



# OIL IN UGANDA

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## Oil Tax Waiver: Tullow Uganda Limited loses Round One

*High Court clears a concerned citizen to challenge a consent agreement between Tullow Uganda Limited and URA that led to tax losses*

By Edward Ssekika

High Court on Friday May 12th, 2017 gave clearance to Mr. Jackson Wabyona, a concerned citizen to challenge the consent agreement between Tullow Uganda Limited and Uganda Revenue Authority (URA) in which the tax authority waived taxes worth US\$157 million dollars from Capital Gains Tax.

Justice Christopher Madrama of the High Court Commercial Division overruled an objection raised by Tullow's lawyers that Mr. Wabyona did not have "locus standi" (i.e. "not the right person to sue") to bring the suit to review the consent agreement since he was not a party.

Early this year, Mr. Jackson Wabyona, a resident of Hoima district sued Tullow Uganda Limited and Uganda Revenue Authority (URA) seeking Court orders that the consent agreement that consequently resulted into a consent decree on the 19th, June, 2015 entered into between Tullow Uganda Ltd and URA be set aside on grounds of illegality.

### PROTRACTED CASE

Tullow has had a number of protracted tax disputes with URA. The one associated with the tax waiver dispute arose from Tullow's sale in 2012 of 66.66% of its oil interests and assets in the Albertine Graben to Total E&P Uganda BV and CNOOC limited at a value of US\$2.9 billion dollars. Total E&P and CNOOC shared the 66.66% in 50:50 ratios, meaning each received about 33.33% of Tullow's oil interests and assets. The sale attracted a 30% Capital Gains Tax (CGT) under the Income Tax Act, which when assessed by URA attracted a CGT value of US\$407 million dollars. However, Tullow objected to the URA assessment on grounds that the company had been granted an exemption on the transfer of oil interests and assets in the Production Sharing Agreements (PSAs) by the then Minister of Energy and Mineral Development, Hon. Syda Bbumba. The Company therefore asserted that as a result of the exemption it was not liable to pay CGT.

URA, on the other hand, argued that the Minister of Energy and Mineral Development was not the



Aidan Heavey, Tullow Oil Founder. - Courtesy Photo

appropriate authority to issue tax exemptions, since this role is vested in the tax authority.

In agreement with URA, the Uganda's Tax Appeals Tribunal ruled that Tullow was liable pay US\$407 million dollars (approximately Shs1.4 trillion) in Capital Gains Tax to the government of Uganda after the farming down of part of its stake to Total and CNOOC Ltd. The tribunal ruled that the Minister of Energy and Mineral Development had no powers to grant a tax waiver.

Dissatisfied by the Uganda Tax Appeals Tribunal ruling, Tullow filed an appeal in the High Court of Uganda and filed a separate complaint at the International Center for Settlement of Investment

Disputes (ICSID) based in Washington DC USA. However, before Tullow's appeal could be handled and determined by the High Court of Uganda, URA entered into a consent agreement on June 19th, 2015, with Tullow in which they agreed to a Capital Gains Tax payment of only US\$250 million, instead of \$407 million. The consent agreement was subsequently filed and endorsed in court as a consent decree. In response to this, Tullow also terminated its proceedings at ICSID.

Mr. Aidan Heavey, the Tullow Oil Plc Chief Executive Officer (then), described the consent decree settlement as good news for the company. "The settlement of this long running dispute is good news for Tullow and Uganda," he said soon after the settlement.

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Uganda could Pick a Leaf From DRC on 'Clean' Gold

## Editorial



By Bazira Henry Mugisha

The emerging extractive sector is awash with mixed reactions ranging from excitement about discoveries to trepidation about the risks associated with the sector and the frequent conflicts of interest. Mineral explorers are occasionally overjoyed with the discoveries they are making in the vastly mineral-rich Uganda. This is often accompanied with involuntary displacement and forceful evictions of local residents off their land with little or inadequate compensation to restore or improve the altered livelihoods. Also, the sector is awash with court cases at the local and international levels all seeking justice or arbitration for infringements on rights and these are not only restricted between the affected citizens and Mining Companies, but also between Companies and the government. Accusations of corruption and mismanagement of the mineral resources and their associated revenues is also rife involving Company and government officials.

As a result of these challenges and problems in the extractive sector, some professionals and international dignitaries are worried that Uganda's vast minerals could actually set it on a path of a resource-curse syndrome characterized with under- and skewed-growth and development in the economy, if nothing is done to strengthen the policy, legal and institutional frameworks to make them more transparent and accountable.

There is excitement among the logistics and service providers that the emerging extractive sector presents great business and employment opportunities for Ugandans

This newsletter whose theme is "Extractives and Law" presents stories that depict the "disharmony" and "conflict" between Extractives and the Law. Disharmony depicted in the policies, laws and institutional frameworks facilitating the extractive sector portrayed in the following stories:

- "CSOs Call for Inclusivity in the Mining Legislation";
- "Establish a National Mining Company: Mineral License Holders Ask Government";
- "MPs Ask Government to Establish an Independent Body to Regulate the Minerals Sector"

And conflict depicted in the violations of the law, human rights and graft portrayed in the following stories:

- "Corruption in Uganda's Mining Sector Exposed"
- "Tullow Sues Uganda Revenue Authority over VAT Tax Refund"
- "Oil Tax Waiver: Tullow Uganda Limited loses Round One"
- "Court Asks Oil Refinery Affected Persons to Negotiate with Government, Settle Out of Court"

There are other stories that depict the fear stakeholders have in respect to the emerging extractive sector.

The articles in this newsletter are a signal to all Ugandans to take keen interest in the way the extractive sector is developed and governed, including the issues of the "rule of law"; respect of human rights; conflict avoidance; environmental protection; social and economic growth and development; among others.

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# Uganda's Oil will be a Curse, warns Danish Ambassador to Uganda



The Hoima RDC Isaac Kawooya (in white shirt) with security officials at huts that have been built in Kyakabooga village in the resettlement village created for the people relocated from the Refinery land in Kabale. - Courtesy Photo

By Edward Ssekika

As Uganda targets to start commercial oil production by 2020, the Danish Ambassador to Uganda, Mergens Perdesen, has warned that if no action is taken to fight corruption and promote inclusive growth, Ugandans should forget the anticipated benefits from the oil industry. He warned that Uganda is headed the path many African countries have taken of abundant oil resources amidst poverty.

"Please, tell me one African country, where oil has been a blessing, it is always a curse, because of lack of inclusive development mainly owing to corruption," the Ambassador warned. He was speaking at the 7th Annual High Level Policy Dialogue on the Budget under the theme, "Unlocking Uganda's Economic Potential: Investing in Strategic Sectors of the Economy" at Sheraton Kampala Hotel on Thursday, May 4th, 2017.

The conference was organized by the Advocates Coalition for Environment and Development (ACODE) and the Ministry of Finance, Planning and Economic Development (MFPED).

Ambassador Mergens Perdesen joins other local and international stakeholders who have often warned of an oil curse, if Uganda does not take deliberate actions to improve governance of the petroleum sector. He urged government to concentrate on fighting corruption; improve institutional quality and government effectiveness.

Hon. David Bahati, the Minister of State for Finance in Charge of Economic Planning assured the Ambassador Mergens Perdesen that Uganda is going to be an exception from other African oil producing countries where the petroleum resource has been a curse.

"Your Excellency, you are going to see Uganda, our oil will not be a curse" Bahati said. Hon. Bahati added that all the systems have been put in place to ensure oil is a blessing for Uganda. That is why we have been cautiously slow,"

Hon. Bahati said the country is looking at oil to solve its financial woes, including cutting down on borrowing. "As government, we believe, by 2020, we will see first oil production, which is going to give us at least US\$2 billion annually [Approximately Shs 9 trillion] of our own money. So, we shall be able to solve some of these challenges," he explained.

Hon. Bahati said this financial year, government plans a massive investment in the oil sector to ensure first oil by 2020. "We are going to invest at least 1.1 trillion shillings in the sector, in order to realize the first oil target by 2020," David added.

Dr. Ezra Ssuruma, the former Minister of Finance, Planning and Economic Development who was the key note speaker at the conference organized by ACODE, said, "Some of the money from oil should be used to start new special banks like the Agricultural Bank; Infrastructure Bank, among others. This will stimulate growth and financial inclusion," Ezra proposed. He, however, noted that the 2015 Public Finance and Accountability Act provides that oil revenues shall exclusively be used for infrastructure projects, a provision he thinks is not well advised.

During the conference, Mr. Elly Karuhanga, the Chairman of Uganda Chamber of Mines and Petroleum (UCMP), said that he asked the President to put in place a "dream team" of genuine government and private sector professionals that would facilitate the realization of first oil by 2020. "Short of this, the 2020 target for first oil is not a reality", Elly added.

# Uganda to Import, Transport millions of Tons of Materials for oil pipeline, refinery

By Edward Ssekika

Local players in transport and logistics sector could reap big as Uganda prepares to import and transport millions of tons of equipment and materials for the construction of the Crude Oil Pipeline and Refinery. The planned importation of equipment and materials into the country presents an life time opportunity for the local players in the logistics industry.

