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# Public Participation and Oil Exploitation in Uganda

Christoph Schwarte



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# Executive summary

In 2006 oil was discovered in Uganda. With the country's economy highly dependent on fuel imports, national oil production could make a long-term contribution to poverty alleviation. But for sustainable development to occur, participatory governance must ensure that people are involved in the decision-making processes affecting their lives. This paper, therefore, first analyses the adequacy of the existing legal framework on access to information and participation. Its findings show that although law and policy in Uganda indicate certain efforts to open up environmental decision-making processes to public influence, this is not the case in the oil production sector. On the basis of interviews and focus group studies it further examines the main practical barriers to better public participation.

The author finds that in practice, public participation is subject to several financial, technical and political constraints. The culture of secrecy within government bodies, weak civil society structures as well as the politics of patronage remain substantive challenges for the fair and equitable management of natural resources in Uganda.

Against this backdrop the author makes several recommendations for enabling oil exploitation to fulfil its potential for alleviating poverty. These include:

- developing subsidiary legislation that makes openness a core value and strengthens the independence of civil servants;
- channelling donor funding for improving environmental governance through credible non-partisan Ugandan NGOs and other civil society organisations;
- undertaking a strategic environmental assessment; and
- building the technical capacity within government institutions to operate a website and make information available electronically.

# Public Participation and Oil Exploitation in Uganda

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## Oil in Uganda

Uganda is one of 33 countries in Africa classified by the United Nations as least developed. According to the 2007/2008 *Human Development Report* (UNDP, 2007), it is ranked 154th on the human development index. The country's economy is to a large extent dependent on foreign aid, with its national budget approximately 40% donor funded (totalling roughly USD 870 million in grants and net loans in 2006/07). More than a quarter of the population is illiterate. Transparency International's 2007 Corruption Perception Index places Uganda 111th out of 179 countries.

Uganda has been depending heavily on oil imports to meet its domestic power needs. When post-election violence erupted in Kenya in January 2008 and fuel shipments from Mombassa ground to a halt, many Ugandan businesses were badly affected. Pump prices rose to an all-time high, many areas suffered fuel shortages and long lines formed at those stations which still sold petrol. Many Ugandans therefore hope that the oil discovered in 2006 in the Albertine Graben region (Lake Albert basin) in the west of the country will strengthen the national economy and contribute to poverty alleviation.

The Ugandan government has repeatedly stated that it will take a cautious approach towards oil production to ensure that "*in Uganda oil will not be a curse but an asset*". The intention is for much of the proceeds to be spent on the country's development (*The New Vision*, 2007). At present foreign oil companies—mainly Tullow (Ireland/UK) and Heritage Oil (Canada)—are putting in place the infrastructure to start oil exploitation in 2009. They have also built schools and health centres and drilled boreholes for drinking water in some villages (Nandutu, 2007).

Nevertheless, local communities around Lake Albert have voiced concerns about the likely impacts of oil exploitation in the area. Although there may be new employment opportunities, fishermen fear that pollution, the influx of oil workers and "rich people" taking their land will adversely affect their livelihoods. They are also concerned about possible access restrictions to their fishing grounds, and security, since the exploration area lies on the border with the Democratic Republic of Congo. Representatives of the Bunyoro Kingdom, whose traditional territory covers the Lake Albert region, have demanded a 50% share of the oil revenues (Kato and Kayizzi, 2006).

Oil exploitation activities can contribute to sustainable development if their adverse effects are minimised through careful planning and stakeholder engagement. They can

provide new business opportunities and often bring new roads and access to water and power to rural areas. Oil revenues can be reinvested in poverty alleviation programmes and help to create an enabling environment for sustainable development. However, to ensure the fair and equitable sharing of benefits, citizens, and especially those living in the oil exploitation area, must have the opportunities and skills to participate meaningfully in the decisions which affect them.

