

AFRICA RISK CONSULTING**Country briefing – Uganda****23 July 2014****Summary**

The Uganda People's Defence Force (UPDF) clashes with a tribal militia after attacks on security installations in Rwenzori in western Uganda. The government downplays speculation that the Allied Democratic Forces-National Army for the Liberation of Uganda (ADF-NALU) was involved. A tax appeals tribunal orders Tullow Oil to pay \$407m in capital gains tax relating to a 2012 farm in deal with Total and China National Offshore Oil Corporation (CNOOC). The United States (US) embassy issues warning of a specific terror threat to Entebbe International Airport. The Civil Aviation Authority (CAA) withdraws air operator certificates from all international commercial air operators registered in Uganda.

1.1 Militia attacks police and military targets in Rwenzori

The **Uganda People's Defence Force (UPDF)** clashed with a tribal militia in the **Rwenzori Mountain Region** indicating that greater stability in the eastern **Democratic Republic of Congo (DRC)** will not ensure increased security in western Uganda. The militia attacked police stations and military barracks in thirteen coordinated attacks across **Kasese, Ntoroko** and **Bundibugyo**.¹ The UPDF said on 7 July that it had killed 90 of the militia during the clashes, and that 80 others are in detention.² At least 17 civilians, police and soldiers died during the attacks on the military and police installations. The militia were armed with guns and crudely fashioned weapons.

While the three districts involved have a long history of insurgency against the government and inter-tribal clashes for resources, there is confusion about the identity of the militia behind the coordinated attacks. The government insists that the militia has no connection to the eastern DRC-based **Allied Democratic Forces-National Army for the Liberation of Uganda (ADF-NALU)**.³

¹ The Independent, 7 Jul 2014.

² The Independent, 7 Jul 2014.

³ The Independent, 7 Jul 2014.

The ADF-NALU formed in the eastern DRC in 1995 from a number of different armed groups seeking the overthrow of Ugandan president **Yoweri Museveni** (1986 - present). Despite its original objective, it has never established a meaningful foothold in Uganda and has focused much of its activity in the DRC.⁴ The government claims that the militia belonged to the **Obusinga bwa Rwenzururu**, a sub unit of the **Bakonzo** tribe, whose members have previously clashed with the neighbouring **Bamba** tribe especially over access to land and the establishment of a **Rwenzururu** kingdom. The UPDF admitted that the militia stole both small and heavy weapons from the military installations. There is no independent verification of the government's claims.

The sophisticated nature of the raids and the seizure of weapons may indicate the involvement of UPDF deserters who have engaged in armed banditry in the region. Desertions from the UPDF have increased in the past couple of years due to low pay and a lack of promotion opportunities. The preferential treatment afforded to Museveni's son, brigadier **Muhoozi Kainerugaba Museveni**, and his **Ugandan Special Forces Group (USFG)** has encouraged discontent in the UPDF ranks and increased levels of desertion. On 24 June, lieutenant **Alfred Ntare**, commander of the presidential protection force, deserted with 16 other officers.⁵ In 2013, it was estimated that over 400 UPDF personnel had deserted, often with their arms and uniforms.⁶ Typically, the government has responded with amnesty offers but is now taking a tougher line with the **Internal Security Organisation (ISO)** leading regular operations to detain deserters. However, the economic grievances behind the majority of desertions means that deserters are more likely to engage in banditry and armed robbery than pose a threat to the stability of the government.

The involvement of the ADF-NALU, if confirmed, would raise the risk of it resuming the Islamist insurgency it fought in western Uganda during the late 1990s and early 2000s, and increase the threat of an attack on oil fields in the **Albertine** rift basin.⁷ There are increasing tensions between Muslim and Christian communities in the region. On 5 July, the UPDF said it had killed an individual involved in an incident in June in which a Muslim militia stormed a church and decapitated a worshipper.⁸ Security sources have accused the ADF-NALU of being behind the attack.⁹ The ADF-NALU last carried out a major attack in Bundibugyo in 2007 but remains active in the eastern DRC and has ties with the

⁴ International Crisis Group, Dec 2012.

⁵ Sudan Tribune, 24 Jun 2014.

⁶ Terrorism Monitor, 3 May 2013

⁷ Source, East Africa analyst

⁸ Daily Monitor, 5 Jul 2014.

⁹ The Independent, 7 Jul 2014.

