PUBLISH WHAT YOU PAY

What a New U.S. Law Means for Oil and Gas Governance in Uganda

Elizabeth P. Allen

ACODE Policy Briefing Paper No. 25, 2011

PUBLISH WHAT YOU PAY

What a New U.S. Law Means for Oil and Gas Governance in Uganda

The U.S. Dodd-Frank Act of 2010 and Revenue Transparency

Elizabeth P. Allen

Cover Photo: Oil exploration worker displays samples of crude oil at Kigogoro drilling site in Bunyoro, Western Uganda.

Published by ACODE
P.O. Box 29836, Kampala - UGANDA
Email: library@acode-u.org, acode@acode-u.org
Website: http://www.acode-u.org

Citation:

Allen, E., P., (2011). Publish What You Pay: What a New U.S. Law Means for Oil and Gas Governance in Uganda. ACODE Policy Briefing Paper Series, No. 25, 2011. Kampala.

ISBN 9789970070138

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ACODE	Advocates Coalition for Development and Environment
API	American Petroleum Institute
ATI	Access to Information Act
EITI	Extractive Industries Transparency Initiative
ESTTA	Energy Security through Transparency Act
FCPA	Foreign Corruption Practices Act
GE	General Electric
IASB	International Accounting Standards Board
KBR	Kellogg, Brown and Root
NMA	National Mining Association
PWYP-US	Publish What You Pay – United States
SEC	Securities and Exchange Commission
U.S	United States
UK	United Kingdom
UN	United Nations

ACKNOWLEDGMENTS

This policy brief is part of an effort by the Advocates Coalition for Development and Environment (ACODE) to promote transparency and accountability in the oil and gas sector in Uganda. ACODE is grateful to the Open Society Institute of East Africa (OSIEA), which provided support for the research and publication of this paper.

The author is also indebted to Onesmus Mugyenyi at ACODE, and to Peter Veit, Alicia Zomer, and Candice Schibli at World Resources Institute in Washington, D.C., for comments on the earlier drafts.

About the Author

Elizabeth P. Allen is a Research Associate at ACODE. She holds Bachelor of Arts from Harvard University and a Masters Degree from John Hopkins Universty.

1. INTRODUCTION

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.

> *The SEC shall "require each resource extraction issuer"—in other words, each oil, gas, or mining company—"to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the [U.S.] Federal Government for the purpose of the commercial development of oil, natural gas, or minerals…."* –Section 1504 of the Wall Street Reform Act

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."[1] 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.[2] 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.[3]

1 See floor statements of Senator Christopher Dodd. C-Span (March 17, 2010)

2 Revenue Watch Institute. "Dodd Frank: The 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. (While Tullow is also registered with the SEC in the U.S., it trades through American Depository Receipts, or ADRs, which are negotiable securities in which a single ADR for Tullow is equal to a certain number of ordinary shares on the London and Irish stock exchanges.)

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 in 2012, 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 (Section 3). 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.

This policy brief provides a description of the Dodd-Frank Act and its genesis (Section 2), followed by a discussion of the key debates and questions currently under review by the SEC and their relevance to Uganda's oil and gas sector (Section 3). The paper concludes with a series of recommendations for organizations in Uganda that are seeking to enhance transparency within the oil and gas sector (Section 4).

2. SECTION 1504: WHAT IT SAYS AND THE CONTEXT BEHIND IT

The text of Section 1504 is relatively short (see Appendix). At its core, the section requires all companies engaged in the commercial development of oil, natural gas, or minerals to disclose *"taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals."* Commercial development is defined as *"exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission."*

Oil and Gas Companies with Signed Production Sharing Agreements in Uganda

Oil Company	Exploration Blocks	U.S. Law Applicable?	Traded Stock Exchanges
Tullow Oil (UK)	1, 2, 3A (1/3 stake)[1]	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

Note: Tullow Oil, Neptune Petroleum (Uganda) / Tower Resources, and Dominion Petroleum trade on the Alternative Investment Market of the London Stock Exchange. Some of these companies trade on additional exchanges, or have securities arrangements with stock exchanges not listed in this table. Also note that Neptune will soon be exiting the Ugandan market.

The provisions within the law apply to extractives companies (dubbed "resource extraction issuers") that file annual reports with the SEC. It should be noted that while many companies throughout the world are registered with the SEC and submit reports to the Commission, only those companies that trade on U.S. platforms (for example, on the New York Stock Exchange or NASDAQ) will be bound by the provisions within the Dodd-Frank Act. In Uganda, Total and CNOOC—both of which trade on the New York Stock Exchange (and thus file annual reports with the SEC)—will be required to comply with Section 1504.

2.1 Section 1504: Its Origins

The Dodd-Frank Wall Street Reform Act was borne in the aftermath of the financial crisis of 2008. While the crisis had many causes, a spate of banking deregulation that began in the 1990s was a major driving force behind the spiraling downturn. While the general contours of these past few years are known to many, it perhaps bears repeating that by 2008, the United States was sitting atop the perfect storm: an overheated housing market propped up by a financial sector that had grown fat through hampered oversight. When the Wall Street behemoth, Lehman Brothers, went bankrupt in the fall of 2008, the result was a cascading domino effect within U.S. (and eventually global) financial markets, the entire architecture of which threatened to collapse without the support of the U.S. federal government in the form of a massive Wall Street bailout to investment banks. One of the consequences of this necessary, if politically unpopular, intervention was the realization that the United States's financial regulatory framework needed a complete overhaul.

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: 2013 (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. (For a description of the SEC and what it does, see Box 1 in the body of the briefing.) 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 in 2012—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. (Once the SEC releases its ruling, ACODE will follow up with an addendum to this paper that explains exactly how the provisions within the U.S. law will affect Uganda.)

