



OIL: UGANDA'S OPPORTUNITY FOR PROSPERITY

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WINNER OF THE 2012 DR. SUSAN AURELIA GITELSON
AWARD FOR HUMAN VALUES IN INTERNATIONAL AFFAIRS



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May 2012

Executive Summary

The discovery of commercial quantities of oil presents Uganda with both opportunities and challenges. Using reasonable estimates, the country possesses at least \$75 billion in assets in the form of oil – five times Uganda’s 2010 national GDP. Even taking into account that the proceeds must be shared with oil companies and others, oil will make a substantial addition to Uganda’s national wealth. There is great potential for Uganda to leverage this newly discovered wealth for the betterment of its people and to bring a generation out of poverty.

At the same time, policymakers must be aware that the African continent has too many examples of countries that missed their opportunity to apply oil wealth wisely. Oil has unfortunately resulted in conflict or strife in Nigeria, Sudan, Chad and Angola. Its development can accentuate discords between those who benefit from its development and those that suffer the disruption and displacement that so often accompany its extraction. Moreover, dependence on petroleum revenues can undermine a country’s competitiveness in other sectors, leaving it vulnerable to the inevitable decline in production once the resource is exhausted.

Once encountered, the so-called “resource curse” is almost impossible to escape – it must be avoided through rigorous preparation.

Recommendations

This report, informed by extensive consultation and interviews with lawmakers, government officials, academics, journalists, international donors, civil society and local affected communities, argues that Uganda has a short window of opportunity to establish the necessary legal, good governance, economic, environmental and social foundations for a strong oil sector before full-scale production in 2016. It contains a series of recommendations along each dimension:

Legal

Uganda must upgrade its petroleum-related laws to meet the challenges presented by commercial oil production and apply them to current as well as future projects. The licensing process needs updating to reduce the range of topics subject to negotiation, reflecting Uganda’s stronger bargaining position as a country with proven reserves of oil.

Good Governance

Uganda needs strong and reliable institutions that are well-equipped to monitor the oil industry and to enforce regulations. Uganda’s institutions are not yet sufficiently robust to meet the challenge of a professional oil industry with its skilled and experienced staff, and must prioritize strengthening of critical oil-related agencies prior to full scale production.

Specifically, we recommend strengthening checks and balances of decision making authorities within the oil sector; ensuring the independence of policy and decision-making from outside influences; strengthening institutions’ enforcement powers; promoting accountability; and conducting capacity building in key institutions by taking advantage of donor support.

Economic

Much of the focus on oil sector development centers on how oil revenues will be collected, held and spent by the State. The experience of other countries demonstrates that discipline on managing revenues is critical to prevent losing or misspending the windfall, or even worse, damaging other parts of the economy.

Accordingly, the report contains recommendations on the adoption of a licensing process to optimize government take through open bidding, on the establishment of a resource fund to hold and invest the revenues until they can be deployed within Uganda, on the implementation of a process to identify spending priorities, and on ways to ensure socio-economic spillover benefits beyond the mere extraction of oil, including the delineation of a manageable role for the national oil company.

Environmental

Oil discoveries have occurred in the Albertine Graben, which is a very ecologically sensitive area. Accordingly, stringent environmental conditions and management will be required to protect the local environment from environmental risks associated with oil drilling.

The report proposes a comprehensive Environmental Management System that includes good planning practices (prior to production), a clear and transparent licensing regime to ensure that only oil companies with top environmental records are invited to participate in Uganda and safeguards to avoid, mitigate, and offset foreseeable environmental damage.

Social

Local communities will be the ones most impacted by oil development, and addressing their needs is critical to ensuring fairness as well as sustainable development of the oil industry. The bitter experience of countries such as Nigeria and Sudan shows that local discontent can flare into violence if not justly addressed by the central government.

Our report presents recommendations on two particular issues: land rights and compensation, so that local communities are not unfairly displaced from their traditional homelands, and ensuring local economic and decision-making participation in the oil industry, so that benefits accrue at the local level.

Implementation roadmap

The most urgent priorities, to be addressed in the next 6-12 months, include passing updated legislation on the licensing and revenue management processes, establishing a compensation regime for those who will be displaced by oil development and developing appropriate environmental safeguards. The conclusion to this report contains guidance on how to order the implementation of the recommendations in a coherent way.

Avoiding the resource curse will not be easy. Yet Uganda has the advantage of learning from other countries' experiences, stable government and an educated population. With foresight, imagination, hard work and strong leadership, Ugandans can use oil to build a platform for prosperity. We hope this report can assist in their efforts.

Summary of recommendations

No.	Section	Para	Heading	Recommendation
1.	Legal	2.2.1	Update petroleum legislation	Pass petroleum legislation as a matter of urgency, incorporating feedback from stakeholders on suggested improvements.
2.	Legal	0	Apply the new laws to recently signed PSAs	Ensure that amendments to Petroleum Bills apply retrospectively to recently signed PSAs.
3.	Legal	2.2.3	Increase specificity in laws to reduce negotiation scope	Update the licensing process to include pre-qualification of bidders on clear criteria and include as much as possible in the Law so there are limited topics subject to negotiation in the PSA.
4.	Governance	3.2.1	Establish a clear division of decision-making powers across multiple ministries/agencies	Ensure that licensing, monitoring and revenue collection are handled by separate agencies, with the Petroleum Authority in charge of licensing, environmental monitoring and compliance undertaken by the National Environmental Management Authority (“NEMA”), and revenue collection by the Uganda Revenue Authority (“URA”). Mandate the Attorney General and the Inspectorate of Governance to oversee all agencies.
5.	Governance	3.2.2	Create an oversight role for Parliament	Create a joint parliamentary and governmental oversight committee with clear oversight and ratification powers and strong involvement of civil society.

No.	Section	Para	Heading	Recommendation
6.	Governance	3.3.1	Adopt a government code of conduct governing conflicts of interest that extends to family members	<ul style="list-style-type: none"> • Amend section 159 of the EDP Bill to extend to public officers' family members and affiliated companies. • Ensure proper enforcement of the <i>Leadership Code Act</i> and the <i>Code of Conduct and Ethics</i>.
7.	Governance	3.3.2	Implement strict penalties for ethical breaches	<ul style="list-style-type: none"> • Increase the capacity of oversight organizations (funding, human resource and training). • Enjoin Parliament to implement recommendations formulated in the Inspector General and Auditor General's reports. • Create an internal ethics committee in each agency. • Hold superiors responsible for their subordinates' misconduct.
8.	Governance	3.3.3	Get Parliament approval for key nominations	Give Parliament a broader role in suggesting and approving nominations. Impose minimum competency requirements for certain posts.
9.	Governance	3.3.4	Protect appointees' independence and impartiality by giving them security of tenure	Guarantee appointees' independence by giving them greater security of tenure.
10.	Governance	3.4.1	Give agencies broader investigation powers	Give agencies the right to conduct unannounced audits and inspections, including to right to compel the production of documents, and facilitate cooperation and information sharing

No.	Section	Para	Heading	Recommendation
				across agencies
11.	Governance	3.4.2.	Give agencies the power to impose sanctions or suspend operations when an agency finds that oil industry actors have violated their contractual or legal obligations	Incentivize decision makers to comply with the law by increasing the amount of fines and suspending licenses.
12.	Governance	3.5.1	Encourage donors and civil society to redirect aid towards building capacity and promoting transparency	<ul style="list-style-type: none"> • Refocus donor aid towards capacity building and training. • Make transparency a pre-requisite for donor assistance.
13.	Governance	3.5.2	Focus capacity building on key institutions	<ul style="list-style-type: none"> • Build competent workforce through a merit-based, managerial civil service • Use foreign capacity as a bridge to Ugandans taking over more responsibility both in oil and non-oil sectors. • Maintain competitive salaries to retain top staff.
14.	Governance	3.6.1	Comply with EITI transparency requirements	<ul style="list-style-type: none"> • Remove the obstacles to EITI implementation from the Petroleum Bill. • Mandate the disclosure of the basic revenue streams. • Catch up with other African countries in the implementation of EITI.
15.	Governance	3.6.2	Grant broad access to information	<ul style="list-style-type: none"> • Facilitate access to information by placing on the party

No.	Section	Para	Heading	Recommendation
			related to oil activities	<p>seeking to block disclosure the burden to prove that its legitimate proprietary business interests would be damaged as a result of the disclosure.</p> <ul style="list-style-type: none"> • Increase institutions' capacity to meet existing disclosure laws. • Increase awareness of the Access to Information Act.
16.	Governance	3.6.3	Actively conduct a PR and communications campaign to inform the general public	Create a communications division within each Ministry and a central information authority, independent of PEPD that collects and disseminates information and ensures its accuracy.
17.	Governance	3.6.4	Ensure that the Petroleum Bills do not in any way limit free speech, the right of assembly or to engage in peaceful protests	Modify the EDP Bill to remove any obstacles to individuals' right to exercise their freedom of speech, their right of assembly or their right to engage in lawful protests.
18.	Governance	3.6.5	Protect whistleblowers and encourage them to come forward	Extend the existing regulations related to the protection of whistleblowers to the Petroleum Bill, and increase visibility and staff of agencies that are charged to protect them.
19.	Economics	4.2.1	Develop a competitive auctioning process	Uganda should develop a competitive auctioning process to help strike a balance between getting responsible foreign investment into Uganda and ensuring that it comes in on the best possible terms for the Ugandan people.
20.	Economics	4.2.2		The GOU must continue to strengthen its capacity for strict monitoring of recoverable costs and ensure that non-

No.	Section	Para	Heading	Recommendation
			Enforce cost recovery limits strictly	recoverable costs under the Tullow PSA are carried forward to future licensee agreements.
21.	Economics	4.3.1	Develop a simple and separate revenue collection system	Support the provisions within the Public Finance Bill (“PF Bill”) that create one single account to which all petroleum revenues are directed and designate the URA responsible for all oil revenue collection.
22.	Economics	4.3.2	Locate petroleum accounts offshore to protect inter-generational savings	Uganda must locate the Petroleum Fund offshore at a reputable financial institution
23.	Economics	4.3.3	Establish a pricing committee for macroeconomic stability	A pricing committee should be established to consult the Government and Parliament on medium term oil price projections with a view to smoothing future spending based on expected oil receipts.
24.	Economics	4.3.4	Develop clear investment and advisory guidelines	The Minister should implement all advice provided by the Investment Advisory Committee or be required to explain to Parliament his or her rationale to reject advice. The independence of the Investment Advisory Committee can be strengthened through the appointment of its members by Parliament, not just the Minister. The BOU should only be investing in asset classes that it has internal expertise to manage. External managers appointed should be non-conflicted and offer the best price for service ratio.
25.	Economics	4.3.5	Create an independent governance structure for oil revenues	An alternative governance mechanism must be established for the Petroleum Fund. This must have a broader membership than simply the Minister or his appointees.

No.	Section	Para	Heading	Recommendation
26.	Economics	4.4.1	Focus on education, infrastructure	Investment in capital – physical and human – will enable the oil revenue to have long lasting impact. Contingent on the economy’s absorption capacity, such investments require a long-term perspective and must be done in the context of a holistic national development plan that also prioritizes increased agricultural investment.
27.	Economics	4.4.2	Reduce the non-oil deficit	When oil revenue is applied to relieve budgetary deficit, it must be short-term and accompanied by a plan to reduce recurrent expenditure.
28.	Economics	0	Broaden the revenue base	Uganda must keep focusing on non-oil revenue collection in order to maintain a long-term prudent fiscal strategy.
29.	Economics	4.4.4	Consider withdrawal rules for national budget transfers	Parliament should consider amending the PF Bill to cap the annual transfer from the Fund to the national budget. Lawmakers should consider including a super-majority provision in the PF Bill to ensure that appropriations above the proposed limit are in line with the national development agenda.
30.	Economics	4.5.1	Develop a strategy for generating economic value from refining activities	Develop an overarching strategy and road map to facilitate capital provision, train labor and export refined products, with buy-in from government, oil companies and regional neighbors.
31.	Economics	4.5.2	Establish a National Oil Company initially for commercial, not operational	NATOIL should be established as a state owned enterprise that will represent and safeguard the state’s interests where the

No.	Section	Para	Heading	Recommendation
			purposes	government has holdings through joint ventures, not as an operator but as a licensee. As Uganda develops as an oil producing nation, the need to develop the NOC model may be re-assessed. Building capacity within the Petroleum Authority is a major priority.
32.	Environment	5.3	C Create a strong and legally binding company selection process that highlights companies' environmental and social track records	Create strong criteria for which companies are eligible to bid on oil and gas exploration licenses and production sharing agreements. The criteria for eligibility should be strongly influenced by the company's social and environmental track records in previous operations in other countries. Solicitations for production sharing agreements from companies with previous exploration licenses should also be vetted for their eligibility based on their historic track record of social and environmental responsibility during exploration.
33.	Environment	5.4.1	Enhance Access to Environmental Impact Assessments	<ul style="list-style-type: none"> Require the same criteria and format as Tullow's Jubilee-1 well in Ghana for EIAs conducted by the oil and gas industry in Uganda, to enhance the government's capacity to ensure thorough EIAs, translate results into regulations, and more efficiently monitor obligatory mitigation measures. Redefine access to information provisions in order to ensure the highest possible level of transparency with regards to environmental impact assessments
34.	Environment	5.4.2	Include an assessment of cumulative impacts of activities over time and	<ul style="list-style-type: none"> Disclose potential options for transporting oil offsite before the exploration phase begins such that those making

No.	Section	Para	Heading	Recommendation
			space as a detailed schedule to the Environmental Impact Assessment.	<p>decisions about whether or not oil exploration is right for sensitive areas such as Murchison Falls National Park can be fully informed of the decision they are making and debate surrounding that decision can be public and fully informed.</p> <ul style="list-style-type: none"> Require that EIAs include an analysis of the potential future impacts on the environment should that site turn into a production site including scenarios of auxiliary requirements for production such as roads, pipeline and truck/tanker transport.
35.	Environment	5.4.3	Institutionalize and mandate Strategic Environmental Assessments and spatially cumulative assessments.	<ul style="list-style-type: none"> Establish a Strategic Environmental Assessment (SEA) regulation that puts a SEA processes in place whenever an important natural resource or infrastructural development is to occur. Strengthen the inter-ministerial “Oil Task Force” and the NEMA EIA review boards to include government agencies specialized in social security and more highly skilled leaders from governmental departments who specialize in environmental and social issues linked to oil and gas exploration and production.
36.	Environment	5.4.4	Translate Mitigation Recommendations into a Legal Code of Conduct for	Adapt EIA mitigation recommendations into a legal code of conduct for oil companies with <u>deterrent</u> fines, criminal punishment, biodiversity offsets and environmental service

No.	Section	Para	Heading	Recommendation
			Companies.	payments associated with non-compliance.
37.	Environment	5.5.1	Prioritize towns facing a direct threat from oil activities for enhanced environmental and human health management	Create a participatory social and environmental safeguard plan for Kaiso, Kabanda, and Bulisa that strengthens environmental protection, generates adequate compensation for negative impacts and prioritizes development programs with donors to offset harmful impacts of oil activities to livelihood sources.
38.	Environment	5.5.2.1	Perform and publicize more in depth cost-benefit analyses on oil revenue in contrast to tourism revenue and oil well environmental risks to revenue ratios.	Conduct an adequate study of the cost benefit ratio of oil revenue versus risks to wildlife and thus tourism dollars. The Buffalo-1 EIA's cost benefit analysis is a good beginning, and more well specific cost benefit analyses should be done and published widely for public scrutiny, however further study, updated data, and a more rigorous methodology is needed in the future on existing and proposed wells in order to demonstrate the full economic risks posed by oil activities.
39.	Environment	5.5.2.2	Use international treaties as guidelines for determining no-drill and intensive management sites.	<ul style="list-style-type: none"> • Incorporate all international environmental treaties signed by Uganda into all laws, regulations and oil contracts. • Ensure that oil wells within the proximity of 5 kilometers of the Ramsar site undergo heavy scrutiny. • Enact strict codes of conduct for the Giraffe, Buffalo, Mpyo (Crocodile), Nigiri, Kasamene, and Wahrindi regarding blow-out prevention, fuel spills, improper waste management, human activity, noise, light, vibrations, and

No.	Section	Para	Heading	Recommendation
				<p>flaring. Violations should result in the immediate loss of production license and steep fines.</p> <ul style="list-style-type: none"> • Enforce bio-diversity offset fees that sponsor the increased management of the Site and other high-biodiversity sites in the national park. • Prohibit oil activities inside of the Ramsar site. • Analyze the Giraffe, Mpyo (crocodile), Buffalo and Kasamene wells to determine the feasibility of alternative drill sites, horizontal drilling, alternative technologies and a thorough cost-benefit analysis of a no-project scenario before production begins in 2016.
40.	Environment	5.5.3.1	Increased management and monitoring of fish stocks in Lake Albert should be accompanied by programs to replace illegal nets with regulation nets.	Have the Department of Fisheries Resources replace confiscated nets with regulation size nets.
41.	Environment	5.5.3.2	Compensation should be given for fishing exclusion zones	Compensate villagers' livelihoods for legitimate denial of resources.
42.	Environment	5.5.4	Create an Action Plan to Protect Against Contamination of Drinking Water	Design and implement a government action plan for protecting and enhancing clean drinking water in the area of first-strike risk.
43.	Environment	5.5.5	Prohibit gas flaring while creating incentives for gas capture, storage, sale,	<ul style="list-style-type: none"> • Draft regulations that explicitly prohibit flaring except

No.	Section	Para	Heading	Recommendation
			and use for electricity generation.	<p>under situations that pose significant safety risks.</p> <ul style="list-style-type: none"> Incentivize gas recovery through cost recovery programs for associated gas recovery infrastructure so that gas can be captured and sold to local communities or used for electricity generation that benefits the region
44.	Environment	5.5.6	Generate and widely distribute a waste oil and toxic mud cuttings management plan and allow for civil society, media and citizen monitoring of compliance	Elaborate a hazardous waste and mud cuttings disposal plan as a top priority. A waste site must be identified and an environmentally sound system of transport and disposal must be elaborated. Monitoring of compliance should be done rigorously and in partnership with civil society and project affected communities
45.	Environment	5.5.7.1	Generate and widely distribute an oil spill disaster preparedness plan for every well-site based on its unique conditions and ensure the expertise and facilities to clean up a spill are on site at all times.	Create a <i>National Oil Spill Emergency Response Plan</i> and ultimately a fully functional <i>National Oil Spill Response Center</i> as soon as possible. Meanwhile all well-sites must be stocked with state-of-the-art oil spill disaster response equipment and trained personnel. Monitoring compliance of this should be held to public scrutiny.
46.	Environment	5.5.7.2	Ensure that the financial burden of environmental fines outweigh the benefits of non-compliance in order to prevent oil spills and environmental damage.	Ensure that the financial burden of environmental fines outweigh the benefits of non-compliance in order to prevent oil spills and environmental damage.