Preliminary studies by the Joint Venture partners – Tullow Oil, CNOOC (U) Ltd and Total E&P Uganda BV have estimated that Uganda will import a total of 11.2 million tons of materials worth billions of dollars. Out of these, 6.2 million tons of materials will be sourced from within the region, while the rest of the materials will be imported from beyond.

Mr. Moses Kirumira from Total E&P Uganda BV notes that Uganda is about 1,500 kilometers away from the coastline and therefore has to import the materials and equipment through the coastal ports of Mombasa in Kenya or Der-es- Salaam or Tanga in Tanzania. “We envisage to import an estimated 11.2 million tons of materials and equipments within a period of three years,” The bulk of the cargo, he added will be transported by road.

Mr. Kurumira was making a presentation [titled, “Transport and logistics needs for the oil and gas sector as seen by Joint Venture Partners,”] at the Joint Oil and Gas Convention and Logistics Expo 2017 at Serena Hotel in Kampala on Tuesday, 25 April, 2017. This year’s convention was meant to make a case for the opportunities the oil and gas sector present to the logistics business in the country.

The oil refinery project will be divided into two: i.e. the Buliisa project that will evacuate the crude from the oil fields in Buliisa and Nwoya; and the Kingfisher Discovery Area Integrated Project that will evacuate crude from Kingfisher and the Kaiso- Tonya oil fields in Hoima district. The Buliisa project will have a Central Processing Facility (CPF) in Buliisa district, while the Kingfisher Integrated Project will also have its own CPF at Kingfisher.

“In terms of equipment and material volumes, the Buliisa project will receive approximately 1 million tons, while the Kingfisher Discovery Area and Kaiso-Tonya will receive 200,000 tons. The Crude Oil Pipeline will receive 500,000 tons of equipments and materials, 30 percent of which will come to Uganda and the remaining 70 percent will be in Tanzania,” Moses explained.

The country plans to transport about 6.2 million tons of materials sourced from within Uganda and the EAC region.

Government has, in collaboration with the oil Joint Venture Partners (JVP), mapped-out specific roads that will be needed to transport the materials and equipments.

“For equipment and materials that will pass through the port of Mombasa, the JVP intend to use the northern route and avoid the busy towns, because of



*This is a depiction of the type of infrastructure and transport system that will be required. - Courtesy Photo*

the already existing heavy traffic” Moses explained. He added that equipment and materials destined to Buliisa and Nwoya districts will be routed from Mombasa and pass through Nyeri – Nakuru – Busia – Mbale – Soroti – Lira and have a temporary stop at Masindi where they will be checked and sorted according to their final destination” Materials and equipment destined for the Kingfisher area will be transported from Mombasa via Nakuru – Malaba – Kampala – Hoima and finally to Buhuka in Kyangwali sub county, Hoima district.

Materials and equipment imported through Tanzania will go through Mutukula –Masaka – Ssembabule – Mubende – Hoima – Masindi and finally to their respective final destinations.

## TRUCKS

The equipment and materials will be transported by regular trucks and other specialized vehicles. “We estimate at least 350 trucks will be needed per day,” Mr. Kirumira said. According to Industrial Baseline Survey (IBS) released by the Joint Venture partners in 2014, the country has a shortage of trucks. Most of the trucks cannot meet the international standards the sector requires. Local transport and logistics entities will have to improve their capacities (i.e. human, financial & technological) to meet the standards, if they are to benefit from the opportunities presented by the sector.

Hon. Irene Muloni, the Minister of Energy and Mineral Development, in 2016 issued regulations to operationalize the Upstream and Midstream Petroleum Acts in which she ring-fenced certain categories of goods and services in the sector to be provided exclusively by Ugandan citizens, companies or entities. Transport and logistics was one of the services ring-fenced.

“We [Uganda] will have vehicle vetting that will involve checking the condition of vehicles in terms of age, mileage, mechanical conditions and suitability for service”, the Minister reported. “We shall be very strict on the age and safety conditions of vehicles”, Moses said. Moses added that “the oil sector will be interested in the certification and defensive driving abilities of drivers”. In addition, drivers will all be required to undertake routine medical checks to make sure that they are fit to do the work,” he said.

In respect to personnel, at least 5,000 people are expected to be working in the field at the Buliisa project; 1,000 at Kingfisher and about 4000 during construction of the crude oil pipeline.

According to Muloni, “It is during the construction phase the oil sector will present the greatest opportunities for Ugandans to make money”, said Hon. Irene Muloni.

# Uganda and Tanzania Embark on RAP Studies for the Crude Oil Pipeline



An overground oil pipeline but the planned East Africa's crude oil pipeline will be buried underground . - Courtesy Photo

By Edward Ssekika

Soon after signing the Intergovernmental Agreement (IGA) On Friday, May 26th, 2017, the governments of Uganda and Tanzania announced that they would embark on conducting Resettlement Action Plan (RAP) and other studies for the East Africa Crude Oil Pipeline (EACOP).

The Energy Ministers from Uganda and Tanzania signed the Intergovernmental Agreement (IGA) on Friday, May 26th, 2017 upon which the EACOP will be anchored. This was done at the Serena Hotel in Kampala. The agreement also paves way for the start of construction of the crude oil pipeline. The signing of the Intergovernmental Agreement was in response to a directive by the two Heads of State.

After the signing of the IGA on Friday, May 26th, 2017, Hon. Irene Muloni, the Minister of Energy and Mineral

Development (MEMD), said "The Resettlement Action Plan (RAP) study is expected to commence in June, 2017 in both countries."

The 1,445 km long, 24-inch diameter heated pipeline is being developed to provide access for Uganda's crude oil to the international market. The pipeline will run from the oil fields in Albertine region of Uganda to the coastal port of Tanga in Tanzania. The construction of the pipeline will provide employment opportunities and spur development in the two countries.

Hon. Muloni said, once completed, the pipeline will attract a tariff of about US\$12 dollars per barrel of oil transported. She revealed that Onshore Geophysical and Geotechnical surveys for the pipeline and above ground installations like heating stations are also planned to commence in Jun 2017 in the respective countries.

Hon. Muloni also said Environmental and Social Impact (ESIA) studies for the pipeline within both countries is due to start in June 2017. The pipeline will be buried underground up to a depth of 1.2 meters for most part of the pipeline length.

The pipeline flow rate will be 216 barrels of crude per day and will have six pumping stations and 2 pressure reduction stations, among others.

Hon Muloni also revealed that a company will be incorporated that will be responsible for managing the pipeline. This is expected to be completed this year 2017. This company will involve the two countries; Joint Venture Partners and others investors as shareholders. Upon incorporation, there will be a series of agreements the pipeline company and the two governments and shareholders will generate. The company will have to seek for financing of the project like ordinary private sector companies

## DELAYS

Hon. Muloni reiterated government's commitment to produce first oil by 2020. She warned that the 2020 target is dependent on implementation of activities as scheduled. However, so far, most of the activities are launched behind schedule.

For instance, the Intergovernmental Agreement was signed five months behind schedule. According to a Statement to Parliament in December last year, Muloni told parliament that the Intergovernmental Agreement (IGA) had been planned to be completed in January 2017, following which it will be submitted to Parliament since it is a Treaty which will require ratification.

According to Hon. Muloni, Resettlement Action Plan (RAP), Environmental and Social Impact Assessments (ESIAs), Onshore Geophysical and Geotechnical surveys, among others had all be scheduled to commence in January, 2017 but are now expected to start June 2017, six months behind schedule. Such delays, could determine whether the 2020 'first oil' target will be met or not. These statements seem to confirm common doubt that first oil shall be realized by 2020.

## Oil Tax Waiver ...

From page 1

As a result of the consent decree, government of Uganda lost US\$157million (Shs 568 billion).

When asked to explain the circumstances under which she as Minister of Energy and Mineral Development issued an exemption to Tullow's farm-down of its oil interests and assets in the Production Sharing Agreement, Hon Syda Bbumba feigned ignorance of the exemption. "I did not read the agreement. My signature was based on the approval by the Solicitor General. Once, he cleared it, I took it that everything was fine," She said this this year (2017) during a Parliamentary Committee meeting probing the Ug.shs 6.0billion awarded to 42 government officials by the President as a token of gratitude for having successfully won another CGT Court case in London associated with Heritage Oil and Gas Company's farm-out of its oil interests and assets to Tullow Oil, a probe commonly referred to as the "Presidential Handshake investigations".

It is against this background that early this year (2017), Mr. Jackson Wabyona a resident of Hoima district, who is also the Forum for Democratic Change (FDC) Chairman in Hoima, filed a suit in

Court challenging the consent decree between Tullow Uganda Limited and URA on grounds of illegality. Mr. Wabyona did this through his lawyer, Mr. Mohammed Mbabazi.

