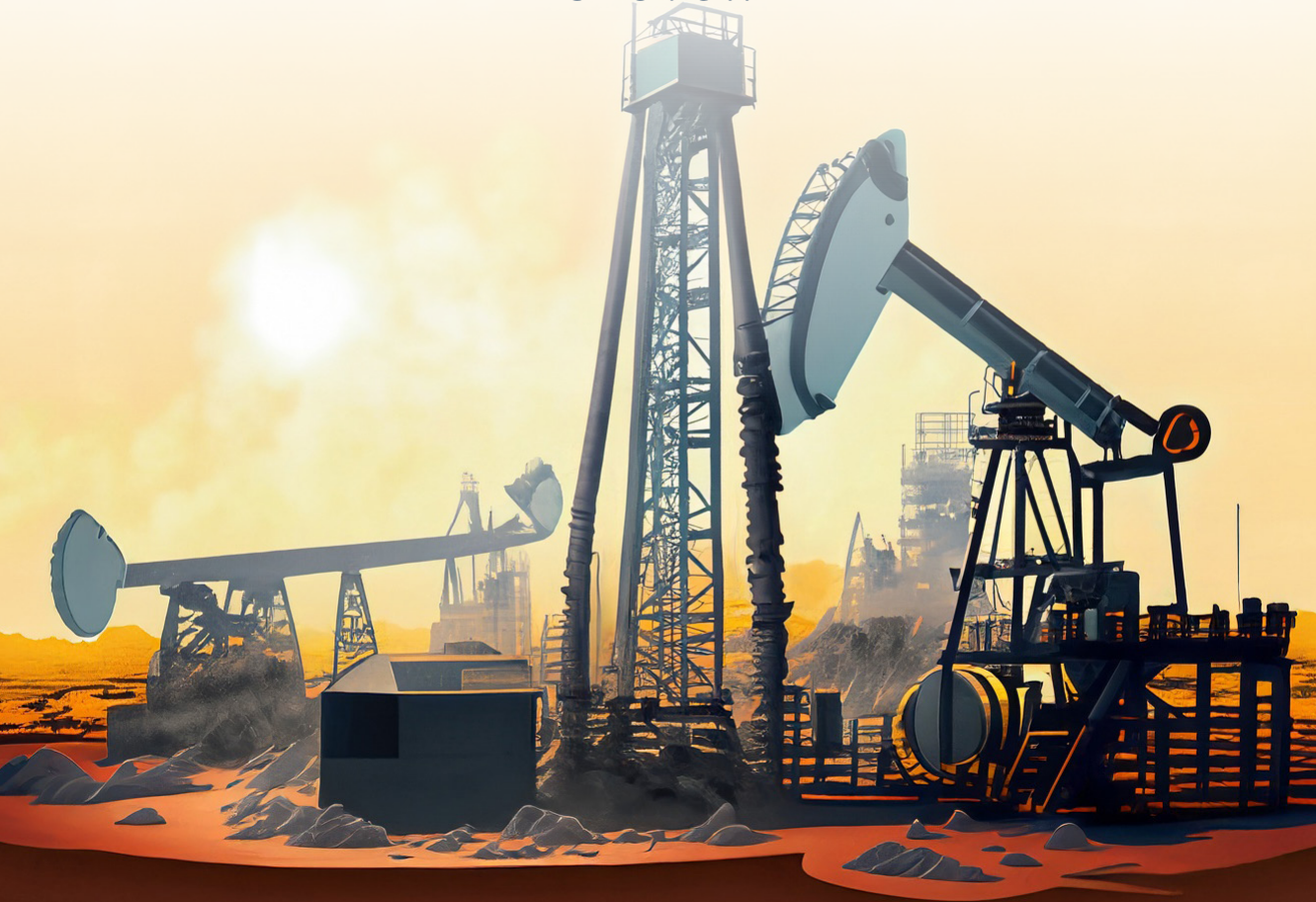




# MEMORANDUM

Submitted to the Minister of Energy and Mineral Development on September 4, 2023

## GAPS IN REVENUE GENERATION, TRANSPARENCY, AND MANAGEMENT IN UGANDA'S EXTRACTIVES SECTOR



October 2023

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# Gaps and Recommendation

Honorable Minister,  
Ministry of Energy and Mineral Development (MEMD).

## Preamble

This memorandum is presented to you by the Advocates Coalition for Development and Environment (ACODE), the Civil Society Coalition on Oil and Gas (CSCO), and the Albertine Graben Oil & Gas Districts Association (AGODA). The memorandum seeks to highlight the gaps in revenue generation, allocation, and management and contribute to the requisite policy and legal reforms within the extractives sector. This is primarily aimed at improving transparency, accountability, management, and equitable sharing of extractives revenue between the national and sub-national governments.