## Public participation in environmental decision-making

Poor people in developing countries often rely heavily on their immediate environment for their livelihoods. Whilst they are the most exposed to environmental risks and degradation, they are usually the worst represented in the relevant decision-making processes. Good natural resources management therefore depends on participatory, transparent, open and accountable governance that ensures the effective participation of the public in the preparation and implementation of environmental policies, legal frameworks, plans and projects. This was also a key principle recognised by governments present at the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992.<sup>1</sup>

Effective access to meaningful information is the first step in empowering citizens to exercise a degree of control over resources and institutions. The right to know is the basis for stakeholder involvement in environmental decision-making processes that affect their lives, their community and the development and security of their country. In his address to the World Bank conference "Global Knowledge" in 1997, Kofi Annan, the then Secretary-General of the United Nations, observed that "*the great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today.*" (Annan, 1997).

Only a well-informed public aware of its rights to participate can truly help decision-makers make the "right" choices. Allowing public knowledge to feed into the planning process early ensures broader perspectives and the development of better engagement strategies. This does not only enhance the credibility of the decision-making process, but may also generate new solutions, diffuse opposition to a project and ensure a consensus is built, leading to a public sense of "ownership". The next section examines if and to what extent the legal framework supports meaningful public participation in decisions on oil exploitation in Uganda.

## Regulatory framework in Uganda

The Ugandan Constitution of 1995 provides that the state "*shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance*", and promote sustainable development and the management of

<sup>1</sup> Principle 10 of the *Rio Declaration on Environment and Development*, Annex I of the report from UNCED, Rio de Janeiro, 3-14 June 1992. See [www.unep.org/Documents.Multilingual/Default.asp?documentID=78&articleID=1163](http://www.unep.org/Documents.Multilingual/Default.asp?documentID=78&articleID=1163)

natural resources so “as to meet the development and environmental needs of present and future generations of Ugandans”. It shall further “promote and implement energy policies that will ensure that people’s basic needs and those of environmental preservation are met”. The constitution comprises a comprehensive set of guarantees on political and human rights which include the right to freedom of speech and expression, the right to a clean and healthy environment and the right to access information held by the state.

These fairly general and vague constitutional guarantees are complemented by an increasing number of specific acts and subsidiary legislation:

### **Access to Information Act**

The *Access to Information Act* (No 6 of 2005) determines the scope of citizen rights and the obligations of information offices in all public bodies. It defines the process by which government information is available to the public and how someone can appeal a refusal to release information. In principle the act applies to information and records of all government bodies at the national, regional and local level (though not to cabinet records and the records of court proceedings before the conclusion of the case). The act explicitly recognises the link between the provision of timely, accessible and accurate information and transparent, accountable and participatory governance.

The Ugandan *Access to Information Act* is one of the very few of its kind in Africa.<sup>2</sup> However, its significance is diminished by a lack of clarity in drafting, the envisaged scope of application and insufficient procedural guarantees.<sup>3</sup> Exceptions to the right of access are rather wide and open to interpretation. The classification of information as confidential, for example, is not linked to any legal, professional or ethical commitment to secrecy. The act does not apply to private bodies which carry out public functions. Finally, an access fee may effectively prohibit most Ugandans from seeking information, yet there is no special provision for waiving fees if requestors are unable to pay.

Overall the language and content of the act suggest a limited understanding of the measures necessary to facilitate and promote access to information. Although the act’s structure and wording are not fundamentally different to corresponding pieces of legislation in industrialised countries, it merely focuses on “allowing access to official records” rather than delivering a service to citizens. The United Kingdom Freedom of Information Act 2000, in comparison, requires authorities to “communicate” information to requestors and provide a “digest or summary of the information”.<sup>4</sup>

Although there are other pieces of legislation that contain access to information provisions, the Ugandan act does not clarify its relationship with these rules.<sup>5</sup> Thus

2 Other acts were adopted in South Africa and Angola. The 2002 *Access to Information and Privacy Protection Act* of Zimbabwe mainly focuses the government’s powers on controlling the media and prohibiting the “abuse of free expression”.

3 A comprehensive analysis of shortcomings has been undertaken by the Commonwealth Human Rights Initiative and Article 19 (Commonwealth Human Rights Initiative, 2004; Article 19, 2004).

4 *Freedom of Information Act 2000*, Section 1, paragraph 1 (b) and Section 11, paragraph 1 (c).

