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OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK OF THE OIL AND GAS INDUSTRY IN UGANDA

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Overview of the Legal and Regulatory Framework of the Oil and Gas Industry in Uganda

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1. Introduction

Uganda recently joined the list of countries with commercial petroleum production projections. Commercial quantities of oil were ascertained in 2006 in the Albertine Graben region in Western Uganda.¹ It is globally agreed that for a country to see tangible benefits from its natural resources, there needs to be a favorable governance environment. Governance is the process through which policies are designed and implemented by States and other stakeholders in agreement with the law.² This paper thus examines the legal and institutional framework for the exploration and extraction of the petroleum resources in Uganda. It considers issues of resource ownership, granting of exploration and production rights, sustainable development among others. This is through an analysis of constitutional provisions, sector policy statements as well as specific laws and regulations.

2. The Legal Regime for the Oil and Gas Industry

(a) The 1995 Constitution of the Republic of Uganda

The Constitution is the supreme law of the country. Under National objective XXVII, the country's natural resources including oil and gas are entrusted with the State which is directed to protect them on behalf of the people of Uganda. The Parliament of Uganda is mandated to make laws for the regulation and exploration of both mineral and petroleum resources under Article 244. The powers also extend to making laws for the management of the resulting revenues.

(b) The National Oil and Gas Policy for Uganda, 2008 (NOGPU)- This provides a framework for the entire process of exploration, development and production

¹ Republic of Uganda: Leveraging Oil and Gas Industry for the Development of a Competitive Private Sector in Uganda, March 25, 2015. at p.41 World Bank GTC DR AFRICA <http://documents.worldbank.org/curated/en/521361468302082824/pdf/ACS125280REVIS0itive0Private0Sector.pdf>

² World Bank Group. 2017. *World Development Report (WDR) 2017: Governance and the Law*. Washington, DC: World Bank. © World Bank. <https://openknowledge.worldbank.org/handle/10986/25880> License: CC BY 3.0 IGO at p.2

of Uganda's petroleum wealth. The NOGPU is steered by principles of efficient management of resources, utilisation of resources for sustainable societal benefits, cooperation, capacity and institutional building, protection of the environment as well as transparency and accountability. The laws governing the oil and gas sector of Uganda are divided into 3 with separate laws for each level of the value chain of petroleum activities and these include the Petroleum (Exploration, Development and Production) Act, 2013; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act of 2013 and the Petroleum Supply Act of 2003.

- i. **Exploration and Upstream Production Activities** - The Petroleum (Exploration, Development and Production) Act, 2013 (P(EDP)A) generally governs the exploration and production upstream activities. Under section 4, and in accordance with Article 244 of the Constitution, the entire property in petroleum resources found in the country are vested in the State, to hold for and on behalf, and for the benefit of Ugandans. The Minister is vested with the authority to grant petroleum rights, as well as directing the monitoring and compliance with the contract terms and the law and among others.
 - (i) **Midstream Activities** – These are governed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act of 2013.
 - (ii) **Downstream Activities** – These include activities such as the distribution, marketing and sale of the resulting products. They are generally governed by the Petroleum Supply Act of 2003.

Other related and applicable laws include the Midstream National Content Regulations; Midstream General Regulations; Midstream HSE Regulations; Uganda Access to Information Act 2005; Upstream General 2016; Upstream HSE 2016; Upstream Metering 2016; and the Upstream National Content 2016; the National Environment Act, Cap 153.

3. The Institutional Framework

As earlier noted, good governance entails a strong and functioning institution responsible for the implementation.³ The management of the petroleum industry in

³ *Supra.*, n.1

Uganda is vested in various institutions with each having distinct functions. It is worth noting that some of these institutions serve both the oil and gas sectors as well as the mining sector as discussed below.

- **The Ministry of Energy and Mineral Development (MEMD)**

The MEMD is vested with the power to formulate and direct policy for both the petroleum and mining industries. It is also responsible for overseeing strategic management and development of the extractive resources. In addition, the Ministry is in charge of ensuring that the energy and mineral resources are exploited and utilised rationally and sustainably to contribute to the social and economic development of Uganda.

