of the 1980s due to the high prices of crude oil that prevailed since the 1970s and aeromagnetic survey evidence of the presence of sedimentary basins of hydrocarbons. This spurred the enactment by the government of Uganda of the 1985 petroleum exploration and production Act.

1.2 Emerging Oil Industry in Uganda

Commercially viable oil reserves were discovered in the Albertine Rift Valley between the periods of 2004 to 2012 estimated at 3.5 billion barrels. This reserve capacity is based on the 40% of the exploration blocks that have been explored. The practice of contracting foreign multi-national companies to explore and exploit oil in Uganda is attributed to the fact that Uganda lacks the requisite technical, technological, human resource and financial capacity to undertake the activities/operations involved. As a result, government has over the years signed exploration and production licences with a number of international companies including Energy Africa, Hardman Resources, Heritage oil and Gas, Tower Resources, Neptune, Global Petroleum, Dominion, Tullow, Total F and P and Chinese National Offshore Oil Corporation (CNOOC). Much of the exploration successes may be attributed to mainly Tullow Oil Uganda Operations PTY Ltd and Heritage Oil and Gas Ltd. Most of the licenses have ended up being transferred from one company to another in a process referred to as a “farm-down” where a company transfers its assets and interests in exploration for and production of oil to another company at an agreed price. Usually, the amounts involved in the transfer of assets and interests are in the tune of billions of dollars and attract what is referred to as a “Capital Gains Tax (CGT)” by government.

During the exploration process, it became obvious that the 1985 Petroleum Exploration and production Act was not sufficient to take the industry from the exploration and development phase into the production, processing, transportation, storage and marketing phases. Consequently, government initiated a process of drafting and fast-tracking the enactment of updated petroleum bills/laws to guide and govern the industry. Three bills were drafted, namely; the Petroleum (exploration, development and production) bill 2012 also known as the upstream bill; the Petroleum (Refining, gas processing and conversion, transportation and storage) bill 2012 also known as the mid-stream bill; and the Public Finance bill 2012. These bills/laws are intended to guide and govern the respective sections of the petroleum value-
chain as described in their classification. The Public Finance Bill is intended to govern the revenues accruing from operations of the oil industry.

Given the unpredictability and uncertainty of future oil production and prices, it is difficult to predict how much oil revenues Uganda is likely to earn from oil. With a 40% oil recovery potential, government is likely to extract a total of 1.4 billion barrels of crude from the 3.5 billion reserve capacity. At a current average price of US$95 per barrel, the total amount of revenues that can be generated is US$133 billion. These revenues must be shared between government and the oil companies involved in its generation where government receives its profit share and taxes, while oil companies receive profit oil and any recoverable costs associated with the investment.

However, based on the 250,000 bopd peak production, an estimated US$2.0-3.5 billion is likely to be earned. This has the potential of doubling the country’s revenue base and contributing 50-90% of the national budget and 10-15% GDP during 10 years of peak production.

Although commercial production of oil has not yet begun, revenues from other oil processes have already been (should have been) earned by government in terms of signature bonuses and Capital Gains Taxes (CGT).

There will be additional taxes, unless exempted, to be drawn from oil company transactions and associated capital investments. In analysing the various taxes to be accrued from the oil and gas sector in Uganda, it is imperative that Uganda’s current tax system and how it links with the petroleum sector is internalised and mechanisms put in place to ensure that the right and fair tax is collected from the industry.

1.3 Taxation

Taxation is an ancient practice dating back to the Egyptian Pharaoh, the Greek and Roman empires times. However, the actual date and time that taxation began is unclear. Taxes are considered a problem by everyone. It is, therefore, not surprising that there have been tax problems and disputes dating back to historical times. For example, in 60 AD, Boadicea, the queen of East Anglia, led a revolt that was attributed to corrupt tax collectors in the British Isles. Her revolt was reported to have killed Roman soldiers within a 100 miles radius; seized London and killed over 80,000 people.

Tax is commonly defined as a payment made to a government for which no direct benefit is provided in exchange. However, it is expected that the revenue collected will enable government to fund essential services and infrastructure for the citizens. Taxation can be used as a tool to achieve trade policy objectives and economic stabilization through income distribution; to address poverty and inequality and mobilization of local/domestic tax revenues that can be used for the provision of public goods and services and help avoid over-dependence on foreign aid assistance. This has positive outcomes of strengthening national sovereignty and relationships with the citizens.

1 Based on the London Brent and New York Light Oil prices December 2012
2 Barrels of Oil Produced per Day (bopd)
IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?

However, setting up an efficient and fair tax system is far from simple, particularly for developing countries such as Uganda that want to become integrated in the international economy. The ideal tax system in these countries should raise essential revenue without excessive government borrowing, and should do so without discouraging economic activity and without deviating too much from tax systems in other countries.

In Uganda, taxation dates back to the kingdom eras where the different monarchs and chiefs had their own customs and cultures. Taxes were either paid in kind (e.g. bark cloth, cowry shells, etc) or through labour contribution or compulsory military service. These were further advanced during the colonial times. The current taxation system that government of Uganda applies is enshrined in the Constitution [Article 152(i)] which states that “No tax shall be imposed, except under the Authority of an Act of Parliament”. The Constitution makes taxation an exception, except under an Act of Parliament, meaning that in the absence of a tax law, citizens are free from taxation. This could explain the options or opportunities for tax exemptions in certain circumstances.

1.4 Tax Principles

The principles upon which taxes are derived and justified include the need for:
- Government to collect sufficient revenue to enable it to meet its basic responsibilities;
- All citizens to contribute to the common good through a system of taxation based on ability to pay;
- Sharing widely the national burden with all its citizens through a balanced mix of broad based taxes with few exemptions;
- Taxes not to be viewed in isolation, but as part of a holistic revenue structure;
- Taxes administration (i.e. assessment and collection) not to be very expensive relative to the yield (income);
- The tax to be easy to understand and comply with;
- The revenue system to be administered efficiently and uniformly;
- The impact of the tax laws to be consistent with public policy;
- The use of taxes as an incentive or disincentive, or the granting of tax preferences to be based on the common good and not on special interests;
- The revenue structure to be flexible, allowing policy makers to respond to changing circumstances and priorities;
- Earmarking or allocations to be viewed with caution.

Therefore, a tax system will be construed as being just; if it is equitable, meets the country’s needs, and citizens pay a tax that is commensurate with their incomes.

1.5 The Taxation Reality in Uganda

The 2003 Public Finance and Accountability Act is a law enacted to guide assessment, determination and collection of taxes and how they are used to deliver social goods and services to the Ugandan citizens and trigger national development and growth. There are many taxes payable in Uganda that include among others Value Added Tax (VAT), Pay As you Earn (PAYE) and excise duty.
Uganda’s tax system is generally classified by tax experts, scholars and civil society actors as regressive where indirect taxes like Value Added Tax (VAT) negatively impact on poor people and is among the prime tax instruments. This is also aggravated by the fact that the Uganda Revenue Authority (URA) the central body for collecting taxes in Uganda lacks sufficient resources and human capacity to implement effective tax policy that would ensure that the country meets its revenue targets and needs.

There is a general perception among the public (right or wrong) that majority of Ugandans do not pay appropriate taxes that are commensurate with their incomes. The wealthy, socially and politically influential individuals have a tendency of evading, and avoiding, taxes, while the less advantaged of society bear a greater burden of the tax. It is thought that this scenario could be playing itself out in the petroleum industry, a reason why it is important that Uganda’s current tax system and how it links with the petroleum sector is internalized and mechanisms put in place to ensure that the right and fair tax is collected from the industry.

Recently, government demanded that oil companies transferring oil interests and assets to one another pay capital gains taxes, but these payments have been embroiled in legal disputes and contestation between government and oil companies and are responsible for a significant amount of tax leakage.

It is on the foregoing background that SEATINI-U\(^3\) commissioned an action oriented research to enhance the tax justice campaign in Uganda with a view of informing the public and strengthening advocacy to trigger changes in Uganda’s tax policies and practices to increase transparency.

### 1.6 Research Goal

The overall objective is to highlight cases of tax injustice and tax leakages in the Uganda oil and gas sector to public discourse and encouraging awareness on why it is necessary to bring about change in the tax regime and administration together with increasing transparency.

### 1.7 Specific Objectives of the Research

a) Examine the current status of the oil and gas sector in relation to tax systems, policies and practices in Uganda.

b) Analyze the current tax disputes between government of Uganda and the oil companies in relation to tax justice principles.

c) Make policy recommendations on best practices for oil management in relation to tax justice.

