Legal and Environmental Dimensions of Oil Exploration in Uganda

By

Dr. Emmanuel Kasimbazi
Senior Lecturer, Faculty of Law, Makerere University
Kampala, Uganda
Oil area in Uganda

- Uganda is a land locked country in East Africa with Kenya to the East, Tanzania to the South, Rwanda to the South West, Democratic Republic of Congo to the west and Sudan to the North.
- Oil exploration activities in Uganda are concentrated in the Albertine Graben, in the Western region of the country.
- The Albertine Graben is the region on the Uganda-DR Congo border and includes Lake Albert and River Semliki that lies in the northern section of the Albertine Rift.
Oil Area in Uganda

- The oil exploration area stretches from West Nile to the south-western tip of Uganda covering an area of 23,000 km²
Map showing Oil area in Uganda
The History of Oil Exploration in Uganda

- Oil exploration in Uganda was first done by Wayland in the 1920s, who documented up to 52 oil and gas seeps in the Albertine Graben.
- Petroleum exploration activities seized due to the Second World War in 1945
- In 1983 geologists resumed exploration activities in the Albertine Graben, revealing reasonable oil presence. This led to the creation of the Petroleum Unit in 1985, in the Geological Survey and Mines Department to spearhead exploration promotion;
- In 1985 the Petroleum (Exploration and Production) Act was enacted to make provision for the exploration and production of petroleum and related matters. The Petroleum unit was replaced by the Petroleum Exploration and Production Department which commenced aeromagnetic surveys.
- The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations 1993 were passed for regulating petroleum activities in the country.
The Status of Oil Exploration

- In 2006 it was officially announced that there is Oil in Uganda.
- The Albertine Graben has been divided into nine exploration blocks, five of which have been licensed to oil companies.
- Within the five blocks licensed to companies, a potential of over a billion barrels is estimated; and at least 17 oil wells with significant quality and huge oil reserves have been discovered.
Licensed Companies to Explore Oil

- Heritage Oil and Gas Ltd of the United Kingdom was given a license in the Semliki and Southern Lake Albert Basin (Exploration Area 3).
- 2001: Hardman Petroleum Africa (pty), a subsidiary of Hardman Resources Ltd. of Australia and Tullow Oil of Ireland were given the mother Lake Albert Basin (Exploration Area 2).
- Tullow Oil and Heritage were given a license for the exploration of the Pakwach Basin (Exploration Area 1). They were licensed in 2004;
- Neptune Petroleum, (Low Tower Resources) of U.K. was given a license for the exploration of the Rhino-camp Basin (Exploration Area 5). It was licensed in 2005;
- Dominion Oil of United Kingdom and Alpha Oil of Uganda have applied for a license to explore the Lakes Edward-George Basin (Exploration Area 4). The licensing process is yet to be completed.
Ownership of Oil and Minerals

- The ownership of oil was first regulated by the Petroleum (Exploration and Production) Act Cap 150.
- The property in, and the control of, petroleum in its natural condition in or upon any land in Uganda is vested in the Government on behalf of the Republic of Uganda.
- No person can lawfully carry out any exploration or development operations on petroleum in or upon any land in Uganda without a licence.
- The Constitution (Amendment) Act, 11 of 2005 which provides that: "All minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda."
- Implication of the amendment: if oil is discovered in ones land, it belongs to the government and the land can be acquired compulsorily for public use under Article 26 of the Constitution.
- Even though the Constitution protects the right of every person to own land, compensation can easily be paid for any land acquired for oil exploration because of the economic benefits.
Issues Cont’d

- Land issues: Compensation under the Constitution, land Act and the Land Acquisition Act is required for land to be acquired for public purposes which include oil exploration.
- The challenge is the poor are selling land to the rich at a cheaper price and who expect to benefit from the land.
- This is causing land conflicts and landless people.
Issues Cont’d

- EIA is a legal requirement in Uganda.
- Tullow Uganda Operations (Pty) Ltd one of the licenced Oil company produced a report for Early Production System of Kaiso- Tonya Area, Block 2, Lake Albert
- The report Generally provided positive assessments: groundwater, surface water quality, ground air quality, terrestrial and aquatic habitats as a result of sewage, waste and effluent pollution, spillages and leakages, are negligible while the impacts on biodiversity are medium and local fauna are high.
Issues Cont’d