- **Petroleum Exploration and Production Department (PEPD)**

The PEPD is mandated to establish the potential of the petroleum sector as well as promoting it. It is also responsible for implementing the National Oil and Gas Policy for Uganda, 2008. The Department is also supposed to monitor and regulate the companies which hold licences and are involved in petroleum exploration and production in the country.

- **The Petroleum Authority of Uganda (PAU) and the National Oil Company (NOC)**

Both the PAU and NOC are established under Part III of the Petroleum (EDP)Act, 2013. The PAU is responsible for ensuring that the petroleum sector, contributes to the transformation of the social and economic environment in Uganda. It is supposed to monitor and regulate the exploration, development and petroleum production activities. PAU also supervises midstream activities such as refining, conversion of gas, transportation and storage of petroleum. On the other hand, under S.43 the NOC is in control of managing the commercial aspects of the country in the petroleum activities. It also oversees Uganda's participating interests in the petroleum agreements.

4. Key Issues

(a)Ownership of the petroleum resources

The principle of permanent sovereignty over natural resources applies to Uganda.⁴ As such, all petroleum resources are vested in the State as per the Constitution and the Petroleum (Exploration, Development and Production) Act, 2013. The State thus has the mandate through its organs to regulate the exploration and production of the oil and gas resources. The Act thus prohibits the carrying out of petroleum activities in Uganda without proper authorisation, licence, permit or approval. Under Section 6, the government may enter into agreements with respect to the grant of licences, set conditions for the grant or renewal of licenses as well as regulation of the conduct of the licence holders.

(b)Acquiring of petroleum rights (As per the Petroleum (Exploration, Development and Production) Act, 2013)

Type of Licence	Discussion
Reconnaissance Permit	A reconnaissance permit is granted for the purposes of carrying out of surveys and may permit shallow drilling for data calibration purposes. This permit is for a period of eighteen months from the date of issue unless there is surrender or cancellation.
Petroleum Exploration Licence	An exploration licence gives the holder rights to carry out exploration activities in a stipulated area for a stated period but not exceeding 2 years from the date of the grant. It may be renewed although not more than twice.

⁴ See the 1962 UNGA Resolution 1803 (XVII) which provides that the sovereign right of every state to dispose of its natural wealth and resources should be respected... in accordance with their national interests”

Petroleum Production Licence	The production licence grants the holder the right to carry on petroleum activities in the license area; to sell or otherwise dispose of the licensee's share of petroleum recovered in accordance with the field development plan; to carry on operations and execute works in the development area for the achievement of the stated rights. The licence is for a period not exceeding 20 years although subject to renewal.
Facility Licence	A facility licence is granted for the construction, placement, operation or use of a facility not already subject to a petroleum production licence for a specified period.

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- **Award of Exploration Licences**

The award of the licences is by **open bidding** as per Section 52. The Minister responsible for petroleum activities oversees the announcing of areas open for bidding for a petroleum exploration licence. The announcement is made in the Gazette and in newspapers of national and international circulation and in other electronic and print media. The announcement should contain information related to the area open for exploration, period within which to make the applications and any other information the Minister deems necessary.

Direct applications : However, there are circumstances which warrant the use of direct applications for the exploration licences under Section 53. These include where no application is received after invitation for bids are sent out three times, where the application is in respect of a reservoir within a licensed block which extends into an unlicensed block or where enhancement of the participating interest of the State in the promotion of national interest is necessary.

- **Application for petroleum exploration licence:**

Persons intending to conduct petroleum exploration activities must apply to the Minister in writing for a petroleum exploration licence as the call for open bidding or through direct applications. The application should include the applicant, identify the

block or blocks for which the application is made, and these must not exceed ten blocks, the schedule of work, minimum expenditure, competence of the applicant, among others. The Minister grants the licence as per section 58 after careful consideration and consultations. The licence stipulates the date of the grant, exploration area and duration of the licence.