No.	Section	Para	Heading	Recommendation
47.	Environment	5.5.7.3	Create Biodiversity Offsets and Environmental Service Payments system as part of the polluter pays principle that generates social and environmental benefits	Create Biodiversity Offsets and Environmental Service Payments system as part of the polluter pays principle that generates social and environmental benefits
48.	Social	6.1.1	Clarify land ownership, redress land alienation and establish transparency in the land market	Establish a quasi-magisterial Land Rights Board under the Ministry of Land, with the mandate to address land concerns in the oil belt. It should make itself accessible to local residents, and should issue a Charter of Land Rights in the oil belt, specifically relating to the activities of oil prospecting, drilling and development. It should provide copies translated into local languages in every village, while also publicizing it through the mass media. The Land Rights Board should have the power to compile evidence and issue binding adjudications.
49.	Social	6.1.1.1	Conduct a land survey and issue titles to customary owners	<ul style="list-style-type: none"> • Conduct a land survey, with the participation and testimonies of the community, on an urgent basis in the oil-belt, and make its findings public. • Issue ownership certificates (or titles) to individual customary land owners in the oil belt district in accordance with the Constitution, and in cooperation with an ongoing effort by the Bunyoro kingdom official for issuing these.

No.	Section	Para	Heading	Recommendation
50.	Social	6.1.1.2	Address skewed information flows	Oil companies and the Ministry of Land should issue regularly updated public statements in the local languages on the amount of land that is required and in what areas of the oil belt, in order to prevent profiteering on the basis of the current privileged access to such information. In villages, or towns where land is leased out for oil prospecting and allied activities, information on the terms of annual leases, as well as the names of the lessor and the lessee, should be made available to local residents. This could take the form of a public signboard at the specific site, among other measures.
51.	Social	6.1.1.3	Make the functioning of District Land Boards transparent and accountable	Appoint ombudsmen to liaise with the public, issuing directives for them to make mandatory disclosures about the land purchase applications the District Land Boards receive, the surveys they conduct of locals' land, the land sales that they certify, as well as their communications with the Ministry of Land in Kampala.
52.	Social	6.1.2	Develop norms for land use and acquisition compensation, resettlement and other entitlements	<ul style="list-style-type: none"> • Lay down the categorical principle of compensation prior to acquisition, drawing on the guarantee of the customary and other rights to land laid down in the Constitution of Uganda. • Define guidelines for prior and informed consent to land acquisition, including the guarantee of an open and transparent public hearing. During these hearings, provide full information in local languages on the proposed development, its potential benefits and its potential impacts

No.	Section	Para	Heading	Recommendation
				<p>at the local, regional and national level, as well as the proposed resettlement and compensation measures for affected people. Place a special emphasis on the involvement of women residents in public hearings, and the incorporation of their perspectives on resettlement and compensation measures.</p> <ul style="list-style-type: none"> • Urgently devise a policy of compensation, incorporating constitutional guarantees, and a comprehensive range of compensation measures.
53.	Social	6.2.2	Ensure local involvement through information sharing	The government should recognize the need for greater information flows to local communities, and commit to systems that suo moto disclose critical information in a timely and accessible manner. Compliance should be monitored by an independent, accessible authority. Whistleblowers and civil society groups need to be protected from legal threats and criminal proceedings for disclosing information regarding the oil industry when such information is in the larger public interest.
54.	Social	6.2.3	Develop and enforce local content provisions	Uganda must enforce local content provisions in all oil production contracts, covering labor, training and local supply, and facilitate local individuals and businesses to participate in the oil economy. The government must ensure that it legislates and develops the ability to monitor and enforce local content provisions.

No.	Section	Para	Heading	Recommendation
55.	Social	0	Align national development expenditure with local needs	When applying oil revenues to development priorities, focus on agriculture as a prime generator of employment, and education schemes to allow locals to participate in the oil industry and beyond.
56.	Social	6.2.5	Implement accountable and impactful revenue sharing	Revenue sharing should be supported by structures that meaningfully involve existing and respected local community institutions in the process of policy formulation, decision making, grievance redressal and cultural protection.

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ACKNOWLEDGEMENTS

The Columbia University School of International and Public Affairs' Uganda Capstone Workshop group would like to acknowledge the many individuals and organizations that provided invaluable assistance in creating this report:

- Professor Jenik Radon, the capstone advisor, for his outstanding wisdom and mentorship.
- Advocates Coalition for Development and Environment (ACODE), for hosting the team and assisting in arranging our work in-country.
- Columbia University's School of International and Public Affairs, for providing financial support for this project.
- Robert Sciortino and Takashige Yamada, two former Columbia University graduate students whose internships in Uganda, hosted by the Water Governance Institute, in summer 2011 were the genesis for this project.
- The over 40 interviewees from government organizations, parliament, civil society, donor community, the oil industry, academia and elsewhere who generously offered their time to meet with us in Uganda and elsewhere, for their candor and guidance.
- Nyela Saeed skillfully designed the report's cover. The cover photograph is the © of Taimour Lay/PLATFORM, who kindly agreed to let us use it.

1 Introduction

“The oil of Uganda cannot be a curse. Oil becomes a curse when you have got useless leaders and I can assure you that we don't approach that description... the oil is a blessing for Uganda...”

President Museveni, 8 October 2006.¹

1.1 Capstone workshop goals

This report is the culmination of a capstone workshop at Columbia University's School of International and Public Affairs (“SIPA”). The report team comprised eight SIPA students with interdisciplinary backgrounds spanning law, economics, human rights, journalism and environmental sciences, together with a faculty adviser, Professor Jenik Radon. Accordingly, the contents of this report are completely independent of any pecuniary or personal interest in Uganda.

The topic of research emerged out of discussion with civil society organizations in Uganda, particularly the Advocates Coalition for Development and Environment (“ACODE”) and Professor Jenik Radon's prior work on Uganda's draft petroleum law. ACODE was instrumental in defining the scope of the report, setting up meetings with stakeholders in Uganda and acting as a sounding board for our recommendations, but the viewpoints, conclusions and recommendations set forth herein are those of the authors together with their faculty adviser Professor Radon.

Our workshop seeks to provide practical advice to Ugandan policymakers on how to reform, improve and build upon the current legal and institutional framework to ensure sustainable development of oil resources in a manner that promotes economic development and good governance for Uganda and its people.

The project will address three (3) main questions regarding sustainable oil management in Uganda:

- 1) *Optimizing the economic impact*: How can the current system of holding and spending oil revenue be strengthened and accordingly improved, and how can the government create a sustainable framework for preserving macroeconomic stability and deploying the additional fiscal resources from oil development most effectively?
- 2) *Transparency, Accountability and Capability Building*: How can transparency and accountability in present oil management institutions be strengthened and accordingly improved so that good governance becomes self-perpetuating? How can good

¹ "Uganda Announces Oil Discovery." *Independent Online* [South Africa] 9 Oct. 2006.

governance increase access to capital markets and foreign investment to further the positive economic impact of oil? What are the key capabilities for effective governance of the petroleum sector and how can Uganda acquire them?

- 3) *Social and Environmental Sustainability*: What is the maximum economic benefit Uganda can receive while also ensuring that health, safety, security, equality and its pristine environment are not compromised, especially in those regions directly impacted by oil development projects?

1.2 Research approach

The findings in this report are based on extensive review of literature on the oil industry in Uganda and, on a comparative basis, on an examination of oil industry development in other nations, particularly in Africa and Asia. This research was complemented by over forty in-person interviews conducted with stakeholders, both in Uganda and elsewhere. These included members of parliament, the Parliamentary ad-hoc committee on petroleum, government officials, representative of oil companies, members of civil society, donor agencies, embassy officials, academics, judicial officials and people active in the financial sector. Moreover, two team members travelled to the oil-producing region of Hoima to meet with locally affected communities. The report has also benefited greatly by review from ACODE and other civil society organizations

1.3 The resource curse

The so-called “resource curse” refers to the counterintuitive result that “countries with large endowments of natural resources, such as oil and gas, often perform *worse* in terms of economic development than do countries with fewer resources”.² Resource wealth is also strongly associated with negative developments such as weak democratic development and corruption.³

The resource curse has several potential causes:

- 1) *Institutionally*, the presence of large revenue streams encourages spoliation and can lead to the diversion of wealth away from the state and into private hands. Moreover, reliance on resource revenues makes the state less reliant on its people, weakening the connection between state and citizens.
- 2) *Economically*, governments may not achieve the maximum possible rent from its resources due to capacity inequality vis-à-vis extractive companies. Moreover, once resource revenue starts flowing into the country, it may overwhelm the ability of the country to absorb it, leading to inflation and affecting the competitiveness of non-resource sector (so-called “Dutch disease”). The volatility of revenues can also translate into economic volatility if not carefully managed.

² Humphreys, Macartan, Jeffrey Sachs, and Joseph E. Stiglitz. *Escaping the Resource Curse*. New York: Columbia UP, 2007. Print, p. 1.

³ Ibid.

- 3) *Environmentally*, oil production (in particular) is often associated with environmental degradation that can represent a huge cost burden to host countries, if not remediated by the oil producing company.
- 4) *Socially*, the presence of oil revenue may lead to increased inequality and unrest in oil producing regions, especially in response to forced outward migration, influx of outsiders, and ‘enclave’ mentality among oil producing companies. In its extreme form, oil production can encourage armed resistance to government rule, as witnessed in Angola and Sudan, among others.

None of this is to say that the resource curse is inevitable – on the contrary, some countries (most notably Botswana and Norway) have managed to leverage their resource wealth productively to lift the standard of living for the population as a whole. However, there are enough countries, particularly in Africa, that have experienced the resource curse such that Ugandan policymakers should be cognizant of its dangers.

1.4 The case of Uganda

On 8 October 2006, President Museveni announced the discovery of commercial quantities of oil in the Albertine Graben formation situated in Uganda’s west. Subsequent drilling has uncovered over 2.5 billion barrels of oil in place, of which around 800 million – 1 billion barrels are estimated to be recoverable.⁴

Full-scale production of oil is expected to occur in 2016. Accordingly, Uganda has a short window of opportunity until then to establish the necessary legal, economic, institutional, environmental and social safeguards to extract full value from its oil endowment.

1.4.1 Context

Economic

Uganda is one of the poorest countries in the world, with a GDP per capita of \$1,250 (2010 estimate, at purchasing power parity)⁵ placing it at 202/226 countries recorded in the CIA World Factbook.⁶ GDP growth has been strong, averaging around 6 percent per annum since the mid-1990s, but has slowed in recent years due to the global financial crisis. The government has stated that oil production could lift GDP growth to double digit rates.⁷ Inflation has spiraled in recent times, with current year-on-year inflation running at 27 percent and benchmark lending rates at 23 percent as the central bank tightens money supply to curb price rises.⁸

Population

⁴ Rubondo, Ernest. "Uganda’s Petroleum Upstream Sector: Implementation of the National Oil and Gas Policy." Petroleum Exploration and Production Department. Jan. 2012. Presentation.

⁵ "Data Catalog." World Bank. Web. 05 May 2012.

⁶ "Uganda." *World Factbook*, Central Intelligence Agency. 13 April 2012.

⁷ "Uganda 2012 GDP Growth Likely to Slow – IMF." *Reuters* 25 Jan. 2012.

⁸ *Ibid.*

At the same time, Uganda has the fourth highest population growth rate in the world,⁹ with its population projected to grow from 35.8 million in 2012 to almost 90 million by 2037 if currently fertility rates continue.¹⁰ The median age today is just 15, emphasizing the need for investment in education.

Geography and environment

Oil discoveries in Uganda have occurred in the Albertine Graben region surrounding Lake Albert and Lake George, and one of the most species rich eco-regions in Africa.

Accordingly, there are numerous national parks, forest reserves and wildlife sanctuaries located within the region.¹¹ These overlap with oil exploration activities – for example, drilling is occurring within Murchison Falls National Park.¹² Ensuring that oil development does not negatively impact the natural environment will be a key challenge for Uganda’s policymakers.

Political system

Uganda operates under a presidential system, with the directly elected President serving as head of state and chief executive. The incumbent, President Museveni, assumed office in 1986 following an armed struggle against the regime of General Okello. After the ratification of a new constitution in 1995, President Museveni was elected for five (5) year terms in 1996, 2001, 2006 and most recently in 2011. The president appoints a Cabinet to assist in the operation of the Executive Branch.

The legislative branch consists of a unicameral parliament (the National Assembly), which passes legislation and is largely directly elected in multi-party elections.

The National Resistance Movement (NRM), President Museveni’s party, is the leading political party in Uganda. In addition to the presidency, the NRM controls 263 of the 375 seats in the National Assembly.

An independent judiciary includes the magisterial courts, High Court, Court of Appeal and the Supreme Court. The Judiciary is headed by the Chief Justice. Judicial officers are appointed by the President on the advice of the Judicial Services Commission and subject to the approval of Parliament.

1.4.2 Oil in Uganda

While oil seepages have been recorded in Uganda since the 1920s, consistent oil exploration activities only began in the 1980s. The government established the Petroleum Exploration and Production Department within the Ministry of Energy in 1991, which led to the enactment of petroleum regulations and the grant of exploration licenses to foreign

⁹ “Uganda.” Central Intelligence Agency, above n 6.

¹⁰ *Uganda: Population Factors and National Development*. Rep. Population Secretariat, Ministry of Finance, Planning and Economic Development (Uganda), Jan. 2010. Web. 5 May 2012.

¹¹ Veit, Peter. *Avoiding the Resource Curse: Spotlight on Oil in Uganda*. Working paper. World Resources Institute. Web. 5 May 2012.

¹² *Ibid.*

companies including Hardman Resources (later Tullow Oil) and Heritage Oil during the late 1990s and early 2000s.

The announcement of oil discoveries in the Kaiso-Tonya area in 2006 confirmed the commercial potential of the Albertine Graben area. Of 64 exploration and appraisal wells sunk in the region, 58 have been successful, a success rate of over 90%. The government halted licensing of new acreage since the first discovery of oil in 2006, to prolong the country's production potential.¹³ Less than 40% of the Graben has been evaluated, raising the potential of further finds in the future.

The majority of discovery areas are under license to Tullow Oil, a company registered in England and Wales, which in turn farmed down one-third of its interest to each of Total (France) and CNOOC (China).

¹³ Ibid.

Figure 1: Status of Licensing in Albertine Graben (overleaf) shows the current status of licensing in the Albertine Graben. 11 exploration areas have been created, of which 5 are the subject of production sharing agreements (“PSAs”).

Following the announcement of oil discovery, the government formulated the National Oil and Gas Policy (“NOGP”)¹⁴ that set down principles on licensing, national involvement, revenue management, environmental protection and social initiatives.

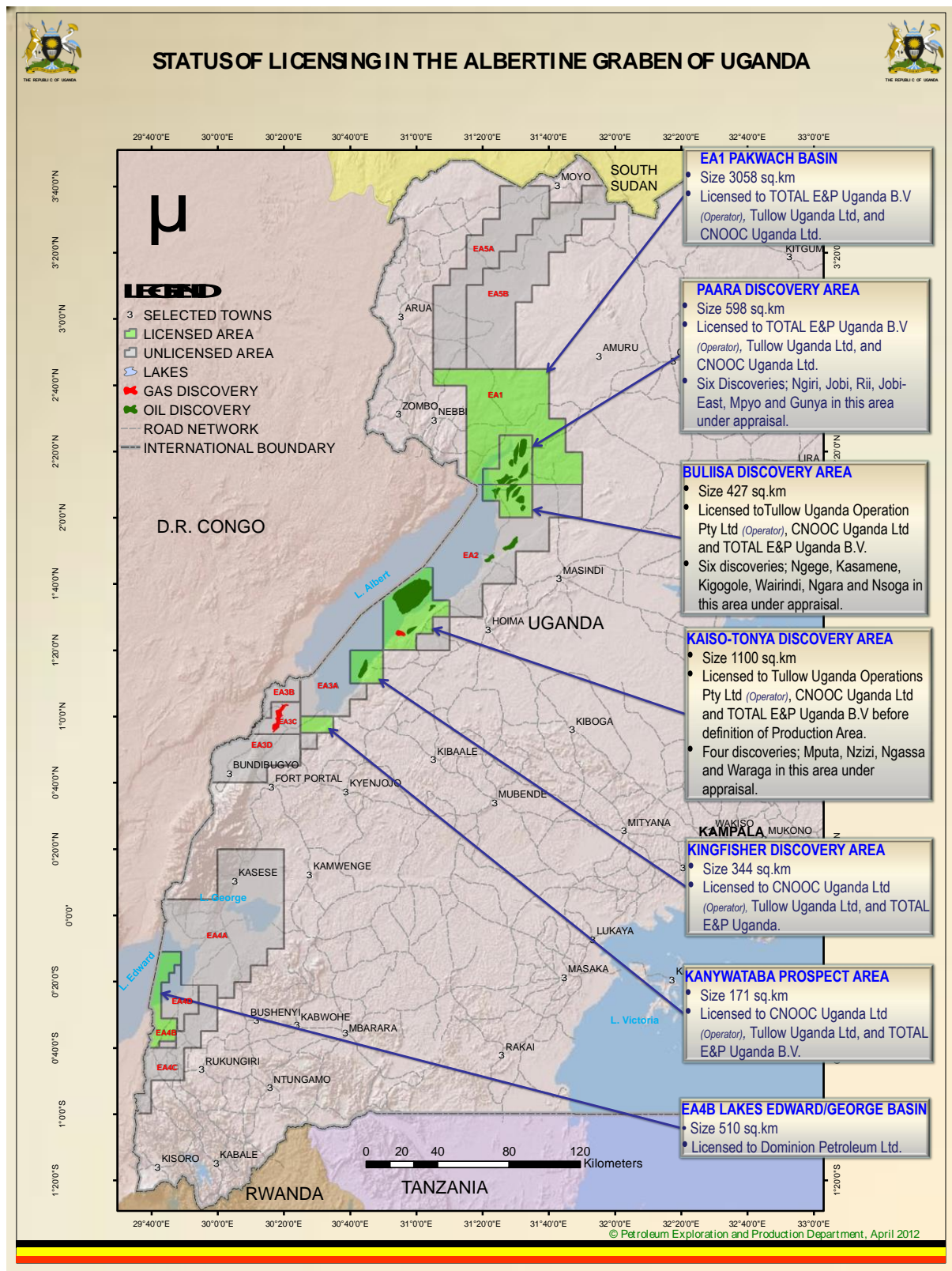
1.5 Report overview

This report comprises five sections – legal, institutions, economic, environmental and social – reflecting the four underlying causes of the resource curse plus the necessary regulatory framework to build a strong platform to support development of a successful oil industry that delivers significant benefits for Uganda.

A summary of recommendations is contained at the front of the report for easy reference. The body of the report contains the factual basis underpinning the recommendations.

¹⁴ Ministry of Energy and Mineral Development. *National Oil and Gas Policy for Uganda*. February 2008. Print.

Figure 1: Status of Licensing in Albertine Graben



Source: Petroleum Exploration and Production Department

2 The Need for Upgraded Petroleum Laws

2.1 Context – The need for upgraded petroleum laws

With the discovery of commercially recoverable quantities of oil in Uganda, the government is quickly proceeding to the production phase in order to monetize the reserves. The main law that specifically regulates upstream activities was largely drafted in the 1980s, when focus was on exploration rather than production. Current legal regime is somewhat outdated and does not reflect the government's National Oil and Gas Policy ("NOGP").