5 E.g. Section 86 of the *National Environment Act*, Section 91 of the *Forestry and Tree Planting Act* and Section 59 of the *Petroleum Act*.



one may even argue that by introducing new exemptions beyond those under, for example, the constitution (security and sovereignty of the state, privacy) and the National Environment Act (proprietary information), it has effectively reduced existing access rights.

## National Environment Act

The *National Environment Act of 1995* sets out the general legal framework and policy objectives for the sustainable management of Uganda's environment. It encourages participation by the Ugandan people in the development of policies, plans and processes for managing the environment, as well as the equitable use of natural resources for the benefit of present and future generations.

The National Environment Management Authority (NEMA) was established under the act as Uganda's principal agency for environmental management. Its functions include gathering and disseminating information on the environment and natural resources, publishing relevant data on environmental quality and resource use, as well as organising public awareness and education campaigns on the environment. The act states that people have the "*freedom of access to any information*" relating to the implementation of the act. Access will be granted "*on the payment of a prescribed fee*" but "*does not extend to proprietary information which shall be treated as confidential*".

The act further outlines the basic steps and requirements of the Ugandan environmental impact assessment (EIA) process as the main tool for communicating environmental information related to oil exploitation activities among stakeholders. The EIA Regulations of 1998 further specify the rules and procedures for carrying out an environmental impact study (see below).

## Environmental impact assessment

Under the EIA Regulations "*[t]he developer shall take all measures necessary to seek the views of the people in the communities which may be affected by the project*". Based on the project brief submitted by the developer, the NEMA determines, in consultation with other government agencies, (a) whether the project has a significant impact on the environment; and (b) the level of EIA required. If the project brief adequately addresses environmental concerns, approval can be issued without the need for further assessment. Otherwise a full environmental impact study has to be carried out by EIA experts approved by the NEMA.

Once the impact study is completed, the developer must submit an environmental impact statement (EIS), including a description of the project, potential impacts and mitigation measures, possible alternatives, knowledge gaps and an economic analysis. The EIS "*shall be a public document and may be inspected at any reasonable hour by any person*".<sup>6</sup> The NEMA will invite written comments by people who are most likely to be affected by the proposed project, and by the general public. The invitation to submit comments should be publicised through national or local newspapers, other mass media and lower-level governments. It should contain specified information (e.g. location,

6. Section 21 of the National Environment Act.

proposed mitigation measures, benefits to community) and “*be in languages understood by the majority of the affected persons*”.

Depending on the comments received, the NEMA may issue a certificate of approval, reject or modify the proposal. If the project is particularly controversial, or has trans-boundary impacts, a public hearing has to be held and should be advertised through the mass media. Anyone attending the meeting can make presentations and can request copies of reports, submissions and other materials in the files. In return the authorities can demand an administration fee (NEMA, 1999). The developer should be given an opportunity to answer to any presentation and to provide further information.

The law provides for public participation during the scoping phase and as part of the consultations on the environmental impact statement. It requires the main documents to be publicly available and determines timelines for input and decision-making. However, while in other countries it is generally recognised as good practice that when a decision has been taken the authorities again inform the public of its content, especially any mitigation measures,<sup>7</sup> this requirement appears to be partially missing from the Ugandan legislation.

The *Environmental Impact Assessment Guidelines for the Energy Sector* also apply to oil exploration projects (NEMA, 2004). They provide ministry officials, developers and practitioners with a simple overview of their tasks during the EIA process. They also describe impacts commonly associated with different energy projects, possible mitigation measures and guidelines for resettlement and compensation. A listing of the possible methods for public involvement includes meetings, interviews, surveys, field offices (to serve as a liaison with the developer and the public), “open houses” (accessible locations where the information on the proposed project and the EIA is displayed) or advice panels consisting of representatives of the different stakeholder groups.

One major barrier to all compliance monitoring and enforcement is lack of funds. Even where public participation has resulted in tangible outputs such as mitigation measures, the NEMA and other government agencies often do not have the resources or capacity to monitor and ensure compliance with them.

The environmental impact assessment process in Uganda depends heavily on the expertise of private consultants. Following the discovery of oil there was a substantive lack of expertise amongst local practitioners. This is now gradually being filled with the help of international experts. Other gaps in the institutional and administrative arrangements are also being addressed—mainly with the support of the Norwegian Agency for Development Co-operation (the Oil for Development initiative).