- **Application for a Petroleum Production Licence**

The right to apply for the grant of a production licence over any block(s) is exclusively reserved for the person holding a petroleum exploration licence, who has made a petroleum discovery in the exploration area, subject to the conditions set out in S.69. The application must be made within two years from the date of submission of the technical evaluation to the Minister except with prior permission from the Minister or in accordance with the petroleum agreement. The Act also sets out guidelines for the application of a production licence where the person does not hold an exploration licence in respect of an exploration area. The Minister is authorised to announce the areas open for bidding for petroleum where the holder of the exploration licence makes no application for a production licence. S.71 sets out the requirements of the application for the production licence while S.73 sets out the criteria followed in granting the licence. The petroleum production licence is granted in accordance with S.75 in a manner and under conditions as determined by the Minister.

(c) Local Content

It is generally understood that there is no world-wide definition of local content. It is however prudent to assess the individual economic development needs of a country to take necessary measures to generate economic development benefits.⁵ In the petroleum sector, local content connotes the added value brought to a host country through the activities of the oil and gas industry. This can be achieved through value addition in the local workforce development; the total investment in local supplier development; and through local ownership and local control which in turn leads to economic growth, long term job creation and sustainable development *inter alia*.⁶

⁵ Mireille Toulekima, *Local Content Key Enabler for Oil & Gas Projects in Emerging Markets; Investing, Developing & Providing Oversight in Countries of Operation*, 2015 at pp 1-2. Published by 10-10-10 Publishing Markham, on Canada

⁶ *Ibid* at pp 3-4

Under the National objectives and Directive Principles of State Policy in the 1995 Constitution, the State is mandated to ensure private sector participation and the involvement of citizens and enterprises in the implementation of development programmes. The National Content Policy of 2017 was approved by cabinet to build capacity of Uganda's human resources in the oil and gas industry. In addition, the Local Content Act, 2017 places priority on the use of local goods and services including employment of Ugandans, procurement of Ugandan companies in undertakings where public funds are used or where the undertaking requires licensing such as petroleum activities.

(d) Sustainable Development in the Oil and Gas Industry

Sustainable development is key to the development of the petroleum industry in Uganda. National objective XXVII directs that natural resources including oil and gas are to be utilised in a way which meets the development needs of the present generations as well as the future ones.⁷ The National Oil and Gas Policy 2008 also acknowledges that oil and gas are non-renewable resources and exhaustible hence they need to be utilised for durable and sustainable economic capacity of the country. It therefore aims to ensure that the resources are utilised in such a manner as to eradicate poverty and support long-lasting value to society. There is focus on using the resources sustainably as opposed to accelerated generation of revenues for lasting societal benefits. The NOGPU thus recognises the development needs of both current and future generations.

5. Conclusion

From the foregoing, it is right to conclude that *prima facie*, Uganda has a robust legal and institutional framework for the management of the oil and gas industry. Sustainable social and economic development is also central in the policy and the several legislations. We await to see what the future holds especially when commercial petroleum production starts. It is imperative that all the stakeholders play their respective roles more so when it comes to implementation of the various laws such as

⁷ This is in line with the definition set out in the Brundtland Report of 1987. See- The 1992 Rio Declaration which set in place the aspects of sustainable development to wit- economic, social and environmental. See also the 2015 Sustainable Development Goals under the Agenda 2030 which set in place global priorities aimed at eradicating extreme levels of poverty, as well as leading all countries on the road to inclusive sustainable development.

those on local content, to drive the development of the country. Good governance is thus key.

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Susan is the Assistant Executive Director of the African Energy and Mining Management Initiative (AEMI). She also heads the Women in Energy and Mining Empowerment Program (WEM). Susan has wide experience and is an expert in the natural resources sector especially the extractive industries. She is a practicing advocate and has worked with reputable law firms in Uganda where she amassed knowledge in corporate and general law. These include Tibeingana and Co. Advocates, Zaale Otete and Co. Advocates and Ssesaazi and Co. Advocates.

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Ongoing- PhD in Energy Law at the Centre for Energy, Petroleum, Mineral Law and Policy – University of Dundee, United Kingdoms

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