### 1.8 Research Methodology

The research team used the following approach to undertake the study:

---

\(^3\) Southern and Eastern African Trade Information and Negotiations Institute - Uganda
1.8.1 Desk Review

The research team undertook a review of literature that informed the study on various aspects of taxation; tax justice; how taxation is applied; the taxation strengths, weaknesses, opportunities and emerging lessons and actions at the national and international level. The reviewed literature was related to the emerging oil and gas industry in Uganda with a view of identifying gaps, implementation challenges, opportunities and make policy recommendations for actions going forward.

It was recognised that the oil and gas industry is new in Uganda and that there was not much Ugandan based literature and experience in the oil and gas industry. So much of the linkage was made in relation to international oil and gas experiences. Among the materials reviewed were:

a) Uganda’s policy, legal and institution frameworks in relation to taxation and the oil and gas sector;

b) Investment agreements (both bilateral and multilateral),

c) OECD and EU Commission reports, papers and analysis on taxation and bilateral and multilateral trading.

The World Bank, African Development Bank, EAC reports, IMF, African Union among others. In addition, financial and statistical data on tax, general academic literature on taxation and oil and gas and reports from SEATINI Uganda, Action Aid and Tax Justice Network-Africa (TJN-A) were reviewed.

Financial and statistical data on general academic literature on taxation and petroleum on the internet were reviewed.

1.8.2 Interviews

The research team held face-to-face consultations and interviews with officials in the Uganda Revenue Authority (URA), the Ministry of Finance, Planning and Economic Development (MFPED), Petroleum Exploration and Production Department (PEPD), Ministry of Energy and Mineral Development (MEMD), Uganda Investment Authority (UIA), Private Sector Foundation Uganda (PSFU), Uganda Consumers Protection Association (UCPA), oil companies (i.e. Tullow, CNOOC and Total), downstream petroleum entrepreneurs, civil society organisations and the Kampala City Traders Association (KACITA).

Other consultations were conducted with officials from Revenue Watch Institute (RWI), Global Witness -UK, International Alert. These consultations were intended to seek views on the taxation in Uganda, the regulatory provisions available and their adequacy, perspectives of the effects of the investment agreements on business opportunities and risks for Uganda in respect to the oil and gas sector.

The information gathered through these two approaches was synthesized, tailored to Uganda’s tax system, oil and gas sector and inferences and policy recommendations made. The analysis and recommendations are presented in the subsequent sections of this research.
2. RESEARCH FINDINGS AND DISCUSSIONS

Multinational corporations (companies) involved in Uganda’s oil industry are reported to be paying most of the taxes; with exception of a few where there are contestations. For the purposes of this paper, focus will be made on the taxes that oil companies are paying (must pay) and those where there are disputes in order to understand the system in relation to the industry, the inherent disputes in the oil and gas sector and formulate recommendations for government and the petroleum industry going forward.

2.1 CURRENT STATUS OF THE OIL and GAS SECTOR IN UGANDA IN RELATION TO NATIONAL AND INTERNATIONAL POLICIES, TAX SYSTEMS, AND PRACTICES

Unless exempted, all taxes in Uganda are applicable to all citizens, including international individuals or companies. There is evidence that oil companies in Uganda are paying most of the taxes – save for those where there are disputes with government for example Capital Gains Tax and VAT.

2.1.1. National Policies, Laws and Agreements Linked to Taxation in the Petroleum Industry in Uganda

i) The Oil and Gas Policy 2008, the Petroleum Exploration and Production Act 1985 and the New Petroleum bills/laws

The 2008 National Oil and Gas Policy is the policy that guides exploration, development and production of petroleum and its associated products in Uganda. It provides the objectives and basic guidance on how the petroleum industry must be developed in the country. It also provides guidance on how revenues and taxes accruing from the industry will be collected and spent to offer social goods and services and promote development.

The Petroleum Exploration and Production Act 1985 is the law that has since then governed the oil and gas industry. During the 2009 to 2012 period, government embarked on a process of drafting new legislation for the petroleum industry. Among the legislation drafted was the:

- Petroleum (exploration, development and Production) bill 2012 also known as the upstream bill. This law will govern the processes of extracting crude oil from underground and bringing it on the ground surface.
- Petroleum (refining, gas processing and conversion, transportation and storage) bill 2012 also known as the mid-stream bill. This law will deal with all processes involved in the refining, gas processing and conversion of crude oil and the transportation and storage of crude, refined and processed oil products.
Public Finance bill 2012. This law is intended to guide the management of all public finances, including those accruing from petroleum.

The upstream bill was in December 2012 passed into law. The remaining mid-stream and public finance bill 2012 at the time of writing (January) were pending enactment.


The Public Finance and Accountability (PFA) Act 2003 is the law that has guided and governed taxation and public expenditure in Uganda over the last 9 years. It established the Uganda Revenue Authority (URA), a government body mandated with assessment, determination and collection of government taxes. It puts into operation Article (152) of the Constitution which provides for taxation.

The Budget Act 2003 is the law that has guided and governed the parliamentary processes of appropriating public finances towards government expenditure. It was a result of a private members’ bill aimed at securing parliament’s involvement in the national budgeting process and determining how government spends public finances. It is an avenue through which citizens participate through their representatives in dictating public expenditure – save for the supplementary budgets that have been used to abuse the budget processes. This, notwithstanding, the budget Act process is a good one that must be protected.

The proposed Public Finance law (bill 2012) is intended to take-over the roles and functions of the PFA of determining, collecting and accounting for taxes collected, including taxes and other revenues from the oil and gas sector. It will automatically repeal the 2003 PFA. This will change the tax regime and tax/revenue base by introducing a new economic sector i.e. oil and gas. Chapter VII of the Public Finance bill specifically deals with revenues accruing from the Oil and Gas sector. It is hoped that the new Public Finance Bill does not repeal the 2003 Budget Act, because by so doing, it would negate the role of parliament in determining how public finances, especially those from the oil sector, are collected and spent.

Reading through the proposed Public Finance bill/Law 2012, it becomes clear that there are positive and negative elements, gaps and implementation challenges in the bill, which if enacted in their current state, would have far reaching ramifications specifically on oil revenue generation, taxation and management and broadly on individuals, peoples’ livelihoods, the society, the economy, the environment and politics both at local and national levels.

a) The Positive Aspects of the Proposed New Public Finance Bills

The positive aspects of the bill are that:

- It meets basic transparency requirements: Clauses 53(5), 56(b), 57, 64(4), 65 and 66-69 require for semi-annual and annual reporting by the Ministry responsible for

---

4 The supplementary budget is a legally accepted process that allows government ministries to seek additional financing from government without going through the elaborate parliamentary budget process. Supplementary budgets are sanctioned by The Parliamentary Committee on Finance. A supplementary budget is not expected to exceed 3% ceiling of the original budget figures approved by parliament, but often times this is violated by exceeding the ceiling.
petroleum to Uganda Revenue Authority (URA), the Secretary to the Treasury, the Accountant General, Auditor General and Parliament. While these clauses are good and strong for transparency, they still need further improvement and strengthening with the support of the other existing attendant laws and regulations.

- It prohibits the collateralization or use of oil revenues as security for procurement of other government goods and services.
- It establishes a Petroleum Fund with two accounts i.e. the Petroleum Revenue Withholding Account and the Petroleum Revenue Investment Reserve Account (Clause 52). This will allow for separation and tracking of oil revenues from the revenues generated by other sectors of the economy and assessing oil revenue effects/impacts on the individuals, livelihoods, the economy, the environment and politics both locally and nationally.
- The Petroleum Revenue Investment Reserve is anticipated to be used for the creation of additional wealth that will in turn be used to reduce poverty and promote economic development and growth in the country, if invested well.
- It provides for parliament’s involvement in the appropriation of the oil revenues through an appropriation act.
- It establishes a Ministry Responsible for Petroleum and a Petroleum Authority that are expected to guide, govern and monitor the petroleum industry for the benefit of the citizens and the country as a whole.
- It provides for the establishment of an institution or entity [Clause 53(5)] that will directly interface with the International Oil Companies involved in the industry on behalf of government. The entity is expected to be responsible for managing the petroleum interests of the country, including trading of the country’s profit oil. It allows delinking government from directly interfacing with Oil Companies, which could compromise government’s position and sovereignty.
- It places encumbrances on the petroleum revenues (Clause 70) making it difficult for any individual or politicians to freely deep their hands in petro-dollar reserves. While this is good, it needs to be strengthened by clarifying the rules and procedures guiding the petroleum revenue accounts/funds.
- It gives authority to URA [Clause 53(1)] to collect taxes and other revenues from the petroleum sector.

b) The Negative Aspects of the Proposed New Public Finance Bills

- Other than the positive clauses cited above, there is no clear provision in the Public Finance bill on public access to information on the petroleum revenues. Public access to information in the petroleum sector is relegated to the Access to Information Act 2005 and the provisions in the upstream and mid-stream petroleum bills that still fall-short of assuring access to information. This calls for an amendment of the Access to Information Act and subsequently revision of the up- and mid-stream petroleum laws to ensure the realisation of the spirit vested in Article 41 of the Constitution on public access to information held under government bodies.
- Like the Upstream and Midstream bills/laws, the Public Finance bill/law attempts to mirror the 1985 Petroleum Exploration and Development Act by according the Minister responsible for Petroleum excessive powers to manage the day-to-day operations of the Petroleum Fund and its associated accounts (funds) – a responsibility that should be shared with the Ministry of Finance, the Governor Bank of Uganda and parliament.

