



CONTRACT TRANSPARENCY IN UGANDA'S PETROLEUM AND MINING SECTORS



Paul Bagabo | Onesmus Mugenyi | Siragi Magara | Paul Twebaze

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Contract transparency is important for ensuring that governments, its citizens and companies benefit from extractive industries. Contract transparency improves competition and the quality of procurement, allows oversight by citizen groups and assures firms of a level playing field when they bid. It provides incentives to improve on the quality of contracting and improves investment climate by sending out signals to investors and international financial institutions that costs of investment will not be inflated by bribery and corruption. This publication arises out of a study that was undertaken in 2018. The publication examines the status of contract transparency in the petroleum and mining sub-sectors of Uganda and makes recommendations for improving transparency.

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ABBREVIATIONS AND ACRONYMNS

AMV	The Africa Mining Vision
ASM	Artisanal and small-scale mining
CAFOD	Catholic Agency for Overseas Development
CNOOC	China National Offshore Oil Corporation
CSOs	Civil Society Organizations
DEI	The Directorate of Ethics and Integrity
DPP	The Directorate of Public Prosecutions
EITI	The Extractive Industries Transparency Initiative
FGDs	Focus Group Discussions
FPIC	Free, Prior and Informed Consent
GI	Global Integrity
HGA	Host Government Agreement
IAF	Inter-Agency Forum
ICMM	International Council of Mining and Metals
IG	Inspectorate of Government
IGA	Inter-Governmental Agreement
MEMD	Ministry of Energy and Mineral Development
NRGI	Natural Resources Governance Institute
OECD	Organization for Economic Cooperation and Development
OGP	Open Government Partnerships
OHCHR	United Nations High Commissioner for Human Rights
UCMC	Uganda Contracts Monitoring Coalition
PSAs	Production Sharing Agreements
PROBICO	Pro-biodiversity Conservationists in Uganda
PWYP	Publish What You Pay
RGI	Resource Governance Index
SOE	State-Owned Enterprise

EXECUTIVE SUMMARY

Resource-rich countries often sign contracts and licenses with extractives companies to exploit publicly held resources. These contracts contain key information on project fiscal terms, production, local content, health, safety and environment. However, these contracts and licenses are not usually publicly disclosed. Contract transparency in extractives refers to the openness of the process by which information on rights awarded is shared with stakeholders. This covers the entire value chain from planning, discovery, bidding, negotiation, contracting and implementation including the amount of revenues generated from extractive operations. Contract disclosure relates to the quality and detail of the information that is availed to stakeholders.

Globally, there is increasing recognition of the benefits of transparency in public data and ever greater momentum towards reform. This is particularly true in the extractive sector; with civil society groups, governments and parliamentarians contributing to a growing movement against opacity and towards improved governance. Transparency of information empowers citizens and civil society groups to hold their governments accountable for responsible stewardship of national resources and reduces opportunities for corruption among public officials. It is essential that citizens gain access to and understand extractives contracts agreed by their governments in their names, in order to ensure that the public obtains the fullest benefit possible from exploitation of their nation's natural resource wealth.

This publication draws from the literature on contract transparency as well as interviews with key experts in Uganda's extractives sector. It concludes that while legal frameworks on transparency and disclosure provisions exist, they have not been effective in ensuring that citizens gain access to information on the details of the contracts; and the level of contract transparency and disclosure in the oil and gas sector is higher than in the mining sector. This could be attributed to the reforms in the legal framework on oil and gas that took place between 2010-2015 that provide for competitive bidding, disclosure of information and reporting. While information on mining licenses is provided on the Ministry of Energy and Mineral Development website and the mining cadastre is publicly available, vital information on actual deposits and revenue sharing is not publicly available. Uganda is party to several transparency initiatives and publicly committed to joining the Extractives Industries Transparency Initiative (EITI). Despite the membership to these initiatives, the level of transparency and disclosure of extractives contracts is still low. In order to ensure that contract transparency contributes to increased accountability in the sector, several recommendations have been proposed.

First, the government of Uganda should undertake legal reforms in the mining industry to include transparency provisions and operationalize the existing legal and policy framework in the petroleum industry and associated regulations to ensure contract

transparency and disclosure. The Mining Act, 2003 does have adequate provisions for contracts disclosure, corporate accountability, disclosure of beneficial ownership, and competitive and transparent allocation of licenses. The legal reforms should integrate the Extractive Industries Transparency Initiative principles and OECD's guidelines on supply chain due diligence. The transparency and accountability provisions in the Petroleum legislation and associated regulations including the Public Finance Act ,2015 ought to be operationalized.

Second, the government of Uganda should develop a disclosure regime that makes contracts and associated documents easy to find, search, and use. This should include the publication of electronic copies of contracts online with paper-based options available to increase accessibility for communities that lack internet access.

Third, the Ministry of Energy and Mineral Development with the associated government agencies should enhance stakeholder consultation including engagement with communities affected by the proposed extractive activities before exploration or production licenses are granted and ensuring that details of the deal are conveyed in a manner and format that is accessible and understood by the population.

Finally, the government of Uganda should attain membership to regional and international transparency initiatives to ensure that stakeholders including international companies are held accountable. Key among these initiatives include the Extractives Industries Transparency Initiative and Open Government Partnership. Under the National Oil and Gas Policy, 2008 and the Oil and Gas Revenue Management Policy, 2012; government of Uganda committed itself to subscribe to EITI and government should take steps to fulfil this commitment by subscribing and implementing the Initiative.

1.0 INTRODUCTION

1.1. Background

Contracts signed between governments and extractive companies are the fundamental documents that set out obligations, rewards, rights and protections in many oil, gas and mining investments. Availability and access to these extractive contracts, enables citizens to understand the nature of the agreements that their governments have made and monitor government and company commitments. Extractive contracts may take one or a combination of the following forms; concessions, licenses, and production sharing or service agreements. Where the government elects to have active state participation through a State-Owned Enterprise (SOE), the agreement between the SOE to manage the business interests of government would constitute a contract. Where the legal frameworks set out most of the rights and obligations, then contracts serve to grant the company, legal title to the particular site of exploration and production area.

Contract transparency refers to the openness of the process by which information on rights awarded is shared with stakeholders. This covers the entire value chain from planning, discovery, bidding, negotiation, contracting and implementation including the amount of revenues generated from extractive operations. Contract disclosure relates to the level to which information on the extractives in the country is publicly available to the stakeholders. According to Duncan (2013), contract transparency leads to improved disclosure of information; use of contracting data by non-state actors; and accountability. The “value” of a contract cannot be captured in a single number;. Contracts typically contain information about fiscal terms and the allocation of risk that are essential to understand the benefits and the risk-the real value-of the deal. (Rosenblum & Maples, 2009). Beyond the fiscal aspects, contracts may also contain other including environmental mitigation and protection measures, land use and rights, and provisions dealing with the displacement of local communities and their rights.

Disclosure of information contained in contracts is important for different stakeholders: Transparency helps citizens to understand the obligations and liabilities of companies when it comes to social and environmental protection, allowing them to hold companies to their contractual obligations. (Rosenblum & Maples, 2009). It allows citizens to ascertain the kind of deal their government negotiated on their behalf, monitor and hold government and investors accountable for their obligations. Disclosure also helps to ensure effective participation and transparent benefit sharing. From a commercial perspective; disclosure supports investment attraction, revenue fore-casting and collection and mitigation of corruption and conflict within extractives producing regions.

Global Witness (2014) notes that publication of contracts creates a strong incentive for governments and companies to ensure that Production Sharing Agreements (PSAs)

and other contracts are open to public scrutiny. This helps to identify any weaknesses, enabling governments to negotiate stronger and favorable terms in future, and build greater trust between governments and citizens. International contract transparency also allow governments to 'borrow' strong terms from other contracts. Rich & Warner (2012) conclude that contract transparency allows citizens to better understand their oil and mining sectors.

1.2. The Extractives Sector in Uganda

1.2.1. Oil and gas sector

Uganda announced the discovery of viable quantities of oil and gas in 2006. Since then, government has signed Production Sharing Agreements (PSAs) with Total E&P, CNOOC and Tullow for exploration of the oil blocks EA-1, EA-1A, EA-2, & EA-3A on Lake Albert operated under a Joint Venture Partnership Agreement. In 2017, the government granted further exploration licenses to Armour Energy of Australia and Nigeria's Oranto Petroleum International based on a competitive bidding process. The government also granted petroleum production license to CNOOC, Total E&P and Tullow. Front-End Engineering Design (FEED) studies were commissioned in 2017 and the Final Investment Decision (FID) is expected before the end of 2019 paving the way for oil production, expected around 2023 at the earliest. The production phase, expected to cost about US\$20 billion presents a huge opportunity for Ugandan firms to benefit through local content (Uganda government, 2016).

Government commenced negotiations for an Inter-Governmental Agreement (IGA) for a USD3.5 billion oil pipelines to connect the oil production area in South Western Uganda with Tanga Port in Tanzania. The pipeline Resettlement Action Plan (RAP) was launched although the Project Affected Persons (PAPs) are yet to be compensated. Government also signed an agreement with a consortium of investors, including General Electric to build and operate a USD 4.0 billion refinery, an airport and plans are underway to construct oil related infrastructure including roads and a Standard Gauge Railway (Government of Uganda 2018).