Specifically, the current legislation does not:

- address handling of natural gas produced during oil production
- deal with improved oil recovery ("IOR") techniques
- apply highest possible health, safety and environment standards
- provide for a competitive licensing process, which is more appropriate now that Uganda has proven oil reserves
- provide for state participation or national content, as foreshadowed by the NOGP
- provide for separate bodies to regulate oil companies and enter into commercial arrangements – all functions undertaken by PEPD under direct control of the Minister of Energy

Updated upstream legislation to implement the NOGP has been delayed several times and is still yet to be enacted. Given that commercial oil finds were confirmed in 2006, and the NOGP was released in 2008, such a delay is particularly concerning. The persistent delays have raised suspicions that it is in the interests of certain actors to preserve the status quo (with weak institutions and lax oversight).¹⁵

Moreover, while most actors are focused on examining the new draft legislation that has been released for comment, production agreements are being signed under the existing legislation (in defiance of a Parliamentary resolution calling for a moratorium on signing of agreements until new legislation is in place) and it is unclear whether the new laws will apply to these agreements.

Finally, the production sharing agreements ("PSAs") being negotiated are excessively complicated due to lack of detail in the laws. Too much is being left to negotiation between the government and oil companies, rather than being prescribed in the law. The Ministry of Energy and Mineral Development has admitted that

¹⁵ See quotes in *Uganda: No Resolution to Growing Tensions*. Rep. no. 187. International Crisis Group, 2012, p. 21.

“[a]s a result of the gaps in the existing legal and regulatory framework, a lot of clauses were included in the PSAs to address this shortcoming. It is the intention of Government that many of the provisions currently in the PSAs should be embedded in the act and regulations to render the PSAs simple, easy to negotiate and manage.”¹⁶

2.2 Recommendations

2.2.1 Update petroleum legislation

Although it may seem an obvious recommendation, passage of updated petroleum legislation (reflecting feedback from stakeholders) is of critical importance as only once legislation has been passed can work commence on drafting updated regulations and model PSAs. Ideally, work on these elements would proceed in parallel with debate on the petroleum legislation, but the constrained capacity of Ugandan public stakeholders has slowed down this process.¹⁷ Passage of updated legislation will also assist potential investors, who may currently be discouraged by the lack of certainty around the Ugandan legal environment.

The government has taken positive steps towards updating the legal regime by tabling the *Petroleum (Exploration, Development and Production) Bill 2012* (the “EDP Bill”) and the *Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill 2012* (collectively, the “Petroleum Bills”) before Parliament on February 8th, 2012. The Petroleum Bills are intended to create a sound and sustainable legal environment for the development of the oil industry in Uganda in a manner that will benefit Ugandans. There are several positive changes in the Bills compared to previous drafts and existing legislation, for example, in their strengthening of environmental provisions by imposing strict liability on companies for environmental damage.

However, the Bills still require significant revision before they are ready for ratification by Uganda’s Parliament. Once passed, oil industry legislation needs to be robust enough to support the development of the industry over several decades. Accordingly, it is prudent practice, as well as in the best interests of the people of Uganda, to invest more time up-front to get this crucial piece of legislation right the first time around. Suggested amendments to the Petroleum Bills are contained in our preliminary letter of advice (attached in the Annex) and also referenced in other recommendations.

Recommendation 1: Pass petroleum legislation as a matter of urgency, incorporating feedback from stakeholders on suggested improvements.

¹⁶ *Strengthening the Management of the Oil and Gas Sector in Uganda: A Development Programme in Co-Operation with Norway*. Rep. Ministry of Energy and Mineral Development, Feb. 2010. Web. 5 May 2012.

¹⁷ *End-Review of the Development Programme ‘Strengthening the State Petroleum Administration of the Upstream Petroleum Sector in Uganda’*. Rep. NORAD, June 2011. Web. 5 May 2012, p. 24.

2.2.2 Apply the new laws to recently signed PSAs

The government has expended considerable time and effort drafting new upstream legislation to provide stronger regulation over petroleum production activities. The legislation must apply retrospectively to agreements signed prior to the new legislation coming into effect – otherwise much of this effort will have been in vain.

The current draft of the EDP Bill contains a transitional provision that is unclear in effect. Section 188(1)(a) provides that licenses issued under the previous law “shall have effect from the commencement of this Act as if granted under this Act”, which suggests that existing licenses should be subject to the provisions of the new law. However, paragraph 2 suggests the opposite by stating that “the terms and conditions including the rights and obligations under a license or petroleum agreement in force immediately before the commencement of this Act, shall not be less favorable than those that applied immediately before the commencement of this Act”. This lack of clarity and contradiction could potentially be used by licensees to argue, for example, that section 127 of the EDP Bill, which provides for strict liability of the licensees in the case of pollution damage, should not apply to them because the obligations that it imposes upon them are more onerous than those that prevailed under the previous law. In short, this gives existing licensees extensive stabilization by law, even in the event such a clause is absent from their license or petroleum agreement.

Given that the Government of Uganda signed a Production Sharing Agreement with Tullow Oil on February 3rd, 2012 before the Bills could be finalized, it is imperative that the EDP Bill clearly specifies that the new law applies in all respects to existing agreements.

Recommendation 2: Ensure that the Petroleum Bills, once passed, apply retrospectively to recently signed PSAs.

2.2.3 Increase specificity in laws to reduce negotiation scope

The government has admitted that current PSAs are excessively complicated due to a need to supplement gaps in the law. Since PSAs are negotiated between companies and government, this allows companies to water down regulations that should be mandatory. A preferable solution is to introduce rigorous and transparent pre-qualification criteria in the licensing process, so that only companies with the suitable financial and operational record are invited to participate. Currently, there appears to be a pre-qualification process,¹⁸ but the details are neither contained in existing law nor regulations. Furthermore, minimum standards in legislation that must be included in PSAs should be specified in the law. This would reduce the complexity of the PSA as companies would be required to comply with the mandatory terms, and could only negotiate on financial terms. More detail on the competitive bidding process and suggested pre-qualification criteria is contained in sections 4.2.1 and 0 below.

¹⁸ See eg statement that Eni was among ten companies to prequalify for purchase of Heritage’s oil assets, “Eni Buys Uganda Oil Blocks from Heritage for \$1.5bln.” *Bloomberg.com*. Bloomberg Media, 23 Nov. 2009. Web. 05 May 2012.

Recommendation 3: Update the licensing process to include pre-qualification of bidders on clear criteria and include as much as possible in the Law so there are limited topics subject to negotiation in the PSA.

3 The Case for Strong and Reliable Institutions

3.1 Overview – Uganda’s institutional landscape

Uganda’s young democracy is built on solid principles: it operates as a multi-party parliamentary system, with separate legislative, judicial and executive branches of government, open markets, an outspoken opposition and a vibrant journalistic tradition. The strength of these institutions will be put to the test as the country begins tapping into its oil reserves. Oil development brings many economic, social and environmental challenges, all of which will need to be met head-on through the adoption of comprehensive policies and laws. Ensuring that these laws will be adequately enforced may in and of itself prove to be Uganda’s most difficult challenge.

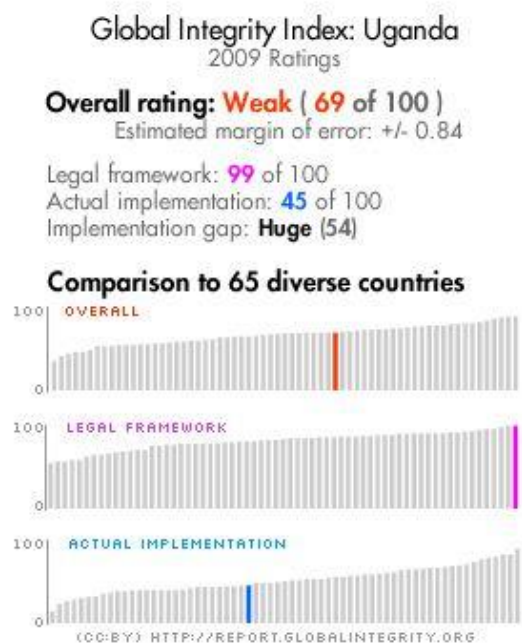


Figure 2 Global Integrity Index

Indeed, although Uganda has relatively good laws, they are not consistently implemented. The 2009 Global Integrity Report (see Figure 2), an international tool prepared by local researchers, academics and journalists to rate governance and anti-corruption mechanisms, illustrates the extent of this gap. While it obtains a score of 99% on legal frameworks, Uganda only scores 45% on actual implementation, resulting in a large gap of 54%, one of the largest in the world. Access to justice, executive accountability, political financing, and law enforcement are all highlighted as areas that require improvement.

Moreover, Uganda must overcome the threat of corruption, which many blame for exacerbating problems like Uganda's perennial medicine shortages in government hospitals, lack of scholastic materials in schools, low levels of investment, under-performing private sector, low revenue collections, and lack of faith in government programs and contracts.¹⁹ Indeed, corruption unfortunately remains a common occurrence in Uganda, as the adjacent table (Figure 3) shows.

Uganda's Corruption Rankings	
Corruption Perceptions Index 2011	2.4, ranked #142 out of 182 countries
East Africa Bribery Index	33.9% of all transactions involved bribes

Figure 3 Uganda corruption rankings

Unless appropriate measures are put in place, oil development will create more opportunities for corruption, with results that could be disastrous for Uganda. Indeed, government officials will play an essential role in ensuring the success of Uganda's oil venture: some will be in charge of preventing oil spills by enforcing environmental regulations, and others of avoiding misappropriation of funds by reviewing money transfers and expenditures. As such, it is imperative that government officials be sheltered from any attempt to corrupt them. Although there are presently seven institutions and departments in Uganda that are mandated to fight abuse and misuse of public offices and resources,²⁰ most Ugandans (61.1%) feel that the government is not fully committed to fighting corruption.²¹

In general, access to capital markets and foreign investment is greatly improved when strong institutions at all levels of government provide transparency and abide by a clear and reliable decision making process. Institutions can also play a key role in monitoring oil industry actors and, with the proper checks and balances in place, in overseeing other governmental institutions. The case studies that follow demonstrate that institutions do play a crucial role in the context of oil development.

Case Studies

Nigeria – Cursed by the Lack of Institutions

Nigeria is the largest crude oil producer in Africa and the tenth largest producer in the world. Nigeria's economy depends heavily on the oil sector, as it accounts for 95% of export revenues, 76 % of government revenues, and about a third of GDP. Nigeria was one of the world's richest 50 countries in the early 1970s, but became one of the 25 poorest countries by the 21st century,²² mainly as a result of the poor management of its oil development. Nigeria is thus considered a classic example of the resource curse.

¹⁹ Nsubuga, Lilian. *Corruption in Uganda*. Kampala: Uganda Debt Network, 2000. Print.

²⁰ The Inspectorate of Government (IGG), the Directorate of Ethics and Integrity, Directorate of Public Prosecution (DPP), the Auditor General (AG), the Public Accountants Committee (PAC), the Criminal Investigations Department (CID) and the Non-Performing Assets Recovery Trust (NPART). See Nsubuga, above, note 19.

²¹ *East African Bribery Index (EABI) 2011*. Rep. Transparency International East Africa, 20 Oct. 2011. Web. 04 Mar. 2012.

²² Onyeukwu, Agwara John. *Resource Curse in Nigeria: Perception and Challenges*. Rep. Open Society Institute, 2007. Web. 4 May 2012.

One of the major reasons for this was institutional weaknesses. Although powers were separated among the executive, legislative and judicial branches of government, these institutions proved to be too weak to conduct effective checks on the executive and the decision made as to how to distribute resource rents. In short, they were unable to prevent the government's poor policy choices, such as the dramatic increase in the size of public service, or its corrupt practices.²³

Botswana – Institutions before Diamonds

Economically, Botswana was not that different from Nigeria after independence – low literacy, and a per-capita GDP of only \$70 dollars a day. However, Botswana was blessed with relatively strong institutions post-colonialism, and supplemented those with sound revenue management and parliamentary oversight. Together, these have helped Botswana become one of the few countries to avoid the resource curse, and experience phenomenal growth. Today, Botswana is a middle-income country with relatively high levels of literacy, human development, and low corruption.²⁴

Ghana – Transparency and Stakeholder Involvement before Oil

Ghana is Africa's leading democracy, with high freedom and anti-corruption rankings. When it discovered offshore oil in 2007, it chose to convene a national discussion involving all stakeholders. Institutions, including the press and civil society, were all able to contribute and play a role in shaping oil policy. Ghana has publicly released its PSAs, and is a leader in complying with the Extractive Industries Transparency Initiative ("EITI") not only in Africa, but globally. Although it may be too soon to evaluate the success of these measures on increasing Ghanaians' living standards, Ghana's policy development process is a good model for Uganda to follow so that it may use its strengths to build institutions capable of managing oil's challenges.²⁵

As these countries' experiences demonstrate, the creation of strong and reliable institutions *before* agreements are signed and licenses are issued can be a determining factor in ensuring that the full benefits of natural resources will be realized.

As such, the choices Uganda makes in building its institutions over the course of the next few months may steer it in either Botswana or Nigeria's direction. In the section that follows, we will highlight how good governance, strong institutions, transparency, and international cooperation can help Uganda attain the full potential of its oil resources. Our recommendations are inspired by research into international best practices and modeled around what local actors have identified as Uganda's most pressing institutional needs.

²³ Olarinmoye, Omobolaji Ololade. "Politics Does Matter: The Nigerian State and Oil (Resource) Curse." *Africa Development* 33.3 (2010): 21-34. Print.

²⁴ Dougherty, Michael. *A Policy Framework For New Mineral Economies: Lessons From Botswana*. Rep. Illinois State University. Web. 07 Apr. 2012.

²⁵ Moss, Todd, and Lauren Young. "Saving Ghana from Its Oil: The Case for Direct Cash Distribution - Working Paper 186." *Center for Global Development*. Oct. 2009. Web. 02 Mar. 2012.

3.2 Strengthen checks and balances of decision making authorities

The Ugandan Constitution states that oil is a resource that should benefit all Ugandans. Building a strong and internationally accepted system of checks and balances between oil management institutions and the government can ensure that government objectives are aligned with the interests of all Ugandans.

3.2.1 Establish a clear division of decision-making powers across multiple ministries/agencies

As explained in our letter of advice (attached to this report), the proposed Petroleum Bills would vest too much authority in the Ministry of Energy and Mineral Development (“MEMD”) and the Petroleum Authority. As the following case study demonstrates, a lack of checks and balances can lead to disastrous consequences.

The United States and the Deepwater Horizon Disaster

In the United States, the Mineral Management Service (“MMS”) was in charge of both regulating the safety of oil drilling and maximizing revenues from drilling, despite the obvious conflict of interest between both missions. As a result, numerous instances of collusion between Government officials and oil company executives were reported, including allegations that MMS staff allowed oil companies to fill out their own safety assessment reports.²⁶ A United States Government report chastised the agency for lax oversight and cozy ties to industry.²⁷ This, among others factors, is considered to have prevented authorities from foreseeing and avoiding the explosion of BP's Deepwater Horizon rig in 2010, resulting in billions of dollars of economic losses along one of the Americas’ most ecologically sensitive regions - with effects still being felt today. **Only after the Deepwater disaster did the United States split the MMS into three separate agencies with stricter oversight. The disaster could perhaps have been prevented had a better separation of powers been in place earlier.**

In order to avoid conflict of interests between regulation of the industry and revenue maximization, the functions of licensing, monitoring and enforcement should be structurally separated. Indeed, the entity that grants a license is naturally biased towards ensuring its continuance, as to revoke the license at a later stage implies error in the initial grant. These pressures are more acute when a national oil company is involved as that company will lose public image or acceptance in such an event. For this reason, monitoring and enforcement of

²⁶ Tankersley, Jim. "Federal Report Slams Drilling Inspectors." *Los Angeles Times*. Los Angeles Times, 25 May 2010. Web. 13 Apr. 2012.

²⁷ *Deepwater Horizon Joint Investigation Team Final Report*. Rep. Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S. Coast Guard, 16 Sept. 2011. Web. 13 Apr. 2012.

regulation and license conditions must be conducted by a separate entity with true independence to carry out their functions.

As mentioned in our letter of advice, section 9 of the EDP Bill defines the functions of the Minister in an overly broad manner (including grant and revocation of licenses, issue of petroleum regulations and negotiation of petroleum agreements), without specifying how that power is to be exercised. No single person can be reasonably expected to simultaneously achieve all of the functions granted to the Minister under the Petroleum Bills, let alone balance them appropriately. Regulation of these functions should lie with the most relevant, preferably expert, administrators, and need to be granted to co-equal Ministries or authorities as part of an institutional checks and balances system, a time-tested approach accepted throughout the world.

The 2008 *National Oil and Gas Policy for Uganda* (“NOGP”) lays the groundwork for good governance through a meticulous separation of powers. More specifically, in sections 7.2 to 7.6, the documents details the specific functions that should be undertaken by Parliament, the MEMD, the Petroleum Authority and several other government ministries and agencies. A similarly thorough separation of powers should be incorporated within the Petroleum Bills. While the concept of a “one-stop shop” to streamline the administrative process is often demanded by investors and appears appealing in concept, we believe that the ministries of health and safety, environment as well as social affairs need to be involved in the licensing, monitoring and enforcement process. This can either require oil projects to be subject to each of those ministries (in addition to the MEMD/Petroleum Authority), or require the Petroleum Authority to involve the ministries in its decision-making process and to gain their consent prior to making decisions.

In conclusion, the Parliament needs to clearly define which powers are to be allocated to the MEMD, the various environmental ministries, both local and regional government authorities, and the ongoing role of parliamentary oversight. Moreover, this process should allow active engagement by civil society through the transparent release of information and third party monitoring and evaluation.

Recommendation 4: Ensure that licensing, monitoring and revenue collection are handled by separate agencies, with the Petroleum Authority in charge of licensing, environmental monitoring and compliance undertaken by the National Environmental Management Authority (“NEMA”), and revenue collection by the Uganda Revenue Authority (“URA”). Mandate the Attorney General and the Inspectorate of Governance to oversee all agencies.

3.2.2 Create an oversight role for Parliament

Parliament must be given the tools to actively oversee the agencies involved in oil development. Parliament's role, thus far, has been limited. The Petroleum Bills should have been debated, tabled for public comments, and approved with adequate civil society and public input before PSAs were signed with the oil companies, if for no other reason than to avoid public suspicion and anxiety. Nevertheless, Parliament still has a strong role to play in oil management and governance. However, before Parliament can begin to fulfill its role, it needs to have full, unfettered access to all of the PSAs, oil revenue data and projections.

Agencies should directly report to the Parliament (in addition to their accountability to the Minister) on a regular basis.