Mr. Wabyona asserts that "URA acted arbitrary and ultra-viresto its mandate to enter into a consent decree to waive taxes that by law had become due and payable" by Tullow Uganda Ltd". He argued that by granting the tax waiver, URA acted in breach of the law; caused significant loss of public property; and discriminated against the rest of the tax payers in favour of Tullow Uganda Limited, which violates the notion of equal treatment and protection before the law. Jackson further argued that taxation of a tax payer is not decided by agreement and compromise of the parties, but rather by law.

Tullow Uganda Limited lawyers Mr. Masembe Kanyerezi, Mr. Timothy Lugayizi of MMAKS Advocates and Mr. Oscar Kambona of Kampala Associated Advocates, instead of defending the suit, applied to Court to dismiss the suit with costs, arguing that Mr. Wabyona was not a party to the consent agreement and therefore was not aggrieved.

However, on Friday, May 12th, 2017, Justice Christopher Madrama of the High Court Commercial Division ruled that "a breach of law by a public authority is actionable. As such, Mr. Wabyona, under Article 17 (i) of the Constitution, as a citizen, has a duty to combat corruption and misuse or wastage of public resources". The Judge argued that "a contract can be challenged for its illegality, especially where it involves a member of the public responsible for its execution; thus, it can be challenged for alleged illegality, by a member of the public".

The ruling now means that Court can hear Jackson's application. The key issues in the main applications are; whether taxes imposed by law can be waived by agreement of the parties and not law and whether URA had powers to enter into a consent agreement waiving taxes imposed by law, among others.

If the case succeeds in Court and URA is found to have violated the law to enter a Consent Agreement with Tullow, the latter could be ordered to pay the US\$ 157 million dollars that had been waived Consent Decree.

# Karamojong Community Cry Foul over Tororo Cement Mining site



*An elderly man protects his consignment of marble rocks in a mining site, located in Katikitile Parish, Tapac Sub County, Moroto district*

**BBy Robert Mwesigye**

About 25 kilometers outside Moroto Town, along the Moroto - Kitale Road that leads to one of the Kenyan borders, is a limestone mining site located precisely in Katikitile Parish in Tapac Sub-County.

In the early 2000s, the site was abuzz with activity. "The entire population in the sub-county of Tapac used to work here," says Mr. Lokiru Sisto Dodoth, the Gombolola Internal Security Organization Officer (GISO). Locals set-up camp at the site which was busy with life. Work at the marble mining site was the main source of livelihood for majority of the residents. Today, however, only a handful of locals work at the mines.

"Then, about 60 – 80 trucks used to collect limestone daily," Mr. Lokiru says. The limestone site which sits on over 49 square kilometers is one of two licensed mining areas Tororo Cement owns. The vast site is dotted with heaps of marble boulders waiting to be collected. Some of the marble heaps have been there for over a year without being bought, according to Mr. Lokiru. Despite this and the very hot sun, youthful men continue to toil; breaking huge boulders with sledge hammers and loosening others with crow bars. An elderly man, probably in his 70s, with the help of a cane, limps around a heap of boulders as he keeps a keen eye to ensure the young men nearby do not steal them. We are told the old man is waiting for his sons to come and start working on marble boulders.

At a distance, is a heavy duty grader owned by Tororo Cement that makes the work lighter. The grader digs-up the huge boulders loosening them for the miners to work on. You could be forgiven for likening the area as a labour camp. This work is "no-walk-in-the-park" assignment; yet the laborers often spend many months without pay.

"These days only about 9 or 10 trucks come for limestone," says the GISO. He adds that this is further worsened by the poor state of the access roads to the mines, which complicates the ease of reaching the limestone markets. Consequently, limestone business in the area is very low and no longer lucrative for workers.

"When a truck comes to collect marble, the obvious priority is put on the boulders closest to the access road. This also determines the ease and pace at which the 15 ton or more boulders are loaded," says Mr. Nathan Mushetsya, the Regional Inspector of Mines, Eastern Uganda.

There is a perception among the local residents of a conspiracy among truck drivers to marginalize the Tepeth tribe by preferring to load marble collected by other tribes, thus depriving the Tepeth income. This perception is confirmed by the assertion of Mr. Lomel Peter, the Local Council 3 (LC3) Chairperson of Tapac Sub-County. "Our people are not given work; Truck drivers prefer to buy from other tribes, so locals do not get market and therefore income for their marble,"

Mr. Thomas Lomel, a 35-year old worker says, "he has worked at the site for seventeen years, but he has not benefited anything". A father of seven, he is worried that after many years of toiling, his energy is dwindling and he fears he might not be able to fend for his family soon. He says, the income generation option available, which is agriculture is unfortunately a distant consolation.

Mr. Lokiru reported that the region has not had meaningful agricultural produce in the last five years, because of adverse weather conditions. A record five-year drought hit the region in 2009 and its effects have continued to be felt to this day.

During a meeting with a team from Oil in Uganda at Tapac Sub-County headquarters, the Local Council officials blamed Tororo Cement for their financial woes and predicament.

"Every time we call the Tororo Cement Officials to meet with us to discuss our problems related with limestone mining, the officials refuse to come to the meetings", Mr. Lomel said. He asked the Oil in Uganda team to help them meet with the Tororo Cement Officials, because "they as affected residents have failed to achieve this" he added.

Mr. Mushetsya, during an extractives stakeholders' workshop organized by Action Aid Uganda, reported that he had met some of the officials of Tororo Cement

Factory who informed him that they had selected a Liaison person at the district to link the affected residents with the factory. However, Mr. Lomel said that "the liaison person had not been of any help to the residents'.

The officials said "Tapac's woes, unsurprisingly, include royalty related issues". Bona-fide landowners where limestone is being extracted have never received their share of royalties remitted by Tororo Cement factory to the Central Government as provided in the Mining Act, 2003", the officials added. Landowners where mining activities are conducted are entitled to 3% of the total royalties paid by a mineral prospector as per the law. Instead, the royalty money was being sent to another sub-county through the Community Development Officer. The landlords reported that this issue has since been rectified and they are in final stages of registering an association through which they will be receiving their royalty money.

Mr. Paul Omonuk, the Production Officer of Tapac Sub-County claimed that the sub-county does not receive the 7% of royalty as provided in the Law. He also asserted that the district restricts the sub-county's use of the 7% royalty money remitted to the district claiming that at one time they wanted to buy a vehicle to ease their movements, but the district refused them to do so. However, this claim was refuted by Mr. Mushetsya who informed the participants at the workshop that the Sub-County has authority and mandate to use the royalty money as per their development plans. He explained that the district leadership cannot dictate how the Sub-County uses the money, because they are accountable for their actions.

The Oil in Uganda team also learnt that Tororo Cement pays Ug.shs7,000 per truck that leaves the limestone mines. But, this money never reaches the sub-county. It was later discovered that Mr. John Bosco Moru, the former Sub-County Chief, used to receive the money and use it for personal interests without the knowledge of the community. Mr. Moru was subsequently dismissed upon the discovery of his illicit conduct.

Based on the submissions of the workshop participants, they suggest that there is an information gap between Tapac Sub-county and Moroto Local Government that is responsible for the unease between the two parties. There is need for timely sharing of accurate information between the two parties.

## **Tororo Cement sets Record Straight**

The Tororo field office is located in Kosiroi about 5 kilometers from the limestone mines. While there, the Oil in Uganda team spoke to the site manager, Mr. Kennedy Akenda together with a few other staffs who were disappointed with the accusations being leveled at Tororo Cement Factory by the Tapac Community members

Mr. Akenda explained that "the miners' predicament regarding low business volume as a result of reduced number of trucks ferrying marble attributed to a Uganda National Roads Authority (UNRA) directive to reduce the number of trucks plying the route and the tons ferried to avoid continued spoilage of the roads". He added that "the other factor responsible for the low business volumes was the profitability of ferrying fewer tons of limestone: truck owners found it not profitable to ferry only 11 tons of limestone over a

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# Tullow Sues Uganda Revenue Authority Over VAT Tax Refund



An Oil rig operated by Tullow Oil - Courtesy Photo

By Edward Ssekika

Tullow Oil Plc tax woes with Uganda are not about to end. In a new twist of a series of protracted legal battles over payment of taxes, Tullow Uganda Limited, a subsidiary of Tullow Oil Plc has sued Uganda Revenue Authority (URA) seeking Value Added Tax (VAT) refund of more than Shs 60 billion.

The Irish Oil Exploration and Production Company has been embroiled in a series of tax disputes with the government of Uganda mainly over the payment of Capital Gains Tax (CGT).

The case for VAT tax refund is before Justice Christopher Madrama of the High Court Commercial Division. Tullow Uganda Limited (TUL) claims that between the period of May 2010 and November 2010, the company procured several goods and services for its oil exploration activities in the Albertine graben, which resulted in the company obtaining input VAT credits.

Tullow Uganda Limited claims that it applied for VAT refund from URA, but to date URA has not responded accordingly. The Valued Added Tax Act accords a Tax Payer a refund upon the latter submitting relevant receipts to this effect.

In 2007, Tullow Uganda Ltd and Heritage Oil and Gas Limited jointly acquired the interests and assets of Hardman Resources Plc (an Australian group of companies) and those of the latter's Ugandan-based subsidiary company Hardman Petroleum African Pty Ltd. Tullow held 50 percent of the interests and assets, while Heritage Oil and Gas Limited held the other 50 percent in Exploration Area 1 (EA1) and Exploration Area 3A (EA3A).