- EIA report major weaknesses:
  - No mitigation measures and monitoring for the identified impacts;
  - Lacks a comprehensive environmental management plan to deal with biodiversity, air quality, water, fisheries, wastes, oil spills and pollution, affected communities, tourism;
  - No Strategic Environmental Impact Assessment and yet a number of oil drilling sites
  - Limited public participation;
Issues Cont’d

- Information Disclosure & Transparency of Oil Information: This is crucial in oil exploration and production because must know issues related to production & RS;
- Required under: Petroleum (Exploration and Production) Act of 1985 and the Oil and Gas Policy mentions transparency and accountability as one of the guiding principles & Access to Information Act of 2005
Challenges of Access to oil information:

- Uganda is not yet a member of the Extractive Industries and Transparency Initiative which supports improved governance through the verification and full publication of company payments and government revenues from oil, gas and mining.
- Public bodies often lack even basic technical equipment and communication systems, such as computers and internet connections to post the information.
- There is a “culture of secrecy” amongst civil servants as the main barrier. Government officials are reluctant to disclose information related to government activities. This is aggravated by the Official Secrets Act which government officials do not want to violate.
Most documents such as EIA reports are written in English an official language and yet some Ugandans especially in rural areas cannot read it. A contentious issue in the oil exploration is the non-disclosure of the oil production sharing agreements (PSAs) which were concluded between the oil companies and the Ugandan government.
The Right to Clean and healthy Environment

- The right to clean and healthy environment is a well recognized right under the Ugandan policy and legal framework.

- The above provisions imply that a person whose right to clean and healthy environment is violated due to oil exploration and production may take the company responsible or government to court to seek redress.
Issues Cont’d: How can this be controlled & mitigated?
Public Trust Doctrine

- Ugandan laws recognize the public trust doctrine which makes the central government and local governments the trustee of important resources such as forests, natural lakes, rivers, game reserves, and national parks.
- This implies that the central government or local government cannot lease out or otherwise alienate any natural resource even for oil exploration and production. However, the Government or a local government may grant concessions or licences or permits in respect of any for the natural resource.
- Oil has been discovered in the National Parks, Can government comply with the Doctrine? The answer is NO.
Issues Cont’d

- Pollution Control
- Pollution is one of the major effects of oil exploration and production: The Petroleum (Exploration and Production) Act and the Regulations made the Act control and the National Environment Act, and the Water Act control pollution during oil exploration.
- It is reported local people are already affected by the strong bad smell from the mud pits that are dug during oil exploration and moreover the mud pits have been deposed properly.
Issues Cont’d

- Health and Safety Measures
- Health and safety measures are crucial in oil exploration and production because the activities are dangerous to people.
- The Oil and Gas Policy makes provisions for protection against activities that affect health.
- However, no measures have been taken to control the effects of the activities.
Issues

- **Restrictions on Surface Rights**
- The Petroleum (Exploration and Production) Act imposes restrictions on the surface rights.
- The Act requires the consent of the lawful occupier where the land is the site of or which is within two hundred meters of any inhabited, occupied or temporarily unoccupied house or building, within fifty metres of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops.
Restriction of Off Shore Operations:

The Petroleum Regulations restrict offshore operations. Regulations bar the construction of a fixed platform near the lake unless there is the consent of the Commissioner.
Conclusion

- The existing oil exploration is an important progress towards development in Uganda. Oil is resource that can create lasting value for the Ugandan people.

- However, if the resource is not properly managed it can bring a curse rather than a blessing.
Conclusion Cont’d

The legal and environmental challenges still include:

- lack of transparency,
- limited specialised institutions capacity to handle petroleum management issues
- shortage of skilled personnel in the field of petroleum geosciences, petroleum negotiation skills,
- Limited petroleum law to reflect the modern principles of petroleum exploration;
- limited local participation in the petroleum and gas industry.