This memorandum is based on;

- i. The Uganda Extractives Industries Transparency Initiative (UGEITI) 2019/2020 and 2020/20201 reports, which among other things highlighted a number of gaps that need to be addressed;
- ii. A report of the sub-regional workshop organized by ACODE/CSCO and AGODA on extractives revenue sharing in which key stakeholders in local governments raised a number of challenges regarding domestic revenue mobilization in the sector;
- iii. A study undertaken by ACODE and CSCO's Domestic Revenue Mobilization for Development project titled "Optimizing the Role of the Extractive Industries in Domestic Revenue Mobilization: Analysis of Uganda's Mining and Petroleum Revenue Generation and Management Laws."

ACODE and CSCO have been implementing a project titled "Domestic Revenue Mobilization through Transparent, Accountable and Equitable Management of Extractives in Uganda" (DRM4D). The main objective of this project is to *enhance transparency, accountability, and equity in the management of extractives (oil and gas, minerals) for increased domestic revenue mobilization*. To attain this objective, a number of collaborative efforts have been made aimed at strengthening policy and legal frameworks to ensure more transparent, accountable, and equitable operations in Uganda's petroleum and mineral sub-sectors so as to increase equitable revenue mobilization.

ACODE, CSCO, and AGODA identified a number of gaps that undermine transparency, equity, and accountability in extractive revenue mobilization. These gaps and recommendations have been enumerated below:

### 1. Inconsistencies and lack of clarity on sub-national royalty revenue sharing by local governments

In the Mining and Minerals Act 2022, royalty-sharing proportions were revised giving the central government 70%; local governments 15%; and sub-county or town council 10%. Local governments consider royalties as one of the sources of local revenue.<sup>1</sup> Given that Section 85 (2)(3) of the Local Governments Act Cap 243 stipulates that the Sub-County shall retain 65% or higher of the local revenue generated and are required to remit 35% of the revenue to the district, the Mining and Minerals Act 2022 on the other hand allocates a higher proportion of royalty (15%) to local governments and a lower proportion (10%) to sub-county or town council, and yet mining activities are undertaken at the lower local government level. Also the royalty sharing formula in the

1 Section 80 of the Local Governments Act Cap 243.

second schedule of the Mining and Minerals Act, 2022 does not take into consideration a Municipal council or a City as entities to benefit from royalties. There is need for clarity and harmonization of royalty-sharing proportions between upper and lower local governments in the mining law in line with the revenue-sharing model set by the Local Government Act.

### **Recommendation**

The minister responsible for minerals should cause an amendment of the second schedule in the Mining and Minerals Act, 2022 to allocate a higher royalty sharing proportion to the lower local governments (sub-county, town council, municipal council, and city division) and reduce the proportion of royalty to the upper local government (district). The amendment should also include Municipal councils and Cities as entities to benefit from royalties.

## **2. Lack of Regulations on the utilization of mineral royalties**

Whereas Section 75 (9) of the Public Finance Management Act (FMA) provides that royalties from petroleum production shall be appropriated to a local government in the annual budget for development purposes, the Mining and Minerals Act being the principal Act on all matters incidental to minerals, remains silent on the utilization of mineral royalties by local governments. The implication is that each local government will have the discretion to use the funds from royalties from mining as they deem fit and therefore, there is a risk that such royalty may not be used to develop the local government where the mining has taken place.

### **Recommendation**

The minister should make Regulations for the better administration and utilization of mineral royalties at the sub-national level: These Regulations would be pivotal in restricting appropriation of mineral royalties to the delivery of public services such as health, clean and safe water supply, education, agriculture services, and roads among others.

## **3. Inconsistent information on**

## **revenue generated from mining**

In recent times, gold has been Uganda's leading foreign exchange earner. However, there is a concern about the contradiction in the disclosure of the revenue generated from mining between the Uganda Revenue Authority (URA) and the Directorate of Geological Survey and Mines (DGSM). This contradiction in information sharing is inconsistent with the principles of transparency in revenue generation, management, and sharing.

### **Recommendation**

Reconcile the data regarding minerals produced and exports registered: The Directorate of Geological Survey and Mines should put in place a mechanism for reconciling the minerals produced and the exports registered by the Uganda Revenue Authority, and confirm their source to help in royalty determination.