Somalia-based al Shabaab.¹⁰ Similar groups affiliated to **al Qaeda** had previously provided the ADF-NALU with training and financing.¹¹

The **United Nations Security Council (UNSC)** imposed an arms embargo and assets freeze on the ADF-NALU on 1 July as part of the DRC sanctions regime.¹² The UNSC accused the group and its leader, Ugandan national **Jamil Mukulu**, of recruiting child soldiers and carrying out attacks on **Mission de l'Organisation des Nations Unies en République Démocratique du Congo (MONUSCO)** peacekeepers. A MONUSCO taskforce report claims it is uncertain whether the ultimate objective of the 1,200- 1,400 ADF-NALU militants remains the ousting of President Museveni. The report also said that the tactics of the group “*known to dabble in terrorism*” continue to evolve.¹³ The taskforce says in its report that during a recent ADF-NALU attack in eastern DRC, each small group of ADF-NALU fighters included “*one bearded man who was speaking Arabic*”, bolstering reports of operational links with al Shabaab.¹⁴

The ADF-NALU has been relatively quiet in recent years, following a 2001 Ugandan offensive that substantially reduced its military capacity and curtailed its logistical and financial networks. However, the government considers it a greater threat than previously due to its links to al Shabaab.¹⁵

*“The UDFP likes having a pretext for increased security presence in western Uganda ... there are continued allegations against the ADF-NALU but there have been no incursions or direct threats to Uganda yet.”*¹⁶

There is increased stability in the eastern DRC since its government **Forces Armées de la République Démocratique du Congo (FARDC)** secured a total military victory over the **Mouvement du 23 Mars (M23)** insurrection in November 2013. This allowed Uganda and the **United Nations (UN)** to begin the repatriation of 184,000 DRC refugees in April.

1.2 Tax tribunal orders Tullow Oil to pay \$407m in capital gains tax

¹⁰ Source, East Africa security analyst

¹¹ Source, East Africa security analyst

¹² UN news centre, 1 Jul 2014.

¹³ Reuters, 22 Nov 2013.

¹⁴ Reuters, 22 Nov 2013.

¹⁵ Source, diplomatic security officer, Kampala

¹⁶ Source, political analyst, Kampala

A tax appeals tribunal ordered **Tullow Oil** to pay \$407m in capital gains tax in a 15 July ruling which may raise concerns about contract sanctity and institutional uncertainty in Uganda's oil sector.¹⁷ Tullow is a key company in Uganda's oil sector and it will probably receive a production licence in 2014 (see *ARC Uganda June 2014 Briefing*). Tullow, in consortium with **Africa Oil**, has submitted a proposal for the design of the **Lokichar to Lamu** section in **Kenya** of the **East Africa** regional oil pipeline that will connect Uganda's oil fields with Lamu port on Kenya's east coast.¹⁸ Tullow, **Total** and **China National Offshore Oil Corporation (CNOOC)** have also submitted a proposal for the **Hoima** to Lokichar section.

The capital gains tax dispute relates to Tullow's 2012 farm in deal with Total and CNOOC for its 66% interest in **Exploration Areas EA1, EA2 and EA3**.¹⁹ The **Uganda Revenue Authority (URA)** claimed that it was entitled to capital gains tax on the farm in deal worth \$2.9 billion. Tullow disputed the URA's interpretation of the production sharing agreement claiming that the agreement would not be subject to any tax, fee or levy.²⁰ The tribunal ruled in the URA's favour and ordered Tullow to pay the full balance of capital gains tax owed. It imposed interest of 2% per month until the payment is completed. The URA issued a statement saying that the total amount of capital gains tax owed was \$543m but that Tullow was entitled to reinvestment relief of \$135m for investments made between February 2012 and February 2013. The URA called on Tullow to provide evidence of this reinvestment within three months. Tullow has said that it will appeal the ruling, claiming that the amount already paid exceeds its liabilities in relation to capital gains tax. In a statement, Tullow also said that the company

*"is extremely disappointed that the tax appeals tribunal ruled that the energy minister did not have the legal authority to grant such an exemption. Tullow will challenge the... assessment through the Ugandan courts and international arbitration but hopes that further direct negotiations with the government can resolve this matter."*²¹

Ongoing arbitration or legal challenges may undermine investor confidence in contract sanctity in Uganda. Capital gains tax disputes have already caused uncertainty in the sector. When Tullow Oil, Total and CNOOC signed a production sharing agreement with the government in January 2012, it was done in direct contravention to a standing parliamentary resolution calling for a moratorium on oil

¹⁷ The East African, 17 Jul 2014.