At the time (2007), Heritage was registered under the Investment Trader Scheme for VAT purposes. Tullow acquired Heritage's VAT interests and share of input VAT credits upon the takeover of Heritage's stake in Uganda but also as part of the associated working capital of the joint venture. At the time, Heritage had paid \$10.7 million dollars in input VAT credits.

Tullow Uganda Limited obtained a private letter ruling, stating that the transfer of Heritage assets was completed as a going concern for VAT purposes. Tullow used the private ruling as a basis to make a claim for input VAT tax refund in its own right having paid 50 percent of the share of the VAT input tax and purchased Heritage's interests and assets of 50 percent.

During the hearing on Wednesday, Tullow presented one witness Mr. Ezra Wanzira who was between 2008 and 2016 a Senior Tax Advisor at the company to prove its case. Mr. Wanzira is currently the Business Support and Planning Manager at Tullow Uganda Limited and Tullow Uganda Operations Pty Ltd.

Mr. Wanzira told court that in 2010, Tullow Uganda Limited applied for registration under section 7(1) (b) of the VAT Act. The registration was based on the anticipated contract between Tullow and Hima Cement for the supply of Extended Well Testing Crude (EWT) Oil. By the time of seeking VAT registration, Tullow believed that their taxable supplies would make standard rate sales in the subsequent three months that would exceed Shs50 million. However, the Ministry of Energy and Mineral Development (MEMD) did not furnish the consent for Tullow to sale its EWT Crude Oil to Hima Cement Ltd. Consequently, Tullow lost the opportunity of making sales to Hima and was deregistered for failure to make taxable supplies.

Later on in March, 2011, Tullow Uganda Limited was registered under the Investment Trader Scheme for VAT purposes and continued to file monthly returns to URA in that regard. Since then and until 30th April 2012, Tullow Uganda limited had accumulated an input VAT claim of Shs23.4billion.

Mr. Wanzira told court "that since March 1st, 2011, Tullow Uganda Ltd continued to file monthly VAT returns and had claimed a refund of input VAT for the period 1st March 2011 to 30th April 2012 amounting to Shs23.4 billion. The claim for refund was completed in accordance with section 28(3) of the VAT Act that entitles a tax payer to claim VAT for "goods on-hand" prior to registration and for "goods and services on-hand" during registration. However, URA has not yet honored the claim for refund to date.

Mr. Wanzira further added that "during mediation, the parties conducted verification and it was agreed that Tullow Uganda Operations Pty Ltd is claiming input VAT credits to a tune of Shs 57.9 billion based on the original invoices availed and Shs7.9 billion based on certified copies of invoices," the mediation statement reads.

URA, on its part, contends that it has a counterclaim of Shs 9.0billion that was refunded to Tullow Uganda Limited.

URA plans to call its former Commissioner for Domestic Taxes, Mr. Moses Kajubi who is currently working with the World Bank based in Nairobi to testify on their behalf.

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## Clearing and Forwarding Companies Strategize to tap into Oil and Gas Opportunities

By Edward Ssekika

Local Clearing and Forwarding Companies are developing a private sector-led National Strategy to help logistics companies tap into the opportunities in the oil and gas sector. Ms. Jennifer Mwijukye, the Chairperson of Uganda Freight Forwarders Association (UFFA), says that, "currently local clearing and forwarding companies are not ready to tap into the oil and gas opportunities". "I can't lie we [local logistics companies] are not ready for the sector," she said.

She explained that it is the reason why the private

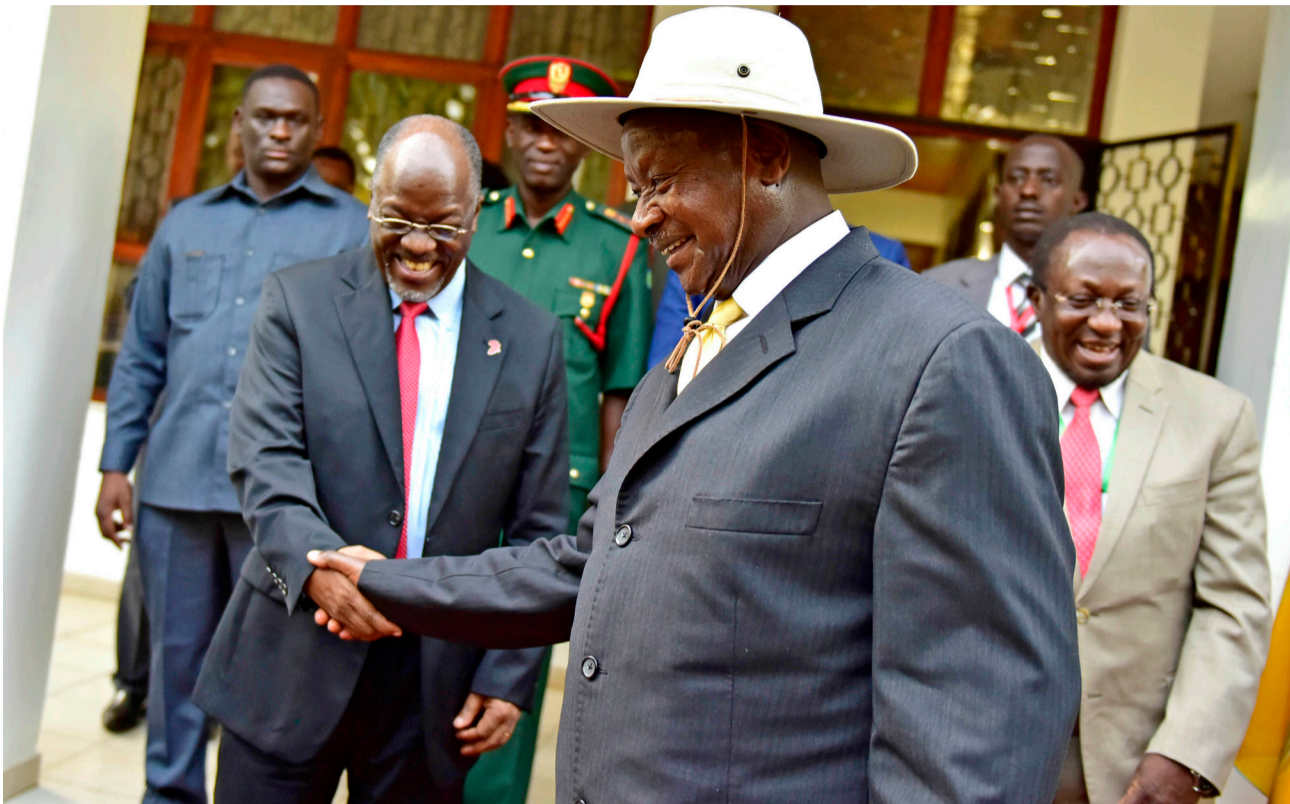
sector is in the process of developing a National Logistics Strategy that will help train and equip logistics' companies to be ready to tap into the opportunities presented by the oil and gas sector. So far, Uganda Freight Forwarders Association, in partnership with other stakeholders, is conducting research that will form basis on which the National Logistics Strategy will be crafted.

Ms. Mwijukye was on 10th April, 2017 speaking at a press conference at the Private Sector Foundation Uganda (PSFU) announcing the Regional Logistics Expo that would be a side-event at the upcoming Oil and Gas Convention 2017 scheduled for the 25th to

27th April at the Serena Hotel in Kampala..

Mr. Elly Karuhanga, Chairperson of the Uganda Chamber of Mines and Petroleum (UCMP) that annually organizes the Oil and Gas Convention said that this year's convention would be organized in partnership with Uganda Freight Forwarders Association and the Ministry of Works and Transport, among others under the theme: "Transforming Uganda into a Regional Logistics Hub - What is your role? And Oil and Gas Doors Open in Uganda". The three-day convention was scheduled on April 25-27, 2017 at Kampala, Serena Hotel.

# Museveni, Magufuli Finally Sign Crude Oil Pipeline Deal



President Yoweri Museveni with President John Magufuli in Arusha during EAC Summit. - Courtesy Photo

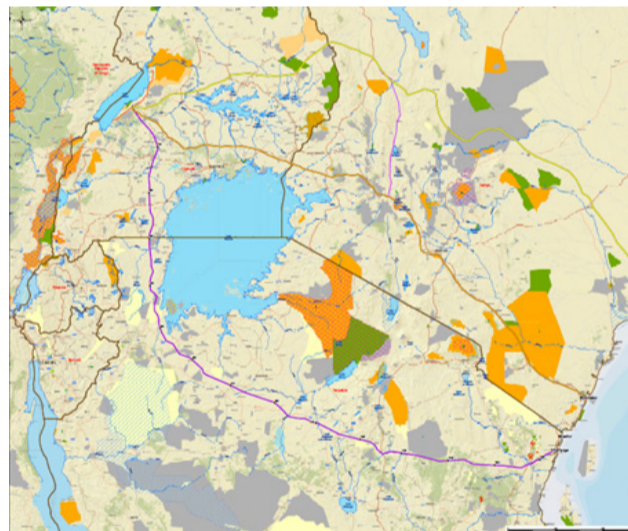
By Edward Ssekika

President Yoweri Museveni and his Tanzanian counterpart Dr. John Pombe Magufuli have finally signed an agreement to start the construction of the East African Crude Oil Pipeline, following a year of protracted negotiations.