The government finalized oil-related policy and legal frameworks. These include the Oil and Gas Policy, 2008; the Oil and Gas Revenue Management Policy, 2012 the Petroleum (Exploration, Production and Development) Act 2013, the Petroleum (Refining, Conversion, Transmission and Mid-stream Storage) Act 2013 and the Public Finance Management Act, 2015. Regulations were completed for the upstream and midstream laws but the government is yet to introduce regulations for petroleum revenue management. The government developed a model Production Sharing Agreement (PSA) to inform future contract negotiations.

1.2.2. Mining sector

Mineral Development in Uganda peaked in the 1960's and 1970's with the sector accounting for up to 30% of export earnings. However, the last thirty years witnessed a contraction of the sector with its contribution to GDP dropping from 6.5% in 1978 and to just over 0.5% in 2010. To revive the sector, the government with support from the World Bank completed a USD 75 million national mineral survey in 2014. The survey revealed the presence of high value minerals such as uranium, tin, coltan, nickel, copper, gold, limestone, clay, salt and stone aggregate across the country. The most endowed regions neighbor mineral-rich Eastern Congo and the Green Stone Gold Belt in Northwestern Tanzania. Uganda's mining sector combines formal mining operations and artisanal small-scale miners. Artisanal mining accounts for more than 90 percent of metallic, industrial and building minerals and provides livelihoods to almost 350,000 individuals.

The government finalized the Mining Policy in 2018 and plans are underway to review the Mining Act, 2003 and the regulations. This Policy outlines the principles for regulation of the mining sector. Other legislations key to mineral development includes the National Environment Management Act 2003, the Land Act 1998 and the Land Regulations 2004 (Duncan, 2013). In order to exploit the abundant mineral deposits, Uganda signed mining agreements with Tibet Hima, and Guangzhou Dongsong Energy Group to exploit copper and cobalt in Kilembe and revive the Sukulu Fertilizer and Phosphates factory in Tororo District respectively. Also, the government of Uganda has signed exploration and mining concessions, licenses and leases with several firms for exploitation of the vast mineral resources in the Country.

1.3. Statement of the Problem

While Uganda possesses vast quantities of oil and mineral resource, the extent to which the resources will benefit current and future generations depend to a large extent on the level of transparency around the oil and mining contracts that government has signed with extractives companies. In spite of the existence of policies and laws on transparency; some aspects of the contracting process are transparent, while others are not readily available to the public. Information requests as stipulated in the Access to Information Act, 2005 are time consuming and sometimes do not yield any results. For example, the Ugandan Chief Magistrate's Court of Nakawa found that two applicants did not prove beyond reasonable doubt that public benefit in disclosure outweighed the potential harm to third parties (Charles Mwanguhya Mpagi and Izama Angelo Versus the Attorney General, 2010).

Currently, there is no comprehensive study that has established the level of contract transparency in line with best practices in the extractives sector, even when attempts have been made to analyze Uganda's evolving extractives industry. This publication fills

that gap by analyzing the state of contract transparency and disclosure in Uganda and makes policy recommendations on measures that can be adopted by government to improve extractives governance.

1.4. Objective of the Study

The objective of this research was to assess the level of contract transparency in the extractives sector in Uganda.

Specifically, the study set out to; assess the extent to which Uganda's extractives legal and policy frameworks reflect best practices in contract transparency and disclosure; highlight contract transparency practices in the extractives sector, examine factors that affect compliance to contract transparency, and generate recommendations for enhancing contract transparency.

1.5. Methodology for the Study

1.5.1. Approach to the study

The study employed mixed research methods and participatory approaches. This involved using mainly qualitative methods of data collection and analysis, as well as enriching it with quantitative data generated from relevant secondary sources. Data was elicited from sources that included documents, interviews and interactions with different stakeholders.

Triangulation of data was adopted so as to be able to compare information from different sources, such as documentation and interviews, or interviews on the same subject but from different stakeholders. This was useful in corroborating and cross-checking the reliability of findings.

Preliminary literature review was undertaken to inform the selection of the issues to investigate, and determine selection of key informants for qualitative data-collection phase. In addition to face-to-face key-informant interviews, focus group discussions and telephone interviews were conducted in order to widen and deepen diversity of data from a cross-section of stakeholders.

In order to assess the overall contract transparency in the extractives sector, seven aspects of the value chain in terms of awarding rights for exploitation were considered as laid out in section 1.1. Given that these are not mutually exclusive aspects, the level of transparency was based on each aspect of the award process. For example, a country could score well on the availability of data on the mineral deposits and publication of the process of bidding, but there could also be challenges with disclosure of the contracts or revenue from the exploitation processes.

1.5.2. Secondary data collection

The study reviewed a wide range of documents. These included official government documents, reports, materials, journal articles and books on contract disclosure and transparency. Review of these secondary sources was aimed at analyzing laws, policies, regulations and strategies, as well as practices on contract transparency. This desk research provided conceptual clarity that informed the aforesaid determination of the value-chain approach to assessing contract transparency in the extractives sector.

1.5.3. Primary data collection

In the study, data was elicited through key informant interviews, telephone interviews, focus group discussions, and participation in workshops, conferences, review meetings related to extractives governance in Uganda. Interviews were conducted with experts from key government MDAs, Members of Parliament (MPs), private sector organizations, and other stakeholders at the national and sub-national level. Furthermore, interviews were held with officials from Civil Society Organizations (CSOs) at the national and subnational levels, as well as representatives of Non- government international organizations working in the extractives sector.

1.6. Justification and Rationale for the Study

While many resource rich developing countries are moving to improve transparency around resource countries, the transparency or disclosure is geared towards what the industry needs with little consideration on what the citizens might want in order to better understand the details of what government negotiated on their behalf and whether it was a good deal (Gary, 2012).

The confidentiality clauses in these PSAs may prevent the Government from publishing this information. Again, due to passive disclosure, the Access to Information Act, 2005 does not explicitly treat contracting information especially PSAs as disclosable and PSA themselves contain exemptions to the disclosure of information held by oil companies or government. This has made contract disclosure especially oil and gas sector in Uganda very difficult. In addition, there is no compelling obligation to publish the contracts since Uganda has not completed the process of joining EITI. The study analyzed contract disclosure in extractives in resource-rich countries in order to make a case for increased contract transparency in Uganda.

1.7. Structure of the Report

The report is structured under four sections including the introduction. Section two reviews initiatives for contract disclosure in the extractives sector. First, a conceptual framework is built around the concept of contract transparency and disclosure. Second, the international initiatives for contract transparency are discussed. Third, the practice of

contract transparency is reviewed in selected resource-rich countries in order to inform understanding of Uganda's experience. Finally, the section discusses challenges to contract transparency. Section three discusses contract transparency in Uganda. The section analyses the policy, institutional and legal framework for contract transparency in Uganda. Second, the practice of contract transparency is analyzed in the context of the extractives sector. Third, an analysis of the challenges to contract transparency is provided. Section four draws conclusions and provides policy recommendations to improve contract transparency in the Uganda.

2.0 CONTRACT TRANSPARENCY AND EXTRACTIVES

2.1. The Concept on Contract Transparency and Disclosure

In resource-rich countries, extractive contracts usually take two forms: Production Sharing Agreements (PSAs) in the hydrocarbons and the Mining Development Agreements in the mining sector. Other types of extractive contracts include Host Government Agreements, Concession Agreements, and Inter-Governmental Agreements. These contracts are negotiated on a project by project basis, supersede statutory law, and typically address a broad range of issues which include fiscal aspects, social and environmental management, and share of profit (Alstine, 2014).

Contracts establish the rights and responsibilities of both the private company and the Government, and include the formulas used to calculate how profits will be divided between the investors and the Government. Extractive industry contracts usually include obligations of both parties, the fiscal provisions and considerations, structure and level of state participation, legal safeguards, and stabilization clauses. These contracts also includes precise definitions of the nature and calculation methods of taxes, payments, or royalties which sometimes can be problematic and confusing (Mason, 2010). Otto (2006) and Mason (2010) points out that extractive's definitions are usually complicated and may be at variance with those used in other countries.

2.2. Transparency Initiatives in the Extractives Sector

In contract negotiations, governments may not have the technical or human resources to get a fair deal for their people or vested interests of government officials may outweigh public interest. Negotiations may be controlled by one ministry leaving other key sectors out of the process thus undermining the state's ability to comprehensively regulate or enforce the terms of contracts. Oil, gas and mining companies, on the other hand, are focused on getting the best deal for their shareholders and invest heavily in legal and fiscal expertise to ensure contract negotiations are in their favor. More often, communities in exploration affected areas are not part of the negotiations and often do not reap benefits. However, this situation is changing since governments in resource-rich countries have adopted extractives transparency practices which ensure stakeholder participation in public contracting at the national and sub-national levels in the extractives sector. These include; the Extractives Industries Transparency Initiative; Publish What You Pay; Open Government Partnerships; Africa Mining Vision; International Conference on the Great Lakes as well as other Multilateral Transparency Initiatives (MTIs).

