



## PUBLISH WHAT YOU PAY: WHAT A NEW U.S. LAW MEANS FOR OIL AND GAS GOVERNANCE IN UGANDA

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*Oil well testing flare*  
Source: ACODE Digital Library 2011



In July 2010, the United States government passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereafter referred to as the Dodd-Frank Act), a piece of legislation with enormous implications for Uganda's burgeoning oil and gas sector. The law contains a provision—Section 1504—that requires all extractives companies that trade on U.S. stock exchanges and file annual reports with the U.S. Securities and Exchange Commission (SEC) to publicly disclose the payments they make to foreign

governments for the commercial development of oil. Two new companies operating in Uganda—Total and CNOOC—file annual reports with the SEC, which means they'll have to abide by this disclosure.

**Name of law:** The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

**Country of passage:** United States

**Date these provisions in the law go into effect:** Late-2012 (estimate)

**What the law does:** It requires extractives companies that trade on U.S. stock exchanges and submit annual reports to the U.S. Securities and Exchange Commission (SEC) to disclose the payments they make to any government throughout the world for the commercial development of oil, natural gas, or minerals. All payments disclosed to the SEC are available online to anyone in the world.

**Why the law matters to Uganda:** Two oil companies that work in Uganda—Total and CNOOC—trade on U.S. stock exchanges. This means that they’ll be required under the new law to disclose to the SEC—and to the worldwide public—detailed information on their transactions with the Ugandan government for the commercial development of oil.

**Remaining questions and concerns:** Before the law can go into effect, the SEC will need to formalize various operational criteria and define a number of important terms. (The law gives the SEC the power to interpret key provisions within the law.) The SEC’s rules—which should be released between August and December of 2011—will have a profound impact on the kind of payment data that people throughout the world will have access to.

**What this means for advocates in Uganda:** Unfortunately, the window of opportunity to submit official comments and concerns to the SEC expired in early 2011. However, the United Kingdom is currently under pressure to pass a similar law, which is important given that three oil companies working in Uganda—Tullow, Neptune (Tower), and Dominion—trade on stock exchanges in the U.K. The caveats and concerns over the U.S. law, as discussed within this document, should be used as a guide for those who wish to lobby the U.K. for the passage of a similar law.

**Want to know more?** For more about this law and its implications for Uganda, refer to the Implications of the U.S. Dodd-Frank Act for Oil and Gas Governance in Uganda. ACODE Policy Briefing Paper Series No. 24, 2011.

Section 1504 is the first law of its kind in the world, and has been hailed as a tectonic shift within the extractives industry—an industry that is frequently criticized for its opaque business practices. Indeed, former U.S. Senator Christopher Dodd, one of the co-authors of the Act, said during a speech on the floor of the Senate in May 2010 that he hoped Section 1504 would “impose a new international transparency standard.”<sup>1</sup> Given the fact that 90 percent of all major international oil and gas companies trade on U.S. stock exchanges, this law may well initiate the standard for which Dodd and others have hoped.<sup>2</sup> In the months following the

passage of Dodd-Frank, advocates in Europe and the United Kingdom have stepped up pressure to develop parallel legislation that regulates extractive companies trading on non-U.S. stock exchanges. Tullow Oil, for example, which is Uganda’s most active oil and gas company, trades primarily on the London and Irish stock exchanges. If the U.K. passes a law with regulations similar to those in Section 1504 of Dodd-Frank, Tullow would be required to publicly release the payments it makes to the Government of Uganda for oil exploration activities, just like CNOOC and Total.<sup>3</sup>

1 Dodd, Christopher. Floor Statements. C-SPAN (May 17, 2010). Available at: <http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598157015 at 5:06:25>.

2 Revenue Watch Institute. “Dodd Frank: The Facts about Disclosure Requirements.” Available at: <http://www.revenuewatch.org/news/news-article/united-states/dodd-frank-facts-about-disclosure-requirements>

3 Tullow Oil has a slightly more complicated trading arrangement in the United States, which makes it exempt from the provisions within the Dodd-Frank Act.

## Oil and Gas Companies with Signed Production Sharing Agreements in Uganda

Oil Company	Exploration Blocks	U.S. Law Applicable?	Traded Stock Exchanges <sup>4</sup>
Tullow Oil (UK)	1, 2, 3A (1/3 stake) <sup>5</sup>	No	London Stock Exchange & Irish Stock Ex.
Total S.A. (France)	1, 2, 3A (1/3 stake)	Yes	New York Stock Exchange
CNOOC (China)	1, 2, 3A (1/3 stake)	Yes	New York Stock Exchange
Neptune / Tower (UK)	5	No	London Stock Exchange
Dominion (Bermuda)	4B	No	London Stock Exchange

### What is the U.S. Securities and Exchange Commission (SEC)?

The Securities and Exchange Commission is a regulatory body within the U.S. government that oversees the trading of stocks, bonds, and other securities on U.S. stock exchanges. Its mission is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.” The SEC describes its mandate thusly:

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

In keeping with this mandate, the SEC requires any company that trades on a U.S. exchange to submit annual financial reports to the Commission. These financial reports are often very detailed, and by law, must be made available to the public. According to the SEC, “the result of this information flow is a far more active, efficient, and transparent capital market that facilitates the capital formation so important to our nation's economy.”