## **4. Failure by the central government to publicly disclose the amount and appropriation of royalties from minerals**

Royalties are calculated ad valorem on all minerals obtained in the course of all stages of mineral production i.e., prospecting, exploration, mining operations.<sup>2</sup> However, the computation of royalties is not only too broad clamping all minerals, but is also largely dependent on the periodic returns to MEMD which according to the Auditor General remain irregular.<sup>3</sup> This has affected the demand side of accountability as citizens. Local governments (upper and lower) and civil society organizations are not armed with the right information to hold the state accountable for royalties due to the local governments. In addition, access to information such as resource contracts which specify the amount of royalties due from the companies during production is also very critical for local governments to determine

2 Section 98 (1)

3 Report of the Auditor General to Parliament for the Financial Year ended 30th June 2022 (Consolidated Audit Findings) Page 91, Paragraph 3.18.1.

the shares of resource revenues received by the central government that they are entitled to in terms of royalties. Much as no local government entity has received royalties from the oil resources because production has not yet begun, there are examples in the mining sector where mining has been undertaken for many years but the local governments do not have full information regarding their fair share of royalties.

## Recommendations

- The Minister should expeditiously make regulations under Sections 180 (1), 180 (3), 183, 184, and 185 MMA for standardized, consistent, reliable and optimal determination of mineral royalties.
- The Minister should publicly disclose all mining permits issued, and all mining revenues paid to the government to enable public scrutiny of how much is due to the government and how the extractives revenue is to be appropriated.
- To enhance citizen participation in holding the central government and upper local government, the Minister should disclose information regarding the transfers/ disbursements of mineral royalties to local sub-national governments.

## 5. Lack of accurate information/ data on quantity of minerals extracted

Section 179 of the Mining and Minerals Act (2022) stipulates that all minerals obtained and mined in the course of prospecting, exploration, mining or mineral beneficiation operations shall be subject to payment of royalties on the gross value of minerals based on the prevailing market price of the minerals at such rates as shall be prescribed. However, both the upper local governments and lower local governments do not know how much is mined and collected out of their districts. This is the case because the Ministry of Energy and Mineral Development (MEMD) relies on declarations from the mining companies in the form of monthly production returns, which are not independently verified; which causes a high

risk of under-declaration of mineral production volumes. Secondly, there is no permanent presence of government mine inspectors to confirm the production figures declared which creates a potential risk of under-declaration of production by mining entities.

## Recommendation

The minister should disclose the amounts of mineral royalties generated and transfers of royalty from the central government to the upper local governments.

## 6. Lack of clarity with regard to which districts will benefit from oil production to enable early planning

Local governments have been encouraged to prepare to receive and effectively utilize royalties from oil and gas. However, representatives of the local governments were wondering how they will be able to prepare when there is no clarity about which district qualifies to benefit and which does not. There are also districts where the pipeline is passing and are wondering whether they will be entitled to receive royalties from the production of oil. The minister responsible for petroleum is enjoined to publish the local governments eligible to receive royalties and this has not been done.<sup>4</sup>

## Recommendation

Publish the list of local governments to benefit from oil production: The minister responsible for petroleum should publish the list of local governments eligible to receive royalties as is required by law to enable them to plan and prepare better.

## 7. Lack of national content policy for the Mining sector

Whereas the MMA envisages local content in the mining sector emphasizing knowledge transfer; employment of Ugandan Citizens;

4 Section 75(2), the Public Finance Management Act, 2015 (As amended).

prioritization of Ugandan goods and services; technology transfer and research and training; the MMA is silent on regulations prescribing the requirement for licensees/sub-contractors and other entities to integrate local content into their operations.

### **Recommendation**

The Minister should make Regulations requiring licensees, contractors, sub-contractors, and other entities involved at all levels of mineral extraction operations in Uganda to consider and incorporate national content as an important element of their overall operations.

## **8. Limited linkage between Local Governments and Ministry of Energy and Mineral Development**

Whereas the mineral and petroleum policies provide for roles of local government, in practice, there is limited linkage between Local Governments and Ministry of Energy and Mineral Development on issues of extractives in Local Government. This has created limited ownership of the extractive sector processes

and made Local Governments spectators in the sector.

### **Recommendation**

Establish an extractives focal person within the local government system at the sub-national level: To enhance the seamless implementation of extractive policies and relevant legislation, the Minister for Energy and Mineral Development in consultation with public service and local governments, should establish an extractives officer with in the local government system in districts were mining and oil and gas activities are taking place.

## **Conclusion**

Transparency, accountability and equity are critical principles in management of extractives. It is important therefore, that as government moves forward to develop its extractives sector, these principles are operationalized in order to ensure that the resource wealth is managed for the benefit of the whole population.





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