Given the regulatory reform that the Dodd-Frank Act sought to achieve, one might wonder why Section 1504 on extractives was deemed relevant at all. Indeed, why did a law on Wall Street reform and U.S. consumer protection include a section on the international operations of oil, gas, and mining companies? And why would transparency within extractives industries—especially those that operate outside the United States—matter to American regulators?

The answers to these questions are somewhat complicated, in part because of the political maneuvers that surrounded the inclusion of Section 1504 in the Act.[4]

4 Some political observers have suggested that Section 1504 was slipped into the body of the bill towards the end of negotiations surrounding Dodd-Frank, essentially catching oil and mining lobbyists off guard. Prior to its inclusion within Dodd-Frank, Section 1504 existed as a separate bill—the Energy Security through Transparency Act (ESTTA), which was drafted in the midst of the financial downturn in 2009, but has its roots in a multi-year effort to push the United States to enact a Publish What You Pay law. Discussion with Vanessa Herrington. "Presentation - Plenary Session on Extractive Resources. The Access Initiative (October 29, 2010), Kampala Uganda.

That said, we can attribute Section 1504's inclusion not only to a desire to promote good governance overseas, but also to a concern about the negative effects of non-transparent business practices on U.S. financial markets. Indeed, investment analysts throughout the world have become increasingly attuned to the kinds of political and economic risks that affect international companies, especially those involved in oil and gas extraction—an industry with a notorious record of corruption and bribery (see Box 2). In a memorandum on the importance of understanding country-specific risks, for instance, Calvert Investments, a financial management company based out of Bethesda, Maryland, wrote in support of the kinds of transparency requirements that were eventually included in the Dodd-Frank Act.[5] Among other things, Calvert pointed to Royal Dutch Shell's experience in Nigeria between 2005 and 2008, when oil production dropped 65 percent due to the ongoing conflict in the Niger Delta. According to Calvert, "The full impact of Shell's drop in production in Nigeria between 2005 and 2008 and its plans for the country cannot be modeled completely without information regarding the related tax, royalty and other obligations disclosed through ESTTA [the U.S. Energy Security through Transparency Act, a bill that was drafted in 2009 and whose text became the basis for Section 1504 of Dodd-Frank]."[6] According to Calvert, information related to payments allows investors to make more informed decisions about a company's future cash flows, which in the end, protects investors—one of the key goals of the Dodd-Frank Act.[7]

Understanding the foundations of these new disclosure requirements is important, because ultimately, the SEC has the final authority to determine the perimeters of the disclosures that extractives companies will have to adhere to. While issues surrounding governance in countries like Uganda are an important consideration for the SEC—as seen by the law's reference to the Extractive Industries Transparency Initiative (see Section 2.2)—the Commission is simultaneously (and perhaps, ultimately) tasked with implementing Section 1504 in a way that supports the flourishing of businesses that are registered on U.S. stock exchanges. To be sure, a fundamental part of this "flourishing" will involve greater transparency and more financial disclosures on the part of extractives companies, the idea being that part

5 It should be noted that Calvert Investments bills itself as a firm engaged in "sustainable and responsible investing." For these reasons, it is quite possible that Calvert would support the provisions in Section 1504 of Dodd-Frank not only to make more accurate investment projections, but also to further the ideological principles that guide the firm's work. For a statement on these principles, see http://www.calvert.com/sri.html.

6 Bugala, Paul. "Materiality of disclosure required by the Energy Security through Transparency Act." Calvert Investments (April 2010).

7 Ibid. Calvert even goes so far as to argue that better information about a company's financial dealings within certain political environments can lessen the intensity of future oil price shocks, at least when it comes to those countries whose production capacity has the ability to affect global oil markets. Following this logic, investors would use the payment data disclosed through Dodd-Frank to create sharper country risk assessments. Depending on what those assessments conclude, investors (including financial managers like Calvert) would direct their resources away from companies working in countries whose extractives sectors were at risk of, say, having their production lines disrupted frequently—and thus having their profit margins diminished.

of what led to the recent financial crisis in 2009 was too little regulation and too much secrecy within U.S. financial markets. Still, the concerns of corporations will matter immensely.

Following the passage of the law, a number of oil and gas corporations, along with the American Petroleum Institute, submitted memoranda and held meetings with the SEC to press their case that the provisions within Section 1504 will hinder business within the sector, and should therefore be interpreted in the narrowest, most limited ways possible.[8] (Among the concerns raised by corporations include the difficulty of compliance with certain disclosures, the loss of competitiveness, and the need to protect proprietary secrets. See Section 3.0 for further discussion of these issues.) In a memorandum dated October 25, 2010 from the executive vice president controller of Royal Dutch Shell addressed to the Director of the Division of Corporate Finance at the SEC, the company warned that, depending on the final provisions decided upon by the Commission,

> Shell and other Foreign Private Issuers [i.e., other extractives companies that trade on U.S. stock exchanges but are registered outside the United States] might be forced to consider withdrawing from the US market in order to protect our shareholders investments. This would not only be disruptive to our business but we believe would not be to the benefit of US investors and therefore not consistent with either the Commission's mission or its obligations under Section 3(f) of the Exchange Act [see Box 1].[9]

While it is impossible to know how serious a warning shot this is, Shell's argument will no doubt be considered seriously by the SEC as it debates the various provisions outlined within the law.

8 For memoranda and documentation on meetings held between the SEC and petroleum industry representatives, see http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specialized-disclosures.shtml. (Note that a portion of the submitted comments pertain to mine safety regulations and "conflict minerals" provisions, which were also incorporated into Dodd-Frank.)

9 Ten Brink, Martin J. "Section 1504 of the Dodd Frank Act." Royal Dutch Shell Plc (October 25,2010).

Box 1: 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. According to the Securities Exchange Act of 1934, which created the SEC, "whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, *the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation"* (italics added). Indeed, as the SEC creates the rules under which Section 1504 of Dodd-Frank will implemented, it will be tasked with weighing carefully these multiple, competing imperatives.