The two leaders signed a Communique on Sunday, May 21st, 2017 at Dar- es- Saalam in Tanzania. This was witnessed by Mr. George Masaju Tanzania's Attorney General and Mr. Mwesigwa Rukutana, Uganda's Deputy Attorney General. The signing of the East African Crude Oil Pipeline Project known as EACOP paves way for the start of construction of the world's longest heated crude oil pipeline. Uganda is already racing with time for the realization of the 'first oil' target by 2020.

In the communiqué, the two Heads of State resolved all issues concerning the project. "The issues of the Hoima - Tanga pipeline are agreed and resolved," the communiqué reads in part. The leaders agreed to lay

a foundation stone for the construction of the crude oil pipeline as soon as possible. About 445 km of the pipeline will be situated in Uganda and the remaining



The 1,445 kilometer heated pipeline will run from Uganda's oil fields in Hoima to the coastal port of Tanga in Tanzania (Map 1).

1000km will be located in Tanzania. Uganda is expected to export at least 200,000 barrels of crude oil per day to the international market through this pipeline.

In January this year, the two countries launched the Front End Engineering Design (FEED) studies for the pipeline. Gulf Interstate Engineering, an American company is conducting the FEED studies that will inform the design of the pipeline and actual cost.

"The Attorneys General of the United Republic of Tanzania and the Republic of Uganda should finalize cleaning up of the IGA [Intergovernmental Agreement] incorporating the above agreed positions within a week from the signing of this communiqué," the Leaders directed.

Since April last year, when the East African Heads of State Summit agreed to the Hoima-Tanga pipeline, the two countries have been in protracted negotiations on how the project will be implemented to resolve issues related to land, tariffs and taxes, among others. The two leaders directed the Ministers of Energy and Mineral Development of the two countries to sign the Intergovernmental Agreement [IGA] on Friday, 26th May, 2017 at a ceremony that was held in Uganda.

"A date for the two Heads of State to lay a foundation stone at either Hoima or Tanga would be arranged as soon as possible," the communiqué reads in parts. The US\$3.55bn equivalent project is expected to employ at least 7,000 people.

One of the issues of contention during the one-year negotiations was in respect to payment of Value Added Tax (VAT) on taxable goods and supplies during the project. However, the two leaders agreed that VAT should be deemed paid during the three years of the construction phase. This is in accordance to the VAT Act on government funded or promoted projects.

On income tax, the two leaders also agreed that the application of branch profit tax on the company that will be formed to run the pipeline shall be reviewed when the company is incorporated and its structure complete and communicated to the two states.

## World Bank Warns Uganda Against Over Reliance on Oil Revenues

By Edward Ssekika

The World Bank has warned Uganda's government against crowding-out non-hydrocarbon revenues when huge oil revenues begin to trickle into the economy. In a report titled, "Does Oil Revenue Crowd-out Other Tax Revenues? Policy Lessons for Uganda," was released by World Bank this month. Based on analysis of more than 30 oil producing countries in the world, the report notes a tendency by many oil producing countries to crowd-out non-hydrocarbon revenues, making them heavily reliant on oil.

According to the report, "Uganda risks relaxing its revenue collection from the other sectors of the economy, once the country begins receiving "petrol dollars". World Bank warns that crowding-out non-

hydrocarbon revenues could spell disaster for the country and make it solely dependent on oil revenues. The report makes a case for strong institutions and political stability to ensure Uganda continues to maximize revenue collection from other sectors of the economy in addition to petroleum revenues.

"Therefore, stronger actions are needed by Ugandan authorities to improve the country's institutional quality to levels that will allow the country to fully reap the benefits of its oil resources," the report warns.

Uganda discovered commercially viable oil resources in 2006 and is expected to begin oil production by 2020. Although the country is yet to start commercial oil production, it has already earned substantial

amounts of revenues from the petroleum sector in the form of signature bonuses; license fees; Stamp Duty; data sales; and Capital Gains Tax among others.

With 6.5 billion barrels of oil discovered, it is estimated that recoverable reserves in Uganda could support production of 100,000 to 200,000 barrels per day for 20 to 40 years, depending on the rate and volumes of extraction. Based on the existing Production Sharing Agreements (PSAs) between government and Oil Companies and assuming a long-term international price of \$90 dollars per barrel, the country expects to earn an average of \$2.5 billion dollars (approximately 9 trillion shillings) annually. This expected revenue was determined after discounting for a number of factors including maintenance days, among others.

...continued on page 12

# MPs Ask Government to Establish An Independent Body to Regulate the Minerals Sector

By Rorbert Mwesigye

Members of Parliament (MPs) want government to establish an independent body i.e. the Minerals Authority (MA) to regulate the mining sector. The MPs argue that the authority will be able to check the immense discretionary powers the Mining Act, 2003 originally vested in the Commissioner [now Director] of the Directorate of Geological Survey and Mines (DGSM).

Hon. Samson Lokeris, the Dodoth East MP, says “just as government established an independent Petroleum Authority of Uganda (PAU) to regulate the petroleum sector, the same should be done for the mining sector”. “The Mineral Authority would regulate and provide oversight supervision of the sector,” Hon. Lokeris added.

“I think there is need to reduce the powers of the Commissioner (now Director) as provided in the 2003 Mining Act. If we can achieve this, it will be critical to reducing the challenges in the sector”, Hon. Lokeris said. We need the involvement of all players in the sector, including communities and local governments,” he added.

Hon. Robert Ntende, the MP for Bunya South Constituency in Mayuge district also backed Hon. Lokeris’ argument on establishing a Minerals’ Authority. “We need to make sure that the powers vested in the commissioner are trimmed and shared with other institutions,” Robert said.

The Commissioner at DGSM is under the 2003 Mining Act empowered to make a number of critical decisions, particularly related to the granting, renewing and revoking mineral licenses without consulting anybody or committee. This means that the Commissioner has direct and unfettered discretionary power and control over the sector, which can be a recipe for corruption, collusion and bad governance of the sector. This discretion needs to be checked, by for example, introducing an independent oversight body that would be tasked with reviewing bids, approving applications and making recommendations to the new Directorate of Geological Surveys and Mines.

The MPs made the recommendations during a meeting between MPs on the Natural Resources Committee (NRC) of Parliament and Civil Society Organizations at Piato Restaurant in Kampala on Thursday 18, May, 2017. The meeting was organized to sensitize MPs and help them internalize the content and implications of current draft minerals’ bill, so that they debate it at the floor of parliament from a point of knowledge and understanding.

Mr. Bashir Twesigye, the Executive Director, Civil Response on Environment and Development (CRED) said many jurisdictions are moving away from concentrating powers in one person or body. He gave the example of Zambia, where government established a Mining Licensing Committee to check on the abuse of powers and provide additional scrutiny. He also cited Ghana where a Minerals Commission was established to handle licensing and other oversight functions of the mining sector.

The CSOs recommend that the Minerals Authority should be charged with review and approval of applications for license and forward them to the Minister for licensing based on a prescribed procedure for the evaluation of bid information.

## MINERAL FUND

The MPs also backed a proposal from civil society organizations for the establishment of the Minerals Fund and a Minerals Investment Reserve in Bank of Uganda to hold all revenues generated from the mining sector. “There is a lot of money from the minerals, but we don’t know where it goes,” said Hon. Lokeris. “Who monitors whether royalties have been paid or not,” Lokeris wondered.

Mr. Isaac Kabongo, the Executive Director of Ecological Christian Organization (ECO) implored government to also consider promoting and regulating low-value minerals in the forthcoming mineral policy and legislative amendments.” Uganda’s policies and laws tend to focus mainly on high-value minerals and are silent on low-value minerals [often referred to as neglected minerals]. Low-value minerals like sand, murrum, clay and granite stones are always neglected,” Isaac said. Isaac noted that “while the Constitution of Uganda excludes sand, clay and stones from being considered as minerals, it recognizes them as important construction materials and should be considered for tax purposes, if exploited commercially”. Failure to exploit all possible avenues for revenue generation will result in government’s failure to meet its budget targets”, Isaac added.

“We [Government] need to be smart and make sure that every taxable fee is collected”, Isaac said. He

wondered whether all mining companies pay the taxes they are supposed to pay.

Mr. Kabongo proposed that there should be a requirement in the forthcoming amendments to the Mining Act 2003 for mining companies to first secure a social license to operate within given host-communities.

“Sometimes, mining companies after obtaining their licenses from Entebbe come to a district with their equipment and start mining operations without any courtesy of first introducing themselves to district, sub-county or the community members. This often results in conflicts with the host-community” Isaac added. He further noted that “in some areas like Karamoja, host communities are involuntarily or forcefully evicted from their lands and are left with no option, but to become landless. This is one of the factors triggering conflicts between host-communities and mining companies.