---

5. Petroleum (exploration, development and Production) Act 2012
There is no evidence of parliamentary involvement in the appropriation of oil revenues, except for monies that are appropriated through the Consolidated Account of Government. This is made worse by the reporting contradictions in the upstream and midstream bills/laws that are linked to the Public Finance bill. The Minister is required to report once every financial year in the up- and mid-stream bill and semi-annually and annually in the public Finance bill. These provisions need to be harmonized. Proposals have been made by civil society organisations, the Auditor General and some members of parliament to correct the anomalies in the Public Finance bill. It is hoped that there will be a balancing of power and clarity of roles and responsibilities between the different arms of government. This is further complicated by the fact that the Minister of Petroleum is a member of the Executive Arm of Government that is chaired by the President. By implication, the minister takes instructions from the President – implying that it is the President in effect who would solely be governing the petroleum industry. This kind of legislation without sufficient checks, balances and a separation of powers\(^6\) is bad legal practice. It entrusts petroleum in a single individual i.e. the President. Effort has been made by civil society actors and members of parliament to rectify this problem, but it has faced a lot of resistance from the Executive Arm of Government.

- While the Public Finance bill authorizes URA to collect taxes and other oil revenues and also mandates the entity responsible for national oil interests to trade profit oil and consequently collect oil money, it does not clarify the different roles and responsibilities of the URA and the entity, which could be a recipe for institutional conflict and loss or misappropriation of oil revenues. There is need to clarify the roles and responsibilities of the URA in relation to the entity responsible for national oil interests.

\(c\) The Gaps, Ambiguities and Implementation Challenges

The Public Finance bill 2012 is riddled with gaps and ambiguities that make it difficult to implement. For example;

- There are no clear rules and procedures for movement of monies from the Petroleum Fund to the other respective funds such as Petroleum Revenue Holding Account, the Petroleum Revenue Investment Reserve Account and the Consolidated Fund.
- It is also not clear whether or not there will be a Stabilization Fund, a Future Generations’ Fund and an Environment Management Fund that are considered critical in countries where finite natural resources are exploited.
- The roles and responsibilities between the Ministry in charge of petroleum and other government ministries, departments, agencies and local governments is not clear.
- The other existing policy, legal and institutional frameworks on land, environment, climate, social protection and security, human rights and justice, taxation, education, agriculture, fisheries, marketing, trading tourism, etc are not yet in tandem with the oil and gas industry. They need to be up-scaled and strengthened to meet the demands of the emerging oil and gas industry.
- Other than providing for a Petroleum Investment Advisory Committee that would be appointed by the Minister responsible for the sector, there is no clarity as to how and to which business oil revenues would be invested to ensure additional wealth creation, economic growth and development. As a priori, it would have been important to clarify the kinds of investments in which oil revenues would not be invested or the procedure

\(^6\) Separation of powers as enshrined in chapters 6, 7 and 8 of the Constitution
that would be applied to determine the investments where oil revenues would be used.

- The bill/law does not explain how the inherent and often unavoidable revenue volatility of the petroleum sector will be addressed.
- The penalties enshrined in the bill cannot prevent or safeguard Uganda, her citizens, her taxes, the economy and environment from abuse by government official and oil companies. The penalties are so weak that government officials may steal or mismanage public funds and accept to pay a fine of ten million Uganda shillings or serve a 4-year prison term, while oil companies could chose to violate the legal provisions and accept to pay the fines and go scot-free. The penalties have been classified by civil society actors as being “loose change” for oil companies.

These and other gaps/ambiguities need to be addressed to make the bill/law clearer, more effective and beneficial to Uganda as a country and its citizens as a whole.

### 2.1.2 International Trade Policies on Taxation Linked to the Petroleum Industry in Uganda

#### i). International Trade Agreements

International Trade Agreements (ITAs) are agreements made with a view of enhancing trading and mutual trade benefits between countries. ITAs were designed to reduce or remove barriers to trade between nations and promote free trade. Experience has shown that while free trade offers overall benefits, removing trade barriers on a particular good hurts domestic industry that produces that good. Oftentimes, these domestic industries hurt by foreign competition wielding significant political power to secure protection against imports. Consequently, barriers continue to exist despite their sizeable economic costs. This has made worldwide free trade in all goods and services almost impossible. While almost all economists think that free trade is desirable, they differ on how best to make the transition from tariffs and quotas to free trade using the three available basic approaches i.e. unilateral, bilateral or multi-lateral (Douglas, 2008). Several studies have shown that incomes grow more rapidly in countries open to international trade than those more closed to trade (ibid). Recognizing the trend of protectionism among nations, a General Agreement on Tariffs and Trade (GATT) was founded in 1947 that later in 1995 became the World Trade Organization (WTO). The WTO oversees four international trade agreements, namely; the GATT; the General Agreement on Trade in Services (GATS); Trade Related Intellectual Property Rights (TRIPS) and Trade Related Investments (TRIMS). WTO also mediates disputes between member countries over trade matters. ITAs have not been very effective, a reason why there is a growing shift towards bilateral and multi-lateral regional trading bloc agreements. Whether or not these bilateral and multi-lateral regional trading blocs are indeed beneficial and more effective in delivering the desired outcomes remains to be tested and verified.

#### ii). Convention for the Settlement of Investment Disputes between contracting State and Nationals of other Contracting States

In 1964, the International Bank for Reconstruction and Development (IBRD) in response to a 1962 international call to put in place a convention for the resettlement of investment disputes between member states, nationals and corporations resolved under Resolution No. 214
that a Convention for the settlement of investment disputes between contracting States and Nationals of other contracting States through conciliation and arbitration be established. This was approved in 1965. The Convention established the International Centre for the Settlement of Investment Disputes (ICSID) through reconciliation and arbitration based in the USA.

As a priori rule, the CSID convention recognized that disputes should be settled through administrative, judicial or arbitral procedures available under the laws of the country in which the investment concerned is made. It also recognized that disputes may arise which the parties wish to settle by other methods. Recent investment agreements show that both States and investors frequently consider that it is in their mutual interest to agree to resort to international methods of settlement. Uganda signed an investment agreement with the United Kingdom in 1998 which provided for the settlement of investment disputes with nationals and corporations of either party internationally under the ICSID mechanism. This explains why majority of the disputes between Uganda and UK-based oil corporations are being settled abroad.

iii). Organization for Economic Co-operation and Development (OECD) Convention on Income and on Capital
Taxation of a given taxpayer operating in two or more countries in respect to the same subject matter and for identical periods in the States the taxpayer operates results in double or multiple taxation problems. This has harmful effects on the international exchange of goods and services and cross-border movements of capital, technology and persons. In recognition of such problems, the OECD put in place a Convention on Income and Capital that provides a means of settling these problems using standardized, uniform and comparable fiscal situations. The convention accords the primary right to tax the country from which capital investment originates (i.e., the home, or resident country of the corporations) rather than the country in which the investment is made (i.e. the host, or resource country). This would mean that multilateral corporations (like Tullow, Heritage, CNOOC, Total, etc) would not be liable to taxation in the host or resource country (i.e. Uganda), but their respective countries. This is rather odd, since the corporations would be exploiting a resource outside their home country. This could be tantamount to robbery. The convention is effective among countries with reciprocal (give-and-take) investment flows - such as the OECD member countries. But, it is ineffective and very unbalanced when dealing with economically weaker member countries and with pairings involving OECD and non-OECD countries that do not have similar investment flows.

This convention was later amended to become the Convention on Mutual Administrative Assistance in Tax matters to bring it in line with the international standard on exchange of information for tax purposes and to open it up to all countries. The amended Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. However, Uganda has not yet signed-up to it. Uganda might want to consider signing up to the convention to benefit from the mutual administrative assistance enshrined therein since the companies that have operated and might operate in the country could originate from the OECD member countries. Such assistance could become necessary when dealing with tax disputes concerning multilateral corporations originating from the OECD countries.
2.2 REVENUES AND TAXES LINKED TO THE OIL and GAS INDUSTRY

Significant amounts of revenues and taxes are generated at all stages of the petroleum value-chain and these include signature bonuses, royalties, exploration fees, development fees, rents, fees on permits, Capital Gains Tax (CGT) on transfer of interests and assets, government’s profit share on production, and revenues and taxes at the refining, gas processing and conversion, transportation and storage of petroleum and its associated products, bi-products and wastes. Additional taxes to these revenue streams include income tax, With Holding Tax (WHT), Pay As You Earn (PAYE), Value Added Tax (VAT), Import Duty, Stamp Duty, Service Tax, among others. This study focuses on those taxes that are unique to the petroleum industry to understand how they are assessed, determined and collected and whether or not there are leakages that do occur in order to make policy recommendations for government.