For more information, see: U.S. Securities and Exchange Commission. "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation." http://www.sec.gov/about/whatwedo.shtml. See also: Security Exchange Act of 1934. http://www.sec.gov/about/laws/sea34.pdf

2.2 Section 1504 and the Extractives Industries Transparency Initiative (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 2002. 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. A recent study completed by the research and consulting firm, Ernst & Young, for example, found that oil and gas companies—more than any other sector—were most likely to be prosecuted for bribing foreign government officials under the U.S. Foreign Corrupt Practices Act (see Box 2). EITI was designed not only to help clamp down on such practices, but also to encourage governments throughout the world to promote the principles of transparency within their own governing institutions. By "publishing what you pay," the idea goes, unscrupulous bureaucrats and oil executives will have less opportunities to engage in corrupt behavior without someone noticing it (and ideally blowing a whistle). According to the first principle of EITI, "the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts."[10]

10 Extractives Industry Transparency Initiative. The EITI Principles and Criteria.

Box 2: Corporate Bribery Legislation in the U.S. and U.K.

The passage of Section 1504 of Dodd-Frank is only the latest in a string of legislation designed to regulate the overseas activities of businesses that trade in the United States. In the mid-1970s, the SEC conducted a series of investigations into the overseas business activities of U.S. companies. The results were staggering. The SEC uncovered evidence that American companies were paying hundreds of millions of dollars in bribes (and other questionable remunerations) to politicians, political parties, and officials within foreign governments. (According to the Fraud Section of the U.S. Department of Justice: "the abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties.") At the time, bribing foreign governments was not illegal in the United States, which prompted Congress to pass the *Foreign Corruption Practices* Act of 1977 (FCPA), which prohibits U.S. firms from bribing foreign officials in order to facilitate business. In the intervening years, the scope of the law expanded to include those companies that may be domiciled outside the United States, but still trade on U.S. stock exchanges (companies like Total and CNOOC, for instance). Recently, a number of high-profile companies have been indicted under FCPA:

- In 2010, the SEC charged General Electric (GE) with making illegal kickback payments to the Iraqi Health Ministry and the Iraqi Oil Ministry to obtain lucrative contracts under the UN Oil for Food Program. GE agreed to pay over $23 million to settle the suit with the SEC.
- In 2009, Kellogg, Brown and Root (KBR), a subsidiary of Halliburton, pled guilty to bribing Nigerian government officials in order to obtain contracts to build liquefied natural gas facilities in the country. KBR paid over $400 million in fines to the SEC.
- In 2008, the German company Siemans, which trades on the New York Stock Exchange, paid $800 million in fines to the SEC and the U.S. Department of Justice after pleading guilty to administering a series of bribes in multiple countries throughout the world.

In 2010, the United Kingdom passed its own version of FCPA, called the Bribery Act, which went into effect July 1, 2011. Recent findings from the research and consulting firm, Ernst & Young, suggest that the U.K.'s new law will likely hit the oil and gas industry hardest (based on an examination of FCPA prosecutions in the United States). Within Ernst & Young's sample, oil and gas companies accounted for 18 percent of all SEC prosecutions, making it the industry with the greatest proportion of bribery charges in the United States.

In the upcoming years, the FCPA and the Bribery Act will no doubt complement and enhance the additional auditing power that the SEC received through the Dodd-Frank Act. Ideally, these laws will also give some additional teeth to the work of the Inspector General of Government and the Director of Public Prosecutions in Uganda, under Uganda's Anti-Corruption Act of 2009.

For more information on the FCPA, see: U.S. Department of Justice. "Foreign Corrupt Practices Act: Anti-Bribery Provisions." http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf. See also: Ernst & Young (May 9, 2011). "Oil and gas sector most at risk from investigation under the UK Bribery Act, warns Ernst & Young." http://www.ey.com/UK/en/Newsroom/News-releases/Assur---11-5-9---Oil-and-gas-sector-most-at-risk-from-investigation-under-the-UK-Bribery-Act.

Box 3: Rumors of Bribery and Influence Peddling within Uganda's Oil Sector

Rumors of corporate bribery are already hanging over Uganda's oil sector, despite the fact that oil production has yet to begin. Below are a few of the allegations that were recently made public:

- Thanks to Wikileaks, we know that U.S. diplomats in Uganda were informed of rumors that the Italian oil company, Eni, had attempted to bribe officials within the Ugandan government in order to gain access to Uganda's oil market. (Back in 2009, Eni was attempting to override Tullow Oil in a bid to buy out Heritage's exploration rights in the Albertine Rift.)

- An additional Wikileaks cable alleges that in 2009, at least two high profile Ugandan officials were attempting to use their public and private connections to orchestrate a joint venture with Iran to build an oil refinery in Uganda. The Ugandan officials in question were said to be financiers of an oil services company, which, according to the leaked cable, may "want to corner the market on the production and distribution of Ugandan's future oil products."

- In early 2011, the British-based Telegraph detailed serious allegations of influence peddling between the British government and two oil companies operating in Uganda, Heritage and Tullow. The origins of the scandal involved a capital gains tax dispute between Heritage and the Ugandan government, into which Britain intervened. According to the Telegraph, members of the British government pressured the Ugandan government to acquiesce to the interests of both oil companies, and forgo Uganda's claims to the tax money. Two officials lobbying on behalf of the companies were Britain's foreign minister and foreign secretary, both members of the U.K.'s Conservative Party, which was the recipient of sizable campaign contributions from the chief executives of both Heritage and Tullow.

While none of these allegations have been substantiated in a court of law—and while the Wikileaks cables are not, in themselves, proof of any wrongdoing—the appearance of improper conduct by so many parties is nevertheless a worrying sign. The recent oil debates in Parliament concerning bribery allegations against Tullow and high-ranking Uganda government officials only attest to this fact.