CSOs also want government to regulate and formalize artisanal and small-scale miners and secure their livelihoods and also the establishment of a quasi-judicial body or tribunal to handle disputes in the mining sector. “We think disputes should be handled by an independent tribunal, which should be established by the amended mining Act,” Mr. Bashir Twesigye said.

## CSOs Call for Inclusivity in the Mining Legislation

By Edward Ssekika

On Thursday May 18th, 2017 civil society organisations called for inclusivity in the mining legislation. This was during their dialogue meeting with Members of Parliament that constitute the Natural Resources Committee (NRC) of Parliament and the Parliamentary Forum on Oil and Gas (PFOG). The civil society organization representatives urged MPs to take into consideration their view in the ongoing legislative review process of the Mining Policy 2001 and Mining Act 2003. .

Ms. Flavia Nalubega, the project officer of Extractives Governance at Action Aid Uganda, said that “it was a great opportunity for civil society to voice their expectations on the Mining Policy and law under review and also to have an input in the matter.

“Now is the time to rally support before the draft mining policy and bills are presented to parliament for enactment,” Nalubega said.

The dialogue follows an earlier consultative workshop with Members of Parliament on the Natural Resources Committee under the leadership of Hon. Mukitale Steven that was held in March this year regarding the review of the Mining Policy and Act.

According to the Mining and Mineral Policy Draft 2016 government recognizes the input of artisanal miners to the socio-economic development of the country bearing in mind that artisanal mining is a source of livelihood for thousands of Ugandans. In this regard, government plans to organize and formalize artisanal miners and gazette them to operate in areas that are not under commercial exploration.

Ms. Winfred Ngabirwe, the Global Rights Alert Executive Director, said “they hoped to build consensus with the legislators that the artisanal mining sub-sector needs to be well regulated and that these laws affect Ugandans meaning whatever we do delivers us to our aspirations as a country”.

“We have the National Development Plan and Vision 2040 and we need MPs to know where we are coming from”, Winfred added. She further argued that “without good legislation we are leaving out a very big section of Ugandans and we will continue to see under-development and exploitation”.

“The challenge is not about the leadership, the State or who is in power; there’s no one against the other, but rather we strive for inclusive development in the mining sector,” Ngabirwe argued.



# Corruption in Uganda's Mining Sector Exposed



**Members of the Parliamentary Probe Committee on the Shs. 6b presidential handshake. The mining sector has also got its own share of corruption related scandals that will probably require to be probed as well. - Courtesy Photo**

**By Diana Taremwa, Water Governance Institute**

It's not common that a report exposes the mechanics of corruption as starkly as a recent Global Witness report on the endemic corruption in Uganda's mining sector titled "Under Mined". Global Witness, a UK-based Non-Governmental Organization that operates in many parts of the world, reminded us [Ugandans] how persistent and costly corruption and political patronage is in the country. The report also highlights the serious risk for extractive sector revenues to be mismanaged and diverted for selfish personnel interests by public officials.

The report that was produced after an 18-month long investigation uncovered evidence of bribery at the Directorate of Geological Survey and Mines (DGSM) and use of political connections to secure mining licences.

Under the existing 2003 Mining Act, the Commissioner [now Director] is empowered with unfettered excessive powers to assess; issue and revoke mining licenses, which is a recipe for corruption and mismanagement. No wonder rampant corruption in the DGSM is now being exposed.

It is now a known fact that there is high prevalence of corruption in the country, which has become endemic and systemic characterized by collusion, bribery; embezzlement, nepotism, and other forms of graft among local and central government officials. This is evidenced by the recent (June 2017) Global Witness Report and successive reports of the Auditor General over the last 10 years.

Politicians have over the last 3 decades hyped rhetoric of fighting corruption with little or no success. Corruption has baffled leaders in Uganda. Government's failure to curtail corruption is blamed on political influence peddling.

The Global Witness report cites "corruption and mismanagement is stifling investment and preventing local communities from seeing any benefits. In fact, because elements of the Ugandan elite who dominate

the extractive sector behave as if they are above the law, impunity reigns, and results in human rights violations and potentially devastating environmental destruction". The report further asserts that while the mining sector is officially run by the Directorate of Geological Survey and Mines (DGSM), the DGSM is controlled by a hidden alternative power structure and decision making process or 'shadow system' which benefits predatory investors and politically powerful Ugandans. Poorly qualified companies can win licenses based on their connections, at the expense of well-qualified and conscientious companies. The absence of respect for the rule of law and the systemic circumvention of policies and procedures undermines investment and puts Ugandans and their environment at risk. The underpayment or complete failure to pay taxes, mineral rents and royalties by many of those operating in the sector deprives the public coffers of millions of dollars a year. This affects the provision of basic services for ordinary Ugandans and further obstructs proper oversight and regulation of the industry.

In its report, Global Witness goes on to cite individuals involved in such scams, including "low-level officials to senior political figures". The report details the parts played by lawyers, a Member of Parliament (MP), foreign-backed investors, and even a pop star in the exploitation of Uganda's mineral wealth at the expense of ordinary people and the country's long-term development.

In addition, Global Witness cites a 2012 Internal Government Report that documented chronic levels of fraud, mismanagement and corruption in the DGSM. Although the Internal Government report did not name the companies and individuals behind the suspect deals, Global Witness in its June 2017 report has published, for the first, the findings of the 2012 Internal Government report exposing the identities of some of those associated with the licensing irregularities. Global Witness further reveals a series of more recent cases that are functions of the same corruption and mismanagement. This evidence base proves that the problems identified in the 2012 Report are ongoing and therefore nothing has

changed at the DGSM, despite the report having been shared with the former Permanent Secretary at the Ministry of Energy and Mineral Development and allegedly discussed with President Yoweri Museveni.

This corruption and mismanagement is not only restricted to the mining sector, it has found its way into the emerging oil & gas sub-sector with cases of fraudulently spent pre-production oil related revenues. Most notable of this is the 2015 Presidential award of Ug.Shs 6.0 billion to 42 government officials (commonly referred to as the "Presidential Handshake") as a reward for the officials' involvement in the winning of Capital Gains' Tax (CGT) case in the London Courts against Heritage Oil & Gas.

While it is too early to say that Uganda could suffer a resource governance crisis, it is not out of place to note that some of the cumulative actions that have taken place in the extractives sector in recent years are clearly setting the country on the path of a resource-curse.

The Parliamentary Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) recently (June 2017) concluded its probe of the Ug.Shs6.0 billion "Presidential Handshake" and revealed that the President was in error to have sanctioned such a payment. The probe recommended that the beneficiaries' of the "Presidential Handshake" must refund the money and that a clear reward system for exceptional performance by public officials be put in place.

In addition to probing the Presidential Handshake, the COSASE investigated the Uganda National Roads Authority (UNRA); Uganda Broadcasting Corporation (UBC); National Forestry Authority (NFA); Uganda Railways Corporation (URC); National Housing and Construction Corporation (NHCC); and Rural Electrification Authority (REA) from 2013/2014 to 2014/2015 periods.

Committee Chairperson, Hon. Abdu Katuntu, said that "In all the entities covered, there are challenges of leadership. Decisions tainted with fraud and incompetence is daily occurrences. "It is the Committee's view that there is inadequate supervision of these entities by the Boards and or parent ministries. Where there has been 'supervision', it was under undue influence," said Hon. Katuntu. He added that "there was high level of fraud and incompetence, and that any achievement was more of an accident than deliberate". The probe further revealed that incompetent firms won contracts whereas they lacked the necessary equipment. The report added that contractors ended-up changing structural designs in the period between bidding and award of contracts. The evidence provided revealed that interference by would be supervisors in the workings of the government entities were rife.

Hon Abdu Katuntu cautioned the Executive not to unduly interfere with the professional management of the government entities. He added that "some Board Members of the entities are part of the problem". "Ministers and political leaders should get out of the procurement process, since they are supervisors," he said. This confirms Global Witness findings.

Such a report by COSASE gives hope that sanity and good governance of public resources could begin to see the light of day, if its recommendations are implemented.

# Establish a National Mining Company: Mineral License Holders Ask Government



A gold nugget after successful amalgamation using mercury in Kampala gold mines, Mubende. - Photo by Josephine Nabaale.

By Edward Ssekika

Local stakeholders in the minerals sector have asked government to establish a National Mining Company (NMC) and capitalize it to carry-out mineral exploration activities and enter into joint venture arrangements with other companies and investors.

Mr. David Kyagulanyi, the Managing Director of Kweri Minerals Ltd, one of the local companies exploring for rare-earth minerals in the districts of Bugiri, Iganga and Mayuge says mineral exploration is too expensive for local/ indigenous investors.

Drawing from his experience, first as a former civil servant in the Department of Geological Survey and Mines (DGSM) and second as a Mineral License holder, Mr. Kyagulanyi says "exploration for minerals has been left to mainly foreign investors, since local companies lack the financial, technical and human capacity to do so at a larger-scale, which is not good for the country".