In addition, section 7.2.1(c) of the NOGP already provides that Parliament should be in charge of “monitoring performance in the petroleum sector through policy statements and annual budgets”. This Parliament oversight role could be achieved through the creation of a parliamentary oversight committee on oil and gas. Such a committee would be responsible for issuing recommendations and updating policy throughout the life-cycle of oil in Uganda. This includes updating the national petroleum policies as circumstances change and ensuring that ministries are functioning independently and effectively. They could also have ratification powers over Petroleum Authority appointees, and authority to reject Environmental Impact Assessments (“EIAs”) upon its own initiative. This may necessitate the re-delegation or re-distribution of ministerial authorities if they are seen to be inadequate. Agencies should be legally required to provide information and attend hearings of the committee upon MPs’ request.

One of Uganda’s strengths is its relatively vibrant civil society sector. Civil society can be a source of information to MPs and the government. Thanks to its eyes and ears on the ground, it can monitor the actions of oil companies and civil servants entrusted to implement and carry out government policy. Parliament should regularly involve civil society in committee meetings, and proactively release information to civil society for feedback and comments. For example, civil society can alert the committee if an EIA has ignored some critical aspect or has not been thoroughly acted upon, or assist the committee in formulating requests for additional information.

Recommendation 5: Create a joint parliamentary and governmental oversight committee with clear oversight and ratification powers and strong involvement of civil society.

3.3 Ensure independence of policy and decision-making from outside influences

In the section that follows, we suggest four (4) concrete solutions to reduce the risk of corruption, in the hope that policymaking and discretionary powers will be exercised without undue outside influences, and with only Uganda’s best interests in mind.

There are seven (7) institutions and departments in Uganda that are mandated to fight abuse and misuse of public offices and resources. These are the Inspectorate of Government (“IGG”), the Directorate of Ethics and Integrity,²⁸ Directorate of Public Prosecution, the Auditor General, the Public Accountants Committee, the Criminal Investigations Department and the Non-Performing Assets Recovery Trust. Among these, we chose to focus our analysis on the Inspectorate of Government and the Auditor General because their roles are enshrined

²⁸ The Department of Ethics and Integrity is not backed by law. It in fact stems from an initiative by the President. President Museveni assigned the Vice President the responsibility of overseeing the fight against corruption that led to the establishment of an Anti-Corruption Coordination Unit in 1996. In 1998, the Unit later became the Directorate for Ethics and Integrity, with the role of devising policy in the fight against corruption with the additional mandate of rebuilding ethics and integrity in the society. See Directorate for Ethics and Integrity. "DEI - About Us." *Directorate For Ethics and Integrity*. Web. 04 May 2012.

in the Constitution, while other watchdogs' roles are not. In addition, the Auditor General has responsibilities under the Petroleum Bills.

3.3.1 Adopt a government code of conduct governing conflicts of interest that extends to family members

Section 159 of the EDP Bill regulates conflicts of interest, but fails to extend it to family members and agents, to private or public companies or business enterprises in which a public officer, his spouse or agent has a controlling interest. This omission should be rectified.

The *Leadership Code Act* of 2002 addresses conflicts of interests among high-ranking government officials. Section 9(5) prohibits officials from participating in activities where their personal interests are to be discussed, while Section 12(1) prohibits them from making contracts with the government or foreign business organizations. These regulations are extended to leaders' family members and business organizations in which the leaders or their family members have a controlling interest.

Lower-ranking public officers for their part are subject to the 2005 *Code of Conduct and Ethics* ("Code of Ethics"), which promotes governance, transparency and accountability among public officers and in particular ensures that public officials are accountable for all resources under them. It also prohibits public officials from accepting (and giving) gifts and bribes. This code extends to their family members. In addition, the Code of Ethics states that public officers shall not put themselves in a position where their personal interests conflict with their duties and responsibilities as public officers (section 4.6 (i)). Public officers are also prohibited from entering into any contracts with the government (section 4.6 (i)). These obligations should also be extended to the public officers' family members and private companies in which the public officers or their family members hold a controlling interest.

These legal obligations are a good step in the right direction, provided they are harmonized to extend to family members and affiliated companies and are incorporated within the Petroleum Bills. The problem however resides in the weak enforcement of these provisions, which is the object of our next recommendation.

Recommendation 6:

- Amend section 159 of the EDP Bill to extend to public officers' family members and affiliated companies.
- Ensure proper enforcement of the *Leadership Code Act* and the *Code of Conduct and Ethics*.

3.3.2 Implement strict penalties for ethical breaches

The EDP Bill stipulates that a person's failure to disclose a matter in which he or she has a personal interest, among other cases of misbehaviour, will lead to his or her removal from the board of directors of the Petroleum Authority (section 21) if he or she is a director, or from the staff of the Petroleum Authority (section 30) in the case of an executive director found to have misbehaved. Section 159(2) states that contraventions will lead to a fine not exceeding 200,000 currency points or imprisonment not exceeding 10 years or both.

These provisions are complemented by other Acts and Codes. The 2009 *Anti-Corruption Act* for example gives a comprehensive definition of corruption and other unethical conducts. This Act also punishes breaches with fines and imprisonment. The Act gives powers to the IGG and the Director of Public Prosecution, such as the power to investigate, inspect documents, seize documents and obtain information. The High Court or a magistrate's court can try offences under this Act, while their decisions will be enforced by authorized officers (i.e. police officers).

The *Leadership Code Act* of 2002 for its part provides the following penalties (depending on the breaches committed) a simple warning; forfeiture to the Government; demotion; dismissal; and vacation of office. By the same token, the 2005 *Code of Conduct* lists the following penalties for unethical conduct (depending on the gravity of the offense or misconduct): a warning or reprimand, suspension of increment, withholding or deferment of increment; stoppage of increment, surcharge or refund, making good of the loss or damage of public property/assets, interdiction from duty with half pay, reduction in rank, removal from the public service in public interest, and dismissal. The Code also rewards ethical conduct and good performance. The rewards include word of recognition of good performance, open praise, challenging work assignments normally done by seniors, a letter of commendation, mementoes, a certificate of merit, concessionary trips, cash bonuses, salary increments, and the award of medals.

However, there appears to be a serious implementation gap. During our interviews, it was often mentioned that existing oversight mechanisms such as the IGG were ineffective. In fact, the effectiveness of the IGG has been hampered by a lack of qualified staff and sufficient funding, while its recommendations are rarely followed-up by the Parliament or by the Executive.²⁹ The Auditor General received a relatively better reputation during our interviews, but its effectiveness is still limited. The Auditor General appears to be largely overlooked by the Executive, and it has to function with a lack of resources, especially with regards to conducting thorough audits at the local level.³⁰

This implementation gap must be closed in order to curtail corruption, especially in light of the current needless secrecy surrounding in the oil industry (see section 0) and the expected massive oil revenue inflow, both of which create significant opportunities for theft and corruption to flourish, as other nations' experience has shown. Increased funding and the training of additional staff members are required to increase these organizations' effectiveness given the high frequency and the large scale of misconduct cases.³¹

Furthermore, these organizations will only provide added value if their recommendations are acted on. Therefore, reports from oversight agencies should be followed up upon both by the Executive and the Parliament. In particular, as a watchdog of the government and as representatives of the people of Uganda, the Parliament should take a leading role in ensuring that such recommendations are consistently enforced.

²⁹ Chêne, Marie. "Overview of Corruption In Uganda." *U4*. U4 Helpdesk, Transparency International, 4 Mar. 2009. Web. 04 May 2012.

³⁰ Ibid.

³¹ Seppuya, Mikaili. *Global Integrity Scorecard: Uganda 2009*. Rep. Global Integrity, 2009. Web. 4 May 2012. In fact, the Global Integrity Scorecard: Uganda 2009 says that due to insufficient capacity, the IGG cannot enforce the existing conflicts of interests regulations.

The “broken window” theory of policing argues that frequent and rampant small-scale misconduct will, if unchecked, lead to large-scale abuses. Hence, in order to avoid serious problems, it is important to eliminate daily, small-scale misconduct. As such, the Ministry of Energy, the Petroleum Authority, and the National Oil Company should establish internal ethics committees to enforce internal discipline. This will strengthen organizational oversight and reduce the burden on the Inspectorate of Government. In addition, making superiors responsible for misconduct of subordinates will incentivize internal oversight.

Recommendation 7:

- Increase the capacity of oversight organizations (funding, human resource and training).
- Enjoin Parliament to implement recommendations formulated in the Inspector General and Auditor General’s reports.
- Create an internal ethics committee in each agency.
- Hold superiors responsible for their subordinates’ misconduct.

3.3.3 Get Parliament approval for key nominations

It is critical to ensure that the most qualified candidates are selected. Selection criteria should be clearly laid out in the EDP Bill or elsewhere. For instance, it may make sense to require the inclusion of at least one economist and one geologist on the Board of the Petroleum Authority. It should be also disclosed to the public how the nominees meet these criteria.

Furthermore, it is important to ensure that nomination decisions are made in the best interest of the country by avoiding favoritism. One option is to give the Parliament the power to select candidates. The Parliament is a body consisting of democratically elected representatives of Ugandan society. As entrenched in the Constitution, some under-represented groups such as women, the disabled and veterans also have quotas in the Parliament. Hence, this is a good entity to nominate the board members of the Petroleum Authority. Alternatively, the Parliamentary Committee on Natural Resources can assume this role, but it should reflect the diversity of the Ugandan society in terms of region, ethnicity, religion, gender, political affiliations and other necessary considerations.

This process could work in the following way. First, the Parliament or the Committee makes a list of selected candidates. Following this, the Cabinet further selects qualified persons to be nominated as board members. The Parliament gives the final approval to the Cabinet’s selection and ensures that all members are independent and qualified.

The second policy option is to have Parliament confirm nominations. If the Petroleum Authority is to be independent, approval from Parliament should be a requirement for appointees. A good example is the appointment procedure for positions within Uganda’s major oversight agencies. For instance, the Auditor General, the IGG and the Deputy Inspector of Government are appointed by the President with the approval of the Parliament. Such increased oversight will give more independence and impartiality to the Petroleum Authority, which will nurture confidence of the Ugandan people in the Authority. AFIEGO also recommends that the Petroleum Authority should directly report to the Parliament and

that members of the Authority should get approval from the Parliament.³² Moreover, this type of procedure will provide incentives for the international investment community to invest in Uganda.

Recommendation 8: Give Parliament a broader role in suggesting and approving nominations. Impose minimum competency requirements for certain posts.

3.3.4 Protect appointees' independence and impartiality by giving them security of tenure

Section 21(2) of the EDP Bill gives the Minister of Energy the ability to remove a member of the board of the Petroleum Authority, which undermines the independence of the Authority. There should be a separate process to determine the termination of appointment, such as a special tribunal. For example, the justices of the High Court can be removed by the President but only upon recommendation of a special tribunal (see Art 144 of the Constitution). Such a process would improve the security of tenure and independence of appointees under this Bill. The same protection can be found to safeguard the tenure of Auditor General (the *National Audit Act* of 2008 at section 7 (1)), of the Inspector General and of the Deputy Inspector of Government, who may be removed from office by the President but only “on the recommendation of a special tribunal constituted by Parliament” (*Inspectorate of Government Act* of 2002, section 5). AFIEGO also suggests this course of action.³³

Recommendation 9: Guarantee appointees' independence by giving them greater security of tenure.

3.4 Strengthen oil and watchdog agencies' enforcement powers

Once the right policies and legal frameworks are in place, the necessary mechanisms to implement them have to be in place. In this regard, Uganda's institutions fall short. The first step in closing the country's implementation gap is to give these institutions stronger enforcement powers.

3.4.1 Give agencies broader investigation powers

Broader enforcement powers would give agencies and ministries in charge of implementing oil regulations greater leeway in monitoring oil activities and investigating suspected violations of a license's conditions. Watchdog agencies should for their part have similar powers in order to investigate corruption allegations and prevent the misappropriation of funds.

As a matter of fact, the Auditor General already has the power to carry out special audits, and investigations under section 22 of the *National Audit Act*, while the *Inspectorate of*

³² AFIEGO, above n **Error! Bookmark not defined.**

³³ AFIEGO, above n **Error! Bookmark not defined.**

Government Act gives the Inspectorate powers of investigation, search and access. The *Leadership Code Act* at section 3 also provides for such powers, while the *Anti-Corruption Act* of 2009 gives the IGG and the Director of Public Prosecution the power of investigation, of search and seizure, and to obtain information. These regulations should be used more often to investigate corruption allegations, and recommendations stemming from these automatically acted upon by relevant authorities. More specifically, the Attorney General should be required to either commence proceedings against individuals or companies implicated in such reports, or provide a detailed accounting of why it chooses not to go ahead with a formal indictment.

The EDP Bill should similarly give agencies that are in charge of enforcing oil regulations the power to conduct unannounced audits and inspections of oil industry actors to ensure that they are operating in compliance with all applicable laws. For this purpose, the Authority and other agencies should be given the power to compel companies to produce copies of certain documents or reports in the hope of identifying violations quickly before any permanent damage is done. Failure on the part of oil companies to comply with such requests on a timely basis should lead to the automatic suspension of their license.

Furthermore, section 150(1) (Prohibition against disclosure of information) of the EDP Bill should be modified, as it could be used to restrict information sharing across government agencies.

Recommendation 10: Give agencies the right to conduct unannounced audits and inspections, including to right to compel the production of documents, and facilitate cooperation and information sharing across agencies

3.4.2 Give agencies the power to impose sanctions or suspend operations when an agency finds that oil industry actors have violated their contractual or legal obligations

Section 160 of the EDP Bill stipulates that a company's management team will also bear personal responsibility and liability for not establishing reliable and solid policies and procedures and for failure in oversight, while section 162 imposes penalties for willful or negligent contravention of directives under the Act. These are steps in the right direction.

For example, section 6(2) (b) prohibiting the conduct of petroleum activities without proper licenses imposes a fine on companies for breach not exceeding 100,000 currency points. At present exchange rates, this equates to less than USD 1 million. For large oil companies, this is not a real penalty. Unauthorized conduct of petroleum activities is equivalent to theft from the Ugandan people and must be punished severely. At a minimum, corporation executives should be subject to criminal penalties for breaches of this provision. If there is no personal consequence for managers, history tells us that managers will take unnecessary and serious risks at the public expense or cost.

Sections 87(1) and (2) give companies the ability to lobby for lesser penalties for default or to "buy" their way out of default. There should be automatic suspensions/cancellation of licenses, especially in case of noncompliance with environment, health and safety laws. Companies will only be deterred into compliance if automatic suspension or cancellation of

licenses is included in the legislation. Moreover, this provision should be self-executing – that is, the license should automatically be suspended upon simple notice by the Minister that a serious violation of the terms of the license has occurred.

Recommendation 11: Incentivize decision makers to comply with the law by increasing the amount of fines and suspending licenses.

3.5 Conduct capacity building in key institutions

Another essential step in closing Uganda’s implementation gap is to build capacity within institutions in charge of enforcing good governance and oil-related policies and regulations.

3.5.1 Encourage donors and civil society to redirect aid towards building capacity and promoting transparency

During our time in Uganda, we met with numerous donors and explored the different models they applied in Uganda, and how they are anticipating the challenges of oil development. International donors currently account for about one third of Uganda’s budget through direct assistance. As Uganda’s economy develops and oil revenues begin to flow, this percentage will almost certainly fall. Moreover, there is insufficient cooperation between donors, civil society and public servants on promoting transparency and fighting corruption in Uganda. Though some initiatives, such as the creation of the Auditor General position through funding from the British High Commissioner, have had a positive impact, the main issues facing Uganda are a lack of implementation and capacity.³⁴

The model used by the Japanese International Cooperation Agency (“JICA”) in integrating “hard” and “soft” development – infrastructure and capacity – is beneficial because it ensures that Uganda can have the indigenous capacity to operate its new infrastructure – for example, staff hospitals and provide care to rural Ugandans³⁵. The British Department for International Development (“DFID”) has been a major funder of Uganda’s new Petroleum Institute, which aims to train Ugandans in oil drilling and refinery-related tasks³⁶. DFID has already begun to refocus its aid away from budget support and towards training and greater integration with civil society.³⁷ NORAD, the Norwegian development agency, has been involved in providing technical assistance upon request to the Government for many years, and has strong relationships with civil society.³⁸

This needs to be expanded. Under the understanding that oil revenue itself will not be enough to meet Uganda’s development potential, a wide range of capacity building needs to take place across sectors, from those directly related to petroleum to those that provide much needed social assistance and improve Uganda’s human development.

³⁴ United Kingdom. Department for International Development. Uganda Office. *Operational Plan 2011-2015*. May 2011. Web. 14 Apr. 2012. <<http://www.dfid.gov.uk/Documents/publications1/op/uganda-2011.pdf>>.

³⁵ JICA Uganda Guide (Hard Copy)

³⁶ “UGANDA: Support for the Uganda Petroleum Institute.” *World Bank*. 2012. Print.

³⁷ United Kingdom. Department for International Development. Uganda Office. *Operational Plan 2011-2015*. May 2011. Web. 14 Apr. 2012. <<http://www.dfid.gov.uk/Documents/publications1/op/uganda-2011.pdf>>.

³⁸ Uganda. Ministry of Energy and Mineral Development. *Strengthening the Management of the Oil and Gas Sector in Uganda A Development Programme in Co-operation with Norway*. Kampala, 2010. Print.

Donors should also focus on building capacity within government agencies, not limited to those directly involved with petroleum, such as those related to health, social services, and infrastructure – all necessary if Uganda is to meet its long term development goals and best utilize oil revenues. JICA’s program of having desk-officers at specific ministries, and sending high-promise ministerial staff to Japan for training, is a model that needs to be expanded with a focus on government agencies that will see drastically enlarged functions due to oil. Donors need to be more integrated into Ugandan society and be willing to work jointly with government and civil society.

Transparency is a pre-requisite for a well-functioning oil sector. Donors should be more actively pushing Uganda to adhere to EITI, the African Platform on Access to Information, and African Union information initiatives. The Netherlands suspended its aid program to the Government after corruption was seen as reducing the efficacy of funding, choosing instead to work with civil society – other donors may consider making similar judgments. Some civil society organizations we met with believed that donors should take a stronger stance against Government corruption and misuse of funds.

Recommendation 12:

- Refocus donor aid towards capacity building and training.
- Make transparency a pre-requisite for donor assistance

3.5.2 Focus capacity building on key institutions

In many sectors, Uganda currently lacks the human capital to fulfill all necessary tasks. Moreover, the transition towards democracy has not yet reformed a civil service system based on individuals or single leaders rather than on organizational knowledge and procedures. Another concern is low pay, which creates incentives for the best, most knowledgeable staff to move to higher paying jobs in the private sector. As oil investment grows and oil companies increase their staff, there will be more incentives for educated Ugandans to leave for new, higher paying positions in oil development.

A well-functioning civil service should not be dependent on a single person, no matter what their status. Strong guidelines should be instituted, in addition to a code of conduct, to promote organizational efficiency. This includes; merit-based promotions regardless of tenure or connections to political leaders, increasing career-development opportunities, and increased emphasis on training at the lower levels of the bureaucracy to create a groundswell of human capital.

Instead of delaying oil development, it is essential that Government has the ability to conduct effective oversight now. Though the preference should always be to use Ugandans instead of foreign staff, in the short term, it will likely be necessary that certain holes be filled by non-Ugandans. Donors, as stated above, can provide some of this capacity, but consultants, NGOs and IGOs should be allowed to provide staff under strict guidelines set forth by Parliament. Moreover, part of any contract for foreign assistance should include requirements for the training of Ugandans to fill those positions in the future. This should also be the system for sectors related to overall development, including the hiring of foreign teachers and healthcare workers until local staff can fill the role.