Because so many companies throughout the world trade on U.S. stock exchanges, the rules and regulations set by the SEC have enormous influence on the flow of global financial information. Ninety percent of all international oil and gas companies trade on U.S. platforms, for example, which gives the U.S. Congress—and by extension, the SEC—a great deal of power to determine the kinds of financial data that oil companies relinquish to the public worldwide. Section 1504 of the Dodd-Frank Act has essentially harnessed this power to compel oil, gas, and mining companies across the globe to disclose much more detailed financial information than they previously have.

It is important to remember, though, that while the SEC has a clear mandate to support transparency within capital markets, the Commission is also acutely aware that free markets are built on the principle of competition, which requires some commercially sensitive information to be kept private. Indeed, as the SEC creates the rules under which Section 1504 of Dodd-Frank will be implemented, it will be tasked with weighing carefully these multiple, competing imperatives.

<sup>4</sup> Tullow Oil, Neptune Petroleum (Uganda) / Tower Resources, and Dominion Petroleum trade on the Alternative Investment Market of the London Stock Exchange. Also note that some of these companies trade on additional exchanges, or have securities arrangements with stock exchanges not listed in this table.

<sup>5</sup> On March 30, 2011, both Total Ltd and CNOOC

Ltd signed Sale and Purchase Agreements with Tullow Oil, which would give them a one-third stake in the oil concessions under Tullow’s control. As of October 2011, the transaction—which was subject to certain regulatory approvals by the Government of Uganda—had yet to be completed.

Yet, while Dodd-Frank has rightly been hailed as a revolutionary change within the extractives industry, the final details concerning the law's implementation have not yet been determined. The SEC currently plans to release its interpretation of Section 1504 between August and December 2011, at which time a host of relatively vague provisions outlined within the law itself will be spelled out in concrete terms. These final rules are of immense importance to countries like Uganda, because they not only define the ultimate scope of the bill—for example, whether the SEC will require companies to disclose downstream payments, as well as upstream ones—but will also spell out how detailed the reported payments will need to be. Given the multiplicity of oil and gas projects that Uganda will soon be hosting—from ongoing exploration and production to refining and export—having financial disclosures that provide detailed and holistic data on payment streams will be critical to any subsequent monitoring efforts that research and civil society organizations will undertake throughout the country.

## THE DODD-FRANK ACT AND EITI

Section 1504 of Dodd-Frank arose, in part, from the example set by the Extractive Industries Transparency Initiative (EITI), which was born in the United Kingdom in 2003. EITI is a voluntary coalition of countries with extractives industries. When a country joins EITI, its government voluntarily agrees to publish the income it receives from extractives companies, while the companies follow suit, disclosing their various payments to and transactions with the government. Through a process of auditing, the payments are reconciled and disclosed to the country's citizens for scrutiny.

The Dodd-Frank Act mentions EITI explicitly as a guide that the SEC should use when creating the rules through which Section 1504 will be implemented. The reference to EITI is significant, and strongly suggests that the disclosures mandated by the Dodd-Frank Act were not only created to protect investors, but were also developed with the goal of promoting good governance overseas—or at least hampering extractives companies from engaging in the kind of behavior that hinders good governance.

Yet, while EITI was used as a reference point in the

creation of Section 1504, the new Act's provisions depart from EITI in significant ways.

First, EITI is a voluntary program, something to which each participating country consents to join. The provisions within Dodd-Frank, by contrast, require companies to disclose their revenue streams regardless of the preferences or desires of the governments in whose countries such companies work. While the Dodd-Frank Act obviously has no authority to compel sovereign governments to disclose the payments that they receive from oil companies, Dodd-Frank's supporters must nevertheless acknowledge that the law circumvented the voluntary spirit of EITI. While the SEC has legitimate concerns regarding the protection of investors—concerns that, in the eyes of many, justified the enactment of Section 1504—the extent to which the Act was also influenced by EITI raises questions about the importance of country participation in such endeavors—questions that a number of oil companies themselves have raised in memoranda objecting to the mandate of Dodd-Frank.

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**In the National Oil and Gas Policy of 2008, the Government of Uganda declared that the country would “participate in the processes of the Extractive Industries Transparency Initiative.” At the current juncture, however, Uganda is not even a candidate country, which means that it hasn't begun the process of formally joining the Initiative.**

Source: <http://eiti.org/countries>

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Second, Dodd-Frank departs from EITI regarding the level of financial detail that the law requires companies to disclose. While governments and companies that participate in EITI generally report payments aggregated at the country level, the Dodd-Frank Act stipulates that companies report much more detailed project-level data. However, the text of the law doesn't

define what constitutes a project, an omission that has generated substantial debate among both supporters and detractors of the legislation.

Ultimately, EITI provided a reference point for Dodd-Frank, even though the law goes much further. In creating the rules to implement the law, the SEC can thus go two ways. It can either interpret the law's reference to EITI as a signal to create as much transparency as possible, in keeping with the overarching principles of the initiative. Or, it can interpret the reference to EITI as a signal to lessen the scope of Dodd-Frank, constraining the law's broad mandate to bring it in line with the more modest actual provisions that comprise the minimum disclosures recommended within EITI itself. Many debates surrounding the scope of the law have used EITI to argue both sides of the issue.

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## **Advocates Coalition for Development and Environment**

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