2.2.1 Signature Bonuses

The signature bonus system is common in many oil-producing countries. It is a payment made up-front to the host country by Oil Companies for the right to develop an exploration block commercially before work begins. It is important to note that paying a signature bonus for a licence does not necessarily guarantee availability of commercially viable oil reserves or future revenues from the secured license. Signature bonuses are a widely recognized and legally accepted system. It is claimed that they are paid to meet administrative costs. Whether or not it is just or unjust is a matter for debate.

In Uganda, the earlier oil companies that sought oil exploration and production licenses in the Albertine Graben such as Hardman Resources Ltd, Energy Africa Ltd, etc were not subjected to pay any signature bonuses. However, later on, companies like Tullow Operations Uganda Ltd and Heritage Oil and Gas Limited were required to pay signature bonuses for the exploration areas/blocks (EA) EA1, EA2 and EA3, respectively. Neptune Resources Ltd and Dominion acquired exploration areas EA5 and EA4B, respectively. The total amount of signature bonuses received by government of Uganda was reported to be about US$600,000 covering 5 exploration areas as shown in Map 1 on the next page. The amount of signature bonuses companies paid for each exploration area is not clear. Also, how the signature bonuses were determined or were supposed to be determined is not clear. Signature bonuses to the tune of US$4million have been paid to the Democratic Republic of Congo (DRC) by a company for a single exploration block. Whether the signature bonuses received by DRC and Uganda over a single block were fair and just is arguable. However, it is clear that Uganda received much less than DRC and could have gotten a better deal.

---

8. Divine Inspiration Group spent more than US$4 million in signing bonuses and fees for block 1 north-eastern DRC in 2008. Divine Inspiration Group had partnered with Tullow PLC (a company also operating in Uganda) to acquire Block 1 and 2 in north-eastern DRC. However, this was not ratified by the DRC government which later gave the two blocks to two not well known oil companies (i.e. Caprikat Ltd. and Foxhelp Ltd) after they paid US$6 million in signature bonuses for the blocks. Both Caprikat Ltd. and Foxhelp Ltd are registered in the British Virgin Islands and owned by South African President Jacob Zuma’s nephew. This resulted in contestation, but DRC denied any wrong doing.
Map 1: Current Status of Licensing of Exploration Areas in the Albertine Graben of Uganda

Source: Petroleum Exploration and Production Department, August 2012.
2.2.2. Royalties

Royalties are usage payments made by an individual or private sector firm/company to an asset/patent/intellectual property/resource holder for the right to continually use the asset/patent/intellectual property/resource. Royalties are typically charged as a percentage of gross or net revenues derived from the use of an asset/patent/intellectual property/resource.

Non-renewable resource royalties are payments usually made on hard metal minerals and petroleum. The terms of payments are defined under a license agreement that is regulated by government where the government is the resource owner. They usually range between 5 - 12.5% of gross revenue earned from the daily exploitation of a given resource and is paid on a monthly basis. Rarely does it exceed 12.5%. Royalty is usually a negotiated settlement between the licensee and licensor. Uganda’s royalty share is 12.5%.

2.2.3. Production Share

Like Royalty, a production share is a negotiated settlement between government and the oil companies. Production shares stipulate how crude oil produced and revenues generated will be shared between government and oil companies. It can either be a share in the crude oil itself or the profits made from the sale of crude oil. The decision to take profit oil or money will vary from time-to-time as the government chooses. In the case of Uganda, draft Production Sharing Agreements (PSAs) that have been reviewed revealed a share of 15% take for the country that would gradually increase over the years of production until a given ceiling. This production share is made after company deductions of agreed percentage investment discounts and operation costs.

The existing PSAs were signed before the bills were drafted or enacted and therefore they have provisions that must inform the petroleum bills. Whether or not they have informed the law making process remains to be verified, because the PSAs have remained confidential – save for restricted access to Members of Parliament.

Government needs to be very vigilant in vetting, monitoring and auditing of the investment discounts and operational costs deductions, because it is through such deductions that revenue and tax leakages do occur, particularly through double- or multiple-investment discounting and inflated operational costs reporting. For example, Tullow Oil was reported the media to have paid a one-man foreign expatriate consultancy firm Ugshs9.0million (US$3,530) per day for a period of one year without advertisement. This was to provide a service that would otherwise have been sourced locally at quarter the cost. It was also in total disregard of set requirements for such services. It is through such deals that Oil Companies siphon huge amounts of profit revenues under the guise of international expert service costs that are recoverable, thus reducing the profit margins available for sharing between the companies and government. Another avenue by which Oil Companies siphon profit revenues or cause tax leakage is through paying their experts and staff large per-diems and travel allowances/costs internally and abroad. Such procurements and expenditures by Oil

---

9 It is important to note that this does not necessarily guarantee increased revenues for government over the years, because oil production declines over the years.
10 Daily Monitor Newspaper, Thursday, March 14, 2013
companies need to be vetted and sanctioned by government, since they could form part of the recoverable costs under the PSAs.

The other component that requires rigorous monitoring and auditing in respect to operational costs is the problem of transfer pricing related to inputs/technology/equipments the company purchases from its national and international subsidiary companies.

Production Sharing agreements usually have stabilisation clauses that tend to limit the country’s ability to introduce new laws that might reduce the profitability and increase the taxes of the companies or increase the costs of the companies’ social and environmental obligations. These stabilisation clauses are increasingly becoming unpopular worldwide, because of their associated stifling of the introduction of new social, economic and environmental concepts, scientific knowledge and/or technologies into the industry. There are proposals to annul such clauses.

It is worth noting that traditionally all PSAs contain a standard clause which provides that all taxes and duties shall be paid in accordance with the laws of the host country (in this case Uganda). This is reiterated in Section 89B of the International Trade Agreement (ITA) which provides that the income earned by a contractor shall be taxed in accordance with the taxing provisions of the ITA. This seems to oppose an earlier OECD convention provision that gave the right to tax to the country from which the investment capital originated.

Due to the undisclosed nature of the PSAs, there has been a lot of rumour and speculation in the public domain on how government would benefit from the oil industry. The rumours and speculations can best be settled by government making clarifications.

2.2.4 Capital Gains Tax

As earlier mentioned, a Capital Gains Tax is that tax charged on the transfer (sale) of interests and assets from one company to another. In the petroleum industry it usually ranges between 30 – 35% of the transfer price. It is a normal and acceptable practice in the petroleum industry and it is covered by Uganda’s Income Tax Act. The Income Tax Act allows a gain on disposal of a capital asset to be taxed and a loss to be considered as allowable deduction. However, the loss on disposal of a capital asset is treated as income to the transferee and will therefore be charged as income tax at the transferee side. This has created a wider scope of collections as well as contestation between the government and oil companies as recently witnessed\(^\text{11}\). The Income Tax (Amendment) Act 2010 sought to enlarge the scope of taxable revenue from petroleum operations to include Capital Gains Tax that was previously not charged on corporations, because the practice of transfer of interests and assets was not common in Uganda.

There are tax revenues (i.e. Capital Gains Taxes) that were supposed to be earned from the farm-down\(^\text{12}\) of interests and assets between different oil companies that were never collected in the early stages of licensing either due to negligence or lack of knowledge by government. Examples of cases where capital gains taxes were supposed to have been paid to government, but never did include the following:

---

11 The Government of Uganda versus Heritage Oil and Tullow Oil v Heritage Oil, High Court, 2011.
12 Transfer of Petroleum interests and assets from one oil company to another
The transfer of oil assets and interests from Energy Africa to Tullow at a price of US$1.1 billion in 2007. This transfer was supposed to pay a CGT tax of US$385 million.

Hardman Petroleum Resources sell of oil assets and interests to Tullow at US$500 million in 2007. This was supposed to pay government US$175 million.

Heritage Oil and Gas Ltd transfer of its first 50% petroleum assets/interests to Tullow at undisclosed fee in 2008. It was difficult to ascertain the payable CGT tax, because the transfer price was and is still unknown. Whether or not the CGT has since been paid to government is not clear.

Following the amendment of the Income Tax Law in 2010, government proceeded to charge corporations Capital Gains Tax upon the transfer of interests and assets from a company to another, but this has sparked disputes between the International Oil Companies and government of Uganda that are discussed in section 3.5.1 below.