2.2.1. Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) was launched in 2002 to improve

transparency and accountability in resource rich countries. The EITI, implemented by 50 countries around the world expanded its requirements beyond payments by companies to governments. It now links a range of important elements in open contracting, including a description of the legal framework governing extractive industries (requirement 2.1), information on the award or transfer of licenses (requirement 2.2), the need for a publicly available cadaster or register of licenses (requirement 2.3), a recommendation to publish the contract/license documents that govern the exploration and exploitation of oil gas and minerals (requirement 2.4) and a requirement to publish information about the beneficial owners of extractive industry projects (requirement 2.5). Furthermore, the requirement to disaggregate revenue payments at the level of individual extractive projects (requirement 4.7), means that EITI data will increasingly be useful to understand and scrutinize the implementation of extractive industry contracts (EITI, 2013). Nearly 1,600 contracts and related documents from oil, gas and mining projects in 90 different countries are publicly available (Gary 2009). As part of their advocacy, civil society is actively engaged in the design, monitoring, and evaluation of this process, and contributes towards public debate.

An analysis of the EITI reporting on contract transparency reveals that policies enacted by governments provide for full contract transparency through laws and mining codes. However, more than half of the implementing countries covered by the review have not fully confirmed the government's policy on contract transparency in their EITI reports. This includes countries with both oil and mining sectors as contractual terms are only fully disclosed in Niger and Zambia in practice (EITI 2013). None of the EITI Reports attempt to explain this discrepancy between policy and practice, nor do they outline any recommendations related to contract disclosure. Huber and Pitman (2017) reveal that 20 EITI implementing countries had neither published contracts nor licenses nor passed a contract disclosure law, while 11 countries had failed to make the disclosures required under national laws. Even in countries where contract disclosure is an established practice, it remains challenging for citizens to determine which contracts or licenses are active (Huber and Pitman 2017).

2.2.2. Publish What You Pay

The Publish What You Pay (PWYP) campaign formally began in 2002 as an alliance of six London-based NGOs, including Global Witness, Open Society Institute, Catholic Agency for Overseas Development (CAFOD), Oxfam GB, Save the Children UK, and Transparency International UK.

PWYP is now a Global Network of more than 800 Civil Society Organizations (CSOs) in over 50 countries whose mission is for a more transparent and accountable extractive sector, that enables citizens to have a say over whether their resources are extracted, how they are extracted and how their extractive revenues are spent so that citizens can benefit from their natural resources. PWYP work to address the "resource curse",

a phenomenon by which resource- rich countries tend to have less economic growth, worse development outcomes, higher inequality and weaker institutions than countries with fewer natural resources (PWYP, 2016).

2.2.3. Open Government Partnerships

The Open Government Partnerships (OGP) is a multilateral initiative that aims at securing concrete commitments from national and subnational governments to promote open government, empower citizens, fight corruption, and harness to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations. The Open Government Partnership (OGP) was formally launched on September 20, 2011 on the sidelines of a UN General Assembly meeting during which Heads of State from 8 founding governments (Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, and the United States) endorsed the Open Government Declaration and announced their country action plans along with an equal number of civil society leaders. The eight founding members also welcomed the commitment of 38 governments to join OGP. Since its creation, OGP has resulted in over 2,500 commitments made by 75 participating countries, covering a third of the world's population. OGP participating countries declare their commitment to increase availability of information about governmental activities; support civic participation; implement the highest standards of professional integrity in administration of state affairs; and, increase access to new technologies for openness and accountability.

In order to participate in OGP, governments must exhibit a demonstrated commitment to open government in four key areas, as measured by objective indicators and validated by independent experts. The four critical areas of open government: fiscal transparency, access to information, asset disclosure and citizen engagement. For an eligible country to join, all that is required is a letter from a ministerial representative indicating agreement with the Open Government Declaration and intent to participate OGP, as well as the leading agency and an individual point of contact for future work.

2.2.4. Africa Mining Vision

The Africa Mining Vision (AMV) was formally established in 2009 by the African Union (AU), to promote equitable, broad-based development through the prudent utilization of the continent's natural wealth. The AMV looks broadly and deeply at how development can be achieved through the creation of local value, driven by the strategic use of mineral resources in Africa. It charts a path for generating and realizing various types of linkages arising from the mineral sector through industrial development and technical upgrading. The AMV recognizes the contribution of artisanal and small-scale mining (ASM) to local economic development, and promotes women's rights and gender justice. It establishes a progressive fiscal regime that can curb the hemorrhaging of the continent's resources through tax evasion and avoidance and illicit financial flows from the mineral sector.

It upholds the principle of free, prior and informed consent (FPIC) for mining-affected communities, and addresses the social and environmental impacts of mining. It is designed to be flexible and dynamic; implemented through derivative policy instruments – the Country Mining Vision, African Mineral Governance Framework and Compact with the Private Sector – while maintaining an integrated, strategic vision for national development. The AMV can be evoked in seeking to promote Contract Transparency and Disclosure in any member state, including Uganda. Thus, noncompliance with AMV commitments would be inconsistent with AU-level and sub-regional commitments on good governance of extractives industry in Africa.

2.2.5. The International Conference on the Great Lakes Region

The International Conference on the Great Lakes Region (ICGLR) is an inter-governmental organization of the countries in the African Great Lakes Region. Its establishment was based on the recognition that political instability and conflicts in these countries have a considerable regional dimension and thus require a concerted effort in order to promote sustainable peace and development.

The ICGLR initiated the Mineral Tracking and Certification Scheme. The purpose of the ICGLR Mineral Tracking and Certification Scheme is to provide for sustainable conflict-free mineral chains in and between Member States of the International Conference on the Great Lakes Region with a view to eliminating support to armed groups that sustain or prolong conflict, and/or otherwise engage in serious human rights abuses. The standards and procedures described herein are intended to prevent non-state armed groups and public or private security forces from interfering illegally at any point along the supply chain or committing serious human rights abuses related to the supply chains of minerals. The ICGLR Mineral Tracking and Certification Scheme is working to eliminate trade in minerals that are connected to non-state armed group from non-state armed groups that; illegally control mines or upstream actors in the supply chain, points where minerals are traded, or illegally tax or extort money or minerals at points of access to mine sites.

The ICGLR Mineral Tracking and Certification Scheme also targets serious human rights abuses including any forms of torture, cruel, inhuman and degrading treatment; any forms of forced or child labour; gross human rights violations and abuses such as widespread sexual violence; and, war crimes or other serious violations of international humanitarian law like crimes against humanity or genocide.

The scheme further seeks to promote the mineral sector's role in the peaceful economic and social development within the Member States of the Great Lakes Region by establishing common regional standards for transparency (both of mineral flows and of payments to government from the mineral industry), working conditions, environmental performance and community consultation.

2.2.6. Multilateral Transparency Initiatives

Multilateral organizations including the World Bank, Africa Development Bank, International Finance Corporation (IFC) and the Organization for Economic Co-operation and Development (OECD) often include contract transparency related clauses as part of support to resource rich countries.

The World Bank has integrated contract disclosure performance into governance assessments of some resource-rich countries. For example, the Mining Investment and Governance Review (MInGov) provides a comprehensive analysis of the governance, investment climate and development impact of the entire extractive industries value chain within a particular country. Country reviews include an assessment of “Openness and Transparency of Licensing Process”, with a focus on the extent of public contract disclosure (United Nations, 2015).

The OECD developed eight guiding principles and supporting commentary for durable extractives contracts (OECD, 2018). These guiding principles and commentary can be used by host government and investors as a common reference for future negotiations. The aim is to reduce or eliminate drivers for renegotiation and provide adaptive and flexible provisions that can automatically adjust to prevailing market conditions.

2.3. Benefits of Contract Disclosure

Contract transparency is an essential precondition for ensuring that all parties benefit from the extractive industries, while disclosure is a necessary precursor for the coordinated and effective management of the sector by government agencies. There is evidence that demonstrates the benefits of contract disclosure accrue to all stakeholders: governments, companies and citizens as outlined in box 1:

Text Box 1: Benefits of contract transparency and disclosure

Getting a better deal: When contracts are made public, countries enter into negotiations with companies on a more level playing field. For example, in 2007, Peru initiated reforms that included routine release of oil contracts and a more transparent bidding process leading to calls for higher royalties by stakeholders. As a result, Peru improved the minimum level of royalties from 5- 26 percent on average. In Liberia, effective transparency policies surrounding the contracting process helped attract investment from some of the largest global resource companies such as Chevron and ExxonMobil.

Monitoring the rules: Disclosure of contracts helps to manage expectations held by communities, governments and companies. Community monitoring of implementation helps companies reduce local conflict with stakeholders. For example, in DRC, civil society provided information on the use of social development funds at the Tenke Fungurume copper and cobalt mine thus improving relations between the company and local communities.

Improving trust and managing expectations: Awareness of the contract terms improves trust between society, government and companies around agreements. In Cambodia, civil society undertook an analysis of key terms of an oil contract and found that the government had negotiated a good deal with the oil company which enhanced confidence.

Attracting Foreign Direct Investment: Proactive transparency demonstrates the confidence and stability of a government as an investment partner. For example, Peru's state oil company Peru Petro's annual reports revealed that investor confidence in the oil sector flourished after the government instituted open contracting measures.