## Oil and petroleum legislation

The *Petroleum (Exploration and Production) Act of 1985* is the main law governing the exploitation of oil in Uganda.<sup>8</sup> The act focuses on so-called “upstream” elements of

7. For example, EU Directive 85/337 on assessment of the effect of certain public and private projects on the environment.

8. The *Mining Act of 2003* does not apply to petroleum as defined in the *Petroleum Exploration and Production Act of 1985* (Act 7 of 1985). The *Petroleum Supply Act of 2003* addresses the transportation, storage, distribution and marketing of petroleum products.

petroleum production, i.e. the exploration and extraction of oil. Although the act recognises the potential for conflicts between oil exploration and other rights to land (grazing and farming), the communication of environmental information is mainly described as a one-way flow towards the government. Thus a petroleum exploration licence holder is, for example, required to inform the authorities about the discovery of oil and has to provide further information as requested.

The authorities have to keep records, but as a matter of principle any information provided by a petroleum exploration or production licence holder shall not *“be disclosed to any person who is not a Government Minister or an officer in the public service except with the consent of the licensee”*. Exceptions apply in connection with legal proceedings, studies, requests of financial institutions, liability claims and contractual agreements. Violation of the non-disclosure obligation is a criminal offence. The act does not address “downstream” oil production activities such as refining and the use of gas, the use and distribution of oil revenues, local benefits and participation in decision-making processes.

This gap in the legal framework has been addressed by the new National Oil and Gas Policy. Officially launched in February 2008, the policy aims to ensure that exploitation and use of oil and gas contributes to poverty eradication and *“creates durable and sustainable social and economic capacity for the country”* (Ministry of Energy and Mineral Development, 2007). Objectives also include national participation in the petroleum and gas industry, nature conservation and the use of revenues *“to create lasting value to society”*.

Transparency and accountability are named as guiding policy principles. Openness and access to information are described as fundamental rights, and the importance of disclosing information *“that will enable stakeholders to assess how their interests are being affected”* is stressed. *“The policy shall therefore promote a high standard of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas.”* To implement policy objectives a new regulatory authority will be set up, along with a national oil company to handle the state’s commercial interests.

Despite addressing a broad range of issues, the policy has been criticised for being vague and incomplete.<sup>9</sup> It does not clarify the role of local communities—how, for example, their relationship with oil companies would be structured, or what benefits they would derive from oil exploitation or production in their area. The policy does not lay the foundations for future financial arrangements for the collection, sharing and reinvestment of oil revenues. At present it only states that revenues should be used in an equitable, fair and transparent manner. *“The interests of local communities ... shall be taken into account by, among other things, sharing of royalties in line with the Constitution and any relevant laws passed by Parliament.”*<sup>10</sup> The policy’s future action points include the adoption of a

9 For a comprehensive analysis of the draft policy see: Bainomugisha, A., Kivengyere, H. and Tusasirwe, B. 2006. Escaping the oil curse and making poverty history, *ACODE Policy Research Series*, 20, 2006. Advocates Coalition for Development and Environment, Kampala.

10 Ministry of Energy and Mineral Development, National Oil and Gas Policy for Uganda, December 2007, Section 5.1.6 - Spirit of Co-operation

new law regulating the payment, use and management of petroleum revenues, and participation “in the processes of the Extractive Industries and Transparency Initiative (EITI)” which supports improved governance through the verification and full publication of company payments and government revenues from oil, gas and mining.<sup>11</sup>

The policy describes in some detail the role of different government authorities in the implementation of the oil and gas policy. In comparison there is only one paragraph on the involvement of “civil society and cultural institutions” that can “contribute to holding the different players accountable ... and participate in getting the voices of the poor into” the design, monitoring and implementation of programmes. In relation to local communities “[a]ll efforts shall be made to ... emphasize peaceful resolution of disputes”.<sup>12</sup> However, there is no further explanation of the forms of participation or conflict management systems envisaged.