2.3 HARMFUL TAX PRACTICES, TAX CRIME AND TAX LEAKAGE IN THE PETROLEUM SECTOR

Harmful tax practices are practices that cause tax leakage or create unfavourable tax conditions to an investor or a country. Tax crime are practices that threaten the strategic, political and economic interests of a country; undermine citizens’ confidence in their governments’ ability to get taxpayers to pay their taxes; and deprive governments of revenues needed for sustainable development. Practices that have been identified as harmful tax practices that are often associated with the oil and gas industry include tax competition, tax havens, transfer pricing, money laundering, preferential tax regimes, tax fraud, undeclared hedge funds, corporate loss through aggressive tax planning, bribery, corruption, etc. These activities all thrive in a climate of secrecy, inadequate legal frameworks, lax regulation, poor enforcement, and weak inter-agency co-operation. Money laundering, corruption and other economic crimes typically constitute a tax crime. 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 prosecute these crimes (i.e. requires a holistic government approach). A description of some of the practices is provided below.

2.3.1 Money Laundering

Money laundering can be defined in many ways, but legally it is the process of taking the proceeds/ revenues of a criminal activity and making them appear legal. Laundering allows criminals to transform illegally obtained gain into seemingly legitimate funds. Oftentimes, those who commit the crime may attempt to launder the money themselves, but there is an emerging breed of criminals that provide laundering services in what is classified as organized crime. This new breed of criminals includes lawyers, bankers and accountants. Criminals want their illegal funds laundered to make it easy to move the money through society freely, without fear or suspicion and to avoid the police confiscating the funds. Laundering usually involves three steps i.e. placement, layering and integration. The first step involves depositing the money in recognized financial institutions or conversion of cash into negotiable instruments.
This is the most difficult step, because Banks are required to report on deposits of more than US$10,000= done by an individual in a single day under the Federal Bank Secrecy (BSA) Act of 1970. Criminals have designed ways of circumventing this bank reporting procedure. The second step involves wire transfers of funds through a series of accounts in an attempt to hide the fund’s true origin referred to as layering. Once this is achieved, then the funds which are no longer traceable can be returned to their criminal origin where they are finally mixed with legitimate funds. This is referred to as integration. Due to the high volumes of wire transfers that occur each day, it makes it very difficult for law enforcement agencies to trace the transactions.

A 2010 Global Witness report reveal that UK-based banks, for example Barclays, HSBC, RBS, NatWest and UBS, were involved in laundering huge amounts of monies from Nigerian politicians over a long period of time (Global Witness, 2010). With this evidence, it becomes difficult to imagine that such corruption that has been going on in the UK unabated - despite having a Financial Systems Authority (FSA) to regulate the sector - cannot happen with Ugandan politicians. In 2011, allegations were rife of Ugandan politicians having been bribed by one UK oil company operating in the country. A Sunday 17th March 2013 Monitor Publications Newspaper alleged that the same UK-based company had muted ideas of bribing Uganda’s President, H.E. Yoweri Kaguta Museveni. The allegations, notwithstanding, the fact that they are emerging is a very worrying situation for Uganda and its nascent oil industry. There is no clear evidence that money laundering is occurring in Uganda. However, government needs to put in place or strengthen mechanisms for monitoring money laundering.

2.3.2 Tax Fraud and Corruption

Tax fraud is defined as an intentional wrongdoing on the part of a taxpayer, with the specific purpose of evading a tax known or believed to be owed. It is the wilful and intentional falsification of information on a tax return in an attempt to limit the amount of tax liability. It essentially entails cheating on a tax return in an attempt to avoid paying the entire or part of the tax obligation. It includes claiming false deductions, claiming personal expenses as business expenses and not reporting on income. Tax fraud has two ingredients i) a tax due and owing and ii) a fraudulent intent - absence of which it is difficult to ascertain fraud. Usually the burden of proof for tax fraud lies with government. This is the most common crime that often goes unpunished and Uganda is no exception.

Corruption is variously defined, but generally, it is the wrongdoing on the part of an authority or powerful party through means that are illegitimate, immoral or incompatible with ethical standards. It often results from patronage and is associated with bribery. It threatens good governance, sustainable development, democratic processes and fair business practices. According to the World Bank, corruption is one of the greatest obstacles to reducing poverty. It undermines development by distorting the rule of law and denies money for public services. As well as the direct loss of government revenue, corruption distorts markets and exacerbates political instability making it more difficult, more expensive and more risky for companies and banks to operate in corruption hot spots. Uganda is now riddled with corruption tendencies with several corruption cases involving colossal sums of money (Ugx2.396trillion shillings) over the last 10 years having been exposed, including the most recent involving donor funds (22billion) misappropriated in the Office of the Prime Minister (OPM). There are many corruption cases that remain unnoticed and unreported in the country.
At an international level, there are efforts to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions. There is now an Anti-Bribery Convention that prohibits tax deductibility of bribes to foreign public officials. This has sent a clear message to the business community that bribery will no longer be treated as an ordinary or necessary business expense, but a criminal offence that is subject to serious penalties (OECD, 2009).11

2.3.3 Tax Havens

A tax haven is a state, country or territory where certain taxes are levied at a low rate or not at all.12 They become the most preferred States in which corporations and individuals want to undertake their shell/front/international subsidiaries businesses, because of the favourable fiscal regimes. Different jurisdictions/ regimes tend to be havens for different types of taxes and different categories of people and/or corporations.13 Tax havens are characterized by having only nominal or no taxes – thus they impede the free exchange of information on taxpayers with governments through administrative practices or laws, non-transparency and a lack of substantial activities in the Tax Haven State. A classic tax avoidance operation is one in which there is buying and selling through tax haven companies to disguise true profits. The company conducts its international operations through the shell corporation – thus not having to report to the host country where its investments are located the sums involved in the transactions and consequently avoiding taxes. This is typical to multinational oil company operations. Tax havens create a situation of tax competition among governments.

While there is no clear and reliable evidence that the impacts of tax havens is already affecting Uganda, the allegations about politicians in Uganda having been bribed by UK-based Oil Company through a bank situated in a tax haven (i.e. Malta) is a worrying situation for Uganda. Heritage Oil and Gas is reported to be based in a tax haven i.e. the Island of Jersey and it is not clear whether or not Heritage applied the practices associated with tax havens in its operations in Uganda. Government of Uganda needs to build capacity to monitor operations linked to tax havens to ensure that there is no tax leakage.

2.3.4 Tax competition

Tax competition also described as regulatory competition or competitive governance or policy competition is a situation where States compete amongst themselves by offering better or lower tax or fiscal terms in the laws, economics and politics with a view of attracting investment inflows instead of outflows. This implies having a national strategy of attracting foreign direct investment (FDI) and high value human resources by minimizing the overall taxation levels, offering favourable fiscal terms, investment incentives – thus creating a comparative advantage over the other countries. This has the effect of either triggering “a race to the bottom” in standards in fear of driving the investments abroad or due to the decreased ability of that jurisdiction to enforce the standards or triggering “a race to the top” in standards due to the ability of different investors to select the most efficient rules by which to be governed in terms of corporate, labour, tax and environmental laws. Many scholars have argued that tax competition is good, because it drives efficiencies and good governance of

---

12 A shell corporation is a company which serves as a vehicle for business transactions without itself having any significant assets or operations. Some shell companies may have had operations, but those may have shrunk due to unfavourable market conditions or company mismanagement. Shell corporations are not in themselves illegal and have legitimate business purposes. However, they are a main component of the underground economy, especially those based in tax havens.
public budgets; offers opportunity for well-paid jobs-especially in countries with limited jobs prospects; is beneficial for investors through lower taxation; and is beneficial to the citizens through the high redistribution of wealth. Some economists also argue that tax competition is beneficial in raising total tax intake due to low corporate tax rates stimulating economic growth. Whatever the case, it is clear that there are risks associated with tax competition, which the affected parties have little or no control over.

Whereas there is no evidence of tax competition affecting the East African Countries and Democratic Republic of Congo, the emerging oil and gas discoveries in Kenya, South Sudan, and Democratic Republic of Congo (DRC) and possibly in Rwanda and Tanzania could be used to pit the different regional countries against each other in a tax competition phenomenon, consequently devastating relationships. This is particularly because the region is a politically volatile one where such competition could trigger economic conflicts between the States. For example, DRC has been reported to be charging significantly higher signature bonuses compared to Uganda. This raised concerns among the Ugandan Public who thought Uganda was getting a raw deal from the award of exploration licenses to multinational companies, yet the country could earn better like DRC. The low signature bonus rates and other incentives on the Ugandan side could encourage corporations already operating in DRC to prefer moving to Uganda. Such a shift could trigger a conflict between Uganda and DRC over the movement of corporations and the loss of tax revenues on the DRC side.