In addition, salary scales should be increased to match what is being offered by private sectors competitors in order to keep highly qualified staff. Guidelines should be regularly reviewed and other incentives provided, such as increased responsibilities, recognition, and benefits, to the best performing staff.

Recommendation 13:

- Build competent workforce through a merit-based, managerial civil service
- Use foreign capacity as a bridge to Ugandans taking over more responsibility both in oil and non-oil sectors.
- Maintain competitive salaries to retain top staff.

Specific Recommendation for Selected Ministries

- i. **National Oil Company** (“NOC”) – The national oil company’s development should not take away from the capacity of other ministries to do their jobs. NOC staff should not come from other ministries, and instead, NOC should focus on building private, technical knowledge about oil and should be seen as a long term endeavor.
- ii. **Uganda Revenue Authority** – In the 2011 East African Bribery Index, URA was ranked the 3rd most bribed institution in Uganda, with 61.3% of users having reported paying a bribe.³⁹ This represents an immense loss and misuse of Government revenues. URA needs to increase its capacity to fight bribery through institutional reform, especially in rural areas, and create an efficient, clean revenue gathering process.
- iii. **Anti-Corruption Institutions** – Increase staffing at Auditor General and Inspectorate of Government, increase funding, and ensure that staff stay on cases through their entirety.
- iv. **Environment Ministry/NEMA/Wildlife Authority** – Increase field staff in charge of monitoring environmental impacts of oil. Allow outside environmental consultants to fulfill these functions. Involve locals and local knowledge in the understanding of these impacts.
- v. **Petroleum Authority** – Increase capacity to review and draft legal agreements.

³⁹ *East African Bribery Index (EABI) 2011*. Rep. Transparency International East Africa, 20 Oct. 2011. Web. 04 Mar. 2012.

3.6 Increase transparency in institutions and over oil activities

Transparency is more than just openness. It is an opportunity to ensure that oil has the greatest impact on Uganda's long term growth and stability. It is clear that in order to fully realize the benefits from oil and to meet the needs of its growing population, Uganda needs to attract more investment from abroad, whether it is from foreign governments, international institutions, or corporations. Lack of transparency and perceived corruption have already hurt overseas development assistance and foreign investment in Uganda.

In its most recent country brief, the World Bank highlighted the following:

*"Perceived deterioration of governance and increase in corruption threatens to tarnish Uganda's image as a development model and challenge its future development efforts. Uganda needs to decisively address increasing petty corruption, the perceived growing culture of impunity for grand corruption and pervasive "quiet corruption"—the failure of public servants to deliver goods or services paid for by governments—such as unchecked teacher and health worker absenteeism."*⁴⁰

The United States, in its widely read Uganda Annual Investment Climate Report, clearly states the potential for oil to increase investment opportunities by improving the country's lacking infrastructure:

"Uganda's potential for larger amounts of Foreign Direct Investment (FDI), is tempered by weak infrastructure, insufficient electricity and high energy costs, the lack of a skilled workforce, political interference, and high levels of corruption. [...]"

*Electricity and road networks urgently need renovation and expansion. With an installed total capacity of just 415 megawatts (MW), Uganda's electricity network reaches only 10% of the population, and load shedding across the country is common. The dilapidated road infrastructure increases transportation costs and leaves the country vulnerable to bottlenecks and disruptions."*⁴¹

However, the report also states how any potential gains will be lost if similar strides are not made in improving governance:

*"Corruption and government interference in the private sector are endemic. In commercial disputes, Government agencies and politically-connected insiders may ignore court rulings against them, leaving foreign investors with no official means of recourse."*⁴²

⁴⁰ World Bank. "Country Brief - Uganda." *worldbank.org*. Web. 05 Apr. 2012.

⁴¹ *Business and Trade*. Rep. United States Embassy - Uganda, 2011. Web. 13 Apr. 2012.

⁴² *Ibid.*

Transparency: How Botswana Boomed

Botswana has many similarities to Uganda. A small, landlocked country with little infrastructure at Independence, Botswana has sustained one of the highest growth rates in the developing world for nearly three decades. Transparency and smart utilization of international aid and capacity, along with sustainable natural resource development, played a role in Botswana achieving such impressive growth.

Botswana's early openness and considerable skill at attracting foreign aid and foreign investment got its economic motor running immediately following independence. At independence the government of Botswana was cash poor. They attracted significant donor money from the international aid community in the first years of independence to develop a productive infrastructure. But unlike many similar cases, donors didn't just introduce capital into Botswana's economy; they stayed and participated in the design of Botswana's independence infrastructure. The system of public administration, for example, was designed by foreign consultants who lived in Botswana for extended periods of time and learned for the nuances of culture in the design of the system.⁴³

Though the situation is different, Uganda can learn from Botswana. **Transparency goes hand in hand with creating a strong investment climate that will allow for oil to benefit the entire Ugandan economy. Only then will the planned infrastructure investments have their intended impact.**

3.6.1 Comply with EITI transparency requirements⁴⁴

Extractive Industry Transparency Initiative (“EITI”) is a mechanism designed to help countries to properly manage revenues from natural resources. It requires, on one hand, extracting companies to disclose what they pay to the government and, on the other hand, the government to disclose what they receive. It thus incentivizes improved revenue streams between the government and companies. It will also involve international actors, notably the World Bank, in the oversight and monitoring of the oil revenue.

Compliance with EITI requires the disclosure of the following basic revenue streams: (1) host government's production entitlement, e.g., oil profits; (2) national state-owned company production entitlement; (3) profits from taxes; (4) royalties; (5) dividends; (6) bonuses (such as signature, discovery, and production bonuses); (7) license fees, rental fees, entry fees and

⁴³ Dougherty, Michael. *A Policy Framework For New Mineral Economies: Lessons From Botswana*. Rep. Illinois State University. Web. 07 Apr. 2012.

⁴⁴ This is also one of the recommendations made by AFIEGO et al., above n **Error! Bookmark not defined.**

other considerations for license; and/or (8) concessions; and other significant benefits to government.⁴⁵

The Ugandan government has already committed to EITI in the 2008 National Oil and Gas Policy. In addition, Uganda's Parliament passed a resolution on October 9th, 2011 demanding that the government participate in EITI. However, Uganda is not yet considered a fully-fledged EITI candidate because it has not met any of the five requirements in the sign-up phase. Among the major oil companies in Uganda, Tullow Oil and Total support EITI, while Dominion, CNOOC and Neptune/Tower do not.⁴⁶

EITI Phases and Requirements⁴⁷

In order for a state to be qualified as EITI compliant, five phases must be completed: (1) sign-up, (2) preparation, (3) disclosure, (4) dissemination, and (5) review and validation. Uganda is not yet considered to be an EITI candidate because it has not fulfilled the requirements at the sign-up phase. At this phase, the government has to meet five requirements: first issue an unequivocal public statement of its intention to implement the EITI; second, commit to work with civil society and companies; third, appoint a senior individual to lead the implementation; fourth, establish a multi-stakeholder group to oversee the implementation of the EITI; lastly, the multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints.

EITI brings about various benefits to a country. For instance, according to Ghana's EITI website,⁴⁸ "the initiative is very relevant to Ghana as it pursues a policy of openness which promotes the concept of tolerance and good governance." It also asserts that EITI contributes to the Ghanaian strategy for extractive industry to "empower and engage mining communities in the development process and to promote responsible behavior and social investment on the part of mining companies and entrepreneurs in those areas where mines are developed and operated."

The EDP Bill presents some obstacles to the implementation of EITI. Section 148 (Availability of information to the public) fails to prohibit confidentiality clauses in oil-related agreements, while section 149 (Confidentiality of data) does not guarantee the disclosure of information required by EITI. When Uganda joins EITI, it will have to amend these provisions.

EITI is becoming the rule rather than the exception in Africa. In fact, Liberia and Ghana already achieved compliant status, while 17 countries (Mauritania, Mali, Guinea, Sierra Leone, Côte d'Ivoire, Niger, Nigeria, Chad, Cameroon, Central African Republic, Gabon, the

⁴⁵ "EITI Rules, 2011 Edition including Validation Guide." Ed. Sam Bartlett and Kjerstin Andreasen. EITI International Secretariat Oslo, 1 Nov. 2011. Web. 4 May 2012.

⁴⁶ EITI Rules, above n 45

⁴⁷ EITI Rules, above n 45

⁴⁸ *Relevance to Ghana's Economy*. Ghana Extractive Industry Transparency Initiative. Web. 4 May 2012.

Republic of Congo, the DRC, Zambia, Mozambique, Tanzania, and Madagascar) have obtained candidate status.⁴⁹ Uganda should not fall behind these countries. As was the case in Ghana, strong leadership from the government will play a significant role in the implementation.

Recommendation 14:

- Remove the obstacles to EITI implementation from the Petroleum Bill.
- Mandate the disclosure of the basic revenue streams.
- Catch up with other African countries in the implementation of EITI.

3.6.2 Grant broad access to information related to oil activities

Citizens have little to no access to reliable, independent information regarding oil activities. The lack of active use of the freedom of information law and of ministerial transparency provisions are creating unmanageable expectation and fomenting unrest. Though Uganda has a strong press, measures should be taken to ensure that press freedom is protected especially in regards to oil operations. Uganda is one of only 10 countries in Africa currently with freedom of information legislation, making it a leader in that sense. However, in the seven years since the signing of the Access to Information Act, only small steps have been made towards its goals of transparency and information access. A large part of this problem is institutional capacity, as March 2012 report from the African Freedom of Information center states:

*“The enactment of the Access to Information Act of 2005 has created opportunities for the public to enjoy the right of access to information but limited progress in implementation of the Act still stands in the way to full enjoyment of this right. Despite over six years since its enactment, there is still inadequate and scattered evidence to show that Government and other stakeholders are committed to ensure full implementation of the 2005 ATI Act.”*⁵⁰

The report also makes some general recommendations on raising awareness about the law:

*“There is need for all public institutions to deliberately create awareness among their staff and their entire clientele on the Access to Information Act of 2005 as well as related legislations and copies of this Act should be made available to all staff of public institutions and the general public. The Ministry of Information and National Guidance should also be supported by Government to produce and disseminate the Access to Information Act in Major Languages of the country. This will boost its dissemination and consequently enable its implementation based on massive demand.”*⁵¹

⁴⁹ Ethiopia has announced its intent to implement EITI. See EITI website for more details ("EITI Countries." *Extractive Industries Transparency Initiative*. Web. 04 May 2012.)

⁵⁰ Katwebaze, Caleb, and Firminus Mugumya. *An Assessment of the Current Capacity of Public Institutions in Uganda to Implement The Access To Information Act 2005*. Rep. Kampala, Uganda: African Freedom of Information Center, 2012. Print.

⁵¹ Ibid, above n. 50.

Oil is likely to increase the volume of access to information requests and exacerbate the current lack of capacity. Thus, additional funds should be set aside to promote transparency and the releasing of information by the Central Bank, the Ministry of Economics, the Ministry of Energy, the Ministry of the Environment and all other agencies involved in overseeing the oil industry. Each ministry should undertake a process to educate staff about the legislation, and what it entails.

Specific measures should be taken to ensure access to information in the oil producing regions, including the dissemination of materials in local languages. Specific guidelines on how to access information and a clear appeals process needs to be developed in local communities.

Furthermore, the party seeking to block disclosure should have the burden to prove that its legitimate proprietary business interests would be damaged as a result of the disclosure. Finally, there should not be any restriction on sharing information between governmental agencies.

Recommendation 15: Facilitate access to information by placing on the party seeking to block disclosure the burden to prove that its legitimate proprietary business interests would be damaged as a result of the disclosure. Increase institutions' capacity to meet existing disclosure laws. Increase awareness of the Access to Information Act.

3.6.3 Actively conduct a PR and communications campaign to inform the general public

The government currently lacks a coherent communication strategy regarding oil. Indeed, there are no clear guidelines on who is responsible for pro-actively informing the public – both in the oil region and in general – about the current situation. As a result, the Ugandan public is generally ill-informed about the actions being taken by government and ministries. Besides the lack of transparency regarding PSAs, oil reserves, and procuring on content, there is limited understanding of the information that the government has released. Civil society and donors are unclear about whom to contact at certain ministries for information, leading to leaks, bad information, and mistrust. The PEPD's 2011 Communication Strategy is a strong first step in understanding the benefits and goals of information, but it needs to go further in detailing how to build cross-ministry linkages and a stronger infrastructure that promotes cohesive media strategy and incorporates media and civil society.⁵² Additionally, there should be designated media staff in each department that actively engages media.

Finally, information such as EIAs, environmental atlases, and feasibility studies that are public should be made more easily accessible. Processes should be put in place to allow the ministerial communications divisions to know who is speaking to media or civil society and can ensure that the information being released is accurate and timely.

⁵² The Ministry of Energy and Mineral Development. *Communication Strategy for the Oil and Gas Sector in Uganda*. Kampala: Govt. of Uganda, 2011. Web.

Recommendation 16: Create a communications division within each Ministry and a central information authority, independent of PEPD that collects and disseminates information and ensures its accuracy.

3.6.4 Ensure that the Petroleum Bills do not in any way limit free speech, the right of assembly or to engage in peaceful protests

Several clauses in the EDP Bill⁵³ can be easily construed as infringing on citizens' basic civil rights. Freedom of speech, assembly, and expression should be enshrined as being above any law, and should be specifically protected to ensure transparent oil operations. Freedom of speech must be respected and Ugandans' ability to participate in public debate protected. As such, sections 157, 158, and 163 of the EDP Bill should not apply to citizens who voice their concerns or opposition regarding oil-related activities and in the process make recklessly misleading statements, given the lack of access to verifiable information. As we will see in the following section, these provisions are also likely to discourage whistleblowers from coming forward.

Recommendation 17: Modify the EDP Bill to remove any obstacles to individuals' right to exercise their freedom of speech, their right of assembly or their right to engage in lawful protests.

3.6.5 Protect whistleblowers and encourage them to come forward

In order to promote transparency and accountability, whistleblowers wishing to reveal information related to alleged abuses of power, corruption or other illegal acts should be properly protected and encouraged to come forward. The EDP Bill raises concerns in this regard. For instance, section 33 (Duty not to disclose information) prohibits members of the Petroleum Authority from disclosing any information which they may have obtained in the course their employment. In addition, according to section 157 (b) (Obstruction of an authorized officer), "any person who knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the authorized officer engaged in carrying out his or her duties and functions under this Act" commits an offense and is liable to be convicted to a fine or to imprisonment. These provisions could be used to prosecute whistleblowers who come forward with allegations of wrong-doing that either stem from information received in the course of their employment, or that are insufficiently documented. Whistleblowers are in reality the active conscience of a society as well as the government.⁵⁴

The *Whistleblower Protection Act* of 2010 offers procedures for Ugandan citizens to report corruption or improper conduct.⁵⁵ The *Inspectorate of Government Act*, the *Leadership Code Act*, and the *Anti-Corruption Act* also provide protection for whistleblowers. These regulations should provide protection for whistleblowers in the oil sector as well. Given that

⁵³ See our preliminary letter of advice attached in the Annex.

⁵⁴ For more on the role of whistleblowers, see Radon, Jenik. "The New Mantra: Bribers Beware." *Journal of Transnational Management* 11.4 (2006): 19-43.

⁵⁵ However, the Act fails protect those who directly report to the press or public.

section 184 of the EDP Bill proclaims the Bill's priority over any other written law, we recommended inserting specific provisions to protect whistleblowers into the EDP Bill itself.

It is worth noting that the whistleblower protections described above were insufficient in and of themselves to foster confidence among Ugandans and encourage them to come forward. According to the East Africa Bribery Index 2011 Report, out of the respondents who encountered a bribery situation, 90.1% did not report the incident.⁵⁶ Major reasons for not reporting bribery cases included lack of faith in the existing anti-corruption mechanisms (35.9%), fear of intimidation (24.1%), and not knowing where to report (14.0%). Thus, Ugandans are neither aware of the Acts nor trust those who implement them. Greater human resources are required to give full effect to these protections and to regain Ugandans' confidence in the system.

Recommendation 18: Extend the existing regulations related to the protection of whistleblowers to the Petroleum Bill, and increase visibility and staff of agencies that are charged to protect them.

⁵⁶ *East African Bribery Index (EABI) 2011*. Rep. Transparency International East Africa, 20 Oct. 2011. Web. 04 Mar. 2012.

4 The Economic Implications of Oil

4.1 Overview – Oil and the Ugandan economy

While poor, Uganda is one of the fastest growing economies in Africa with a real GDP growth of about 6.7% in the financial year 2012/11.⁵⁷ In recent years the services sector has been a major driver of growth, replacing agriculture as the largest contributor to GDP. This development has not been mirrored in Uganda’s structure of employment; two thirds of the working population is still found in agriculture. A senior official at the Ministry of Finance, Planning and Economic Development expressed concern that slow growth in the agriculture sector will have significant implications for the livelihoods of the poor.⁵⁸ The need for growth in employment is compounded by the population pressures that Uganda faces as it enters its oil age. With one of the highest population growth rates globally, total population is expected to balloon and increase from 33 million in 2010 to 100 million by 2050.⁵⁹ This expansion will challenge Uganda’s ability to reduce poverty and will place Uganda’s social services and environment under strain.

Economic Indicators ⁶⁰	* 2010
GDP (current US\$)*	17 bill
GDP per capita, PPP (current \$)*	1263
Real GDP growth	6.7 %
Budget deficit (excl grants & oil revenue)	9.6 %
Current account balance	-1.932 bill
Domestic revenue	2.261 bill
Budget deficit	1.632 bill

⁵⁷ *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development.

⁵⁸ Interview with senior official from Ministry of Finance, Kampala, Thursday 15th March

⁵⁹ "Country Profile: Uganda." United Nations, Department of Economic and Social Affairs, Population Division, Population Estimates and Projection Section. Web.

⁶⁰ *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development. Web. 2010 data from "Data Catalog", World Bank, above n 5.

The macroeconomic picture in Uganda does, however, face a number of pressures. As a net importer Uganda's economy is greatly affected by the events in the international market. Over the last two years supply-side shocks in domestic food production, rising international commodity prices, and unrest in the Middle East resulting in increasing oil prices has led to high domestic inflation. Although food inflation has eased over the past six months, the headline inflation rate remains at 20.3% as of May 2012.⁶¹ Furthermore, the Ugandan Shilling ("UGX") has undergone significant depreciation against the USD, by almost 45% between January 2008 and January 2012, off the back of a deteriorating current account balance and spillovers from the volatility in global financial markets.⁶² As the Governor of the Bank of Uganda ("BoU") himself puts it, "while exchange rate depreciation is usually expected to promote exports, excessive volatility creates a lot of business uncertainty, fuels inflation, deters investment, and consequently has a negative impact on economic growth."⁶³ The present environment is also deprived of liquidity with lending rates being close to their historical highs.⁶⁴

In an interview a senior official from the BoU expressed concern for the future of Ugandan exports given that many post-war neighbors are increasing their capacity to domestically produce agricultural commodities such as coffee, tea, tobacco and building materials such as cement and iron bars, which Uganda has traditionally been exporting. In this sense, oil production will be valuable to close a structural gap.