2.4. Contract Transparency among Resource-rich Countries

Contract transparency has increased among resource rich countries. These requirements are being institutionalized in access to information laws, procurement or public contracting laws, public-private partnership laws, and laws governing the natural resources sectors. This is partly due to increased advocacy by Non-Governmental Organizations (NGOs) and international financial institutions including the World Bank and International Monetary Fund (Marchessault, 2013)

Hubert and Pitman (2017) reveal that while some countries including Niger, the Philippines, Central African Republic and Guinea mandate disclosure through their respective constitutions, other resource-rich countries like Republic of Congo, Liberia and Tanzania disclose contracts through legislation. Resource-rich countries also disclose contracts through decrees as is the case in the Democratic Republic of Congo (DRC). Mexico has reformed its oil and gas sector, and enshrined transparency in its law and contracts. Accordingly, information is made available to the public from the moment the government calls for bids for oil extraction. Hubert and Pitman (2017) reveal that resource rich countries have established online data bases to display the

contracts or licenses. These databases are then publicly available on websites that have been developed and are operated by extractives agencies in the respective countries. In 2016, the government of Colombia put its mining and petroleum contracts online. Sierra Leone announced the launch of a new online government contracts repository, while Senegal indicated that it would pass a new mining code with strong provisions on publication of mining contracts. NRG's 2013 Resource Governance Index (RGI) found that of 58 countries studied, 20 countries publish all or some of their extractive contracts. Other countries that have recently enshrined transparency provisions in their law include East Timor, Ecuador, Ghana and Peru (Marchessault, 2013).

Developed countries like the United States, United Kingdom and Norway, have standardized contracts terms by integrating them into their respective laws. This reduces the number of issues to be negotiated and limits deviation from the terms contained in the law, regulation, or model agreement. Where terms are standardized and discretion limited, governments have little incentive to keep contracts opaque, since each project is governed by a generally-applicable set of rules. This approach, although challenging in terms of providing flexibility for parties, can be very helpful for emerging producer states (World Bank, 2017).

International financing organizations have also included disclosure requirements as a precondition for funding. In 2012, the International Finance Corporation (IFC)—the World Bank's private sector lending arm—added a financing requirement that IFC-backed oil, gas and mining projects disclose the “principal contract with government that sets out the key terms and conditions under which a resource will be exploited.” In Ghana, this rule applied to Eni's Sankofa project, which the IFC agreed to finance. The European Bank for Reconstruction and Development established similar requirements for hydrocarbon projects in 2013. World Bank (2017) reveals that despite the arguments that contract disclosure can compromise commercial competitiveness, there were no real concerns from investors when the IFC made it a pre-condition for financing.

Several OGP countries incorporated contract disclosure commitments in their respective action plans although the scope of what is published differs across the countries. Some choose to disclose contracts related to resource extraction but others go further to disclose information leading up to the execution of the relevant contract.

Contract disclosure among extractives companies is also on the rise. Cunha, Hayman and Pitman (2016) revealed that Tullow Oil and Kosmos Energy championed the call for increased disclosure as a means to build trust and acquire a social license to operate. For example, Turquoise Hill Resources published its investment agreement with the Mongolian government for the Oyu Tolgoi copper deposit. Rio Tinto, Statoil and BHP Billiton have also committed to contract transparency.

The guiding principles for responsible mineral supply chains developed by the OECD and adopted in May 2011 provide detailed recommendations to help companies respect human rights and avoid sourcing minerals from conflict-affected areas. The principles aim at supporting companies to identify and manage risks, and respect human rights throughout the entire mineral value chain (OECD, 2018). According to the Guidelines, companies sourcing minerals for their operations are expected to ensure their supply chains are transparent and not related to conflict areas. The Guidelines are an industry standard referenced in many international declarations, regulations and initiatives. For example, The International Conference on the Great Lakes Region (ICGLR) member states: Democratic Republic of Congo, Burundi and Rwanda have committed to integrated the guidelines into their legal frameworks.

3.0 UGANDA'S EXTRACTIVES CONTRACT TRANSPARENCY REGIME

3.1. Policy, Legal and Institutional Framework for Contract Transparency

3.1.1. Policy framework

The National Oil and Gas Policy (NOGP) commits to promoting high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas. (National Oil and Gas Policy, 2008). Under the guiding principles, the policy provides for openness and access to information as key fundamental rights and commits to promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas. (Guiding principle 5.1.3). Under objective six of the policy which relates to collection of right revenues and using the revenues to create lasting value for the entire nation, one of the key policy actions to achieve the objective is to, "Participate in the processes of the Extractive Industries and Transparency Initiative (EITI). The Oil and Gas revenue Management Policy, 2012 also commits to transparent management of oil revenues and Uganda's accession to Extractive industries transparency Initiative (EITI).

Uganda has a Public Sector Monitoring and Evaluation Policy under the office of the Prime Minister. The policy promotes open contracting by advocating for accountability and value for money. In line with the PPDA Act, 2003 procuring entities consult project affected persons prior to awarding contracts, and also encourage them to participate in the monitoring and implementation of Public Contracts. Furthermore, the PPDA launched an e-procurement strategy, and the 2014-2019 strategic plan aimed at strengthening the public procurement systems and provide value for money through better contracts management and performance. Section 1.7 of the strategy provides for citizen monitoring of public contracts. However, there is still notable secrecy of key oil and gas contracts especially PSAs which cannot easily be accessed by the public.

3.1.2. Legal framework

Uganda's legal framework provides for access to open contracting information e.g. procurement plans, tender notices, bidding documents, and award notices including winners and prices. Information relating to these procurement stages is published by the procuring entities through websites, notice boards, the Uganda Gazette and Newspapers.

Article 41(1) of the Constitution of the Republic of Uganda states that every citizen has a right to access information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security

or sovereignty of the state or interfere with the right to privacy of any other person. The Access to Information Act, 2005 provides for access to public information by any citizen. The model PSA has provisions for disclosure of contract information as well. These three provisions support disclosure with regard to the development of systems to collect and publish contracting data regarding the formation, award, execution, and performance of public contracts, including full texts of documents, simplified summaries, and useful metadata. Regulations to operationalize the Access to Information Act were finalized and approved in 2011.

The Petroleum (Exploration, Development and Production) Act 2013, has specific provisions aimed at ensuring transparency in the sector. Section 11, Subsection 2 (d) requires the Authority to “ensure transparency in relation to the activities of the petroleum sector and the Authority”. Thus, the Minister, assisted by the Petroleum Authority, is required by law to promote transparency in the petroleum sector. Section 6 on “Agreements with Government” Subsection 2, provides for the Minister to develop or cause to be developed a model PSA or any other model agreement to be entered into by Government. The process provides for the required minimum level of transparency that includes submitting the draft PSA to Cabinet for approval and later laying it before Parliament.

The legal framework also provides for access to information related to planning and procurement of public contracts like the Public Procurement and Disposal of Public Assets Act 2003, Procurement Regulations (for both Local and Central government), and The Petroleum (Refining Conversion, Transmission and Mid-stream Storage) Act 2013. The Whistle-Blowers Protection Act of 2010 protects persons or entities who publish information that is of public interest regarding public contracts even if such information is confidential. Uganda is also a signatory to the United Nations Convention Against Corruption (UNCAC) as well as the African Union Convention on Preventing and Combating Corruption since 2004.

Ugandan policies and laws provide for citizen participation in the management of the extractives sector. Citizens participate in the development of policies, laws, regulations and design of projects. The policies also provide for citizen monitoring at all levels of planning, procurement, and implementation of public contracts. Citizen participation in public affairs is a right enshrined in Article 38 of the 1995 Constitution of Uganda. The Oil and Gas Policy, 2008 recognize important roles different stakeholders have to play in order to achieve transparency and accountability in the oil and gas activities, such as licensing, procurement, exploration, and production operations. However, public contracts do not have special provisions explaining the role of citizens and interest groups in contract execution. An interaction with the publicity secretary of Angariama Artisanal Gold Miners in Tira Parish Sikuda Sub-county in Busia District revealed that, the citizens who are usually the custodians of these mineral resources are not adequately

consulted during the process of the award of the mining licenses.

3.1.3. Institutional framework

There are several institutions in the country tasked with investigating wrongdoings, fighting corruption and enforcing contract transparency and accountability in government procurements. These include; Public Procurement and Disposal of Public Assets Authority (PPDA) which has a responsibility of ensuring the application of fair, competitive, transparent, non-discriminatory and value for money public procurement and disposal standards and practices among other responsibilities.

The office of the Inspectorate of Government (IG), the Directorate of Public Prosecutions (DPP), Office of the Auditor General (AOG), the Directorate of Ethics and Integrity (DEI) in the office of the President. The DEI is also the chair of the Inter Agency Forum (IAF), tasked with ensuring effective coordination among all institutions involved in fighting corruption in the country. A specialized anti-corruption court was established with the aim of judging corruption-related cases in a swifter and more efficient way.

3.2. Uganda's Contract Transparency Practice

3.2.1. Contract transparency in the oil and gas sector

Contract transparency in the exploration and production of oil and gas can improve industry engagement, competition and civic trust. According to international best practice, there are existing benchmarks that if applied by any country translate into contract disclosure and hence forth lead to contract transparency (NRGI & OGP, 2018).