2.3.4 Ring Fencing

Ring-fencing is a practice where a company’s assets or profits are financially separated even when it is operated as a single unit for purposes of protecting assets from financial assessments, separation into different income streams for taxation purposes and regulatory segregation. Asset isolation is intended to protect the assets from creditors without appearing to hide the assets and consequently evade taxes. Assets that are shielded from creditors by law are few (e.g. some home equity, certain retirement plans or limited partnerships). Assets that are almost always unreachable are those to which one does not hold legal title. In many cases, it is possible to vest legal title to personal assets in a trust, an agent or a nominee, while retaining all the control of the assets. It can also be used as a method for mitigating liquidation risk or to improve a corporate credit rating. This is a practice common in the mining, gas and petroleum extractive sectors. While there is no evidence that the Oil Companies operating in the Uganda have ring-fenced their assets abroad, it is clear that government of Uganda has adopted the approach of ring-fencing exploration areas (EAs) and licenses awarded to oil companies so that each EA is monitored and assessed independently in terms of operations, production, profitability and tax. It is believed that this will help avoid co-mingling of oil revenues and tax leakage that could occur, if all licenses or EA awarded to a given company are treated as single entity operation.

2.3.5 Transfer Pricing

Transfer pricing also known as transfer costs is the price at which subsidiaries of a company transact with each other. The transaction may include the trade of supplies or labour or semi-processed/ finished goods between the subsidiaries. It is used when individual entities or subsidiaries of a larger firm are treated as separately run entities. It is a very controversial
subject, because multinational companies use it to take advantage of different tax rates between countries\textsuperscript{18}, transferring the tax burden from one country to another where there is a lower tax regime, consequently resulting in paying of lower taxes. In respect to costs of goods, it involves the transfer of goods from a country where there is lower profit margin attributed to a high tax regime to areas with higher profit margin attributed to lower tax levels. The consequence of this is the exchange of old equipment as if it is new from one jurisdiction to another. The other consequences include having tax leakage, disputes over taxes and taxation, high uncertainty for businesses as well as governments and the risks of double taxation or double non-taxation. On recognizing the widespread phenomenon of transfer pricing among multi-national corporations and the risks associated with it for both businesses and governments, the OECD in 2005 started a process of developing guidelines for controlling transfer pricing, while GATT provided a mechanism for a “certificate of origin” that certifies the origin and state of goods traded. It is not clear whether or not Oil Companies operating in Uganda are already practicing transfer pricing, but it is important that government puts in place mechanisms and builds capacity to monitor such vice.

2.3.6 Corporate loss through use of Aggressive Tax planning

Aggressive tax planning involves taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. It generates artificial losses and promotes transfer pricing. Aggressive tax planning can take a multitude of forms. Whereas tax planning is considered a legitimate practice worldwide, its effect is that it shifts taxable profits towards States with beneficial tax regimes, resulting in tax leakage from the corporation’s host country. It reduces tax liability through strictly legal arrangements which however contradict the intent of the law. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source). Member States find it difficult to protect their national tax bases from erosion through aggressive tax planning, despite important efforts. National provisions in this area are often not fully effective; especially due to the cross-border dimension of many tax planning structures and the increased mobility of capital and persons i.e. if the company becomes “exempt” in the state of residence.

Ugandan borders are highly porous that it is easy for aliens to enter and goods or money to leave the country unnoticed. Uganda has been offering tax exemptions to multi-national oil companies setting up operations in the country and this has been a source of conflict. While tax exemptions may result in increased economic benefits, if not probably awarded on the basis of empirical evidence, they can result in a net loss of benefits. It is important that before tax exemptions are awarded, they are informed by empirical evidence. Heritage Oil and Gas cited being in a tax holiday/exception at the time they were transferring their assets and interests to Tullow oil. Heritage Oil and Gas also cited that the transaction of assets and interests to Tullow oil happened outside Uganda and therefore were not liable to pay the Capital Gains Tax to government of Uganda. However, the Court in Uganda ruled in favour of Uganda against Heritage, which sparked the arbitration case currently in the London Court.

The freedom multinational companies have of expatriating all profits out of Uganda is a recipe for tax leakage that is facilitated by aggressive tax planning processes. The Withholding Tax arrangement in Uganda may not be a sufficient deterrent to tax leakage perpetuated through such processes. Government of Uganda tax collectors, monitors and auditors need
to internalise how aggressive tax planning is carried-out to cause tax leakage in order to purge it.

2.4 TRANSPARENCY AND ACCOUNTABILITY IN UGANDA’S PETROLEUM SECTOR

2.4.1 Transparency and Accountability as enshrined in the Law

The proposed new Public Finance Bill 2012 earlier discussed has strong basic transparency and accountability provisions. However, it falls short of allowing public access to certain information concerning the petroleum sector - such as agreements, licenses and permits - relegating it to confidentiality clauses therein and the provisions of the Access to Information Act 2005. It is well known that the Access to Information Act 2005 has provisions that undermine the principles of transparency enshrined in Article 41 of the Constitution. Article 41 of the Constitution gives the public the right of access to information in the possession of the State, with the only exception being prejudice of security or sovereignty of the State or interference with the right to privacy of any other person. This means that the burden of proof that release of information prejudices security, sovereignty of the State or the right to privacy of any other person lies with government. Short of this, information in State possession should be disclosed.

Government accountability mechanisms in respect to monies were enshrined in the Constitution and Public Finance and Accountability Act of 2003. Accountability in respect to performance of government officials is enshrined in laws governing public service. There still exists an Official Secrets Act of 1930 and the Oath of Secrecy that bars government officials from disclosing information held by a public body. The Access to information Act 2005 failed to repeal this old law, which is undermining information disclosure. The new proposed Public Finance Law attempts to provide for transparency and accountability, but if such old laws are not revisited, they will continue to jeopardise the process.

There is need for streamlining the assessment, determination and collection of petroleum revenues and their movement/transfer to different government funds to ensure transparency and accountability.

Transparency and accountability should be the Rule, not the exception. The holding of information as confidential or classified should be limited to patent/commercial/proprietary interests/privacy only and this should be justified by parliament. Similarly, information to be classified as posing a security risk or threat should as priori be clarified and/or justified by parliament.

2.4.2 Institutional Framework for Transparency and Accountability

Government has put in place institutions that are mandated to ensure that there is transparency and accountability such as the Inspector General of Government (IGG), Auditor General, Secretary to the Treasury, Public Accounts Committee of Parliament (PAC), Accountant General, Inspector General of Police, among others. However, transparency and
accountability remains a political rhetoric. The country continues to be bedevilled by many cases and allegations of corruption and theft of public monies to which the petroleum industry is not immune. Over the last 10 years, government has lost about 2.4 trillion shillings through negligence and deliberate action by public officials. The failure of these institutions to fully exercise their mandates is in part due to political interference that undermines institutional independence and the lack of confidence among public officials to exercise the mandates entrusted to them, because of fear of victimisation. Consequently, public officials have been caught-up in the syndicate and fray of misappropriating public resources.

2.5 ANALYSIS OF THE TAX DISPUTES BETWEEN GOVERNMENT AND OIL COMPANIES IN RELATION TO TAX JUSTICE PRINCIPLES

Common practice has been that laws do not act retrospectively, but there is a growing shift worldwide where aspects of a new/amended law act retrospectively. These include aspects of taxation, environmental protection, pollution, human health and safety, among others. Often-times, corporate investors have a problem of complying with laws and regulations that are applied retrogressively and tend to contest such moves. Government in a bid to collect tax from every facet of operations in the oil sector has created (or is creating) new tax obligations and liabilities for oil companies in respect of contractual obligations and financing arrangements without factoring in the liabilities of disputes. Government has changed its income tax three times in the last two years. This has formed fertile ground for present and future disputes. The transfer of pre-production oil and gas interests and assets in Uganda has also triggered disputes over the fairness and taxation of capital gains.

As mentioned earlier, it is due to the weaknesses and inadequacies in the 1985 petroleum Act that a number of problems and tax disputes have emerged. This has been and is being made worse by the bilateral investment agreements that government has signed; the investment incentives that government put in place over the years in a bid to encourage investment in the oil and gas sector; and the inherent weaknesses and inadequacies that have trickled into the new upstream petroleum Act 2012 and are likely to trickle into the mid-stream petroleum and public finance laws. It is the bilateral investment agreements, investment incentives and taxation weaknesses in the laws that are the basis for the disputes that government is embroiled in with international Oil Companies.