## Main practical barriers to participation

From a “consumer” perspective a legal framework is only as good as its implementation. In order to identify the main barriers for meaningful participation, the author organised five group discussions with Ugandan NGOs with particular expertise and experience in the field. These NGOs work on environmental governance and natural resource management issues, and often operate as gatekeepers for local communities. In addition the author held informal interviews with representatives of, amongst others, governments, donors, investors, NGOs, media and academia. This work (mainly funded by Irish Aid) contributes to a wider body of research undertaken by the Foundation for International Environmental Law (FIELD) and the International Institute for Environment and Development (IIED) on legal empowerment and environmental governance in sub-Saharan Africa.

### Poor access to information

The interviewees’ assessment was that people in general are not aware of their participatory rights. Most of the members of NGOs and journalists we interviewed as part of this study knew, in general terms, about the existence of the statutory right to access information, but few had heard about the 2005 act itself. Nearly all of them felt the ability to access useful information depended on personal relationships and trust. They had all encountered a significant lack of responsiveness and described the “culture of secrecy” amongst civil servants as the main barrier. Explanations for the reluctance of government officials to disclose information ranged from the legacy left by the British Empire’s colonial civil service, to pressures exercised by superiors or individuals with business interests.

These views were—at least partially—confirmed by different government officials. They explained that although they would informally answer questions raised by local commu-

11 Section 5.4 Strategies and actions to achieve objectives of the policy, Objective 6 - To ensure collection of the right revenues and use them to create lasting value for the entire nation. For further information on EITI see [www.eitransparency.org](http://www.eitransparency.org)

12 Section 5.1.6 – Spirit of Co-operation.

nities about, for example, compensation payments or environmental hazards related to oil exploitation activities, “*when people write letters*” the officials had to be careful not to infringe obligations under the Official Secrets Act and take into account “*higher authorities*”. Thus, formal requests for information are often subjected to bureaucratic hurdles, delays and excuses.

In the UK in comparison, the *Freedom of Information Act* came into full force in 2005—the same year the *Ugandan Access to Information Act* was adopted.<sup>13</sup> In 2006, 43 central UK government bodies, including all departments of state, received a total of 33,688 information requests. In comparison, the introduction of the new act has gone unnoticed by the general public in Uganda. Ugandan academics, government officials and even journalists and NGO proponents of the act therefore described it as “*a non-starter*” or “*a law for the sake of having it*”.

A contentious issue at present is the non-disclosure of the oil production sharing agreements (PSAs) concluded between the oil companies and the Ugandan government. Under these agreements the corporations provide capital investment in exchange for control over an oilfield and a share of the revenues from it. Since there are few statutory rules and regulations governing downstream activities (such as benefits to local communities or the reinvestment of royalties—see above) the content of PSAs to a large extent depends on the negotiations between the state and the company. The Ugandan government therefore claims that non-disclosure was necessary to protect the commercial interest of investors and to negotiate on an individual basis increasingly beneficial terms and conditions.

A major barrier to information access in Uganda is the general lack of resources, infrastructure and capacity. Public bodies often lack even basic technical equipment and communication systems, such as computers and internet connections. Government websites are not updated for months and only a few public libraries (with even fewer up to date materials) exist. The law recognises that written information in English only reaches a small audience. Television, newspapers and the internet are limited to urban areas while radios, mostly owned by men, are the main channel of communication in rural areas. There are around 2 million mobile phone subscribers and the number of internet connections and internet cafés has increased steadily. However, only 5% of the population has access to grid electricity, so its use is still very limited.

Almost all interviewees agreed that in order to disseminate information more widely the use of different languages and a variety of techniques was necessary. Good practice does exist, particularly in the forestry sector, of providing complex information in accessible formats. The NEMA and the National Forestry Authority have used posters, radio shows and public gatherings to inform people about environmental rights, hazards and management issues. However, in general these efforts have been rather *ad hoc*, subject to major financial constraints and often donor driven (Box 1).