Text Box 2: Criteria for assessing Uganda's extractives contract transparency

Drawing insights from the existing literature this study assessed Uganda's transparency on the following criteria:

- i. Existence of legal, policy and institutional framework for contract transparency. For example whether the laws governing contract transparency are adequate or lacking
- ii. Availability of information about the total area that is to be opened up for exploitation with details of surface and sub-surface rights and needs for users
- iii. The publication of prospective opportunities for exploration and the specific location of the prospective opportunities
- iv. Information about names of companies bidding and the details of the ownership of the companies including the bidding outcome for each stage on the bidding rounds
- v. Information about the negotiations with the successful bidder including the negotiation terms and criteria for the negotiations
- vi. Disclosure of the contract for each project area in full including the text, annexure, amendments and any linkages with ancillary agreements and permits disclosed
- vii. Information on project level reserves and revenues in a disaggregated manner ideally mainstreamed into government systems rather than standalone reporting. These disclosures should include payment and benefit flows broken down to the level of greatest relevance to citizens
- viii. Publication of project-level data on commercial, social and environmental issues, and outcomes against project-level rules to track compliance

3.2.1.1 Transparency of Uganda's oil and gas sector

The study developed a scale from zero to five to assess Uganda's transparency performance against best practices. The scale was aimed at assigning points to the performance on each of the eight criteria developed in 3.2.1 above. The scores are defined as follows:

Based on the scoring for each of the eight criteria identified in the literature, Uganda's performance is summarized in the table below.

Text Box3: Criteria for scoring Uganda's petroleum and mining contract transparency

- 0=None of the contract information is publically available
- 1=Very limited/scanty/inadequate contract information available
- 2= Some information is available but difficult to get
- 3= Some information is available but need to search
- 4=Some information (though not adequate) is readily available and can be accessed publically with ease
- 5= Adequate contract information is readily available and can be accessed publically with ease

Table 1: Uganda's oil and gas contract transparency performance

S/N	Contract transparency benchmarks	Score					
		0	1	2	3	4	5
1	Existence of legal, policy and institutional framework for contract transparency					X	
2	Available information about the total area that is to be opened up for exploitation with details of surface and sub-surface rights and needs for users				X		
3	The publication of prospective opportunities for exploration and the specific location of the prospective opportunities					X	
4	Information about names of companies bidding and the details of the ownership of the companies including the bidding outcome for each stage on the bidding rounds			X			
5	Information about the negotiations with the successful bidder including the negotiation terms and criteria for the negotiations		X				
6	Disclosure of the contract for each project area in full including the text, annexure and amendments.	X					
7	Information on project level reserves and revenues in a disaggregated manner ideally mainstreamed into government systems rather than standalone reporting.		X				
8	Publication of project-level data on commercial, social and environmental outcomes against project-level rules to track compliance			X			

Source: Researchers' own analysis from primary data

As revealed in table 1, Uganda overall contract transparency score in the oil and gas sector is eighteen (18) out of forty (40) score points which is 45%, indicating a below-average transparency in the country's oil and gas sector. The summary score reveals that, while Uganda developed a legal framework with strong provisions for transparency and disclosure, there is a huge gap between specifications of the law and implementation as evidenced by the low scores in regard to disclosure and publication of the details of the oil and gas contracts.

3.2.1.2 Analysis of Uganda's oil and gas contract transparency performance

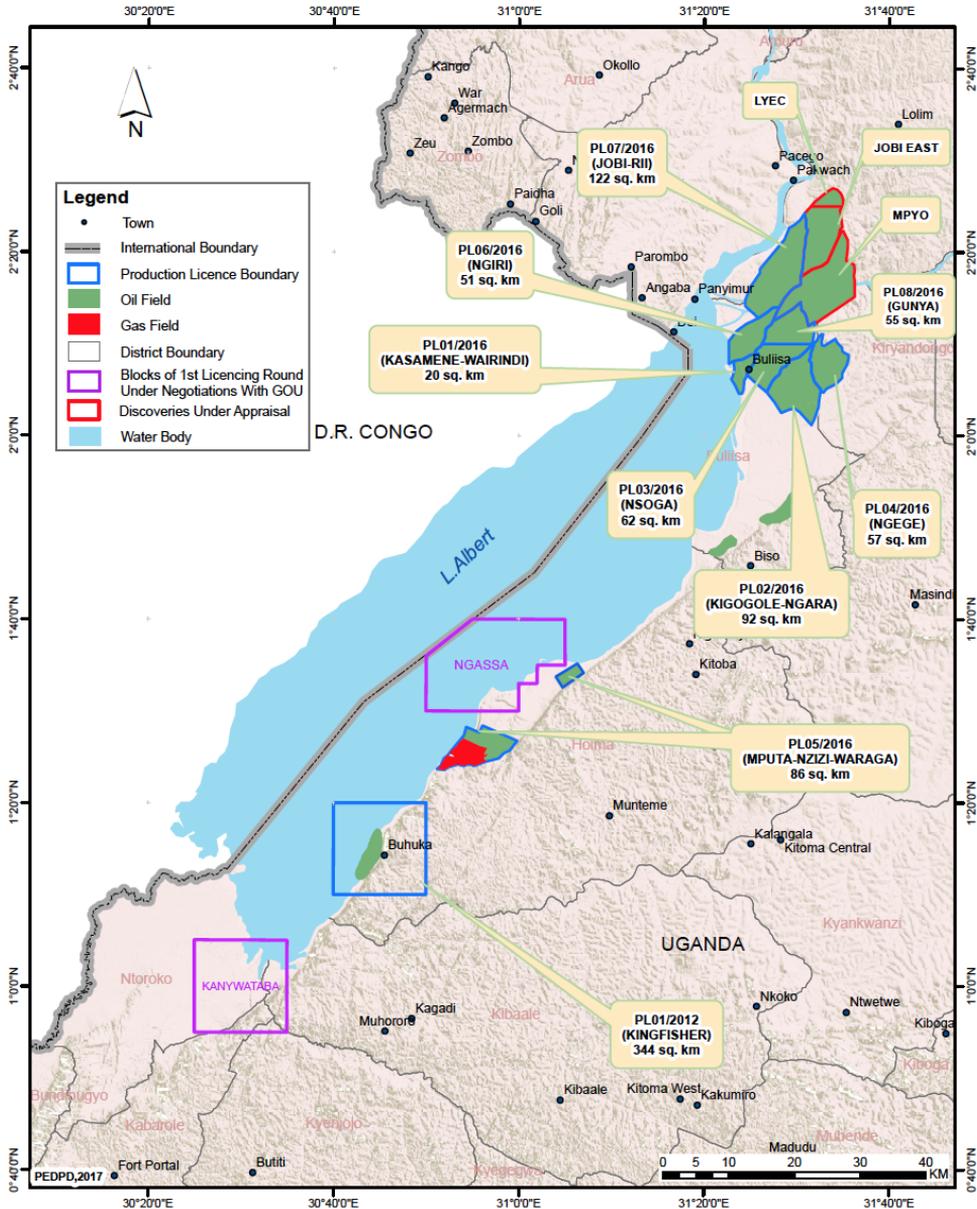
3.2.1.2.1 Existence of legal and institutional framework for contract transparency

Uganda has developed a robust legal, policy and institutional framework to support contract transparency in extractives. This includes the 1995 Constitution of the Republic of Uganda 2005; The Access to Information Act, 2005, the Public Finance Management Act, 2015, Petroleum Exploration, Development and Production Act, 2013 among others. However, the Mining law has not been revised since 2003 and does not have transparency provisions. While the Mining policy has been reviewed and the Mining and minerals Bill drafted, it is not yet known how transparent the final law will look like. The transparency provisions in the petroleum laws are not adequate to guarantee full disclosure of contracts because some contracts such as PSAs still have confidentiality clauses which cannot allow the public access such information. The laws do not fully incorporate EITI principles and practices.

3.2.1.2.2 Information of the oil and gas reserves

Since the announcement of commercially viable quantities of oil and gas in 2006 in the Albertine Graben, international companies have undertaken exploration to ascertain the existence and quantity of oil and gas deposits in the country. In addition, only about 40 percent of the total potential area has been explored. While the government has announced that oil deposits amount to 1.4 billion barrels recoverable, there is no comprehensive information about the exact reserves that the country possesses. Stakeholders interviewed in this study pointed out that given their superior resources and technology, the international oil companies seem to have more accurate records of the Ugandan oil and gas reserves. Also, the government has continuously undertaken seismic studies and is expected to have more accurate information of the reserves at some point in future. Face-to-face interviews with senior staff at the Ministry of Finance, Planning and Economic development revealed inadequate information sharing and exchange among government Ministries, Departments and Agencies (MDAs).

Figure 1: Map showing Uganda's Albertine oil and gas fields and status of licensing



Source: Petroleum Authority of Uganda, 2018

Information about Environmental Impact Assessments (EIAs) is available but one has request for it since it is not readily available on the websites or in the library of the respective organizations such as NEMA and MEMD. While information about the oil projects is available, project level information on the reserves for each exploration area

is not readily available. Even when requested, government officials do not readily supply this information. An interview with senior official of the Directorate of Geological Surveys and Mines revealed that either they do not have that information or officials are not allowed to disclose information on extractives reserves and deposits.