For more information, see: "TULLOW SEES CORRUPTION IN OIL SALE" (09KAMPALA1401, UGANDA). http://www.wikileaks.ch/cable/2009/12/09KAMPALA1401.html. Butagira, Tabu (March 15, 2011). "Uganda-Iran oil deal angered US—leaked cable." Daily Monitor. http://mobile.monitor.co.ug/News/-/691252/1125202/-/format/xhtml/-/e0fq71z/-/index.html. Watt, Holly and Heidi Blake (February 10, 2011). "William Hague 'lobbied strongly' for oil companies run by Tory donors." The Telegraph. http://www.telegraph.co.uk/news/politics/william-hague/8314345/William-Hague-lobbied-strongly-for-oil-companies-run-by-Tory-donors.html

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 (see Section 3).

> *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 has not yet signaled its intent to become a candidate country, let alone start on the two-year path to becoming an EITI compliant country.*
>
> *Source: http://eiti.org/implementingcountries*

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 (see Section 3).

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.

3. DEBATES, QUESTIONS, AND AMBIGUITIES

What follows are some of the key questions that the SEC's rulings will ultimately answer. Their potential impact on the kind of data that Uganda will receive through the Dodd-Frank Act is explained below.

3.1 The Meaning of the Phrase "Other Significant Actions"

The issue: Section 1504 defines the commercial development of oil, natural gas, or minerals to include *"exploration, extraction, processing, export, and other significant actions related to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission."* It is the phrase "other significant actions" that has received the most attention, given the SEC's mandate to outline the specific details of the definition. In November 2010, a joint statement submitted by Publish What You Pay United States, Revenue Watch Institute, Oxfam America, Catholic Relief Services, and Global Witness argued that "other significant actions" should encompass the transport of oil, natural gases, and ores, as well as contracting for security services.[11] By contrast, the American Petroleum Institute (API) and the National Mining Association (NMA), two prominent consortia that represent the interests of American oil and mining companies, have argued that the perimeters of "other significant actions" should be much more narrow. By pointing out that the law itself is technically directed at "resource extraction issuers," API and NMA contend that the scope of Section 1504 be limited to "upstream" activities only, and not include "downstream" activities like refining, marketing, supply, transport, or trading.[12] The NMA has also lobbied the SEC to exclude corporate social responsibility payments from being reported, arguing that strictly speaking, such funds don't further the commercial development of minerals.[13]

Why this matters to Uganda: The SEC's final ruling on the scope of "other significant actions" will have massive implications for Uganda's oil and gas sector. If, for example, the Commission decides that the transport of oil falls outside the scope of the law, any payments related to a future pipeline within Uganda will go unreported. (The fact that countries like Nigeria have lost billions of dollars from the

11 Munilla, Isabel et al. "Comments of Publish What You Pay ounited States on Section 1504 of the Dodd Frank Wallstreet Reform and Consumer Protection Act." Publish What You Pay United States (November 22,2010).

12 Isakower, K and Mulva, Patrick. "Re: Dodd Frank Act - Section 1504: Disclosure of Payments by Resource Extraction Issuers." American Petroleum Institute (October 12, 2010). See also National Mining Association.

13 Ibid.

illegal bunkering or diverting of fuel from pipelines suggests that the transport sector can be a significant conduit for various kinds of theft and corruption.[14]) Additionally, if the Commission chooses to limit the scope of the law to downstream activities, any payments or revenue related to a future refinery will likewise go unreported. When it comes to corporate social responsibility, meanwhile, any reporting scheme that fails to disclose such payments—and the tax deductions pursuant to such payments—could easily arouse suspicion, and possibly political acrimony, within Uganda, especially given the heightened attention that such projects are already receiving in the Rift. Indeed, if the API and NMA's recommendations are adopted, Uganda will end up with skewed and incomplete data on the transactions undertaken within the sector, which will blunt the efficacy of the law.

3.2 The Definition of a Project

The issue: Section 1504 requires extractive companies to disclose *"the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals."* Unfortunately, however, the law fails to specify what it means by "project," and as many have noted, there exists no relevant legislative history in the United States through which to deduce such a definition. PWYP-US has argued that the definition should be narrow enough to "capture the level of payment disclosure detail that the legislation intended," ideally breaking down payments by individual leases or licenses.[15] Industry players, however, have protested by arguing that releasing payment data that is too narrow could force them to disclose commercially sensitive or proprietary information. API has put forward a broad definition of a project that would allow companies themselves to determine what constitutes information that would be material to investors. API has likewise requested that commercially sensitive payments be aggregated into three general categories: taxes and royalties; production entitlements; and other payments.[16]

Why this matters to Uganda: Incidents of fraud, corruption, and waste can often be concealed when data are aggregated in large categories. In June 2010, for example, the U.S. Department of the Interior fined BP (which was engaged in oil exploitation in the United States) $5.2 million for reporting incorrect royalty rates and inaccurate prices for royalty purposes. According to *the Oil and Gas Journal*, BP also "reported production on leases other than those to which the production could be attributed." Needless to say, none of these errors would have been brought to light if auditors didn't have access to disaggregated data by lease—a reporting practice that will become an international standard if this provision is formalized

14 Walker, Andrew. " 'Blood Oil' Dripping from Nigeria." BBC News (July 27, 2008). See also Munilla et al.

15 Munilla, et al.

16 Isakower, et al.

by the SEC.[17] While the SEC may ultimately decide that certain financial payments should be aggregated to protect commercial interests, the norm of disaggregation is nevertheless used in countries like the United States to great effect, and would go far in allowing auditors in Uganda—both within the government and outside it—to detect incidents of fraud.