Oil is poised to double government revenues from today's \$2.261 billion once full production is underway.⁶⁵ According to the World Bank, assuming an oil price of US\$75 per barrel, government revenues from the oil sector are expected to amount to US\$1.2 billion in 2016 and peak at \$2.5 billion in 2023.⁶⁶ Thus it promises to relieve Uganda of its chronic budget deficit of \$1.632 billion and, by increasing exports, of its current account deficit (-\$1.932 billion). More importantly oil revenues have the potential to accelerate the development of Uganda's human and physical capital.

Albertine oil reserves are expected to transfer \$32 billion to the government over the next 22 years.⁶⁷ Unless it is managed properly, this huge and unexpected influx of revenues exposes Uganda to the negative macroeconomic effects of resource-funded spending, also known as the "Dutch disease". Moreover, depending on the pace of extraction, Ugandan oil reserves are unlikely to last longer than 25 years. Like many other oil producing states before it, Uganda risks becoming excessively reliant on oil revenues, which is a one-off revenue source, if it does not use the next few years to build and preserve strong institutions, while also adopting prudent redistribution and saving mechanisms for the oil wealth.

As has been observed in Equatorial Guinea, Angola, Chad and Azerbaijan, without appropriate safeguards, oil revenues can be captured by narrow elites. In addition to misappropriating oil revenues through outright theft and corruption, these elites, either fearful of neighboring rivals or internal opposition, may utilize oil revenues for internal security

⁶¹ Bank of Uganda. *Monetary Policy Statement*. May 2012. Web.

⁶² Oanda.com historical currency rate converter. 1 Jan 2008 USD/UGX was 1680. 1 Jan 2012 USD/UGX 2430.

⁶³ *Annual Report 2010/11*. Rep. Bank of Uganda, p. 2.

⁶⁴ Lending rate as of March 2012 was 27.58% according to Bank of Uganda website.

⁶⁵ *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development.

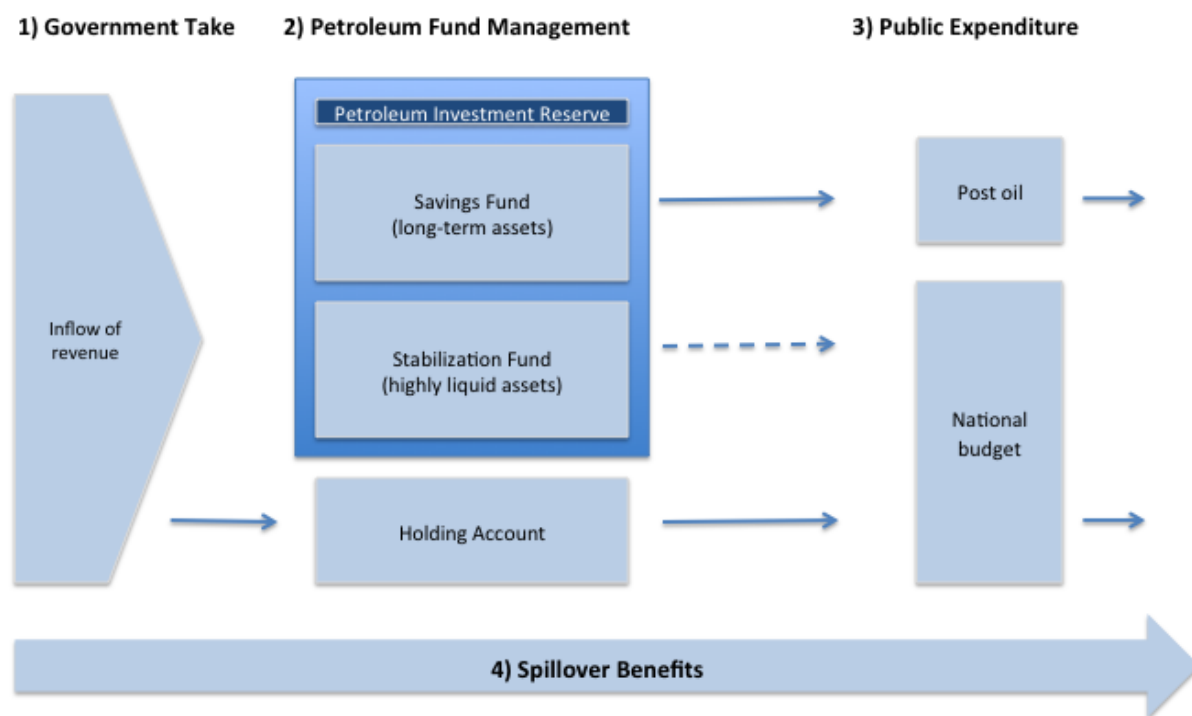
⁶⁶ See Figure 6 Government Revenue in Annex

⁶⁷ *Ibid*.

spending. Uganda finds itself located in a precarious conflict zone and has already incurred increased military spending which has increased the budget deficit.⁶⁸ There is a risk that oil revenues may be utilized for non-development purposes if efficient redistribution mechanisms are not instituted.

In this chapter, as illustrated in Figure 4, we present four pillars of analysis that play a key role in developing a prudent long-term fiscal strategy for the newfound oil resources in Uganda; 1) Government Take, 2) Petroleum Fund Management, 3) Public Expenditure, and 4) Spillover Benefits.

Figure 4: Fiscal strategy for revenue management



Following what is presented in Figure 4, this chapter is presented in four sections. The first section on government take is concerned with Uganda being able to achieve a balance between maximizing payments to the government while also ensuring that a competitive bidding process attracts sufficient investor interest. Issues of petroleum fund management, budget transfers and investment policy will be addressed in the second section. The influx of oil revenues promises significant increase in public financial means that will test the absorption capacity of the Ugandan economy, and put the economy under macroeconomic stress if revenue flow is not managed correctly. Closely related to revenue management is how Uganda prioritizes public expenditure, given that financial resources are going to increase. The third section therefore focuses on spending priorities and fiscal matters that keep the non-oil economy competitive. It is important that Uganda continues to develop its industrial base and create job opportunities for its citizens, thus the fourth section addresses the important issue of maximizing spillover benefits from oil investment.

⁶⁸ *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development.

4.2 Optimizing government take

The complex nature of contracts and revenue streams linked to oil development make it difficult to determine the government's actual "take" in an oil project. This problem is accentuated in Uganda due to the overly tight secrecy that surrounds the country's production sharing agreements. In 2010, the UK-based NGO PLATFORM conducted an in depth-analysis of Uganda's Production Sharing Agreements (PSAs) with Heritage (2004), Dominion (2007) and Tullow (2008 draft), and reported that Uganda was losing out on any upside gained in a high oil price environment because "profit oil"⁶⁹ split was not based on company profit.⁷⁰ That is, the international oil company would profit more from an increase in the oil price than Uganda.

Based on our interviews with senior officials from the Ministry of Finance and the Bank of Uganda, we understand that the recently negotiated Tullow PSA contains a sliding scale for government take based on the licensee's rate of return. If this is the case, then Uganda has succeeded in overturning a serious shortcoming to ensure government take is optimized based on the market value of oil. This aligns the PSA with best practice standards globally.⁷¹

Uganda must continue to ensure that it maximises government take from oil development. It is likely to do so if it transitions away from individual PSA negotiations⁷² to a competitive auctioning process that pits qualified bidders against one another in a contest where the winner is selected based on the best offer of fiscal terms. The government now has the leverage to do this with its proven oil reserves and previous experience with negotiating PSAs. Additionally, it is essential to control government transfers that relate to cost recovery of the licensee's upfront investment.

4.2.1 Develop a competitive auctioning process

Many contract negotiations in developing countries are characterized by information asymmetries (imbalances in knowledge).

Lessons from the Norwegian oil development experience

Helge Ryggvik in *The Norwegian Oil Experience*⁷³ illustrates how Norway fell into the same trap as other oil nations in their first phase of oil development. Eager to find oil, Norway opened up a relatively large share of its continental shelf on favorable terms for private oil companies. The Parliament passed measures that allowed reduced taxes for oil companies, royalties were set at low levels, and there were no incentives for oil companies to partner

⁶⁹ Profit oil is an industry term which refers to the amount of production, after deducting cost oil production (recoverable costs), that will be divided between the participating licensees and the host government under the PSA.

⁷⁰ Lay, Taimour, and Mika Minio-Paluello. *Cursed Contracts: Uganda's Oil Agreements Place Profit before People.*, p. 11. Rep. Civil Society Coalition on Oil in Uganda, Feb. 2010. Web. 28 Jan. 2012.

⁷¹ See Humphreys, Macartan, Jeffrey Sachs, and Joseph E. Stiglitz. *Escaping the Resource Curse*, above n 2.

⁷² See Radon, Jenik. "How to Negotiate an Oil Agreement." in Humphreys, Macartan, Jeffrey Sachs, and Joseph E. Stiglitz, *Escaping the Resource Curse*, above n 2, at p. 89-113, and Kasozi, A.B.K., "Uganda: Negotiating an Oil Agreement", allAfrica, February 17, 2010, Web.

⁷³ Ryggvik, Helge. "The Norwegian Oil Experience: A Toolbox for Managing Resources". *Rep. Center for Technology, Innovation and Culture*, 2010.

with Norwegian companies. Ryggvik concludes that other countries should “[t]ake the time needed to set up a legal framework. And make sure that this framework is sufficiently flexible that the state can tighten the rules when the conditions change”.

The situation was no different in Uganda when the government signed its first PSAs with Heritage and Dominion in 2004 and 2007 respectively. The companies had a better understanding of the value of Uganda’s subsoil resources due to their prior geological surveying activities, which, in addition to their superior negotiation resources, gave them an upper hand in contract negotiations. As such, the fiscal terms agreed in those PSAs were heavily skewed in favor of the oil companies. The PLATFORM report summarized the situation as:

“The terms of the PSAs largely protect the companies from price risk and project risk, with guaranteed profits. Furthermore, the arbitration and stabilization clauses ... in the contracts protect corporate profits from changes in the law and signing of international treaties. Thus, Uganda is constrained in its ability to legislate or regulate, or to manage its economy. Meanwhile, citizens will not have the benefit or protection of international human rights or environmental protection. Effectively the people of Uganda carry the risks on behalf of the foreign oil companies.”⁷⁴

Now that it is publicly known that Uganda has proven and commercially viable oil reserves in the Albertine Graben, the government has greater bargaining power for future licensing rounds. More leverage should translate to better fiscal terms for Uganda. The government is therefore urged to discontinue its practice of negotiating individual PSAs and adopt a competitive auctioning process for future block licensing, something which will require the design of a standard model contract that leaves fiscal terms blank to be completed by the bidders. As discussed in section 2.2.3 above, passing a new upstream petroleum law with more mandated provisions will assist Uganda by constraining the scope of topics that can be negotiated.

“Add-ons” to the contract after a winning bid has been selected must be prohibited, ensuring that the government signs a PSA with the candidate who offers the best economic package. Standard contract terms also make it easier for government to monitor contracts in the future.

Recommendation 19: Uganda should develop a competitive auctioning process to help strike a balance between getting responsible foreign investment into Uganda and ensuring that it comes in on the best possible terms for the Ugandan people.

⁷⁴ Lay and Minio-Palello, above n 70.

4.2.2 Enforce cost recovery limits strictly

The risk and cost of oil exploration, development and production is wholly incurred by the licensee, which agrees to invest upfront capital in the hope that, should commercial volumes of hydrocarbons be discovered, it will later recover its investment through a share of production. The PSAs provide the contractual mechanism for cost recovery, which occurs at a future date to the value of 60 per cent of gross oil production (“cost oil”).⁷⁵ Recoverable costs are approved by the Annual Work Programs and Budgets and subsequently signed off by the Ugandan government. It is important that there is minimal room to interpret which costs are recoverable or not, otherwise the government risks entering into costly disputes equivalent to the one that Chad found itself in when an Exxon-led consortium claimed it could deduct transportation costs from the actual sale price used for royalty calculations.⁷⁶

Under the Ugandan PSAs the licensee is prohibited from recovering certain costs that are deemed non-recoverable. Again, we are hampered by the fact that the PSAs are not publicly disclosed, leaving us unable to evaluate the current terms for cost recovery, which as noted should be limited and restricted.

Our understanding is that the list of non-recoverable items has been expanded in the latest Tullow PSA to include legal and other costs of arbitration and independent experts in respect of any dispute referred to determination under the PSA.⁷⁷ This is a positive development that ensures that the companies only recover costs that lead to commercial production of oil reserves, in line with global best practices.

Reviewing company claims for cost recovery is critical because it is not uncommon for oil companies to try and profit from ‘cost oil’. For instance, Ernst and Young’s audit of Heritage Oil’s exploration activities between 2004 and 2006 found that the company had over-claimed cost recoverable expenditure by almost \$600,000 including spending relating to corporate social responsibility.⁷⁸ Active monitoring of project costs is necessary to recover revenue that would have been lost to government and, in many cases, justifies the cost of conducting the external audit.⁷⁹

We understand that external consultants PwC and KPMG are presently involved in Uganda with auditing cost recovery claims. This makes sense as an interim measure until the government can develop strong internal capability to conduct audits.

⁷⁵ Lay and Minio-Palello, above n 70, p. 9, *Written Submissions of Tullow Oil Plc for the Purposes of the Ad Hoc Committee to Investigate the Regularisation of the Oil Sector and Other Matters Incidental Thereto*. Rep. Tullow Oil Plc, 11 Apr. 2012. Web. 11 Apr. 2012, p. 13

⁷⁶ Gary, Ian. *Oil and Gas Revenues, Funds and State Budgets: Minimising Leakages and Maximising Transparency and Accountability in the Hydrocarbon Value Chain*. UNDP Cambodia, 2008. Web. 28 Mar. 2012.

⁷⁷ Tullow Oil pla, above n 75, p. 15.

⁷⁸ Lay and Minio-Palello, above n 70, p. 9.

⁷⁹ *Ibid*, p. 167.

Recommendation 20: The GOU must continue to strengthen its capacity for strict monitoring of recoverable costs and ensure that non-recoverable costs under the Tullow PSA are carried forward to future licensee agreements.

4.3 Petroleum fund management

The handling of petroleum-related income (known as petroleum revenue management) is regulated by national law. A new Public Finance Bill (“PF Bill”) is currently being reviewed in Uganda. The PF Bill establishes the framework for public budgeting and includes a chapter establishing the framework for oil revenue management, including revenue collection, the design of a petroleum fund, its asset management and investment strategy, and a governance structure for oil revenues.

The influx of oil revenues increases Uganda’s vulnerability to a series of challenges, including political pressure due to rent seeking behavior and macroeconomic stresses associated with inflation, currency appreciation and resource dependency. Senior officials at the Bank of Uganda and Ministry of Finance expressed concerns that Uganda will struggle to deal with these pressures during interviews.⁸⁰ They underlined the importance of passing the PF Bill to ensure that oil revenues are responsibly managed.

As the custodian of Uganda’s oil wealth, the Ugandan government is naturally the primary decision-maker in charge of determining how the oil revenues will be employed, although the exact contours of how these decisions should be made need to be embedded in the law. Our recommendation is to use revenues to improve the country’s agricultural sector, education system and physical infrastructure while also utilizing them to relieve fiscal deficits as the government controls spending and ushers in a new chapter of fiscal responsibility. This being said, the government must not lose sight of the intergenerational priority, which requires it to save revenues for the benefit of future generations who will live after oil has been exhausted.

Lessons from the Nigerian oil development experience

The Nigerian Central Bank Governor Lamido Sanusi, speaking at Columbia University on April 13th, 2012, had the following advice to give to Uganda on its path to oil development:

“Look at what oil has done to the structure of the Nigerian economy – it is 13% of our GDP, 80% of our government spending, and 99% of our export earnings. Meanwhile, our other sectors, which predated oil, including agricultural exports of palm seeds, cocoa, and groundnut have suffered.

The Nigerian economy is growing at 7% annually, but we do not have the employment intensive industries. 80% of our poor come from agriculture but we have very low value-addition in agriculture.

⁸⁰ Interview with senior official from Bank of Uganda, Kampala, March 15th, 2012.

Without paying attention to farming—more credit for farmers, infrastructure that reduces losses between the farm and the market and greater linkages—we cannot change things.

So I would tell Uganda, do not let oil take you away from your agricultural economy and do not lose sight of the secondary services. Those are the sectors that will give you the jobs, and where you need to raise incomes.

Two other things are crucial from the very outset: establishing transparency in oil revenues, and a mandatory setting aside a portion of these revenues for future generations”

The cornerstone innovation of the PF Bill with regards to oil revenue management is the establishment of a Petroleum Fund, which will bridge the priorities of deficit reduction, macroeconomic stability and intergenerational equity. In this section we underline important considerations for the management of a Petroleum Fund that aims to increase transparency and good governance in Uganda’s nascent oil sector.

4.3.1 Develop a simple and separate revenue collection system

Since oil was discovered in Uganda, payments to the government have been received by different public entities.⁸¹ In order to minimize leakage and maximize transparency, all revenues spanning licensing fees to taxes should be deposited into a single fund, given that this is a one-off income source for Uganda. It is commendable that the PF Bill proposes a Petroleum Reserve Holding Account to which all revenues relating to oil shall accrue. The PF Bill also proposes that a credible independent public entity – the URA – will be responsible for the collection of all oil revenues due to the GOU.

These propositions ensure that any revenue leakage can be traced to a single institution. A streamlined and separate revenue collection structure also merits itself because it contributes to increasing overall transparency in the sector. In addition to facilitating public disclosure, a single account that is administered by one public entity may also help Uganda implement EITI sooner rather than later.

The most significant oil sector revenues that accrued to the GOU concern \$328 million worth of capital gains taxes relating to Tullow’s acquisition of Heritage in April 2011 and a further \$142 million relating to Tullow’s interest disposal to CNOOC and Total in February 2012. Both of these payments were received by the BOU and not by the URA. Moreover, these funds were earmarked for the construction of the Karuma Hydropower Project.⁸² While it is important to use oil revenues to build infrastructure, future capital gains taxes must accrue to the new separate account and be aligned with the broader development plan and a unified budget process.

⁸¹ For example, Tullow Oil reports payments to both the BoU and URA (see Tullow Oil plc, above n 75).

⁸² *Annual Report 2010/11*. Rep. Bank of Uganda.

Recommendation 21: Support the provisions within the Public Finance Bill that create one single account to which all petroleum revenues are directed and designate the URA responsible for all oil revenue collection.

4.3.2 Locate petroleum accounts offshore to protect inter-generational savings

It is laudable that the PF Bill proposes the creation of a Petroleum Investment Reserve to receive all petroleum revenues, but it does not specify any details on where the petroleum accounts are to be located. Best practice is for the Petroleum Fund to be established as a recognized offshore account,⁸³ at a reputable financial institution. This reduces the potential for local currency appreciation and keeps the money safe for future generations until it can be safely spent domestically. For example, the Timor-Leste Petroleum Fund is held at the Federal Reserve Bank of New York. The World Bank may also be able to offer appropriate asset management services under its Fixed Income Portfolio Management scheme.