3.2.1.2.3 Information about exploration phase and production sharing agreements

Prior to 2013, the basis for allocation of exploration licenses was based on confidential negotiations with prospective exploration companies. Information on the companies which the government of Uganda was negotiating with and the details of the areas under negotiation were a secret until the 2013 when the Petroleum (Exploration, Development and Production) Act came into force.

The enactment of the Petroleum (Exploration, Development and Production) Act, 2013 introduced a new regime for granting of exploration licenses and developed a model Profit Sharing Agreement to guide future negotiations. This law introduced the requirement for competitive bidding of exploration licenses. The government published information on; the blocks for which exploration licenses would be awarded; details of the companies bidding; progress of the bidding rounds and the names of the successful bidders at every round; and, the successful bidders and bidding areas. The first bidding round based on this system was conducted in 2016 and information on successful bidders was published on the MEMD website and media through press releases.

Production sharing agreements (PSAs)

Oil exploration activities in Uganda are governed by Petroleum Sharing Agreements (PSAs). Most of the PSAs were signed prior to 2008. In 2012, two PSAs were granted to Tullow. In 2017, three new PSAs were issued to Armour Energy based in Australia and Oranto Petroleum Ltd from Nigeria. These PSAs determined the sharing of oil revenues and other aspects of the relationship with the oil companies. However, contract negotiations between MEMD and successful bidders were confidential. The process and details of the negotiations are not public. The PSAs at parliamentary library can be viewed on formal request which is generally cumbersome and time consuming. When allowed to view them, researchers find it difficult to make notes. Phones are not allowed in the Library, and photocopying of the information is prohibitively expensive. The library visitors are also given a few minutes to view these documents, which makes it impossible to generate enriching information from the visit to the Library – making the ‘disclosure’ a mockery of the Access to Information Act. This hinders accurate analysis of the PSAs for possible oversight by oversight institutions and researchers.

Table 2: Uganda: Production Sharing Agreements

Year	PSA area	IOC
Before 2008	Pre-2008 PSAs	Heritage
2012	Kanywataba Prospect Area	Tullow Uganda Operations Pty Limited
2012	Exploration Area 1 (EA-1)	Tullow Uganda Operations Pty Limited
2017	Kanywataba Block	Armour Energy
2017	Ngassa Deep and Shallow Block	Oranto Petroleum Ltd

Source: MEMD, 2018

Production licenses

The Minister of Energy and Mineral Development granted eight (8) Petroleum Production Licenses on 30th August, 2016 over oil fields in Exploration Area 2 (EA2) and Exploration Area 1 (EAI) respectively. Five Petroleum Production Licenses were granted to Tullow Uganda Operations Pty Limited (Tullow), the operator for EA2, and three Petroleum Production Licenses were granted to Total E&P Uganda B.V. (TOTAL) the operator of EAI. Grant of these licenses followed earlier production license issued in 2012 to CNOOC for King Fisher in Hoima district and now presently Kikuube district as of 1st July, 2018. The information about the availability of the production licenses is publically available on the MEMD website and press releases.

Table 3: Production licenses signed by International Oil Companies

Period	Area	Production License	Licensees
2013	King Fisher Production License	PL01/2012	CNOOC
2016	Ngiri Production License	PL06/2016	CNOOC and Tullow
2016	Jobi-Rii production license	PL07/2016	CNOOC and Tullow
2016	Gunya Production License	PL08/2016	CNOOC and Tullow
2016	Kasamene-Wahrindi production license	PL01/2016	CNOOC and TOTAL
2016	Kigogole-Ngara Production License	PL02/2016	CNOOC and TOTAL
2016	Nsoga Production License	PL03/2016	CNOOC and TOTAL
2016	Ngege Production license	PL04/2016	CNOOC and TOTAL
2016	Mputa-Nzizi-Waraga Production License	PL05/2016	CNOOC and TOTAL

Source: MEMD, 2017

While information on production licenses is available, the exact terms of the production licenses are not known to the public. They are never published and it is not possible to access them. Formal requests for such license information may not yield results since the existing law provide for withholding of information considered strategic to national interests.

3.2.1.2.4 Oil Pipeline and refinery projects

The government of Uganda plans to own about 40 percent of the refinery project and will invest about \$500 million. At the same time, government plans to own about 15 percent of The East Africa Crude Oil Pipeline (EACOP) by investing about \$300million. Other subsidiary projects include the Kabaale industrial park, and international airport. The prospective bidders and the bidding rounds for the refinery project were made available to the public. For example, MEMD made press releases and publicity via its website when the Ministry was negotiating with a Russian company, and the outcomes of the negotiations were communicated to the public. Again, information was published in a press release when the Albertine Graben Refinery Consortium was selected to undertake the construction of the refinery. However, information about the refinery and the pipeline, including costs and modalities of financing, is not available to the public.

3.2.1.2.5 Petroleum revenue transparency

While large scale petroleum production has not commenced, the country has already received revenues from oil operations in the form of signature bonuses, capital gains tax, stamp duty, fees and other incomes. The government set up the Petroleum Fund as part of the Public Finance Management Act 2015. The role of the Fund was to receive all revenues from petroleum operations. In addition, the PFMA, 2015 provides for withdrawal, expenditure in addition to an elaborate reporting mechanism on the reserves. The law also provides for reporting on revenue projections and revenues received from petroleum operations and how it is spent. While the government announced that funds from petroleum operations would be deposited in the Fund, the current state of the Fund including the amount of money has not been publicly disclosed (Government of Uganda, 2015).

3.3. Contract Disclosure in Oil and Gas Sector

3.3.1. Proactive disclosure

Proactive disclosure of information is done freely by responsible agency to divulge information to the public without any form of request. All the information about public contracts should be released without fail. However, public officials interviewed during the study did not regard such publication as necessary since summaries are published on the Public Procurement and Disposal of Public Assets Authority (PPDA) website. In majority of the cases reviewed, there was no evidence of publication of full contract details. This is because in some instances the laws are silent on publication of detailed information on contracts. In oil and gas laws (Government of Uganda, 2013), the provisions for access to information on public contracts contain clauses that provide for access but make it discretionary for the information holder to furnish that information. Compliance with full publication of contract information varies from project to project and is more lacking in extractive projects. Access to detailed procurement information is

only possible through formal requests by interested public entities and may suffer delays due to bureaucracy including requirements for payment of a prescribed fee.

The government has taken steps to enhance transparency in the award of rights for exploration and production. These steps include the enactment of the Petroleum (Exploration, Development and Production) Act, 2013 which stipulated a new competitive bidding regime and the design of a model contract in 2018. As a result of these legal reforms, subsequent contracts were announced in newspapers of wide circulation and on the Ministry website.

In view of the above, the relevant national laws describing the legal framework and governing the extractive industries have transparency clauses. Similarly, there is adequate information on the process of identification, appointment, operations and reporting by persons responsible for allocating licenses as well as negotiating, signing and managing contracts. However, the transparency is only related to announcement of the process and outcomes and not details of the contracts signed. An assessment of the contract transparency process for oil production concludes that the Ministry did not go far enough to announce the details of the contracts, the contract sums or the beneficial owners of the companies that benefitted from the contract awards. While limited access is open to stakeholders in the Parliament of Uganda library, this level of disclosure does not permit comprehensive analysis of the details of the contracts to assess what the government signed on behalf of citizens.

Table 4: Level of contract information disclosure by Public Entities (PEs)

Public Entity	Information about existence of the contract	Some contract information released	No of production licenses disclosed	No of PSAs disclosed
Petroleum Exploration and Production Directorate	Available	Available	Nil	Nil
Petroleum Authority of Uganda	Available	Not seen	Nil	Nil
Uganda National Oil Company	Available	Not seen	Nil	Nil

Source: Researchers' own computation from available information

Table 5: Level of contract information disclosure by the Petroleum Directorate

Contract/Information	Number signed	Information about existence of PSAs/licenses publicly disclosed	Detailed contents of contracts/licenses publicly disclosed
PSAs	5	Disclosed	Not disclosed
Oil Production licenses	9	Disclosed	Not disclosed

Source: Researchers' own computation from information available at the MEMD

3.3.2. Reactive disclosure

Reactive disclosure refers to the level of availability of contract information on request from government institutions and other entities or following pressure (legal, political or pressure-group). In this research, it become apparent that reactive disclosure of oil and gas contract information has not been embraced. Even where the Access to Information Act, 2005 provides for the right to access oil contracts, this access is not guaranteed due to existence of confidentiality clauses that prohibit disclosure. The ruling in the case of Mwanguhya and Izama versus the Attorney General reveals that attempts made by some members of the public to sue MEMD to allow access to PSAs were not successful (Monitor Newspaper March 29, 2012). There are no data standards that have been developed for use in the oil and gas sector in Uganda. This has hindered contract disclosure and monitoring.

3.4. Contract Transparency in the Mining Sector

While Uganda possesses abundant mineral deposits, the mining sector in Uganda is dominated by artisanal miners although large scale production also exists in the precious and development minerals.