One oil company representative felt that there were “*massive information gaps and the quality of research very poor*”. For example, there was no sufficient data on the sensitivity

<sup>13</sup> The act entered into force in April 2006.

and biodiversity of Lake Albert, around which most of the oil exploration activities take place. As a result this company undertook its own one-year programme to gather additional information. Contemporary publications in the oil and petroleum sector mainly refer to scientific studies that are several decades old.<sup>14</sup> Other interviewees stated that a lot of useful information was available, but “flying around in different places”. Their

#### BOX 1. THE ENVIRONMENT INFORMATION NETWORK

In order to manage Uganda’s natural resources and environment more effectively, the Environment Information Network (EIN) was established in 2000. Funded by the World Bank, the EIN’s main objective was to exchange information in compatible formats between different government institutions which collect agricultural, meteorological, topographical and other data related to forests, soil and biodiversity. Its activities are coordinated by the NEMA. However, the initial idea to develop a meta-database was soon abandoned as too ambitious and the network narrowed its focus to information exchange, training and updating maps. Its activities have reduced significantly since the funding expired.<sup>15</sup>

emphasis was on consolidating existing sets of data, identifying who has it and standardising methodologies.

#### Poor capacity for participation in decision-making

Ugandan law essentially assumes sufficient capacities and resources within public authorities and civil society to communicate information and allow the public to feed their views into decision-making processes. In connection with EIAs it provides for different procedural safeguards, but does not measure the quality of involvement or participation. A general perception amongst NGOs, journalists, government officials, academics and donor representatives was that people lacked the basic competencies and knowledge to get meaningfully involved in decision-making processes that affect their lives.

People are frequently unaware of basic environmental information, existing government services and opportunities to voice their concerns. Too often they “do not know what they do not know”. It was observed that during EIA hearings people could often not follow the proceedings and did not have the knowledge to challenge the developer’s assumptions. In particular the long-term implications of a project are rarely understood.

To improve governance frameworks donor countries mainly focus on institutional reforms and capacity building. As part of the Ugandan Public Service Reform Programme (PSRP), for example, they promote and sponsor the introduction of Client Service Charters which indicate available services, delivery standards and mechanisms for channelling complaints. The Ministry of Public Service (MoPS) launched its charter in July

14 See, for example, the references in: Ministry of Energy and Mineral Development. 2006. *Opportunities for Mining Investment*, Uganda.

15 For further information see Note by the Executive Director of the United Nations Environment Program (UNEP), Overview of Regional and National Environmental Information Networks, 24th session of the UNEP Governing Council, February 2007, UNEP/GC/24/INF/12, UNEP, Nairobi, available at [http://www.unep.org/gc/gc24/information\\_documents.asp](http://www.unep.org/gc/gc24/information_documents.asp)

**BOX 2. MINISTRY OF PUBLIC SERVICES CLIENT CHARTER 2007/08-2009/2010 (EXCERPT)**

**4.0. General Standards of Service of the Ministry of Public Service**

We shall at all times adhere to and continuously improve the standards of services indicated below:

- Answer all telephone calls by the third ring.
- Be courteous to all our clients.
- Attend to all our clients within 30 minutes from the time of arrival at our respective service points.
- Respond to all written correspondences within five working days of receipt.
- Provide information on new policies, reports, publications and circulars through the Ministry website....

2007 (Box 2) and supported the development of client charters in other ministries (e.g. Tourism, Trade and Industry and Health) and local governments.

However, a recent assessment of the Ugandan PSRP found that the notion of client focus is still hampered by challenges from the demand (clients) and supply (public officers) sides. In essence, clients could not hold the responsible public officers accountable and demand the due services because *"they had not been informed of the commitments in the charters as well as their rights and responsibilities during the implementation of the client charters"* (Tidemand and Ssewankambo, 2008). It still needs to be seen whether the client charters will lead to practical changes, better accountability and service delivery of government institutions.

Representatives of the two oil companies we interviewed described their intention of going beyond the EIA requirements by *"strategically engaging with communities"*. For this purpose they employ professionals who interact *"on the ground"* with local institutions, organisations and communities. But local politicians had often created unreasonable expectations about the possible benefits of oil exploitation in the Albertine Graben. Government officials felt that they did not have the status or resources to compete with political statements. As a result it was very difficult for the general public *"to distinguish between information and propaganda"*.

