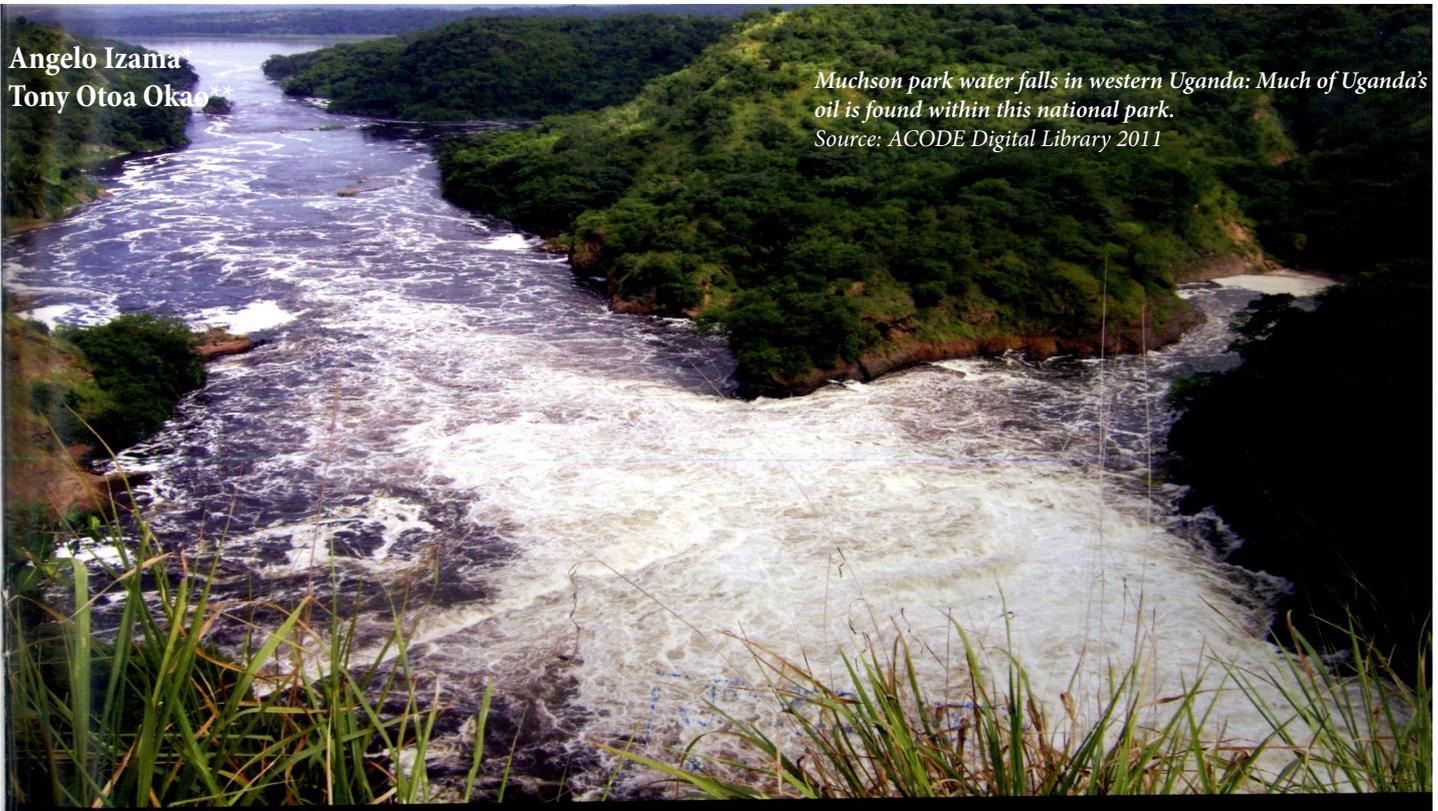




## STATUS OF UGANDA'S OIL AND GAS LEGISLATION

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*Muchson park water falls in western Uganda: Much of Uganda's oil is found within this national park.  
Source: ACODE Digital Library 2011*



Currently, the Government of Uganda is drafting several new bills related to the country's oil and gas sector—legislation that will eventually lay the foundation for the next chapter of Uganda's national petroleum program. The draft bills will further define and regulate the relationship between the government and the various oil companies currently operating in Uganda, while affecting the relationships between specific interest groups, from landowners and cultural representatives in the oil producing areas to members of the private sector.

What follows is a brief description of the various statutory documents that currently shape the contours of the oil sector today. Some of these laws will be rendered obsolete when the new petroleum legislation goes into effect, while other laws will remain in effect and work in tandem with the forthcoming legislation.

- **The 1995 Constitution**

The Constitution is the cardinal law in the land and provides a reference for the powers and roles of the various arms of government. It gives Parliament the power to make laws and puts forward the principles

of the public interest. In recent years, several cases involving transparency in the oil sector and the rights of communal landowners have used constitutional provisions as their cornerstone. In the absence of specific—and current—legislation regulating the oil sector, the 1995 Constitution is the ultimate arbiter of conflicting interests.

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### XIII. Protection of Natural Resources

The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.

#### Article 244. Minerals and petroleum

(1) Subject to article 26 of this Constitution, the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. (2) Subject to this article, Parliament shall make laws regulating -

(a) the exploration of minerals and petroleum; (b) the sharing of royalties arising from mineral and petroleum exploration; (c) the conditions for payment of indemnities arising out of exploration of minerals and petroleum; and (d) the conditions regarding the restoration of derelict lands. (3) Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local governments and the Government.