2.5.1 Tax Disputes and Tax Leakage in the Petroleum Sector

The tax disputes that have emerged between government of Uganda and the international Oil Companies include:

a) The Heritage transfer of its last 50% stake at US$1.45 billion to Tullow where it was supposed to pay a Capital Gains Tax of US$404m CGT in 2010. In this case, Heritage refused to pay the tax arguing that the sale did not occur in Uganda. However, the Ugandan Tax Tribunal ruled in favour of Uganda arguing that “it was the location of the assets which formed the subject matter of the sale that was the pertinent issue rather than the jurisdiction in which the sale took place”. The tribunal ordered Heritage “to pay the tax, including government’s costs i.e. US$434 million”. This dispute is now subject to arbitration in London. Heritage’s refusal to pay the capital gains tax left Tullow in a
very precarious situation of having to pay the same amount of money (US$1.45 billion) paid to Heritage to government for assets Tullow could not use without government’s approval or pay the CG tax that Heritage was supposed to have paid to government. Tullow opted for the latter and to pressure Heritage to pay the tax.

As part of the arbitration case and in line with the requirements of the Convention on the Settlement of Investment Disputes between States and Nationals of Other states, Heritage paid US$121 million to government as deposit pending resolution of the case. Uganda is expected to pay legal costs to the tune of Ugx11.9 billion (US$4.58 million), with no guarantee that the case will be ruled in Uganda’s favour. In the event that Uganda loses the case, the US$121 million paid by Heritage will have to be refunded to Heritage.

b) The second dispute is related to the first one. Following Heritage’s refusal to pay capital gains tax and the filing of the arbitration case, government demanded Tullow to pay a capital gains tax of US$313 million that Heritage was supposed to pay as part of the first 50% transfer of interests and assets to Tullow. Tullow, desperate to obtain the necessary government approvals and rights under Tullow-Heritage Production Sharing Agreements, paid the US$313 million to government in lieu of Heritage’s unpaid capital gains tax. Consequently, Tullow and Heritage became embroiled in a legal wrangle over the capital gain tax paid in lieu of Heritage’s unpaid tax. Tullow is struggling through a case filed in the Commercial Court in London to recover the US$313 million from Heritage citing an indemnity clause in the sale documents where Heritage is obliged to reimburse Tullow for any tax liabilities arising from the sale. This notwithstanding, Heritage claims that the payment made to the government by Tullow was a political one and not a tax and therefore, Tullow should bear the consequences of its decision to complete the purchase from Heritage prior to receiving final government signoff of the deal. As a result, Heritage counter sued Tullow for US$283 million, which is the amount of money that Tullow withheld from Heritage pending the resolution of Heritage’s tax dispute with the government of Uganda. Tullow accepted to meet Uganda’s tax requirements, because it wanted to retain its assets in Uganda, which at the time, were threatened on two fronts. The first front was the potential for a hostile takeover attempted by the Italian Oil Company, ENI. The second front was a government takeover of the exploration block once the Tullow-Heritage PSA license expired.

c) In 2011, Tullow sold two thirds of its stakes to CNOOC and Total FandP Ltd at US$2.9 billion and was supposed to pay US$479 m as CGT. However, this too has not yet been paid, because of disagreements and is likely to result in another arbitration case. While Tullow does not dispute the principle that capital gains tax must be paid, it is disputing the amount charged and has filed a case at the Uganda Tax Appeals Tribunal. Despite these disagreements with Tullow, the minister of MEMD went ahead to award Tullow with another PSA for the Kanywataba Exploration Area and a new license for Kingfisher that had expired in February-March 2012. This award was in violation of a parliamentary resolution in October 2011 that banned all new oil transactions until new petroleum laws were put in place.

d) There are now reports that Tullow is disputing the assessment of capital gains tax
charged on them by URA and is in the process of seeking arbitration in the USA or the
UK. However, they are not disputing the fact that they owe tax to Uganda, but rather
the assessment. This is hugely important for oil companies, because they will always
try to minimise their tax liabilities and include whatever they can in cost oil expenses
and it sets a precedent for oil companies operating in Uganda. This is a complex
area that Uganda needs to get grips with. Therefore, the manner in which this case is
handled both at the national and international level will have far reaching ramifications.
This too could involve a hefty sum of money from government to pay the legal costs
involved in the case with no guarantee that the case would be ruled in Uganda’s
favour.

The jurisdiction of the arbitration is being contended at the tribunal in London where Uganda
claims that the Arbitration court in London does not have jurisdiction, because the tax being
charged on the companies is a domestic issue, which the PSAs do not take precedent over.
On the other hand, the company argues that under the PSAs the arbitration clause, which
states that disputes shall go to arbitration in London under the UNCITRAL rules, does cover
this tax dispute. So it is a question of national legislation versus contractual obligations. It
is not very clear how the trade treaty between Uganda and UK relates to this, especially
since the companies are not registered in the UK, but in Jersey or Isle of Man which are
Crown Dependencies. It could be assumed that since Jersey and Isle of Man are Crown
Colonies (dependencies) of the UK, the treaty applies to them too, but this may well not be
the case. Heritage chose the option for arbitration for a number of possible reasons that
include standing a better chance of being heard; a high possibility of winning and lower
costs of arbitration. In order to apply the mechanism mentioned in the treaty, Heritage would
need to fulfil a number of criteria, which may include the need to show that they were treated
unequally or unfairly in comparison to local investors. If the Arbitration Tribunal in London
decides that it does not have jurisdiction to hear the Heritage case, then Heritage may try the
alternative route, which then presupposes that the treaty applies to Jersey.

Such cases are likely to cause significant loss of government revenue, even before commercial
production of oil begins and could be responsible for huge amounts of tax leakage out of the
country. In addition, the legal battles could cause a lot of controversy that could have far
reaching consequences. For example, they are first of all, setting a legal precedent with
respect to capital gains tax and secondly, on the basis of the arbitration rulings in London,
are likely to affect government of Uganda’s attitude towards farm-down and tax justice in the
petroleum industry.

The requirement of charging capital gains tax was already in force by the time the first
Production Sharing Agreement (PSA) was signed. Therefore, no argument can be raised that
the law is being applied retrospectively. Unfortunately, there is no standard practice on how
capital gains should be charged and no consensus on best practice. It should be no surprise
that these deals give rise to disputes that are typical with immature petroleum governance
systems.

2.5.2 Investment Incentives

In 1997, Government offered investment incentives to international oil companies that would
IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?

be willing to invest in the oil and gas sector that included tax exemptions or holidays. It is these incentives (tax holidays or exemptions) that international Oil Companies are invoking as basis for refusing to pay certain taxes.

2.5.3 Bilateral Investment Agreements

Government of Uganda signed an Investment Agreement with the United Kingdom in 1998 for the promotion and protection of investments. It provides for the creation of favourable conditions (Articles 2); treatment (Article 3); Compensation for loss (Article 4); Expropriation/nationalisation of companies (Article 5); repatriation of investment and returns (Article 6); exceptions to treatment and taxation (Article 7); settlement of disputes (Articles 8 and 9); subrogation (Article 10); application of other rules (Article 11); territorial extension (Article 12); entry into force (Article 13); and Duration and termination of the investment agreement (Article 14) for nationals and companies of the contracting parties.

Articles 7, 8 and 9 of the investment agreement are of particular importance to this study. Article 7 provides a contracting party to the investment agreement exceptions not to grant the other party benefits of treatment, preference or privilege that might be accrued from being a signatory to an international or bilateral customs treaty or taxation arrangement with a third party. This means that the investment or taxation benefits accruing to a party of an investment agreement from a third party cannot be extended to the other party to the investment agreement. Such a clause allows a party to an investment agreement to benefit or transfer tax liabilities14 to a third party country where the party benefits tax exemptions (i.e. a tax haven) or international trade free zones. This clause is not favourable to Uganda, because most of the international oil companies operating in Uganda have subsidiary companies registered in tax haven countries or international trade free zones where they are not required to pay taxes. This is a recipe for tax revenue leakage. Before signing, government of Uganda should have critiqued and internalised the implications of clause 7.

Article 8 requires parties to the investment agreement to appeal to the International Centre for the Settlement of Investment Disputes (ICSID) for settlement through conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other states21. Uganda is currently facing a tax arbitration case in the United Kingdom (UK) with Heritage Oil and Gas, but it is not yet clear whether or not all requirements of the ICSID Convention and the investment agreement between Uganda and the UK have been complied with. Article 8(3) of the investment agreement between Uganda and UK requires that if parties to an investment agreement fail to agree to a dispute through local remedies within 3 months of the dispute, then they should agree to submit their grievance to ICSID in accordance to Articles 28 and 36 of the Convention. The questions that then arise are how Uganda and Heritage Oil and Gas arbitration case end-up being conducted in the UK and who in Uganda agreed to take the arbitration case to the UK? There is likelihood that Tullow could sue government of Uganda over taxation issues.

