

Shrinking civic space in extractives governance

On Thursday, Uganda released its 3rd EITI report and like the previous two reports the variations between the figures of gold exports reported by

Uganda Revenue Authority and reports by the Department of Geological Surveys and Mines (DGSM) are great, and this explains to why over sh31b gold taxes go unpaid.

The EITI Standard enables government to disclose how much is received from extractive companies. Extractive companies are also able to disclose how much they pay. The process of EITI is overseen by participants from government, extractive companies and civil society.

Uganda became a member of the EITI in August 2020 after submitting a candidacy application that outlined its commitment to enhancing governance in the extractive sector, as this tool will demystify and simplify the extractives sector for all interested parties with hope of curbing the existing shrinking civic space in natural resource governance.

Uganda became an EITI member at a time when extractive sector had for long been shrouded in mystery coupled with a lot of speculation, but now information on the extractives will be made public.

Once information is routinely disclosed, it will promote public and investor confidence in the Government's management of the sector. Furthermore, the public will be able to hold duty bearers to account on how expenditure is apportioned, and to outline what they consider to be their development priorities for oil expenditure.

If well implemented, Uganda's membership in EITI will strengthen public and corporate governance, enhance accountability, strengthen revenue

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management and boost investor confidence in the country

Forexample, Requirement 2.4 of the EITI Standard is to the effect that implementing countries are encouraged to publicly disclose any contracts and licences that provide the terms attached to the exploitation of oil and gas. Important to note is that the EITI Standard requires EITI-implementing countries to disclose all contracts and licences. To this effect, Uganda has gone the extra mile to create a committee comprised of multi-stakeholder group members that is tasked with studying government policies on disclosure and advise accordingly.

A recent development was the revision of the 2003 Mining and Minerals Act. The Mining and Minerals Act 2022 provides new legal provisions for the disclosure of contracts and beneficial owners of companies, in line with the EITI Standard.

Uganda has all the required legal frameworks that promote contract disclosure. Forexample, Uganda's upstream oil and gas contract framework is based on a Production Sharing Agreement (PSA). The rights and obligations of licencees are governed principally by the terms and conditions of the PSA.

Access to Information Act, 2005 stipulates that all agreements, licences and any amendments to the licences or agreements whether or not terminated or valid should be made available to the public domain for scrutiny.

The EITI Standard is about data, disclosure and debate. Publish the data, disclose

the information on revenue collection and expenditure, production as well as the legal and regulatory frameworks, amongst other things. These disclosures shall trigger a debate on pertinent issues affecting the sector.

However contrary to this, both the Model Production Sharing Agreement (MPSA) and the Petroleum (EDP) Act, 2013 include confidentiality provisions. For example, Article 33 of the MPSA states that "Subject to the Constitution the Act Regulations Access to Information Act, 2005, this Agreement and any confidential information of any Party hereto which becomes known to the other Party in connection with the performance of this Agreement shall not be published or disclosed to third parties without the former Party's written consent".

Furthermore, Section 152 of the Petroleum (EDP) Act, 2013 all data submitted to the minister by a licencee shall be kept confidential and shall not be reproduced or disclosed to third parties. These confidentiality clauses are seen to be raising red flags in the all three EITI reports.

From the recent assessment Uganda received a moderate score of 78.5% and this was partly because of these confidentiality clauses where state-owned enterprises (SOE) leveraged the opportunity not to disclose, for example, that the Uganda National Oil Company (UNOC's) PSAs are not in the public domain and this inhibits public scrutiny and hence a barrier to service delivery.

Relatedly, the third EITI report notes that discrepancy between mineral production and export doesn't only apply to gold, but also vermiculite and zinc which aren't reported

among the minerals produced. All these discrepancies are due to confidentiality provisions which inhibit disclosure and hence extractive sector mismanagement.

Gold exports continue to be much higher than gold production and gold imports; for example URA reported gold exports from refineries worth sh6.3b compared to imports reported by one refinery, Thaba, of sh1.3b. Gold production was reported at 15kg by the Directorate of Geological Surveys and Mines (DGSM).

Accuracy of export data and analysis of the component of gold value chain continue to be key recommendation from the previous two EITI reports (the first and second EITI reports).

According to the third EITI report, African Gold Refinery exported 2,421kg of gold valued at sh577.9m.

Aurnish Trading LTM exported the largest amount, with 3,636kg worth sh757.7m. Bullion Refinery Limited shipped 11,080kg, totalling sh2.333b, while Metal Testing and Smelting Co. Ltd exported 10,044kg, valued at sh1.907b.

Simba Gold Refinery LTM exported 2,836kg, worth sh130.9b. In an attempt to explain these discrepancies, some officials suggest that the reported gold may be entering the country through undocumented means, primarily from neighbouring countries, particularly the Democratic Republic of Congo,

The UGEITI report for the fiscal year 2021/2022, like the three previous reports continues to witness the variations between the figures of gold exports reported by Uganda Revenue Authority and reports made by the DGSM.

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