3.4.1. Mining rights

There are two main types of mining rights in Uganda; leases and contracts. The majority of mining contracts in Uganda take the form of mining leases for exploration as well as production. Information available at the MEMD revealed that there are about 671 active licenses of different categories.

Table 6: Uganda- status of mineral rights, 2018

Type of License	Status as at 01/04/2018	Granted	Renewed	Expired	Revoked/ Surrendered	Current as at 30/06/2018
Prospecting License	110	59	N/A	30	0	139
Exploration License	346	24	2	45	0	325
Retention License	4	1	0	0	0	5
Location License	74	8	3	11	0	71
Mining Lease	39	2	0	0	2	39
Mineral Dealers' License	67	25	N/A	0	0	92
Total	640	119	5	86	2	671

Source: Researchers' own computation gleaned from records available at MEMD

3.4.2. Mining contracts

Government of Uganda has in recent years signed some mining contracts. In September 2013, the government granted a \$175m concession to restart the Kilembe copper-cobalt mine with Tibet Hima Mining Company (THMCOL), a consortium of Chinese companies to extract cobalt from Kilembe's slag heaps and upgrading Mobuku hydropower plant to a 12 megawatts facility. In December 2014, the government and Guangzhou Dongsong Energy Group of China signed an agreement for the development of the US\$ 560million Sukulu phosphate and steel project. The plant has capacity to produce 300,000 tons of phosphate fertilizers and 200,000 tons of sulfuric acid per year (Government of Uganda 2016).

3.4.3. Analysis of level of contract transparency in the mining sector

The analysis of Uganda's performance on contract transparency was based on a criteria developed by the research team. The aim of the criteria was to determine the level transparency of the mining sector compared to best practice in the sector.

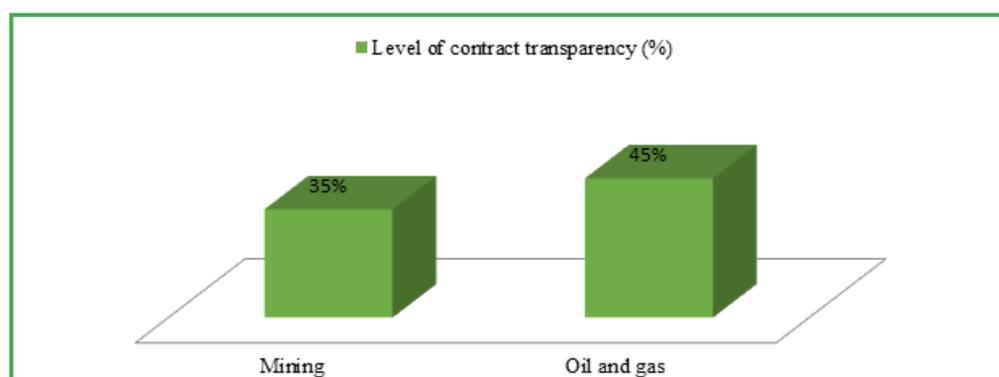
Based on the criteria outlined in text box 3, the scoring for each of the eight criteria identified in the literature, Uganda's performance is summarized in the table 7.

Table 7: Uganda's mining contract transparency performance

S/N	Contract transparency benchmarks	Score					
		0	1	2	3	4	5
1	Existence of legal, policy and institutional framework for contract transparency				X		
2	Availability information about the total area that is to be opened up for exploitation with details of surface and sub-surface rights and needs for users			X			
3	Publication of prospective opportunities for exploration and the specific location of the prospective opportunities				X		
4	Availability of information about names of companies bidding and the details of the ownership of the companies including the bidding outcome for each stage on the bidding rounds		X				
5	Availability of information about the negotiations with the successful bidder including the negotiation terms and criteria for the negotiations		X				
6	Disclosure of the contract for each project area in full including the text, annexure and amendments.	X					
7	Availability of information on project level reserves and revenues in a disaggregated manner ideally mainstreamed into government systems rather than standalone reporting.		X				
8	Publication of project-level data on commercial, social and environmental outcomes against project-level rules to track compliance		X				

Source: Researchers' own analysis from primary data

Uganda's score on the mining contract disclosure and transparency was 14 out of 40 (35%) which implies a below-average performance and lower than the level of contract disclosure and transparency in the oil and gas sector.

Figure 2: Comparison of contract transparency in mining, and oil and gas sectors

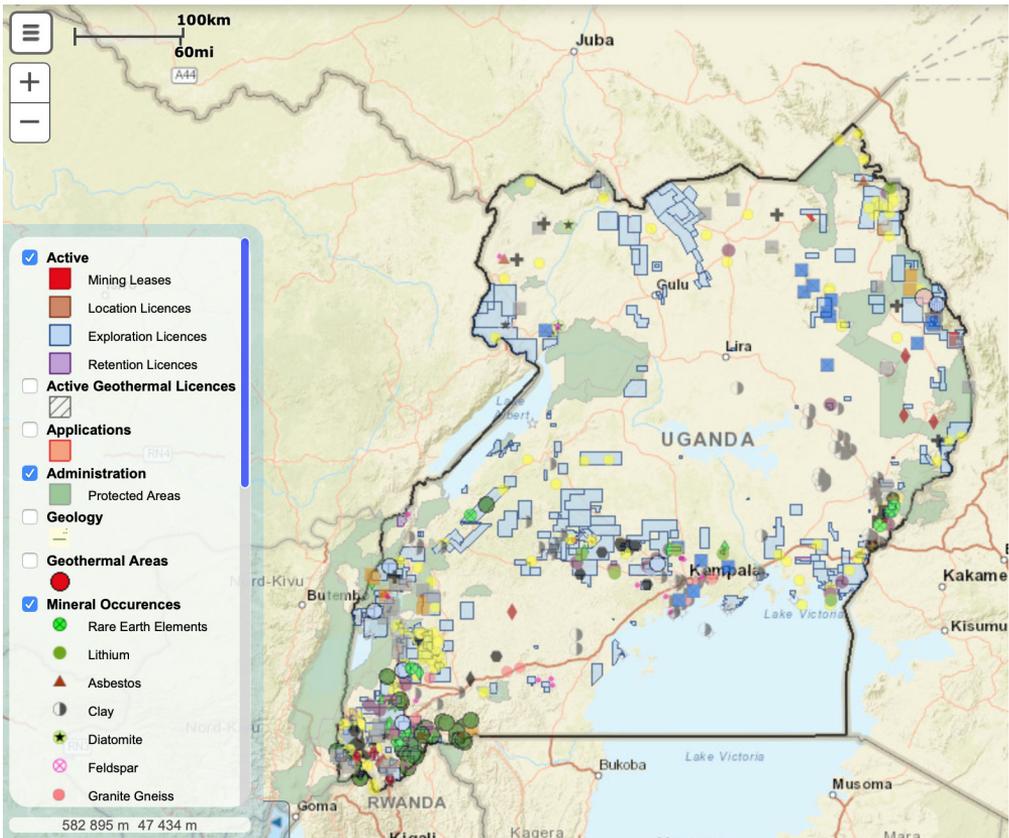
Source: Researchers' own analysis from primary data

3.5 Analysis of the Scores for Contract Transparency Practices in Mining Sector

3.5.1 Information on mineral deposits

The government with support from the World Bank undertook a survey of the mineral deposits in the country but the survey did not cover Karamoja. Officials at the Directorate of geological surveys and mines indicated that government has now acquired resources to undertake the aeromagnetic survey of the Karamoja region. The survey culminated in the development of a cadastre map. The Flexi Cadastre Portal is publicly available on the Ministry website. However, the details of the quantities of mineral deposits are not available on the cadastre. United Nations Development Programme has noted in its report (UNDP, 2018) that an abundance of geodata exists but its out of reach for most stakeholders.

Figure 3: Uganda's Mining Cadastre



Source: Uganda Mining Cadastre Portal (<http://portals.flexicadastre.com/uganda/>)

Local governments in the mineral rich areas are entitled to royalties from mineral extraction. However, they do not have sufficient information on the available mineral deposits and volumes extracted in their jurisdiction to enable them make accurate projections on potential revenues. A senior official in Bugiri District revealed that local governments lack information on mineral deposits and do not participate in the licensing process. Artisanal miners interviewed during the study decried lack of information pertaining both to the process and details regarding a mining lease issued to a company known as Green Stone Mining Company Limited. A detailed review of the Government Procurement Portal indicates that the ministry of energy as a procuring entity only displays procurement plans for services and not mining contracts. There is no mining contract information displayed on the Government Procurement Portal.

3.5.2 Acquisition of licenses

Interviews with officials at the MEMD revealed that the process of acquiring licenses is spelt out in the Mining Act 2003 and the Mining Regulations 2004 and prescribed forms for the application of the different licenses are available at the department of Geological Survey and Mines. For example, applicants are required to erect beacons over the area of interest, develop a work program, prospecting returns and budget, ensure the documents are endorsed by the Chief Administrative Officers (CAO) of the respective District(s), and attach a bank statement as proof of adequate financial resources to carryout planned activities. An eligible applicant as per the requirements under the Mining Act, 2003 and Regulations, 2004 qualifies to be granted a mineral right on the basis of 'First Come First Serve'. The research team found public notice boards in the offices of the Directorate of Geological Survey and Mines (DGSM) where the procedure for acquisition of licenses is displayed.