The oil companies had some degree of involvement in the development of the new oil and gas policy through the presidential roundtable for investors. But they did not make an input at a lower, more technical level. Consultations on the policy were organised through the local authorities and invitees included, for example, representatives of the business community, faith groups, *"cultural leaders"* and members of local councils. Central meetings were held in the main cities for several districts at a time. Feedback to the ministry mainly concerned royalties, benefits, land issues and resettlement. At this stage of the consultations NGOs were not officially invited to participate.

# Conclusion and recommendations

Although the role of public participation is limited under the current legislation, law and policy in Uganda do indicate efforts to open up environmental decision-making to public influence and scrutiny. The right of access to information and participation in environmental decision-making processes are recognised as general principles of accountable governance and are guaranteed through different legal instruments. But to date there is no corresponding legal framework in the oil exploitation sector and the existing governance structures do not sufficiently promote accountability and transparency.

In practice public participation is subject to several financial, technical and political constraints. The culture of secrecy within government bodies, weak civil society structures as well as the politics of patronage remain substantive challenges for the fair and equitable management of natural resources in Uganda. Given the array of needs and the general lack of resources, it is important to prioritise among the long list of possible recommendations to address these shortcomings. The following section therefore outlines some possible recommendations. The last recommendation of each section could be easily implemented within the existing framework of law and policy.

## Strengthening legal and institutional frameworks

There are various opportunities to strengthen the legal regime as it applies to public participation in oil exploitation and production decisions. These include:

- A revision of the *2005 Access to Information Act* clarifying its provision and scope of application in the oil and gas sector. The act could be substantially improved by incorporating the requirements to proactively publish previous requests and other documentation, waive fees for the poor and translate information into local languages. Exceptions to disclosure of information should be narrow and carefully drafted. The increased use of the existing law and subsequent applications for judicial review could help to clarify the provisions and gradually strengthen their value.
- Use the drafting of new provisions on oil exploitation and production to establish equitable arrangements for sharing benefits and meaningful stakeholder involvement. Introduce further sector specific EIA guidelines and a uniform assessment methodology, indicating high and low impacts of a project.<sup>16</sup> Include a requirement in the EIA regulations that the public must be informed adequately about the approval of a project and how its impacts will be addressed.
- Tackle the culture of secrecy and improve the institutional capacity for good governance and transparency. In practice openness and meaningful public involvement depend on daily decisions by civil servants and their commitment to applying the law correctly. This mindset can be created through training which addresses not only the formal questions of implementation, but also the rationale behind the legislation and the benefits for society and civil servant themselves.

<sup>16</sup> This makes it easier for project participants to measure the overall environmental performance of a proposal.



- Develop subsidiary legislation that enshrines openness as a core value and strengthens the independence of civil servants. The Ugandan government is in the process of drafting a set of regulations to “operationalise” the *Access to Information Act*. Such subsidiary legislation (that could also take the form of ministerial rules or a presidential decree) could provide a “protective shield” against influences and may create substantive leverage to improve the relevance of legal frameworks in practice. By emphasising the obligations of civil servants vis-à-vis citizens, protecting civil servants who disclose information and requiring decisions to be made in the public interest, it may be possible to begin undermining the culture of secrecy.

### **Strengthening civil society**

However, a sole focus on law and institutions may neglect the fundamental challenges encountered by Ugandan society at large. No matter how good the legal framework eventually may be it is only one step in promoting open governance. To date the experience in Uganda indicates that passing laws without addressing larger questions of capacity-building achieves very little (Mendel, 2005). The need to strengthen the demand side of accountability and build civic competencies was emphasised by almost all interviewees. There is a variety of possible responses by government, civil society organisations and donors to this need:

- Public education campaigns should be undertaken to ensure that the public is aware of their right to access information and participate in decision-making processes. If there is a lack of knowledge and structures to demand and enforce rights, any legislation on environmental governance is in danger of being perceived as just another alien Western concept promoted by donors and yet inadequate for developing countries (Kanyehamba, 2006).
- Encourage independent and balanced journalism to lay the foundation for informed social, economic and environmental choices. The government still expects the media to mainly report on successes and praise achievements. Journalists whose reporting has become “too critical” still experience intimidation and threats.
- In addition, the role of NGOs, churches, unions and other civil society stakeholders in disseminating information could be further strengthened. Collectively they often reach the poorest and most alienated citizens and, as a result, can serve as a (two-way) communicator on their behalf.
- Financial aid aimed at improving environmental governance and strengthening civil society should be channelled directly through credible non-partisan Ugandan NGOs and other civil society organisations. Currently, the large-scale programmes required to improve governance depend heavily on donor support. Many donor governments pool funds and channel support to Uganda directly through the national budgets (direct budget support). Whilst there is evidence that direct budget support has been instrumental in improving services in, for example, health and education, it might not be adequate in other areas. Since it primarily creates rights and liabilities between states, a recipient government may focus on its responsibility vis-à-vis donors and not the local population. Financial support directed away from independent organisations