3.3 The Definition of De Minimis

The issue: Section 1504 of the law excludes "de minimis" payments from being disclosed—that is, payments deemed insignificant or irrelevant (i.e., too small) to provide meaningful information on a project's annual liabilities.[18] What, exactly, constitutes a de minimis payment, however, is not stated within the Act, and is thus up to the SEC to determine. PWYP has advocated that de minimis payments be set at a quantitative threshold of $1,000 for individual payments and $15,000 for all payments in the aggregate within a given category, in keeping with the de minimis threshold provided by the London Stock Exchange's Alternative Investment Market (on which three of Uganda's oil companies—Tullow, Tower/Neptune, and Dominion—trade). American Petroleum Institute, by contrast, has advocated that the SEC adopt a percentage threshold, defining de minimis as any payment that falls below 15 percent of a reporting company's "total worldwide government payments."[19]

Why this matters to Uganda: If the threshold for de minimis payments is too high, a number of payments that might be influential within Uganda's oil sector could be excluded from disclosure. Likewise, if the threshold for de minimus payments is too low, companies will be forced to inundate their financial reports with minor payments for otherwise insignificant transactions (like office supplies, say)—something that would likely overload financial reports and obscure significant payments in a sea of minor transactions. All this has the potential to create huge and unnecessary burdens on companies themselves, which runs counter to the SEC's mandate. That said, the standard put forward by the American Petroleum Institute would almost certainly exclude a large number of significant financial transactions within Uganda. CNOOC and Total, for example, are large international corporations whose holdings in Uganda will probably amount to a relatively small proportion of their total business worldwide. If those two conglomerates are allowed to avoid reporting on any transactions that amount to less than 15 percent of their global payments

17 Snow, Nick. "BP America fined $5.2 million for false reporting on tribal lands." Oil and Gas Journal (January 30, 2010). See also Munilla et al.

18 Munilla et al.

19 Isakower, et al

to governments, much of their business in Uganda could go undisclosed. Indeed, what may count as de minimis on the annual balance sheets of CNOOC and Total may be of extreme importance to a small oil-producing country like Uganda. The adoption of the API standard would essentially create a massive loophole through which payments of major significance would remain secret.

3.4 Entities under the Control of an Issuer

The issue: The provisions within the Dodd-Frank Act require *"each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government [of the United States] for the purpose of the commercial development of oil, natural gas, or minerals."* The intent of this clause is to ensure that even the payments of subcontractors—which can be monetarily significant—be reflected in any report that details a company's payments to a government. However, corporations may have limited auditing control over the unconsolidated subsidiaries with which they work, which raises questions about what reasonable standard corporations should be held to. The National Mining Association argues that corporations only be responsible for either those entities that are fully consolidated under the company in question, or those subsidiaries in which the company holds a voting interest of greater than 50 percent.[20]

Why this matters to Uganda: The SEC is tasked with balancing the very real limitations that oil and mining companies have in compelling independent partners to disclose their financial data, against the concern that by allowing unconsolidated subsidiaries or certain joint partnerships to escape disclosure, the Commission may inadvertently create a tempting loophole through which corrupt activities could be channeled. In effect, the worry is that companies might make changes to the ownership structure of a particular entity in order to avoid certain disclosure requirements.[21] The SEC may not be able to reconcile this problem entirely, although one partial solution would be for the SEC to require companies to report their payments on a "proportionate share basis." This means that if an oil company enters into a partnership with an unconsolidated subsidiary (i.e., an independent

20 It should be noted that mining and oil operations are quite different in terms of the numbers of subsidiaries involved in their operations. Mining tends to have many more informal players involved, while oil extraction tends to involve smaller classes of formalized players, which makes this provision within Dodd-Frank easier for oil companies to adhere to. See National Mining Association.

21 Munilla et al.

subcontractor), the oil company would at least be required to disclose its payments for the percentage of the venture or project under the company's control.

3.5 EITI and Violations of Data Disclosure within Contracts

The issue: As mentioned earlier, the Extractives Industry Transparency Initiative has become a point of contention for both supporters and detractors of Section 1504. One of the central issues involves the question of disclosure—that is, what happens when Section 1504's mandate on disclosure contravenes another country's laws, or put more succinctly, what if a country passes a law forbidding oil companies from disclosing various payment data to securities regulators? Both the American Petroleum Institute and National Mining Association have raised this issue. As API complained, "there is no mention in the Act if the effects on reporting if sovereign nation laws and regulations prohibit such disclosure." Indeed, will such disclosure requirements place oil companies registered on U.S. stock exchanges at a disadvantage when it comes to bidding for various contracts?

Why this matters to Uganda: One of the policies that API and its affiliates have been lobbying for is that the SEC "be respectful of host government laws and regulations that prohibit payment disclosures." One way to achieve this, according to API, is by "including an exemption [within the SEC's rules] that permits exclusion of the prohibited information from public disclosure"—i.e., that allows oil companies to withhold any financial data that a government wishes to remain private.[22] With regard to this argument, three points are worth making: First, as API points out, it's certainly true that oil companies must abide by the various laws of the countries in which they work. However, what API's memorandum doesn't mention is that, within extractives industries, it's relatively standard for contracts between extractives companies and governments to contain confidentiality clause exemptions that allow companies to disclose financial data to securities regulators.[23] While the full texts of Uganda's Production Sharing Agreements are not yet available to the public, the odds are exceptionally high that Uganda's PSAs also contain such exemptions. Second, because an overwhelming majority of the world's oil and gas extractors trade within the United States, the chances of a company being placed at a disadvantage

22 Isakower, et al.

23 According to a joint analysis between Columbia Law School and Revenue Watch Institute: "In a survey of over 100 oil and mining contracts between host governments and EI [extractives industry] companies across the globe, the confidentiality clauses in these contracts are surprisingly similar. In varying language, most provisions state that no party to the contract may disclose any information flowing from the contract without the written consent of the other parties. These confidentiality clauses then go on to list fairly standard exceptions to this general rule. These exceptions almost always allow disclosures of information for compliance with the law. The 'compliance with law' exception does not specify any particular law (host government law, home government law for the foreign company, or otherwise)." See Lissakers, Karin. "Extractive Industry Disclosure Act: Confidentiality Analysis." Revenue Watch Institute and Columbia Law School (June 8, 2008).

because of these reporting requirements are exceptionally minor. (This debate, however, does highlight the need for other countries to enact similar legislation to create a uniform standard worldwide.) And third, it should go without saying that the specter of the American Petroleum Institute—possibly the world's most powerful oil and gas lobby—positioning itself as a protector of the sovereignty of countries like Uganda is a testament to the ways in which oil creates strange bedfellows, indeed.