¹⁸ Daily Nation, 17 Jul 2014.

¹⁹ The East African, 17 Jul 2014.

²⁰ The East African, 17 Jul 2014.

²¹ The East African, 17 Jul 2014.

deals until the government had capital gains tax legislation in place. President Museveni intervened and signed the production sharing agreement. While not technically unlawful on Museveni's part, the action was almost entirely unilateral.²² There is now a risk that these agreements may become symbolic targets for opponents who in future want to reject and dismantle Museveni's legacy.

The role of the energy minister is especially concerning for oil companies. When parliament passed the **Petroleum (Exploration, Development and Production) Bill** in December 2012, it included the controversial Clause 9 provision giving the energy minister the power to issue and revoke licences and to override parliament.²³ Opposition MPs argued that this gives too much discretion to one politician and called for the power to issue and revoke licences to reside in an independent authority.²⁴

It is notable how little visibility energy and mineral minister **Irene Muloni** enjoys. She has had a low profile even as the country is preoccupied with endless oil debates and is in a particularly weak position given that her remit for the oil sector is only temporary pending the establishment of an oil ministry.²⁵ Museveni overrides Muloni on all key decisions.²⁶ However, as with most other policy areas in which Museveni still takes a direct interest, he does not appear to consult particularly widely with anyone for input on key questions. He is known to solicit advice and technical information from acquaintances rather than involving ministries, and takes a selective interest in documents put in front of him.²⁷

The ruling will also embolden the URA which is increasingly proactive in its revenue collection efforts. In April, the URA joined the **Global Forum on Transparency and Exchange of Information for Tax Purposes** in a bid to crack down on tax avoidance.²⁸ The Global Forum is an **Organisation for Economic Co-operation and Development (OECD)**-managed initiative to increase tax compliance by allowing members to exchange information and order simultaneous audits of companies suspected of malpractice. URA commissioner general **Allen Kagina** said that increasing involvement of the foreign registered or domiciled private sector companies in Uganda's oil and gas sector made membership of the Global Forum necessary. The URA has faced a number of legal disputes with

²² Source, East Africa analyst

²³ It was eventually implemented in March 2013.

²⁴ Source, East Africa analyst

²⁵ Source, East Africa analyst

²⁶ Source, East Africa analyst

²⁷ Source, East Africa analyst

²⁸ Daily Monitor, 8 Apr 2014.

multinational corporations over unpaid capital gains tax, notably with **Zain Telecom** following the 2010 sale of its African network to **Bharti Airtel Telecom**, and with **Heritage Oil** following the 2010 sale of its Ugandan assets to Tullow Oil (see below).²⁹ Membership of the Global Forum will also see members peer review Uganda's legal framework to bring its business legislation in line with international standards. This will include the Company Act 2012, the Bank of Uganda Act 2004, and the Capital Markets Authority Acts 1996.

In a separate dispute, the court of appeal in **London (United Kingdom)** on 23 July rejected Heritage Oil's case to reverse a 2013 high court ruling that it was liable for \$313m in capital gains tax relating to Tullow's acquisition of Heritage Oil's **Blocks 1 and 3A** in July 2010.³⁰ Heritage claimed that it was not liable for the \$434m capital gains payment and remitted instead \$121.5m to the URA with Tullow covering the difference. The high court found that Heritage Oil was liable for the rest of the payment but allowed the company to appeal certain aspects at the court of appeal.

1.3 Terror threat at Entebbe International Airport

The **United States (US)** embassy on 3 July issued a warning of a specific terror threat to **Entebbe International Airport**, notifying US nationals to avoid the airport between 21.00 and 23.00 that evening.³¹ While the US has regularly released security warnings in recent months, this warning differed in terms of its specific nature. The US said that the **Uganda Police Force** was the source of the intelligence regarding an unknown terrorist group. The warning had no impact on flights with departures and arrivals continuing to schedule. Domestic security forces deployed in **Kampala** under the authority of the **Joint Anti-Terror Task Force (JATT)** in response to the same security threat.³² Entebbe International Airport was the main location of the security sweep. Additionally, there was an increased security presence of heavily armed and camouflaged military personnel including special forces and snipers, and **Counter Terrorism Police** at key infrastructure in Kampala. Security forces erected barriers on main thoroughfares and searched individuals in both the central business district and on the road to the airport. The JATT temporarily assumed responsibility for security at Entebbe International Airport.³³ Inspector general of police **Kale Kayihura** warned a passing out parade of newly graduated aviation security personnel that Entebbe International Airport did not have the necessary technology to stop attacks and that a terror cell had already conducted trial runs at the

²⁹ Daily Monitor, 8 Apr 2014.