Recommendation 22: Uganda must locate the Petroleum Fund accounts offshore at a reputable financial institution.

4.3.3 Establish a pricing committee for macroeconomic stability

A study by the World Bank in 2010 estimated that with oil prices at the US\$120 per barrel mark, government revenue could eventually accumulate to well over US\$4 billion annually.⁸⁴ Conversely, at US\$50 per barrel Uganda's oil revenue would amount to just US\$1.1 billion. This price contrast is relevant because it underlines the vulnerability a government faces due to oil price volatility. From this perspective, it is imperative that Uganda refrains from increasing recurrent spending on the premise that oil revenues will sustain their high levels seen in recent times. Instead, the government should employ oil resources to smooth out public expenditure in tune with long term price projections of oil.

A good example of smoothing volatility from resource revenues can be found in Chile, where copper revenues make up a large part of government revenues. To combat volatility in spending caused by fluctuating copper prices, Chilean budgetary rules require a structural balanced budget, constraining the ability of government to increase spending in response to an increase in copper prices. Chile relies on two independent panels of experts to determine the existence and extent of any output gap, and how the price of copper compares to its medium-term (10 years) equilibrium. When the economy is booming and/or copper prices are high, excess revenues are used to replenish a stabilization fund, which can only be drawn down in times of recession or low commodity prices.

⁸³ Dabán, Teresa, and Jean-Luc Héris. "A Public Financial Management Framework for Resource-Producing Countries." IMF. Web. Mar. 2010.

⁸⁴ World Bank. "International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency Country Assistance Strategy for The Republic of Uganda for the Period FY 2011 – 2015, Report No. 54187-UG." World Bank. Web. Apr. 2010.

Like Chile, Uganda should look to assemble an independent pricing committee comprised of professionals who can advise the executive and legislature on the projected trajectory of oil prices over the medium term. This committee will aid the domestic authorities responsible for national planning and budgetary oversight in their missions to ensure that spending is smoothed in accordance with the projected receipt of oil revenues.

Recommendation 23: A pricing committee should be established to consult the Government and Parliament on medium term oil price projections with a view to smoothing future spending based on expected oil receipts.

4.3.4 Develop clear investment and advisory guidelines

The PF Bill proposes that monies in the Petroleum Fund are invested in accordance with the petroleum investment policy issued by the Minister. The policy is prepared “in consultation with” an Investment Advisory Committee. The PF Bill proposes that members of the Investment Advisory Committee to the Petroleum Fund are appointed and determined by the Minister. This means there is no real independence for the Committee. Parliament may consider granting security of tenure, or granting appointment/removal powers to another body (perhaps Parliament). Moreover, there is no requirement for the Minister to take the Committee’s advice into account. There is a risk that the Committee’s role will be sidelined under this approach. Parliament may consider requiring the Minister to explain to Parliament if the Minister does not follow the Committee’s advice.

The petroleum investment policy restricts the types of instruments that the fund can invest in investment grade instruments in convertible currencies issued by or guaranteed by a government or Central Bank. Holding highly liquid assets is a requisite to ensuring that the revenues can be converted to cash and applied for macroeconomic stabilization purposes. However, the PF Bill imperils itself by giving very broad discretion to the Minister to authorize investments in “any other qualifying instrument”. The PF Bill could require that investments are (a) offshore; (b) investment grade; (c) liquid and (d) completely separate from any Ugandan interests. This includes instruments that are controlled by family members of Ugandans or subsidiaries of Ugandan companies.

At present the BOU has an expertise in managing debt securities and less experience with managing alternative asset classes such as equities and real estate. It is therefore advisable that the BOU pursues an investment strategy that plays to its core competence while building up its asset management unit to manage the investment portfolio over the long-term.

The BOU is authorized to appoint an external investment manager. However, the PF Bill should prohibit the external manager from having any connection or interest in Uganda to ensure investments are made in a completely impartial manner. It should also be noted that transaction and commission costs could run into many millions of dollars as the portfolio sizes up and there must be consideration for the pricing levels offered by an external manager. The BOU should conduct regular Request for Pricing tenders to foster competitive bidding among the best external managers.

Recommendation 24: The Minister should implement all advice provided by the Investment Advisory Committee or be required to explain to Parliament his or her rationale to reject advice. The independence of the Investment Advisory Committee can be strengthened through the appointment of its members by Parliament, not just the Minister. The BOU should only be investing in asset classes that it has internal expertise to manage. External managers appointed should be non-conflicted and offer the best price for service ratio.

4.3.5 *Create an independent governance structure for oil revenues*

The PF Bill designates responsibility for overall management of the Petroleum Fund to the Minister of Finance, while the BOU is responsible for its operational management. The provisions in the PF Bill are vague and they also seem to invest great power in the Minister. Further thought should be given to specifying the operating and governing structure of the fund. In particular, lawmakers may consider including other actors (additional to the Minister) in the governance process – for example on the Board of the fund – to create an institutional checks and balances system. Inserting other actors increases transparency and trust in the system, as well as ensuring that alternative perspectives are taken into account, minimizing the risk of dangerous “groupthink”.

Other countries such as Sao Tome and Principe, Timor-Leste, Chad and, more recently, Mexico have taken steps to formalize the involvement of other relevant actors in overseeing expenditure of oil revenues. For example, Chad originally established a joint government/civil society committee called the Petroleum Revenue Oversight and Control Committee which was mandated to “verify,” “authorize” and “oversee” expenditure of oil revenues. The committee included “Members of Parliament, the head of the Central Bank, the Director General of the Treasury, a member of the Supreme Court and four civil society members representing religious faiths, human rights organizations, trade unions and women’s organizations”.⁸⁵ Uganda should look to ensure that the Petroleum Fund is also subject to an oversight environment that involves different interest groups.

Recommendation 25: An alternative governance mechanism must be established for the Petroleum Fund. This must have a broader membership than simply the Minister or his appointees.

4.4 Rethinking public expenditure policy

Revenues from natural resources are unique and extra-ordinary compared to other forms of government revenue. The government, on behalf of the Ugandan people, is a resource owner of a valuable asset. Oil and gas production is the equivalent of transforming an underground fixed asset into a liquid asset. Thus, an increase in government revenue comes at the cost of reduced national reserves. How the revenue is managed and eventually spent is crucial in determining whether the country becomes richer or poorer.

⁸⁵ Gary, above n 76.

The National Oil and Gas Policy for Uganda states that oil and gas resources shall be used to eradicate poverty and create lasting value to the Ugandan society.⁸⁶ In this context, prioritizing spending will be necessary moving forward. To achieve the overarching goal of poverty alleviation, it is crucial that the oil revenue is put to use under a long-term prudent fiscal strategy. Key elements of such a strategy include 1) investment in education, infrastructure and agriculture 2) tracking and limiting increase in non-oil deficit and 3) broadening the revenue base.

4.4.1 Focus on education, infrastructure and agriculture

Uganda must already begin to plan for a future without oil revenues, a reality that will take place at the same time as the population is ballooning. Encouragingly, there appears to be an understanding among Ugandan decision makers that oil revenues should be invested in physical and human capital. Already in 2008, President Museveni stated that:

“Oil revenues will not be used for consumption and importing perfumes, wines, cars and paying salaries. We shall use it as a finite resource to create infinite capacity for Ugandans. This is our core view in building long-term benefits from the oil.”⁸⁷

With half of its population under the age of 15 and population growth at 3.5%, Uganda must invest in education today if oil is to deliver the promise of eradicating poverty. Professor Dani Rodrik from Harvard University argues that poor people are poor due to low productivity; their work produces too little to feed and house them. This underscores how investment in education, skills and competence is a prerequisite for a country to move towards a modern diversified economy.⁸⁸ The value of human capital has the potential of contributing to a much larger share of a nation’s wealth than its natural resources. For instance, while Norway’s petroleum wealth accounts for around 200 % of GDP or 6-7% of total national wealth, human capital is valued at around 80% of total wealth.⁸⁹

Building roads, electricity grids and power plants is also necessary to increase productivity in an economy. With the electricity grid reaching just 10% of the population and a two-lane highway from Kenya remaining the primary route for 80% of Uganda's trade, there is a great need for building infrastructure.⁹⁰

Investing in capital assets is a process that takes many years and requires a prudent and long-term fiscal strategy. The economy’s capacity to undertake many large-scale capital investments is limited by access to labor, raw material and equipment. Thus, funneling revenues into the economy in accordance with the economy’s absorption capacity is critical in order to avoid money being spent on imports or resulting in inflation. In addition, capital investments themselves require a long-term perspective, which implies that human capital

⁸⁶ *National Oil and Gas Policy for Uganda*. Rep. Ministry of Energy and Mineral Development, 2008. Print.

⁸⁷ Nakaayi, Florence, Raymond Baguma, and Ibrahim Kasiita. "Museveni Reveals National Oil Plan." *New Vision* [Kampala] 08 July 2008. Print.

⁸⁸ Rodrik, Dani. "Global Poverty Amid Global Plenty: Getting Globalization Right." *Americas Quarterly* -. Web. 30 Apr. 2012.

⁸⁹ Davis, J.M, R. Ossowski, and A. Fedelino. "Fiscal Policy Formulation and Implementation in Oil-Producing Countries." IMF. Web. 18 Apr. 2012.

⁹⁰ *Uganda: Country Profile 2009*. Rep. London: Economist Intelligence Unit, 2009.

investment needs to be frontloaded. For instance, a supply of nurses and teachers is necessary to ensure that a new school or a new hospital has the desired impact of improving access to education and health services.

Finally, Uganda must not neglect the promotion of its economic lifeblood: the agricultural sector. Over 80% of the population depends on agricultural activities to sustain their livelihoods. It is imperative that investment in agriculture persists and that this investment is increased as oil revenues expand the financial means of the government. Developing the country's capacity to increase agricultural production in a sustainable manner will have far reaching and desirable implications for health, employment and poverty reduction. It will also reduce inflationary pressures in the domestic economy which predominantly arise from high food price inflation.⁹¹

Uganda's medium term National Development Plan can be used as a key fiscal policy instrument for channeling oil revenues into capital investments. The existing National Development Plan (NDP) runs through to the fiscal period 2014/15 and is the first of six five-year NDPs intended to achieve the national vision of "a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years."

Recommendation 26: Investment in capital – physical and human – will enable the oil revenue to have long lasting impact. Contingent on the economy's absorption capacity, such investments require a long-term perspective and must be done in the context of a holistic national development plan that also prioritizes increased agricultural investment.

4.4.2 Reduce the non-oil deficit

In 2011 Uganda ran a fiscal deficit of 9.6% of GDP excluding oil and grants. Therefore, it failed to achieve its goal of reducing the deficit from 7.2% in 2009/10 to 6.2% in 2010/11.⁹² Over the last decade Uganda has financed its fiscal deficit with donor aid, which is likely to decrease as Uganda develops. Following the assessment above, oil revenues should be saved and injected into the Ugandan economy by investing in long-term capital assets.

Nevertheless, the economic reality requires an assessment of the rationale for saving. The reality is that Uganda is running a chronic budget deficit. In 2011 expenditures exceeded revenues by more than \$1 billion, which is around 50% of the forecasted oil revenues that the government will receive once full-scale production begins. If interest earned on the funds is lower than the rates Uganda government can raise through issuing bonds, there is an argument for using the oil revenues to close the deficit. Yet to apply oil revenues to close a recurrent budget deficit of this magnitude would leave little remaining for productive investments or future generations.

This points to the great challenges facing Uganda as oil production commences. Structural challenges in the economy must be addressed before large revenues start coming in. There

⁹¹ Food price inflation alone was 15.1% while headline inflation was 20.3% in April 2012. Reference: Bank of Uganda. *Monetary Policy Statement*. May 2012. Web.

⁹² *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development. Web. The Ministry reports that increase in government expenditures are due to necessary investment in national security, as well as to cover salaries, pension payments, interest costs and the energy subsidy.

will be strong pressure for interest groups resisting any fiscal tightening during a period of perceived plenty.

Azeri and Kazakhstani experiences with managing petroleum funds

The experiences of Azerbaijan and Kazakhstan offer interesting insights on the challenges of managing a petroleum fund for both macroeconomic and intergenerational purposes.

Although Azerbaijan assigns primacy to long-term savings objectives, in reality it has been compelled to use a significant portion of its oil windfall to finance public expenditure. Depletion of the State Oil Fund of Azerbaijan (“SOFAZ”) has been authorized by presidential decree and targeted at investment beyond the scope of the national budget. Simultaneously, Azerbaijan continued to borrow money in the international capital markets at rates that surpassed the returns that could be achieved for oil revenues deposited into SOFAZ. The overall effect of increasing public expenditure included heightened inflation, limited national saving and an increasing non-oil fiscal deficit – reaching up to 30% of GDP in 2006.

Conversely, Kazakhstan was paying off external debt while it was automatically accumulating oil revenues beyond a predetermined oil price. When the Kazakh banking sector ran into serious financial turmoil in 2007, substantial funds were transferred from the National Fund of the Republic of Kazakhstan (“NFRK”) to provide stimulus for economic activity and fund public expenditure.

Going forward it is critical that the Ugandan government tracks both the national deficit and non-oil deficit, making sure the non-oil, consumption deficit does not increase over time. The Budget Sustainability Ratio, measuring the ratio of non-investment related expenditure to non-mineral revenues is used for this purpose.⁹³ A ratio higher than one indicates that the government is using oil revenues to finance consumption.⁹⁴ Botswana, recognized for its prudent management of mineral wealth, has used the sustainability ratio when formulating its NDP.⁹⁵

Recommendation 27: When oil revenue is applied to relieve budgetary deficit, it must be short-term and accompanied by a plan to reduce recurrent expenditure.

⁹³ Excluding health and education, which are considered as investment in human capital.

⁹⁴ Based on financial data from the fiscal year 2010/11 Uganda’s sustainability ratio is already above 1. Assuming Domestic resource mobilization (excl. oil revenue) at Shs 6013 billion and Shs 8972 billion in expenditure and lending. See *Annual Economic Performance Report 2010/11*. Ministry of Finance, Planning and Economic Development. Web.

⁹⁵ *Guide on Revenue Resource Transparency*. Rep. International Monetary Fund, 2007. Web. 6 May 2012.

4.4.3 Broaden the revenue base

Significant oil and gas revenues reduce a country's need to raise revenues from the country's citizens and residents. However, as oil revenue is finite it cannot be the sole basis for a sustainable public sector income base. Income taxes must continue to form the foundation of public revenue base. Thus, cutting taxes as a measure to increase political support or to stimulate economic activity elsewhere will only increase the budget's resource dependency. Broadening the revenue base is in particular important for Uganda which faces declining donor support and has an already low tax to GDP ratio of 13% compared to its neighboring countries such as Kenya with 19%⁹⁶

There are several examples of resource rich countries that have been tempted to lower taxes. Although short-term benefits can be achieved, such as increased political support, the result is often large budgetary deficits when oil runs out or in cases of low oil price environments.⁹⁷ Saudi Arabia for instance, lowered several taxes while increasing public expenditure in the 1970s. When oil prices fell, the government was forced to finance its deficit with savings and domestic borrowings. Their inability to increase taxes reduced their fiscal room for managing the economy in a sound manner.⁹⁸

Recommendation 28: Uganda must keep focusing on non-oil revenue collection in order to maintain a long-term prudent fiscal strategy.

4.4.4 Consider withdrawal rules for national budget transfers

The PF Bill contains strong language prohibiting the assets of the Petroleum Fund being “earmarked, pledged, committed, loaned out or otherwise encumbered by any person or entity”, and any contract or agreement to the contrary shall be null and void. However, one of the most critical issues in designing, and, accordingly managing, a Petroleum Fund is defining the circumstances and procedures under which money can be withdrawn. The PF Bill sets the principle that Parliament retains ultimate authority over withdrawals from the Fund, and that money withdrawn from the Fund forms part of the Consolidated Revenue from where it is appropriated according to standard annual budgetary processes. Importantly, the PF Bill requires the Minister to develop a medium term expenditure framework that will set the parameters over a three-year period for government expenditures.

To uphold the integrity of these provisions, and the effective control of Parliament over withdrawals from the Fund, it is important that amendments to budget documents are tightly controlled. The PF Bill specifies that payments from Petroleum Fund only to be made under an Appropriation Act or Supplementary Appropriation Act and a warrant from the Attorney-General. An Appropriation Act needs approval by Parliament, but a Supplementary Appropriation Act may be approved by the Minister up to 10% of the initial approved budget,

⁹⁶ “Data Catalog”, World Bank, above n 5.

⁹⁷ It is important to recognize that some taxes might be beneficial to reduce due to their distortionary impacts. However, upholding income tax on citizens is crucial for a long term sustainable financial strategy.

⁹⁸ Dabán, above n 83.

without prior approval of Parliament. This is only meant to be approved where there is an “unabsorbable, unavoidable and unforeseeable expenditure for which no amount has been appropriated”. However, there is no mechanism specified for deciding whether this criterion is satisfied. In practice, there is potential for very significant withdrawals from the Fund to occur under Supplementary Appropriations without Parliamentary approval.

This loophole presents a serious threat to the integrity of the budgeting process. The use of supplementary appropriation bills is not merely theoretical – press reports in February 2012 refer to Parliament being asked to approve supplementary appropriations for expenditures that have already occurred.⁹⁹ If the Minister is able to bypass Parliamentary approval process for supplementary appropriations, especially significant amounts, then this detracts from, and imperils, the principle of Parliamentary supremacy over appropriations.

While the Charter of Fiscal Responsibility contains the principle that petroleum resources should be managed “for the benefit of current and future generations”, the PF Bill does not impose any specific limits on the amount of withdrawals from the Fund into the annual budget. This is a serious shortcoming. Over-spending of oil revenues in the domestic economy (greater than the country’s absorptive capacity) can lead to rapid exchange rate appreciation, damaging non-oil sectors. Moreover, it takes resources away from future generations.

Other countries have embedded custodianship over Fund assets for future generations – for example, in Norway where ‘the portion of resource revenues used to finance the non-resource deficit cannot be larger than 4 percent of the resource savings over the medium term’, or Timor-Leste which limits annual withdrawals to an amount determined as “estimated sustainable income”, which is “the maximum amount that can be appropriated from oil savings in that fiscal year and still leave enough oil savings for an amount equal to the real value to be appropriated in all later fiscal years”.¹⁰⁰

Parliament may consider including specific language in the PF Bill that caps the annual transfer from the Fund to the budget. This also carries the added benefit of reducing political pressure to use Fund assets for short-term spending measures such as pet projects or tax cuts. A Bank of Uganda official expressed in an interview the urgency for such a cap on transfer to mitigate risks associated with majority party representation in Parliament.¹⁰¹ Although no Parliament can legally bind its successors, lawmakers may consider including a super-majority provision in the PF Bill so that appropriations above the defined limit require a higher majority than 50%+ 1.