4. CONCLUSIONS AND RECOMMENDATIONS

The passage of the Dodd-Frank Act has created immense momentum throughout the world to pass similar legislation in other countries that host major stock exchanges. Unfortunately, though, when it comes to Dodd-Frank, the official window of opportunity to lobby the SEC has passed, which means that civil society organizations and other interested parties in Uganda won't have the opportunity to weigh in on the SEC's rule-making process. However, civil society groups have ample opportunity to lobby for the passage of similar legislation within the United Kingdom (which is where Uganda's other three oil companies trade). In April 2011, Publish What You Pay Uganda, along with a coalition of several other civil society organizations (which included ACODE), submitted a letter to Prime Minister David Cameron, advocating for just such a law.[24] Yet, the letter was lacking in the kinds of specifics that could "make or break" such legislation. What follows are recommendations for Ugandan stakeholders that wish to engage in further advocacy concerning this issue.

4.1 Advocate for Specifics

As the saying goes, the devil is in the details. It is not enough to lobby for a British version of the Dodd-Frank Act, given loopholes that could weaken such legislation, rendering it of little value beyond the symbolic. Stakeholders need to advocate for the following:

- That financial disclosures include both upstream and downstream activities, with a special focus on oil refining and the transportation of fuel
- That published payments be sufficiently detailed to make it harder to conceal incidents of fraud, corruption, and waste on financial reports
- That definitions of "de minimis" payments (i.e., small or insignificant payments) not provide a legal loophole through which large oil companies can avoid disclosing transactions related to Uganda's oil industry

24 Njoroge, John. "Ugandans Petition UK Premier over Oil." Daiy Monitor (April 1, 2011).

- That oil companies can't hire independent subcontractors or other unconsolidated entities as a way to avoid disclosing any payment information relating to a particular lease or project
- That regulators prevent companies from opting out through confidentiality clauses
- That the disclosure of payments include at a minimum: taxes (including VATs); royalties (both financial and in-kind); dividends and profit shares; fees (license, rental, and entry); production entitlements and in-kind payment volumes; bonuses (signature, discovery, and production); import and export levies and taxes; pipeline transit fees; customs duties and customs users fees; payments (taxes) in lieu; ancillary payments pursuant to the investment contract (personal training programs, local content, technology transfer, local supply requirements); liability payments; and corporate social responsibility expenditures and tax deductions.[25]

4.2 Target Particular Parliamentarians

The provisions that eventually ended up in Section 1504 of the Dodd-Frank Act had long-time champions within the U.S. Congress. When it comes to lobbying parliamentarians in the U.K. and elsewhere, civil society organizations and other interested stakeholders in Uganda would do well to target particular legislators who have a specific interest in these issues. Such individuals will likely be more amenable (and available) to engaging in conversations about the detailed content of such legislation than the country's prime minister.

4.3 Domesticate the Provisions of the Dodd-Frank Act within Uganda's Petroleum Act

Uganda should pass legislation in which the government commits itself to disclosing its transactions with oil companies. Such disclosure requirements could be included in the forthcoming Petroleum Act, for example. To be sure, Uganda already publishes some aggregated payment data from its extractive sectors in the annual reports of the Ministry of Energy and Mineral Development. But the government could—and should—disclose much more to its citizens.

Additionally, the government should consider including anti-bribery provisions within the Petroleum Act, which would supplement the Anti-Corruption Act of 2009. Given the rumors of bribery that are already casting shadows over Uganda's nascent oil sector (see Box 3), the government might consider levying additional penalties on oil companies whose employees are found guilty of bribing (or attempting to bribe) public officials. Considering the high-stakes nature of the oil industry in general,

25 Munilla et al.

Parliament should debate such additional provisions to keep the sector as clean and honest as possible.

4.4 Keep Abreast of IASB Announcements

The International Accounting Standards Board (IASB) is a privately funded organization based out of London that determines the content of the International Financial Reporting Standards, a set of accounting benchmarks that have immense influence throughout the world over public company financial statements. Rules created by the IASB, for example, are automatically applied to a number of global stock exchanges, including those within the European Union. In April 2010, The IASB released a discussion paper on the regulation of disclosure requirements for extractive industries. Unfortunately, the period for public comment on this paper expired in July 2010, but the IASB is currently deciding whether to add extractive industry disclosures to its forthcoming agenda of sectors to study.[26] The Board will likely issue a formal announcement during the second half of 2011. Because of the substantial reach of the IASB, advocates within Uganda should pay special attention to the Board's determination. If the IASB adds extractives to its agenda, coalitions within Uganda should consider lobbying the Board for the kinds of disclosures summarized in Section 4.1. Currently, Uganda only holds petroleum licenses with companies listed on platforms in the United States and the United Kingdom. However, the government could certainly sign future agreements with companies that trade on other stock exchanges, making the IASB relevant to Uganda's oil industry.