giving government a degree of influence over its distribution could also undermine emerging civil society structures and hamper their capacity to act as an independent counterweight to the state.<sup>17</sup> Interviewees usually described concrete working relationships between NGOs and government officials at the technical level as good and mutually beneficial. NGOs often possess a unique set of skills and enjoy a higher degree of trust than government officials. However, at the institutional level they still feel perceived as “troublemakers”.

## Introducing strategic environmental assessment

If citizens have the right, means and capacity to get involved in decision-making processes, officials will also have better and more comprehensive information on which to base their work. But the new oil and gas policy remains particularly vague on the anticipated involvement of local communities and broader civil society in future benefit-sharing structures and the related decision-making processes. In addition EIAs are of limited use a consultation tool around large scale oil exploitation and production. Most of the oil exploration sites are located in protected areas where community access is limited.

- There is therefore a need for a wider-ranging assessment that allows for strategic decisions on the vulnerability of social and environmental systems, the required infrastructure and the related trade-offs. Whilst for the foreseeable future activities will mainly take place in a geographically defined area (Albertine Graben), there will be impacts on the whole country and its economy. The Ugandan government should therefore initiate a strategic environmental assessment (SEA, see Box 3) to feed into subsequent legislation and policy. Although some of the issues have been addressed as part of the consultations on the new oil and gas policy, an SEA would focus (in more detail) on the practical challenges arising from oil exploitation and provide, for example, a basis to set aside certain areas for nature protection and prepare for the influx of the workforce and the pressure on local resources and transportation. Ugandan NGOs and other civil society organisations would be allowed to play a much larger role in representing the interests of citizens during the process.

### BOX 3. STRATEGIC ENVIRONMENTAL ASSESSMENT

Strategic environmental assessment (SEA) describes a range of analytical and participatory approaches for integrating environmental considerations alongside social and economic aspects at the early stages of decision-making. It helps to develop and assess policies, plans and programmes. Unlike an EIA, an SEA is not related to a particular project but the information it generates can be used as part of an EIA at a later stage. In Uganda SEA-type approaches such as participatory tools have been used to inform the development of poverty eradication action plans.

Further information: Barry Dalal-Clayton and Barry Sadler. 2005. *Strategic Environmental Assessment: A sourcebook and reference guide to international experience*, Earthscan, London.

17 Jane-Lise Schneeberger, Die Budgethilfe: Nicht perfekt, aber zumindest existent, *Eine Welt*, Nr.4, December 2007; Tim Burr, Comptroller and Auditor General National Audit Office, *Providing Budget Support To Developing Countries*, Department for International Development, London, February 2008.

## Improving information dissemination

In general, Ugandan government institutions dealing with the environment and natural resources are under-staffed and under-funded. Even senior civil servants often find it difficult to obtain official documents and they hold on to their hard copies with a vengeance. Information technology can greatly facilitate data availability:

- NGOs, local officials, lawyers and others working with communities increasingly rely on the internet to fulfil their "gatekeeper" functions. However, at present only very few people have access to this technology. Hence the dissemination of information through radio, theatre performances or mobile (solar powered) cinema units, at local gatherings, and in different languages remains important. Initiatives such as the distribution of free (wind up or solar powered) radios to remote regions in Africa further support a "bottom up" approach to government accountability through citizen empowerment.
- A priority should be to build the relevant technical capacity within government institutions to operate a basic website which provides meaningful information and which is regularly updated. Such information should include their role, the types and forms of records held, relevant laws and policy documents, audited accounts, services to the public, achievements and so on.

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