³⁰ Irish Independent, 23 Jul 2014.

³¹ Daily Monitor, 4 Jul 2014.

³² Daily Monitor, 4 Jul 2014.

³³ Daily Monitor, 4 Jul 2014.



airport.³⁴ The **Kampala Metropolitan Police** also included the **Munyonyo Commonwealth Resort** as a possible target during ongoing international conferences.³⁵

1.4 International commercial airlines lose operator certificates

The **Civil Aviation Authority (CAA)** withdrew air operator certificates from all international commercial air operators registered in Uganda, notably regional carrier **Air Uganda**, in June, leading to logistical challenges for the regional transport of freight or personnel.³⁶ Air Uganda was the only scheduled passenger airline affected, the other airlines - **Uganda Air Cargo Corp** and **Transafrik Uganda Ltd** - were freight carriers. The withdrawal of the licences followed a scheduled **International Civil Aviation Organisation (ICAO)** audit of the CAA. The ICAO audit failed the CAA, highlighting shortcomings in its oversight and regulatory capacities. While the ICAO audit did not survey the airlines that operate under the CAA's supervision, it questioned the CAA's authority to award certificates. The CAA responded by withdrawing air operator certificates from all Ugandan registered airlines that fly internationally. The CAA in a statement on 21 July claimed that Air Uganda had allegedly failed to meet the passenger safety and security standards before the ICAO audit.³⁷ Air Uganda holds an **International Air Transport Association (IATA)** safety audit certificate.³⁸

The three affected airlines have grounded their flights, with Air Uganda warning that it views the suspension of services as indefinite and that reimbursing clients and meeting fixed costs means that they will require new investment to resume services.³⁹ Aircraft lease agreements typically include provisions cancelling the leasing of aircraft if an airline is not able to fly. Air Uganda previously flew its fleet of three aircraft from Entebbe International Airport to **Nairobi, Dar es Salaam, Mogadishu, Mombasa** and **Juba**.

2 Implications

The Ugandan military is likely to respond aggressively to any perceived ADF-NALU provocation. Despite this, there is increased risk of violence in western Uganda as the 2016 elections approach. Ethnic militias will clash over access to resources and political influence. Increased ethnic tensions in

³⁴ Daily Monitor, 4 Jul 2014.

³⁵ Daily Monitor, 4 Jul 2014.

³⁶ East African, 19 Jul 2014.

³⁷ Daily Monitor, 21 Jul 2014.

³⁸ www.iata.org

³⁹ East African, 19 Jul 2014.

the region will require careful management by companies coupled with good community liaison and effective community engagement. UPDF desertions in west Uganda will continue, with the lower ranks frustrated at the better opportunities and conditions enjoyed that the SFG enjoys. This raises the risk of armed banditry rather than a wider insurgency. Instability in the west will place cargo at increased risk of disruption and theft, and raise the risk of injury to personnel, although they are unlikely to be specifically targeted.

The capital gains tax dispute is indicative of Uganda's need to establish a transparent and effective regulatory framework. The **Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013** provides for the creation of three institutions, the **Directorate of Petroleum**, the **Petroleum Authority** and the **National Oil Company**. The government has not set up any of these bodies. Even when it does, the energy minister will remain the dominant office holder, meaning that effective institutional regulation is unlikely. The government remains optimistic that commercial oil production will begin in 2017, but 2018 onwards appears a more probable time frame.

The threat of an al Shabaab attack on key infrastructure or places frequented by westerners in Kampala or Entebbe remains high. The concern is that complacency will increase with each security notice that passes without incident.

The CAA will not quickly reissue the air operator certificates. The financial losses accrued during the grounding of the planes means that the airlines will struggle to recover. **Ethiopian Airlines** has long vied with **Kenya Airways** for supremacy in East Africa and both will seek to assume control of the Air Uganda routes.