—Constitution of the Republic of Uganda, 1995

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- **Uganda Petroleum & Production Act, Chapter 150 of the laws of Uganda 2000 [amended from the 1985 Petroleum (Exploration and Production) Act]**

This Act is the most recent piece of legislation guiding oil exploration and production activities in the country.<sup>1</sup> Among other things, the Act gives the responsibility of directing the upstream petroleum sub-sector to the Minister responsible for oil (typically the Minister of Energy and Mineral Development), who receives applications for any petroleum rights, and is charged with issuing, renewing, and revoking petroleum exploration and production licenses.<sup>2</sup>

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1 The National Oil and Gas Policy for Uganda, 6

2 Ibid., 6

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**The [Uganda Petroleum and Production] Act also provides for a commissioner of PEPD, who, together with technical staff carry out petroleum promotion, initiate petroleum legislation and monitor oil companies' compliance with the laws, regulations and agreements.**

—National Oil and Gas Policy

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- **Petroleum Supply Act 2003**

The Petroleum Supply Act guides all downstream petroleum activities that involve the distribution, marketing, and selling of petroleum products. The forthcoming Petroleum Act (which, as of November 2011, has yet to be tabled before Parliament) will expand beyond downstream activities to include midstream activities, as well—from oil and gas transportation and processing, to refining.

- **Uganda Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations 1993**

These regulations currently guide the conduct of operations in the upstream petroleum sub-sector. Given their age, however, the government has recognized the need to revise them in light of global improvements in technology. Uganda's Oil and Gas Policy also mentions the need to update these regulations to account for new and growing concerns about environmental conservation and sustainable development.<sup>3</sup>

- **The Mining Act 2003**

The Mining Act regulates the distribution of rights and benefits within Uganda's mining sector, while applying guidelines as to how the sector should be administered. It also provides the licensing regime for prospecting in minerals, and is the main reference for how royalties should be divided. When discussing the issue of royalties within the oil sector, the government has frequently made reference to the divisions put

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3 National Oil and Gas Policy for Uganda, 7

forward within this Act.

- **The Procurement and Disposal of Public Assets Act (amended) 2011**

Uganda developed a “best practices” procurement regime in response to the huge losses of public funds that the country routinely experiences. (Losses from procurement alone can range anywhere from UGX500-900 billion per annum). In a recent parliamentary appearance, the head of the procurement regulator worried that the government has weak safeguards to protect itself when licensing various companies to engage in oil exploration, because such licensing is based on the now-antiquated 1985/1990 Petroleum (Exploration and Production) Act. It was also disclosed that a policy allowing for the participation of local companies was not being implemented, even if the licensing regime required it and the practice was encouraged by the regulator. Such anecdotes show not just why updated laws are essential, but also that Uganda’s old oil sector legislation need to be brought into harmony with more recent and relevant laws and practices like the PDPA Act.

- **Income Tax Act**

The Income Tax Act regulates taxes payable on income. With regard to the oil sector, it is the piece of legislation (first established in 1997, but amended at various points, including in 2010) which forms the basis for the tax claims by the Government of Uganda in the Heritage Oil and Gas (capital gains) tax dispute.

- **The Public Finance and Accountability Act 2003**

This Act affects the governing of public finances and is presided over by the Auditor General (whose mandate extends through the Local Government Act 1997 and the National Audit Act 2008). More than other pieces of legislation, the PFAA will be a centerpiece of Uganda’s oil sector developments. Its amendments will indicate whether oil will be centrally managed (as a part of the budget like any other income) or separated into several funds with only a portion feeding into the national budget. Debate on this issue has received less public attention, but is important nonetheless—especially because the “value for money” audits by the AG are the torch bearer as to whether money has been spent according to the rules and intents stipulated in the law.

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#### Other Related Instruments

##### The National Oil and Gas Policy for Uganda

The policy, which was finalized in 2008, is not law but a deriving document that outlines the principles that should guide any future legislation on oil. It was hailed by many as a progressive, if standard, document that incorporates numerous international “best practices,” and puts oil resources at the disposal of the public interest.

##### Uganda’s various land laws

The regulation of land rights and disposal will be extremely important to Uganda’s oil story. In the oil sector, land is emerging as the principal source of conflict, and is likely to remain so. In a field of massive asymmetries in information—especially on the titling of land and the maintenance of accurate records—abuses have already been alleged. If land is not well managed, and transparently so, Uganda may suffer not an oil curse, but a land curse.

##### Production Sharing Agreements (PSAs)

The PSAs are the contracts between the Ugandan government and the various oil companies currently operating with the country. Among other things, they provide guidelines for the division of any extracted oil and gas between the government and a given company. (The Petroleum Regulations Act of 1993 allows the government to sign PSAs with resource extractors). Uganda has a model PSA that details the government’s positions on various issues. As of 2011, the PSAs were not public documents in Uganda, although there are numerous struggles to release them to Parliament and to the public at large.

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- **The National Environmental Management Act**

The primary law regulating the protection of the environment, this Act supersedes any other, especially contracts by oil companies, on matters environmental.

While various technical developments within Uganda’s oil sector have advanced far ahead of the laws meant to regulate the sector, the oil industry in Uganda is certainly not operating in the absence of legislation.

While there are obvious weaknesses in past legislation, the legal documents today nonetheless cover a wide array of regulatory functions for the institutions, companies, and individuals participating in the sector. The upcoming petroleum bills will, among other things, include provisions for the development and production of natural gas, and will likely bring on board international best practices like Improved Oil Recovery (IOR), while incorporating the latest health, safety, and environment standards within the industry.<sup>4</sup>

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<sup>4</sup> This is in reference to comments submitted by the Civil Society Coalition for Oil and Gas in Uganda in response to the previous Draft Petroleum Bill of 2010.

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