4.5 Lobby the Government of Uganda to Make a Decision about EITI

Given the fact that the Government of Uganda has declared itself interested in joining EITI, it should take steps to do so. One of the virtues of EITI is its auditing process, which seeks to reconcile a company's payment record with a government's record of receipts. While the provisions within the Dodd-Frank Act can tell us what Total and CNOOC paid the government, an auditing process that involves government receipts essentially provides a check on those payments. But beyond the technical virtues of EITI, the government's public disclosure of such receipts—whether it does so through EITI or not—would go far in assuring citizens that it does, indeed, take seriously the principles of public accountability that it embraces on paper.

26 For an online copy of the discussion paper, see: http://www.saimm.co.za/downloadDPExtractiveActivitiesApr10.pdf

4.6 Take Advantage of Uganda's Access to Information Act of 2005

Civil society organizations, journalists, and other interested stakeholders should continue to use Uganda's Access to Information Act (ATI) to retrieve public information and data pertaining to the country's oil sector. Two senior journalists at Monitor Publications, along with the Human Rights Network of Uganda (HURINET), are currently using ATI to sue the government to publicly disclose the Production Sharing Agreements that it signed with various oil companies operating in the Rift.[27] (The lawsuit is ongoing, but the government has already released some of the agreements to Parliament.) In June 2011, the government published its regulations on the implementation of ATI, which will make the Act all the more useful and politically potent.

27 The primary plaintiffs in the suit, Charles Mwanguhya Mpagi and Angelo Izama, are currently appealing to Uganda's High Court to reverse a lower court's dismissal of the case.

REFERENCES

Bugala, Paul. "Materiality of disclosure required by the Energy Security through Transparency Act." Calvert Investments (April 2010). Available at: http://www.calvert.com/NRC/literature/documents/10003.pdf

Butagira, Tabu. "Uganda-Iran oil deal angered US—leaked cable." *Daily Monitor* (March 15, 2011). Available at: http://mobile.monitor.co.ug/News/-/691252/1125202/-/format/xhtml/-/e0fq71z/-/index.html.

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.

Extractives Industry Transparency Initiative. "EITI Principles and Criteria." Available at: http://eiti.org/eiti/principles

Ernst & Young. "Oil and gas sector most at risk from investigation under the UK Bribery Act, warns Ernst & Young." Ernst & Young (May 9, 2011). Available at: http://www.ey.com/UK/en/Newsroom/News-releases/Assur---11-5-9---Oil-and-gas-sector-most-at-risk-from-investigation-under-the-UK-Bribery-Act.

Herrington, Vanessa. Presentation—Plenary Session on Extractives Resources. The Access Initiative (October 29, 2010), Kampala, Uganda.

Isakower, Kyle and Mulva, Patrick. "Re: Dodd-Frank Act—Section 1504: Disclosure of Payments by Resource Extraction Issuers." American Petroleum Institute (October 12, 2010). Available at: http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-27.pdf.

Kasozi, Ephraim. "Hearing of Access to Oil Information Case Adjourned." *Daily Monitor* (April 14, 2011). Available at: http://www.monitor.co.ug/News/National/-/688334/1144356/-/c2q70fz/-/index.html

Lissakers, Karin. "Extractive Industry Disclosure Act: Confidentiality Analysis." Revenue Watch Institute and Columbia Law School (June 8, 2008). Available at:

https://org2.democracyinaction.org/o/5399/images/Karin%20Lissakers_addendum_HR6066.pdf

Morningstar Document Research. "CNOOC Ltd – CEO. Report of Foreign Issuer Rules 13a-16 and 15d-16 of Security Exchange Act." Morningstar (March 30, 2011).

Munilla, Isabel et al. "Comments of Publish What You Pay on Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act." Publish What You Pay

United States (November 22, 2010). Available at: http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-82.pdf

National Mining Association. "White Paper on SEC Implementation of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Extractive Resource Issuer Disclosure of Payments to Governments)." Available at: http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-52.pdf

Njoroge, John. "Ugandans Petition UK Premier over Oil." *The Daily Monitor* (April 1, 2011). http://www.monitor.co.ug/News/National/-/688334/1136818/-/c3b8flz/-/

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

Snow, Nick. "BP America fined $5.2 million for false reporting on tribal lands." *Oil and Gas Journal* (January 30, 2010). Available at: http://www.ogj.com/index/article-display.articles.oil-gas-journal.general-interest-2.government.2010.06.bp-america_fined_.QP129867.dcmp=rss.page=1.html.

Ten Brink, Martin J. "Section 1504 of the Dodd-Frank Act." Royal Dutch Shell plc (October 25, 2010). Available at: http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-33.pdf

"TULLOW SEES CORRUPTION IN OIL SALE" (09KAMPALA1401, UGANDA). Available at: http://www.wikileaks.ch/cable/2009/12/09KAMPALA1401.html.

U.S. Securities and Exchange Commission. "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation." http://www.sec.gov/about/whatwedo.shtml.

U.S. Department of Justice. "Foreign Corrupt Practices Act: Anti-Bribery Provisions." Available at: http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf.

Walker, Andrew. "'Blood Oil' Dripping from Nigeria." *BBC News* (July 27, 2008). Available at: http://news.bbc.co.uk/2/hi/africa/7519302.stm.

Watt, Holly and Heidi Blake. "William Hague 'lobbied strongly' for oil companies run by Tory donors." *The Telegraph* (February 10, 2011). Available at: http://www.telegraph.co.uk/news/politics/william-hague/8314345/William-Hague-lobbied-strongly-for-oil-companies-run-by-Tory-donors.html

Appendix

Text of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS—

''(1) DEFINITIONS—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE—

''(A) INFORMATION REQUIRED—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD—

''(i) IN GENERAL—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) PUBLIC AVAILABILITY OF INFORMATION—

''(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

''(4) AUTHORIZATION OF APPROPRIATIONS—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.''