Mr. Kyagulanyi further explains that this could be the reason why many local companies are holding licenses merely as "speculators" waiting to partner with foreign investors, so as to initiate exploration and mining activities. In order to develop mining sector, He advises government to establish a Statutory National Mining Company that would carry-out exploration activities; sale the exploration information to prospective miners and/or partner with prospective companies and investors to exploit the minerals.

"I think to move forward the sector, just like we have established the Uganda National Oil Company (UNOC), government needs to establish a National Mining Company (NMC) to undertake mineral exploration to a good degree of certainty and then promote mining projects" said Mr. Kyagulanyi. He added that "many mining countries like Tanzania, Zambia and South Africa among others have established national mining companies.

"My thinking is that it is better to have a National Mining Company that can acquire licenses like any other person or company, conduct exploration activities to a degree of certainty or make a discovery and then enters into joint ventures with investors," he explained.

"Availing dependable exploration data will develop the mineral sector faster. But this means, government must be willing to commit money to the NMC and also agree to take the risks associated with mineral exploration," David explained.

One of the biggest challenges facing the minerals sector is lack of reliable exploration data to determine the actual sizes of the mineral reserves. In a bid to address this challenge, government recently established a department in charge of mineral exploration in the Directorate of Geological Survey and Mines (DGSM), whose main mandate is to carry-out mineral exploration activities.

But Mr. Kyagulanyi, who formerly worked with DGSM, argues that creating a department in DGSM is not enough. He emphasized the need for an independent and semi-private statutory corporation that can enter into joint ventures with investors to develop the mining sector.

Kyagulanyi says it is not good for government to always chase royalties yet it can reap from the benefits of investment like any other investor. "This reliance on royalties as a way of earning revenues, in my opinion is shallow minded,

Kyagulanyi believes that government should also have a bigger stake in the minerals sector and not to leave everything to investors, with government only waiting to earn from royalties.

In the alternative, he says government should consider offering grants to local mining companies. "In countries like Australia, mining is well developed. The government gives grants to local companies to explore for minerals and develop the mines. This is something that can even be done here. It is not good to leave everything to an investor, who bears a big risk, but also government gets very little," he explains. He maintains the mining company is the best option, since grants can be misused by individual companies due to high levels of corruption in the country.

## Clearing and Forwarding Companies Strategize to tap into Oil and Gas Opportunities

By Edward Ssekika

Local Clearing and Forwarding Companies are developing a private sector-led National Strategy to help logistics companies tap into the opportunities in the oil and gas sector. Ms. Jennifer Mwijukye, the Chairperson of Uganda Freight Forwarders Association (UFFA), says that, "currently local clearing and forwarding companies are not ready to tap into the oil and gas opportunities". "I can't lie we [local logistics companies] are not ready for the sector," she said.

She explained that it is the reason why the private sector is in the process of developing a National Logistics Strategy that will help train and equip logistics' companies to be ready to tap into the opportunities presented by the oil and gas sector. So far, Uganda Freight Forwarders Association, in partnership with other stakeholders, is conducting research that will form basis on which the National Logistics Strategy will be crafted.

Ms. Mwijukye was on 10th April, 2017 speaking at

a press conference at the Private Sector Foundation Uganda (PSFU) announcing the Regional Logistics Expo that was a side-event at the Oil and Gas Convention 2017 that took place from the 25th to 27th April at the Serena Hotel in Kampala..

Mr. Elly Karuhanga, Chairperson of the Uganda Chamber of Mines and Petroleum (UCMP) that annually organizes the Oil and Gas Convention said that this year's convention would be organized in partnership with Uganda Freight Forwarders Association and the Ministry of Works and Transport, among others under the theme: "Transforming Uganda into a Regional Logistics Hub - What is your role? And Oil and Gas Doors Open in Uganda". The three-day convention was scheduled on April 25-27, 2017 at Kampala, Serena Hotel.

### NATIONAL CONTENT

Mr. Karuhanga explained that the annual Oil and Gas Convention brings together industry stakeholders to deliberate on how to take advantage of the numerous opportunities in the oil and gas sector in Uganda. He further said that this year, the convention deliberately

chose to focus on local content with emphasis on the clearing and forwarding and logistics services - which are critical in the oil and gas industry.

Elly emphasized that 50 percent of the oil and gas expenses will be spent on logistics and implored local companies to adequately prepare themselves to seize the opportunities.

"We will need more than 4,000 certified drivers. If we don't get prepared, train and certify our people, we might have to import drivers. Everybody, including drivers, should be internationally certified," Elly added. He emphasized that "There is only one alternative - the standards must be complied with, because the Oil Companies will not lower the standards for the sake of national content. Therefore, we need to train and skill Ugandans now," he concluded.

Ms. Mwijukye also noted the need for the country to establish a logistics hub. A logistics hub is a central distribution area or location designated for activities related to transport and distribution of goods for national and international basis for various operators.

# Uganda could Pick Leaf From DRC on 'Clean' Gold



Artisanal miners separating Gold bearing material in the Mubende Gold mine. Courtesy Photo

By Robert Mwesigye

In 2012, an India-based jewelry company, Jan Mangal, ventured into Karamoja region which is richly endowed with gold, fully equipped with excavators and other machinery. Human Rights Watch reports that while the company, backed by some high level government officials sought a few individuals whom they compensated to gain access to mineral sites, the indigenous population was unaware of what was going on.

Mr. Isaac Kabongo, Executive Director of the Ecological Christian Organization (ECO), a non-governmental organization working to improve the quality of life and sustainable livelihoods of the poor and vulnerable groups, reported how Jan Mangal extracted an unknown amount of gold and purportedly took it to solicit a buyer back in India. The company deserted workers they had brought from India to work in the mines leaving them at the mercy of angry locals. Mr. Kabongo says they had had their passports confiscated by their bosses and were therefore left stranded until ECO came to their rescue.

Bank of Uganda, in its 2015/16 statistics reported a surprise Shs700b gold export revenue figure, but shockingly admitted not knowing its source. Dr. Adam Mugume, the Executive Director of Research at the Central Bank, while speaking at the Stanbic Bank Uganda Economic Outlook Forum in February 2017, acknowledged that the amount of gold mined in Uganda is not even known. He added that "government agrees that the country is losing a lot of revenue in smuggled gold, because it cannot be traced from mine site to exporter i.e. a concept known as the Chain of Custody". He further added "that this is one of the main challenges we [Uganda] are facing, because we don't see where the gold is coming from. We do not see it in imports, but are seeing it in exports."

Mr. Edwards Katto, a Commissioner at the Department of Geological Surveys and Mines, once told a gathering at a policy briefing workshop organized early this year by Africa Center Mineral Policy (ACEMP) that the president wondered where the source of all the gold that Uganda was registering was, yet it could not be traced. Edwards said he told the President that "gold was being smuggled through the porous border points of Butogota and Busia". The 2016 Value-for-Money Audit report by the Auditor General showed government had lost up to 4.4 billion in uncollected royalties from mining activities.

Most of the gold, which is the second export revenue

earner in Uganda, is extracted by artisanal miners who contribute up to 90% of the mining sector in the country.

## Government Measures

Since the formulation of the Mineral Policy in 2001, there has been heightened activity in the mining sector in the country with high ranking government officials, politicians and their associated cohort investors benefiting the most in the sector at the chagrin of regular citizens. Land disputes; involuntary displacement and a contaminated and degraded environment is what the regular citizens and the mining activities' host communities have been relegated to especially in remote areas.

As mining companies begin exploration and exploitation of minerals in the Karamoja region, "communities express fear of land grabs; involuntary displacements and forceful evictions; environmental degradation and pollution; and inability to access improved basic services cites a February 3, 2014 Human Rights Watch Report. "How Can We Survive Here?", the communities lament.

This is further complicated by the incoming mining companies displacing artisan and small-scale mining operations that have sustained many in the communities, thus depriving them of their basic livelihoods. Furthermore, this is made worse by the fact that artisanal miners are not recognized by law, yet they are the ones that do the donkey work and bear the brunt of the sector on behalf of the license holders. There is a ray of hope for the artisanal miners as government revises the Mineral Policy and legislation to accommodate, among other things, artisan mining and regularize the "Chain of Custody" for minerals as a mechanism for tracking and certification of mineral sources, which is in tandem with the Great Lakes' Region Protocol against Illegal Exploitation of Natural Resources.

The protocol requires tracking and certifying the source of the minerals and confirming that the minerals are not illegally gotten or gotten as a result of force or armed conflicts and that the minerals are extracted in accordance to acceptable standards and traded through a clear "Chain of Custody". The protocol was developed from an International Conference on the Great Lakes' Region (ICGLR) and is often referred to as the ICGLR Protocol on Minerals. The ICGLR conference constituted an Audit Committee for Implementing the Mineral Tracking and Regional Certification Mechanism of the protocol that is currently chaired by a Ugandan Mr. Don Binyina Bwesigye, the Executive Director of Africa Center for Mineral Policy (ACEMP), a non-

governmental organization based in Uganda. ICGLR Audit Committee is particularly interested in tracking Tungsten, Tin, Tantalum and Gold that have, for a long time, been riddled with illegal exploitation in the Great Lakes' Region. "Currently, only Rwanda and the Democratic Republic of Congo (DRC) have domesticated the Regional Certification Mechanism (RCM). It is hoped that with the revision of the Mineral Policy and legislation, Uganda will domesticate the RCM" said Mr. Don B. Bwesigye.