The arbitration Court in London on 3rd April 2013 ruled in favour of Uganda against Heritage Oil and Gas Company affirming that oil transactions in Uganda were taxable and thus quashed Heritage’s claim contesting URA’s quest to tax the US$1.45billion transaction of

14 The clause promotes the vice or practice of transfer pricing and inside trading with subsidiary companies and therefore loss of oil or tax revenue to the host country.
interests and assets to Tullow Oil. This was a second time that Heritage was losing a case to Uganda. The company first lost in a Uganda’s Tax Appeals Tribunal, which upheld that the transaction was taxable. After losing the case in Uganda, Heritage took the matter to London. Uganda argued that the transaction attracted a tax; the dispute could not be handled in London exclusively; Heritage had forfeited its right to have the matter handled in London when it subjected itself before the Uganda’s Tax Appeals Tribunal; and that the tax could not be determined in London.

This is one of those rare cases where an oil rich developing country wins a case(s) against international Oil Company.

2.6 IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?

On the basis of the foregoing analysis and discussions, this might be time to ask and answer the question as to whether or not “tax and oil tax justice is a myth or reality” in Uganda? It is a reality because tax must be paid by every citizen or legal entity (by birth, naturalisation or resident) of Uganda, including the oil companies. Whether or not tax justice is a reality depends on several factors including how it is assessed, determined, collected and utilised by government to provide social goods and services; its effect/impact on individuals and corporate; and how those who are taxed regard it.

Tax justice is a myth because of the complexities involved. For example, there are tax practices that are considered legal, yet they have or could have negative or harmful effects/impacts on individuals, corporations and nations such as transfer pricing, ring-fencing and aggressive tax planning, among others. This is further complicated by the illegal tax practices such as money laundering; non-transparent and dishonest tax declarations; tax avoidance; high levels of bribery and corruption; and the absence of standards under which taxes are assessed, determined, collected and utilised. Very few citizens understand and appreciate how taxes are assessed, determined, collected and utilized. There is a high degree of dissatisfaction among the public in the manner in which taxes are utilised by government and its officials. The high levels of corruption and mismanagement of public funds (taxes) that is rife in government and failed delivery of adequate social goods and services are nurturing decent and reluctance to pay taxes and are promoting a culture of tax evasion or avoidance, among the citizenry.

The emerging legal conflicts between government of Uganda and international oil companies operating in Uganda could be an indication of an inadequate policy, legal and institutional framework in place to govern the petroleum industry; failed tax system to address the demands of the industry; ineptness of Ugandan officials to adequately govern the industry or aptness of international oil gurus in edging-out favourable deals from the gullible Ugandans; and/or the skewed nature of business arrangements/agreements in favour of international investors at the detriment of indigenous investors.

15 New Vision Newspaper, Thursday, April 4, 2013.
3. CONCLUSIONS

The oil discovered in Uganda has the potential of lifting the country out of the current state of poverty if it is properly managed. However, it also has the potential of drifting the country into abject poverty worse than the current states, if poorly managed. In order to achieve the former, adequate and effective fool-proof legal and institutional mechanisms are necessary. The existing policy, legal and institutional framework is inadequate to deliver the desired outcomes from the industry. It is riddled with gaps, ambiguities and implementation challenges that need to be rectified going forward. It requires the whole regulatory mechanism to be overhauled and up-scaled to meet the demands of the petroleum industry. The current legal disputes and contestations between government and oil companies is a manifestation of the inadequacies in the regulatory framework and agreements that government of Uganda signed with multinational corporations and their respective countries of origin.

While multinational investment agreements are renowned to benefit as a whole the parties involved, international trade agreements are slow in delivering the desired outcomes. This is the reason why many countries are now opting to have bilateral agreements. This is well demonstrated in respect to petroleum where there are oil trading blocs e.g. the OPEC. It is possible that after significant discoveries of commercially viable crude oil and gas reserves in the 5 East African Countries, an East African Oil and Gas Trading bloc could emerge.

There are tax practices classified as legal internationally, such as tax haven, transfer pricing, ring-fencing and aggressive tax planning that have the potential to cause harm to the tax base and economy of countries. There are also other practices that are illegal that should be avoided altogether such as money laundering, bribery, secrecy, corruption, tax avoidance, non-transparent and dishonest disclosure of tax liabilities, etc. These seem to be playing-out in Uganda’s oil and gas sector where there have been allegations of bribery concerning certain oil companies and ministers in Uganda. It is also not possible to rule-out money transfer pricing and aggressive tax planning practices in the industry, because of the high levels of secrecy.

Efforts to fight against harmful tax practices have met with mixed reactions. The primary objection being that tax policy is a matter of sovereign entitlement and therefore should not be dictated by foreigners or foreign interests. This, notwithstanding, the fight continues in various aspects including blacklisting countries considered uncooperative in the drive for transparency of tax affairs referred to as the “The List of Uncooperative Tax Havens”

Currently, there are 40 new tax havens in the World that are being investigated where undeclared revenue is hidden and host many of the non-regulated hedge funds, including Switzerland that encourages tax fraud.

The current legal contestations between government and oil companies are making collection of the Capital Gains Tax extremely expensive through legal fees. The political manipulation, capture and writing of individuals in the petroleum law have been witnessed. This is not healthy for the industry in Uganda and it becomes difficult to see how Uganda will avoid the much touted resource-curse syndrome.
4. POLICY RECOMMENDATIONS

It should be in government’s interest to have fool-proof regulatory mechanisms for the oil and gas industry. The political manipulation and capture and the writing of individuals in the law that has been experienced in the past should be avoided and where it has occurred rectified.

Government needs to build capacity (i.e. technological, technical, human and financial) to monitor harmful tax practices that could be playing-out in Uganda’s petroleum sector with a view of purging the vices.

Due to the unpredictability and uncertainty of oil prices on the international market, it is important that a tax regime different from that of other industries is created. At the same time, government has to make sure that the oil industry is not exempt from any of Uganda’s other taxes that are applicable to them.

Tax exemptions and incentives in the oil and gas sector should be for specific period of time or brought to termination completely, because they are no longer justifiable for a sector with proven commercially viable oil reserves and more to be discovered.

There is need for streamlining the assessment, determination and collection of petroleum revenues and their movement/transfer to different government funds to ensure transparency and accountability.

The roles, responsibilities and interactions between different government ministries, departments, agencies and local governments need to be clarified to avoid conflicts.

Notwithstanding the constitutional provision that shields existing agreements to new legislation, the application of the proposed new petroleum laws needs to have a retroactive element in respect to social and environmental safeguards. The highest and best industry practice standards must be applied.

A progressive fiscal regime should be considered and negotiated up front, as this removes the need for re-negotiating when the profitability of oil companies increases.

Petroleum taxes should be inexpensive to administer relative to yield. There is need to avoid tax conflicts that make the collection of taxes very costly by putting in place clear legal and institutional frameworks.

Petroleum taxes should not be viewed in isolation. Each should be considered as a part of a complex revenue structure. When taxing companies, each exploration block should be ring-fenced i.e. treated as an independent (separate) entity.

Uganda should revisit the investment agreement with the United Kingdom and any other pending agreements for signing with a view of first understanding thoroughly the pros and
cons of the different investment agreements entered into. It should also exercise full authority over resources exploited in its jurisdiction. Otherwise, external processes could undermine the confidence in the country’s judicial system and sovereignty.

While there is an increase in global downturn in corporate income taxes as a result of tax competition among nations, Uganda should not be captured in the excitement of lowering her taxes in a bid to attract Foreign Direct Investment. Deliberate effort should be undertaken to encourage domestic investors in the petroleum industry.

Transparency and accountability should be Rule, not the exception. The holding of information as confidential or classified should be limited to patent/commercial/proprietary interests/privacy only and this should be justified by parliament. Similarly, information to be classified as posing a security risk or threat should as priori be clarified and/or justified by parliament.

Citizens and CSOs should continue to demand for accountability from the government on how the oil revenue is used.
REFERENCES

(Endnotes)

2 www.taxworld.org/history/history.pdf.
8 Tax fraud http://www.investopedia.com/terms/t/tax-fraud.asp#ixzz2HBNcBoMl
9 Corruption http://www.businessdictionary.com/definition/corruption.html#ixzz2HBPiwMJT
17 Asset Protection http://en.wikipedia.org/wiki/Asset_protection
18 Transfer Pricing http://www.investopedia.com/terms/t/transferprice.asp#ixzz2HByOiZC4
19 African Studies Quarterly | Volume 12, Issue 3 | Summer 2011
20 Tullow Oil v Heritage Oil, High Court, 2011
IS TAX JUSTICE IN THE OIL AND GAS SECTOR A MYTH OR REALITY IN UGANDA?