Publications in this Series

Mpeirwe, A., (2003), WTO Negotiations on Geographical Indicators: A Case for Non-Discrimination of Products of Interest to Developing Countries. ACODE Policy Briefing Paper, No. 1, 2003. Kampala.

Tumushabe, G., (2004), Type II Partnerships As a Strategy for Implementing WSSD Outcomes: Considerations to Guide Government Decision Making. ACODE Policy Briefing Paper, No. 2, 2004. Kampala.

Mugyenyi, O., (2004), Status of EPA Negotiations: Eastern and Southern Africa Approach and the Challenges to Effective Negotiations. ACODE Policy Briefing Paper, No. 3, 2004. Kampala.

Tumushabe, G., and Naluwairo, R., (2004), COP-MOP 1 Decision on Liability and Redress: Analysis of Implications and Challenges for Eastern and Southern Africa. ACODE Policy Briefing Paper, No. 4, 2004. Kampala.

Naluwairo, R., and Tumushabe, G., (2004), Uganda's Position on GMO's: Whose position? Reflections on Uganda's Policy Making Process on GMOs. ACODE Policy Briefing Paper, No.5, 2004. Kampala.

Naluwairo, R., and Tumushabe, G., (2004), Approaches to Biosafety Legislation in Africa: Options to Facilitate National Decision making. ACODE Policy Briefing Paper, No. 6, 2004. Kampala.

Tumushabe, G., and Bainomugisha, A., (2004), The Politics of Investment and Land Acquisition in Uganda: A Case Study of Pian Upe Game Reserve. ACODE Policy Briefing Paper, No. 7, 2004. Kampala.

Naluwairo, R., (2005), Promoting Common Property Rights in Fisheries Management in Uganda: A Review of the National Fisheries Policy and the Proposed Legislation. ACODE Policy Briefing Paper, No. 8, 2005. Kampala.

Tumushabe, G., and Naluwairo, R., (2005), Harnessing the Power of Intellectual Property Rights in Building Science and Technological Capacity: Key Issues for Policy Makers in East Africa. ACODE Policy Briefing Paper, No. 9, 2005. Kampala.

Tabaro, E., (2005) Copyright Law Reform in Uganda: Addressing International Standards at the Expense of Domestic Objectives. ACODE Policy Briefing Paper, No.10, 2005. ACODE Policy Briefing Paper No. 21, 2010. Kampala.

Tumushabe, G., and Mugyenyi O., (2005), Uganda National Biodiversity Strategy and Action Plan: The Crisis in Uganda's Biodiversity Policy Making Process. ACODE Policy Briefing Paper, No. 12, 2005. Kampala.

Mugyenyi, O., Twesigye, B., and Muhereza, E., (2005), Balancing Nature Conservation and Livelihoods: A Legal Analysis of the Forestry Evictions by the National Forestry Authority. ACODE Policy Briefing Paper, No. 13, 2005. Kampala.

Mugyenyi, O., and Twesigye, B., (2006), Marginalization of the Environment and Natural Resources Sector: The Roots of Economic Crisis and Poverty: A Policy Memorandum Submitted by ACODE to the 8th Parliament during the debate on the budget for the Financial Year 2006/2007. ACODE Policy Briefing Paper, No. 14, 2006. Kampala.

Keizire, B., B., Muhwezi, W., W., Natuhwera, C., and Kayiso F., (2006), Examining the Nexus between Nature, Wealth and Power in the Lake George Fishery: The Case of Major Actors in the Fish Product Chain. ACODE Policy Briefing Paper, No. 15, 2006. Kampala.

Mugyenyi, O., (2006), Gifted by Nature, Dispossessed by Parliament: The Plight of Mpungu Community in Kanungu District. ACODE Policy Briefing Paper, No. 16, 2006. Kampala.

Mwenda, A., (2006), Redefining Uganda's Budget Priorities: A Critique of the 2006/07 Budget. ACODE Policy Briefing Paper, No. 17, 2006. Kampala.

Tumushabe, G., (2007), Redefining Uganda's Budget Priorities: A Critique of the 2006/07 Budget (Executive Summary). ACODE Policy Briefing Paper, No.18, 2007. Kampala.

Mwesige, P., and Muyomba, L., (2007), Deepening Democracy in Uganda: Legislative and Administrative Reforms Ahead of 2011 Elections. ACODE Policy Briefing Paper, No.19, 2007. Kampala.

Mushemeza, E., D., (2007), The Functioning of Multiparty System in Local Governments: Challenges of Transition from the Movement System in Uganda. ACODE Policy Briefing Paper, No. 20, 2007. Kampala.

Naluwairo, R., and Tabaro, E., (2010), In Defense of Farmers' and Community Rights: Justifying their Inclusion in Uganda's Plant Variety Protection Legislation. ACODE Policy Briefing Paper, No. 21, 2010. Kampala.

Mugyenyi, O., and Kagarura, D., (2010), Step By Step Guidelines for Making Ordinances and Bye Laws for Local Governments in Uganda. ACODE Policy Briefing Paper Series No. 22, 2010. Kampala.

Tumushabe, G., et.al. (2010). Uganda Local Government Councils Score-Card Report 2008/09: A Comparative Summary of Findings, Conclusions and Recommendations. ACODE Policy Briefing Paper Series, No. 23, 2010. Kampala.

Mugyenyi, O., et.al (2011). Marginalisation of Environment and Natural Resources Sub-sector: Undermining the Economic Base and Entrenching Poverty in Uganda. ACODE Policy Briefing Paper Series, No. 24, 2011. Kampala.

ISBN 9789970070138

ACODE

Advocates Coalition for Development and Environment
Plot 96, Kanjokya Street, Kamwokya
P. O. Box 29836, Kampala. Tel: +256 312 812150
Email: acode@acode-u.org; library@acode-u.org
Website: www.acode-u.org