3.5.3 Disclosure of contract details

The research team was informed by senior officials at the Department of Geological Survey and Mines that the website for the Department was not functional due to technical reasons making it difficult publicly disclose any details on contracts and ownership of the mining rights. A report by the Daily Monitor Newspaper of 18 July 2018 released the names and details of owners of leases in the mining sector implying that this information exists but is not publicly available (Kahungu, 2018).

3.6 Analysis of Non-disclosure of Contracts in Extractives Sector

Confidentiality clauses in the PSAs

A senior official in the Department of Geological Survey and Mines revealed that the confidentiality clauses in the PSAs prevent disclosure of contracts. These confidentiality clauses on the PSAs do not prohibit disclosure but require written consent from the

mining company prior to disclosure. Confidentiality clauses in the PSAs, can include an exception for disclosures that are required by law. Thus, governments can require contract transparency by law relating to both the contracts and information which a company is required to provide to governments as part of its contractual obligations.

Need to protect government's position

Officials in the Ministry of Energy and Mineral Development argued that in many cases, governments do not have the capacity and resources to negotiate good contracts. This may arise due to lack of sufficient information and expertise in negotiation. Disclosing such contracts may lead to extractive companies to compel government to offer similar terms which may result in fiscal losses to government. According to the officials in the Ministry, it is not strategic to reveal the details of previous contract negotiation outcomes. For example, Global Witness (2016) indicated that PSAs signed after 2012 provide up to 83 percent government take on profits from oil production compared to PSAs signed prior to 2012. In addition, the PSAs signed after 2012 also provide a detailed breakdown of information regarding total government revenue, the Internal Rate of Return (IRR) of the company, and the rate of royalties arising out of oil production.

Protection of commercially sensitive information

Contracts contain commercially sensitive information and such information when disclosed, could cause competitive harm to both companies and governments. Analysis of contracts reveals that primary contracts do not usually contain information commonly cited as commercially sensitive. Contracts that are disclosed do not generally contain information that would meaningfully impact a company's competitiveness. Analysis of the model PSA did not reveal any information that could be commercially sensitive and as such there should be no reason for this non-disclosure on those grounds. A review of contracts in several oil rich countries concludes that there is no evidence to show that extractive companies were discouraged to invest due to fear of disclosure of contracts (NRGI and OGP, 2018). Furthermore, many companies also disclose contracts in stock exchange filings. Uganda's joint venture model implies that each production area is jointly owned by the three joint partners. As such, the partners already have access to information on the other companies' contracts so there is not confidentiality in that regard. Given that the PSAs contain details of payment terms, participating companies and other information they are fundamental to assessing the balance of benefit and risks agreed to by government officials on the country's behalf. As such, there is a very strong public interest in contract disclosure to the fullest extent possible.

Complexity of contracts

Officials interviewed at the MEMD argued that most contracts include complex issues that are not easily understood by the public. As such disclosure of contracts with complex

economic and extractives details is not necessary as it would require expert knowledge and skills if stakeholders are to analyze contract information. Other respondents argued that there are organizations that can offer expert advice to analyze contracts since there is need to ensure that citizens benefit from publicly held extractive resources.

3.7 Factors Affecting Contract Disclosure in Uganda

Inadequate laws on contract disclosure in the extractives sector: The Production Sharing Agreements that Uganda signed with international oil companies contain confidentiality clauses that prevent contract disclosure and the Access to Information Act 2005 is silent on whether the public is entitled to access the information contained in the PSAs. This has been an impediment to ensuring transparency and accountability in the extractives sector.

Inadequate government willingness to disclose contracts: Uganda government officials are not bound by any existing laws to release information on extractives contracts. A senior official working for Oxfam in Uganda informed the research that even where the disclosure of contract information is not prohibited, government officials are not willing to release such information and, in most cases, do not respond to public requests for information on PSAs and mining contracts.

Inadequate capacity by MDAs and Ministries to monitor and enforce contract disclosure: Public oversight authorities and implementing agencies, including line ministries, auditor general, IGG, often lack the staff, money, capacity, and time to exhaustively inspect, audit and review all planning and award processes, or performance of contracts more so in the extractives sector. There is thus inadequate financing of anti-corruption body in Uganda limiting its capability to monitor all the contracting issues that arise from public contracts.

Complicated nature of extractives contracts for the public to understand: Extractive industry contracts are complex and the public may not fully understand the complexities of the extractive sector. Therefore, many CSOs and other oversight bodies do not put enough pressure on government to disclose the contracts since their capacities to analyze and critique the contracts are limited.

High level of corruption in Uganda: Uganda is still ranking high on international corruption index. Thus, issues of contract disclosure do not appeal to most government bureaucrats and may prefer to work in a closed fashion hence paving way for possible corruption. Otherwise there would not be any incentive to close the sector to the extent of concealing oil contracts that are signed on behalf of the citizens.

Contract information accessibility challenges: Bits of information relating to extractive contracts/licenses are only available on the MEMD website and many people in Uganda

cannot easily access such information due to internet connectivity and affordability challenges. This therefore keeps the majority of the public in the dark regarding ongoing activities in the sector.

4.0 CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

The objective of this study was to assess the level of transparency in the contracting processes in the petroleum and mining sectors in Uganda and compliance with best practices related to contract transparency in the extractives sector. The following conclusions can be drawn from the study:

Provisions on contract disclosure and transparency exist in Uganda's legal framework for the extractives sector. These include among others; the Constitution, the Access to Information Act 2005 and the Public Finance and Management Act, 2015. However, the use of these legal frameworks has not been successful at ensuring that citizens gain access to information on the details of the extractive's contracts.

The Production Sharing Agreements signed between the government and International Oil Companies do not explicitly prohibit disclosure of contract information. As such, the PSAs were made public in the parliamentary library. However, the manner in which the contracts were publicly disclosed does not enable the public to comprehensively analyze and interrogate the contracts in order to ascertain what the government negotiated on their behalf.

The level of contract transparency and disclosure in the oil and gas sector differ. There is higher transparency in the oil and gas sub-sector compared to mining sub-sector. This could be attributed to the reforms in the legal framework on oil and gas that provides for competitive bidding and disclosure, and the character and practice of the current license holders. Also, oil and gas contracts have been publicly displayed in the parliamentary library but this is not the case with the mining contracts.

Information on contracts is provided on the Ministry of Energy and Mineral Development website and the mining cadastre which is publicly available. However, vital information on actual deposits and revenue share is not publicly available limiting the level to which the public can hold their governments accountable in the implementation of the extractive's contracts.

Uganda is party to several transparency initiatives and publicly committed to joining the Extractives Industries Transparency Initiative (EITI). Despite the membership to these initiatives, the level of transparency and disclosure of extractives contracts was still lower than would be expected for member countries.

4.2. Policy recommendations

The analysis of the literature together with information gleaned from the interviews with

key government, Non-Governmental Organizations (NGOs) and private sector has pointed to the need for government to address key challenges to contract transparency in the extractives sector. Specifically;

Undertake legal reforms in the mining industry: The government of Uganda should undertake legal reforms in the mining industry to include transparency provisions and operationalize the existing legal and policy framework in the petroleum industry and associated regulations to ensure contract transparency and disclosure. The Mining Act, 2003 does have adequate provisions contracts disclosure, corporate accountability, disclosure of beneficial ownership beneficial and competitive and transparent allocation of licenses. The legal reforms should integrate the Extractive Industries Transparency Initiative principles and OECD's guidelines on supply chain due diligence. The transparency and accountability provisions in the Petroleum legislation and associated regulations including the Public Finance Act ought to be operationalized.

Develop a disclosure regime: The government of Uganda should develop a disclosure regime that makes contracts and associated documents easy to find, search, and use. This should include the publication of electronic copies of contracts online with paper-based options available to increase accessibility for communities lacking Internet access.

Enhance stakeholder consultation and engagement: The Ministry of energy and mineral Development with the associated government agencies should enhance stakeholder consultation including engagement with communities affected by the proposed extractive activities before exploration or production licenses are granted and ensuring that details of the deal are conveyed in a manner and format that is accessible and understood by the population.

Subscribe to and implement regional and international transparency initiatives: The government of Uganda should attain membership to regional and international transparency initiatives to ensure that stakeholders including international companies are held accountable. Key among these initiatives is the Extractives Industries Transparency Initiative. Under the National Oil and Gas Policy, 2008 and the Oil and Gas Revenue Management Policy, 2012 government committed itself to subscribe to EITI and government should take steps to fulfil this commitment by subscribing and implementing the Initiative.

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About ACODE

The Advocates Coalition for Development and Environment (ACODE) is an independent public policy research and advocacy think tank based in Uganda. ACODE's core business is policy research, advocacy and capacity building. Since its establishment in 1999, ACODE has become one of the leading think tanks in Sub-Saharan Africa. ACODE has been ranked among the 100 top think tanks globally in the Global Think Tanks Index Report (2017) published by the University of Pennsylvania's Think Tanks and Civil Societies Program (TTCSP).

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