## DRC Success Story

The Partnership Africa-Canada (PAC) last week reported the first Conflict-Free Artisanal Gold Supply Chain (CFAAGSC) in the Democratic Republic of Congo through the "Just Gold Project". PAC reports that the development is a milestone in proving a successful Chain of Custody from mine site to exporter is possible.

"After almost two years of testing the possibility of an effective artisanal mineral's Chain of Custody and Due Diligence System, the "Just Gold Project" reported success. We are excited to share news of our success in establishing an effective Artisanal Gold Chain of Custody in the DRC," said Mr. Joanne Lebert, the Partnership Africa Canada's Executive Director. The Project creates incentives for artisanal gold miners to channel their product to legal exporters and eventually to responsible consumers by offering fair and transparent pricing and by providing capacity-building, such as technical assistance to miners in return for legal sales.

Uganda could learn lessons from DRC's Artisanal Gold Chain of Custody to establish similar mechanism in the country; evaluate the benefits of such a system and domesticate the practice as applicable. While commissioning the Africa Gold Refinery in February this year in Entebbe, President Museveni urged artisanal miners to bring their gold to the refinery and even waived some taxes, including royalty on Gold. Whether this cursory gesture of waiving taxes was only meant to cajole Gold miners or facilitate private interests is a question of debate.

Mr. Katto, a commissioner in the Directorate of Surveys and Mines, when asked to comment about Uganda domesticating the RCM during an ACEMP meeting early this year, said that since ICGLR was a regional issue, the Ministry of Internal Affairs had been handed the responsibility to see it through.

Mr. Lebert says that "the ICGLR protocol has standards and guidelines similar to those of the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains, which will assist the two mechanisms to work in harmony". He added that "the DRC, through the implementation of the ICGLR protocol, is demonstrating how the two mechanisms can work collaboratively towards progressive improvements in the mining sector and enabling artisanal miners to access international markets".

Joanne further added that "the Just Gold Project had undertaken research and analyses of the artisanal gold supply chain to understand women's roles and improving their involvement and benefits in the sector in respect to rights, access and control.

With political will, Uganda can achieve this milestone too of domesticating the RCM. Short of this, we shall continue to see government officials reporting baffling statistics of Uganda's mineral trade exports and revenues, as the case was in February this year when the Bank of Uganda reported gold revenue receipts that are not commensurate with the country's Gold production capacities – an indication of unclear or illicit gold trading in the country.

# Marble Miners hardly survive on hand to mouth



Locals crushing limestones to ready them for buying by Tororo Cement Factory in Kitikitile Parish, Tapac Sub county, Moroto district - Courtesy Photo

By Josephine Nabaale

Basic survival for regular citizens working in Marble mines at Kosoroi Marble Quarry in Moroto district is very different from their counterparts in similar mining activities. It is difficult due to the little pay they receive from the labour services they render to Kosoroi Marble Quarry.

According to Mr. Lorech Michael, a parish Councilor of Katikekile parish, communities at Katikekile have traditionally survived through a combination of pastoral and ago-pastoral livelihood i.e. balancing cattle-raising with opportunistic crop cultivation.

Deep-rooted poverty; frequent loss of livestock due to cattle raiding and environmental variability has over the last 3 decades pushed people into artisanal and small-scale mining for survival. The region's minerals, particularly Marble is a great attraction. It is not clear how many people rely entirely on or periodically turn to mining for cash, but estimates suggest over 18,000 men, women, and children are currently active in Marble mining.

Lorch added that "this remote Karamoja region is characterized by chronic poverty where some people, even those involved in the Marble mining, can barely afford to put food on their tables. This puts the lives and sustainability of the local people at risk."

Mr. Thomas Lowel, a 35-year old Marble miner at Kosoroi village in Tapac sub-county in Moroto district explained that He has worked at the Kosoroi Marble mine now for 17 years, but he can hardly sustain his family. "I am working hand to mouth" he said. "I have not achieved anything tangible, because of the little pay am receiving from here." He added.

Thomas added that "A truck of Marble that weighs 24 tons pays us Uganda Shillings (Ug.shs) 40,000, while a 27 ton truck pays between Ug.shs80,000 and shs90,000 and a 30 ton truck pays between shs150,000 and shs210,000 at the current prices.

Marble extraction involves tedious work of breaking boulders into small pieces, yet the income varies tremendously and is a very risky gamble. To fill a truck of Marble, it takes two to four months breaking stones on a daily basis involving 5-to-6 of us, which is time consuming. Every time we load a truck with Marble and we get paid, we share the proceeds,

which are really meagre and we end-up getting very little as individuals. Consequently, we are entrapped in the cycle of poverty.

Mr. Lumungiri Lukorori, a 36-year old miner explained that "Marble extraction is no longer lucrative". Income from extracting Marble can only feed my family and not cater for any other basic necessities of life". For a period of now 2 years, we are being affected by the reduction in the number of trucks that come to purchase Marble. Previously, 60- 80 trucks would come to fetch Marble on a daily basis, but currently only 10-20 trucks purchase Marble on a daily basis" He added. "This is leading to increased poverty as few people are able to sale their crushed stones" Mr. Lumungiri further noted.

Mr. Lumungiri also noted that the above mentioned problems are further worsened by Language barrier, which undermines Marble sales, since very few individuals are able to coherently bargain for better prices for Marble with buyers who frequently come from regions that do not understand the local dialect. This coupled with the reduced number of buyers, has resulted in an accumulation of Marble awaiting sales for now 2 years, yet it is the main source of livelihoods, thus creating a situation of uncertain food and livelihoods security.

However, Ms. Lowumu Alice - a mother of 5 children and a sole provider to her family -has a different story to tell. She attributes her success to Marble mining in Kosoroi village. She says for a period of 10 years of extracting Marble, she was able to purchase 2 goats that gave birth and now she has 5 goats. She was able to construct a semi- permanent house for her family; take two of my children school and is able to feed her family.

Mr. Kennedy Akendo, a site supervisor for Tororo Cement Factory, based in Tapac subcounty in Moroto District explained that it is not their deliberate action to reduce the number of trucks that transport Marble from the mines, but rather "it is an instruction from the Uganda National Roads Authority (UNRA) to reduce the number of trucks transporting Marble on the realization that these trucks were damaging the roads in this area" "We therefore took heed to the instruction" Kennedy added.

## Karamojong Community Cry...

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distance of 300kms and consume more than 250 liters of fuel, so many truck owners opted out of the business and put their vehicles to other use" Kennedy said. "The distance from Moroto to the factory in Tororo is over 300km. It does not make business sense to ferry low tonnage of limestone and a high transport cost" Kennedy added. He informed the Oil in Uganda team that "the factory was expanding and setting-up another plant; "maybe then business will boom for the minors. Mr. Akenda further explained that they were instructed by Tapac officials to withhold payments on truck royalties until the mess created by the former Sub-County Chief is sorted. Once the Tapac officials give the factory clearance to remit the royalty money, they will do so accordingly, because they have clear records. This explanation from the officials of the factory notwithstanding, the Tapac leaders are determined to pursue the matters until they get what belongs to them as benefits. They warned the factory from bringing their own labour force to mine the limestone, arguing that the community members are ready to mine and sale the limestone to the factory.

The Tapac leaders reported that they are in negotiations with Tororo Cement over a Memorandum of Understanding (MoU) that will guide their relationships.

## World Bank Warns...

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"This additional resource revenue could create a disincentive for government to collect non-petroleum related taxes, thus crowding-out potential taxes from other sectors of the economy." the report suggests.

The World Bank notes that the "Dutch Disease" could cause the non-petroleum sectors to contract, resulting in declined overall revenues. The report further notes that a government with significant revenues from extractives may decide to relieve the tax-burden on its citizens, which in turn, could result in the reduction of the demand for accountability and public service delivery. "Natural resource abundance could be a disincentive for governments to implement tax reforms aimed at broadening the tax-base and collecting more non-petroleum tax revenue," the report warns.

The report suggests that the risks of crowding-out non-petroleum revenues are high, unless government commits to addressing issues of political stability; regulatory quality and government effectiveness.

"Authoritarian regimes often deliberately reduce non-resource tax rates to quell the masses when they protest about not receiving their fair share of the resource rents," the report reads.

Since the discovery of oil, government is struggling to improve its institutional and governance quality, but with little success. "The laws adopted and the oversight institutions created to promote good governance and minimize corruption are very strong on paper, but actual implementation remains limited. The country's implementation of laws scores only 51 out of 100 on the Global Integrity Scale," the report reads in parts.

World Bank recommends that Uganda should focus on expanding the tax-base and build strong institutions that will collect taxes from other sectors of the economy. This should be done in a fair, just and balanced manner.