Recommendation 29: Parliament should consider amending the PF Bill to cap the annual transfer from the Fund to the national budget. Lawmakers should consider including a super-majority provision in the PF Bill to ensure that appropriations above the proposed limit are in line with the national development agenda.

⁹⁹ Lumu, David Tash. "Now Parliament Gets Shs 28 Billion in Extra Allowances." *The Observer* [Kampala] 24 Feb. 2012. Print.

¹⁰⁰ Dabán, above n 83.

¹⁰¹ Interview with official from Bank of Uganda, Kampala, Thursday 15th March

4.5 Increasing spillover benefits

By optimizing government take and establishing good revenue management principles, the government can ensure that the monetary advantages of oil production flow to Ugandans. Oil production has the additional ability to generate economic benefits that spill over into other economic sectors. More obviously, this includes sectors that feed off the oil value chain. Interviews with senior officials at the Ministry of Finance and the Bank of Uganda underlined the government's vision of developing a petrochemical industry that can leverage Uganda's geographic position in the East African Community and supply products like fertilizer to the agricultural sector. The development of a national oil company (NATOIL) can also deepen linkages to the national economy, although the build-up of NATOIL should proceed at a conservative pace.

4.5.1 Develop a strategy for generating economic value from refining activities

Oil contracts often stipulate that a share of downstream activities be undertaken in a host country. Uganda's National Oil and Gas Policy recommends value addition to the country's crude oil by undertaking refining activities. Subsequently in 2010 the Government commissioned a feasibility study, which concluded that a refinery is more viable than a pipeline due to the waxy nature of the crude and its high pour point.¹⁰² The rationale for a refinery is thus based on the need to bring the oil to the market and lessen the import bill associated with petroleum products (15% of total imports). Furthermore, there is an emphasis on developing a petrochemical industry, which can serve unmet demand in the East African Community, Eastern DRC and South Sudan, in addition to creating new jobs for Ugandans.

In its negotiations with the GOU, Tullow has agreed to build a small refinery. The facility is expected to begin with a limited refining capacity of 20,000 barrels per day, ratcheting up over a number of years to a peak of between 150,000-200,000 barrels per day.¹⁰³ Two issues that policymakers must consider when going forward with this large-scale investment – likely to cost up to \$2 billion – is the lifetime of oil resources and the potential for regional rivalry in the refining space. First of all, Uganda must ensure that a petrochemical industry can develop in the near term. This must not come at the expense of development efforts in other key sectors, such as agriculture, which form the bedrock of economic activity and will outlast the country's oil boom. Next, although Uganda leads the race to oil production, Kenya has also discovered significant deposits of oil, which combined with its geographic location and existing and planned refining capacity, puts it in an advantageous position to assume some of the regional influence Uganda has envisioned for itself in this space.

A thorough investment returns analysis and feasibility study by qualified professionals is necessary before the decision to build a large refinery is made. This report wishes to emphasize that while it is desirable to build a petrochemical industry in Uganda to bring greater diversification and industrialization to the economy, it must be pursued and implemented with the full support of the investors and regional neighbors. Moreover, Uganda

¹⁰² *Refining Opportunities in Uganda*. Rep. Uganda Ministry of Energy and Mineral Development. Web.

¹⁰³ Interview with Tullow representatives in Kampala.

must significantly increase training opportunities to feed the industry with a skilled labor force and invest in power generation capacity that small to medium size enterprises depend on.

Recommendation 30: Develop an overarching strategy and road map to facilitate capital provision, train labor and export refined products, with buy-in from government, oil companies and regional neighbors.

4.5.2 Establish a National Oil Company initially for commercial, not operational purposes

The 2008 National Oil and Gas Policy for Uganda calls for the establishment of a Uganda National Oil Company, NATOIL, as a separate legal entity. NATOIL will be responsible for managing the state's commercial aspects of petroleum activities and the participating interests of the state in licensing.¹⁰⁴ A state should not sign contracts with private companies, to minimize the government's liability. Uganda will therefore benefit from establishing an entity that can represent the state's interest in commercial ventures. However, the proposed upstream Petroleum Bill does not detail NATOIL's purpose or organizational structure, and there is a risk that NATOIL's mandate will be overly broad.

4.5.2.1 Types of NOC

There are several models of NOCs, ranging from fully operational to non-operational companies. A fully operational NOC conducts actual extraction activities and manages its own revenues, while a non-operative is more of a government entity that represents the state in each license.

- Examples of NOCs with operational capacity include Petrobras (Brazil), Sangol (Angola) and Azerbaijan's State Oil Company of Azerbaijan Republic (SOCAZ), also Statoil (Norway). Within this category, some NOCs have exclusive rights to the state's reserves, while others compete for licenses on similar terms as competing international oil companies.
- Examples that are partially operational include Ghana's National Petroleum Corporation. It is allowed to manage some of its revenues, but salaries are set by the government.
- Other NOCs are unable to manage revenues and are non-operational. Petoro, for instance, is the Norwegian SOE that owns and manages Norway's interests on the Norwegian continental shelf, including the block bidding process. They are responsible for collecting the revenues, but operate under budgetary support from the government.

¹⁰⁴ *Oil and Gas Laws in Uganda: A Legislators. Guide Oil Discussion Paper No.1.* Rep. International Alert, May 2011. Web.

The above categorization is purely static and does not reflect how NOCs develop over time. For instance, the Norwegian NOC, Statoil, went through several stages from a non-operating company, to a company operating on the Norwegian continental shelf and eventually a leading international oil company. These stages reflect “changes in capabilities, business realities confronting the company and the government, and goals or functions performed by the company.”¹⁰⁵ Eventually, the state’s interest as owner of oil blocks was spun off in a separate company, Petoro.

4.5.2.2 Risks of developing an operational NOC

Countries are often attracted by the prospect of developing a national oil company, based on the idea that a country can increase the potential dividends from the oil industry by becoming an actor on the operational side as well. However, when creating an operational entity several risks should be understood:

- **Power imbalances:** The success of the tripartite model depends on the institutions ability to act independently and balance the others powers. There are several cases in which NOCs develop into a “state within a state” as their economic influence grows.
- **High cash requirements:** The oil and gas sector is a cash and capital-intensive industry. An operational NOC requires large cash inflows. Thus investment in a NOC limits a countries ability to diversify its economy, making the country more dependent on its natural resources.
- **Drainage of competence:** The institutional framework in the PF Bill is based on a tripartite model separating government bodies into policy, regulatory and commercial functions. Establishing a new organization threatens to deplete capacity from other ministries and regulatory bodies both now and in the future. This risk does not only stem from the fact that establishing organizations require human capital, but also because NOCs usually offer higher salaries as they compete for talents with international oil companies (IOCs).
- **Commercial inefficiencies:** NOCs are more successful when operating under clearly commercial objectives, rather than being the focal point for a broad range of economic, social and political objectives. Nevertheless, many NOCs are exposed to political pressure to take on a larger social role, in particular if they develop into a large regional and national actor e.g. PDVSA, Venezuela.

4.5.2.3 Maximizing efficiency from NATOIL with “operator” ambitions

As this vision for NATOIL unfolds, Uganda can prepare to maximize efficiency from this state-owned enterprise by examining what Mexico is undergoing. In 2008 the Mexican Congress created the National Hydrocarbons Commission to increase regulatory oversight of Pemex, the state-owned oil monopoly and mainstay source of government revenue. The independent commission, which comprises a five-member panel of energy specialists

¹⁰⁵ Gordon, Richard, and Thomas Stenvoll. "Statoil Case Study in Political Entrepreneurship." The James A Baker III Institute for Public Policy Rice University. Web. Mar. 2007. The five stages identified are 1) Norwegian oil before Statoil 2) Startup and Evolution, 1972 – 81, 3) Post Adolescence, Functional Competitor, 1981 – 2001 4) Privatization, 2001 – 06 and 5) Statoil Post Hydro Merger.

supported by a staff of 61 individuals and an annual budget of \$7 million, has begun to confront Pemex executives over its exploration and drilling plans as it responds to public desire to increase transparency in the sector.¹⁰⁶

4.5.2.4 Recommendation for Uganda

In light of the potential for conflict of interest, early stage of oil development and risks related to establishing an operations-performing NOC, Uganda's focus should be on the establishment of a NOC that takes on commercial interests of the state and limits its operational ambitions until capacity is built up. To secure high competence and sufficient capacity within the Petroleum Authority while the NOC is being established, funds should be earmarked for the development of this entity.¹⁰⁷

Recommendation 31: NATOIL should be established as a state owned enterprise that will represent and safeguard the state's interests where the government has holdings through joint ventures, not as an operator but as a licensee. As Uganda develops as an oil producing nation, the need to develop the NOC model may be re-assessed. Building capacity within the Petroleum Authority is a major priority.

106 Malkin, Elizabeth, "In a Change, Mexico Reins In Its Oil Monopoly", New York Times, April 23rd, 2012

107 Building capacity within the Authority is an important independent of the decision to establish a NOC. Strong competence is required to follow up on and work with IOCs. The oil spill in the Gulf of Mexico is one recent example of the how an independent regulator (the Minerals Management Service) failed to implement and uphold high operational standards.

5 The Need for a Comprehensive Environmental Management System

5.1 Uganda's environment in the context of the global resource boom

Given that oil discoveries have occurred in the ecologically sensitive Albertine Graben, stringent environmental conditions and management will be required to protect the local environment and human health from environmental risks associated with oil drilling. This section of the report proposes a comprehensive Environmental Management System that includes good planning practices (prior to production), a clear and transparent licensing regime to ensure that only oil companies with top environmental records are invited to participate in Uganda, and safeguards to avoid, mitigate, and offset foreseeable environmental damage.

Growing demand for oil products around the world have pressed companies to delve into increasingly remote locations in the developing world in search of reserves. These remote areas tend to be home to some of the world's most untouched natural environments as well as impoverished communities whose lives rely heavily on natural commodities such as clean water, air, fish, soil, grazing land, and productive soil. The Albertine Graben, where oil has been discovered in Uganda fits the description. The introduction of oil prospecting, exploration and production has brought along with it risks that threaten the regions' ecological harmony as well as the livelihoods of those who rely upon provisions from the natural environment.

The promise of jobs, roads, drinking water, health centers and schools tends to raise the expectations of project-affected communities. However, local and national governmental and corporate plans tend to ignore the severity of small deprivations and cumulative impacts of a project or sector development.

Given that Uganda has known about the potential for oil extraction in the Albertine Rift since the 1920s, some speculate that the national park system around the areas was in part created by the British to reserve uncontested land for its development.¹⁰⁸ However, domestic turmoil and high risks in exploration meant that commercially viable reserves of crude oil were not discovered until 2006. Exploration has been successfully concluded in 46 wells around Lake Albert, but production will not start until 2016. This situation generates a window of opportunity to create an Environmental Planning Management System that will ensure that Oil can generate much needed revenue and economic growth for Uganda without sacrificing the long-term health of its environment.

¹⁰⁸ Interview. Bunyoro Representative. 4/17/12.

The area of oil exploration in Uganda is known as the Albertine Graben by biologists and earth scientists. The region is not only rich in fossil fuels; its magnificent landscape is rich in biodiversity and species endemism. The Albertine Graben was formed by the shifting fault lines that are slowly ripping the African tectonic plate apart. This has resulted in deep crevasses filling with water and creating the great lakes of Eastern Africa. Simultaneously, the earth's crust was thrust into the air forging the Ruwenzori Mountains that rise to a dizzying 16,670 feet above sea level (5,106 meters). The high altitude is contrasted with the lowest altitudes of 600 meters at the shores of Lake Albert.¹⁰⁹ The wide range in elevation coupled with a high variance in rainfall due to local rain shadows and equatorial temperatures is the perfect recipe for high variation in flora and fauna and a high incidence of species endemism.

In acknowledgement of the region's unique biodiversity and potential for eco-tourism, Uganda has established 22 protected areas in the Albertine Graben (75% of all protected areas in Uganda are in the Albertine Graben), including the nation's largest national park, Murchison Falls National Park, which is also the second most visited thanks to its spectacular wildlife viewing and the Victorian Nile Falls, which force the entirety of the Nile through a shoot 6m wide and into the Victorian Nile Delta, home to a vast array of threatened species including the crested crane, cheetah, hippopotamus and giraffe¹¹⁰.

Verifiable scientific studies on the environmental impact of oil activities in the Albertine Graben are virtually non-existent; however, there have been claims of habitat destruction, wildlife displacement, improper waste disposal, overfishing and future risks posed to sensitive areas.

Biologists conducting research in protected areas have noted impacts of oil production on wildlife. Jacqui Weaver, an environmental and wildlife expert based out of the University of Houston, whose group receives funding from the US for environmental mitigation of the effects of petroleum development, noted that the elephants at one well site in Murchison Falls National Park had moved quickly 30 kilometers north when the conductor pipe was being driven into the ground. According to Weaver, "scientists are unsure as to whether animal movements such as these are caused by sensitivity to the ground vibrations from the pounding or by another unidentified factor and are currently proposing to tag elephants in future well site areas to study their reactions."¹¹¹

Of course habitat destruction, access road development in protected areas and any form of spill will undoubtedly negatively impact wildlife. This chapter recommends stronger mitigation and planning measures for environmental protection and maps the oil and gas development by overlaying sensitive habitats and communities with environmental hazards and risks in order to specify towns, wells and areas that need to be prioritized for protection.

¹⁰⁹ NEMA. *Environmental Sensitivity Atlas For the Albertine Graben*. Vol. 2. Government of Uganda, 2010. Print ("Sensitivity Atlas")

¹¹⁰ *Ibid.*

¹¹¹ Weaver, Jacqui. Email response. Professor, University of Houston. 2/28/12

5.2 Overview of Uganda’s progress towards environmental sustainability in the oil sector: current environmental policy and legal structure

The Ugandan government has recognized that its environmental management system is under-capacity and lacks the legal force to address the complexities of environmental impacts arising in the oil and gas sectors. The 1995 Constitution provides every Ugandan “the right to a clean, safe and productive environment.”¹¹² This right was emphasized in the 2008 *National Oil and Gas Policy* (“NOGP”), which sets principles for future legislation to follow, and emphasizes high standards for environmental protection. The NOGP states that the government will create regulations that will ensure best practices in clean technology are used such as the “use of green dragon burners¹¹³ for flaring during flow testing of oil and gas wells instead of other types of burners which produce more smoke and harmful fumes and are therefore less friendly to the environment.”¹¹⁴ The NOGP puts the responsibility of environmental protection on the companies producing oil and gas, and outlines that it is the government’s responsibility to monitor compliance.¹¹⁵ The NOGP boldly states that the government will perform due diligence on companies prior to licensing which takes into consideration not only a company’s ability to meet financial obligations and technical requirements, but also qualifies a given company’s environmental standards.¹¹⁶ The NOGP rightly asserts its position to “put in place the necessary regulatory framework for prohibiting venting and restricting flaring in order to avoid wastage of the resources and safeguarding the environment.”¹¹⁷ To ensure the oil and gas sector operates in a way that conserves the natural environment and biodiversity, the government has committed to a commendable series of strategies and actions. These include:

- 1) Institutional and regulatory reform to address environmental and biodiversity related issues pertaining to the oil and gas sector, as well as the necessary capital and capacity to empower these new institutional branches;
- 2) Mandating compliance through the use of best practices and self-regulation by both companies and their contractors;
- 3) A mandate that all disturbances be rehabilitated to their previous state; and,
- 4) To carry out “physical master plans, environmental sensitivity mapping, and oil spill contingency plans” for both the oil producing region and any transportation corridor to be used.¹¹⁸

The progress toward environmental reform and a strong planning process has been possible thanks to committed donor support, largely that of The Oil for Development program, established by the Norwegian Development Agency (“NORAD”) to provide oil rich countries

¹¹² Constitution of the Republic of Uganda (1995), article 39.

¹¹³ Green Dragon Burners are a high efficiency hydrocarbon burner used for offshore drilling and well-head testing during oil and gas exploration. It appears to be the name of a specific brand of well-head burners. See <http://www.slb.com/~media/Files/testing/product_sheets/surface/green_dragon_burner_ps.ashx>.

¹¹⁴ NOGP, above n 14, p. 7, section 2.3.2.

¹¹⁵ Ibid p. 20, section 5.1.5.

¹¹⁶ Ibid p 22. This provision could be broadened to include corporate environmental standards and environmental track record.

¹¹⁷ Ibid p. 25. However, the policy should prohibit all forms of gas flaring and provide a framework for a tax structure to give incentives for associated gas capture and use.

¹¹⁸ Ibid. p 29.

with requested assistance for ensuring that their natural resource wealth is able to support their national development objectives.¹¹⁹ The program has been working with the Government of Uganda since 2009 to ensure that Uganda's petroleum resources are managed in a way that is economically, socially and environmentally responsible and safeguards the needs of current and future generations.

The Oil for Development program in Uganda is divided into three pillars: Resource Management, Revenue Management and Environmental Management. The Environmental Management pillar has made the undertaking of a Strategic Environmental Assessment ("SEA") of the oil region a fundamental priority, along with the revision of key laws and protected area management plans in order to update them in line with the needs of a petroleum sector. The program has been extremely successful at unifying and catalyzing government resources and commitment to progressive reform of environmental management.

In 2012, some of these promises have been carried out, such as the creation of an atlas that spatially depicts regional social and environmental sensitivities to oil and gas development, and the conspicuous rehabilitation of disturbed areas during exploration. However, the major obligations of institutional and legal reform have moved at an excruciatingly slow pace. An official of the National Environmental Management Authority ("NEMA") stated in an interview that these reforms will happen once the government has conducted a thorough SEA to inform such regulations, which began in March 2012 and is due to conclude in December.¹²⁰ The slow pace of reform may be a necessary precondition for careful deliberation, however critics fear that contracts are being signed and irreversible damage taking place in an unregulated environment, while government environmental authorities have already taken nearly four years after the NOGP's official decree to enact reform. Waiting for reform for one more year in this context could be detrimental. Once recommendations come out of the SEA process it could be months or even years before environmental regulations and new legislation are enacted. The Petroleum Bills introduced before Parliament make substantial references to the National Environmental Act for guidance on environmental and social impact issues, yet that piece of legislation, as previously stated, lacks adapted rules for the petroleum sector. Furthermore, the Petroleum Bills fail to force companies to adhere to the world's highest and best practices, to require the use of state-of-the-art technology, and to make health, safety and environmental concerns companies' foremost priority.¹²¹

A NEMA official argued that much of the reform could occur through small changes to preexisting legislation through internal regulation generation, yet the bulk of substance needing reform lies in acts that will need to be changed by the presidential cabinet and approved by Parliament, prolonging the duration of potential reform and limiting NEMA's ability to implement stop-gap measures.¹²²

¹¹⁹ Interview. NEMA Official. 3/13/12

¹²⁰ Ibid.

¹²¹ See our preliminary letter of comments in the Annex, under "Stronger enforcement provisions".

¹²² Interview. NEMA Official. 4/13/12

5.3 Create a strong and legally binding company selection process that highlights companies' environmental and social track records

In accordance with the NOGP, the criteria for eligibility to bid on oil and gas exploration licenses and production sharing agreements should be strongly influenced by the company's social and environmental track records in previous operations in other countries as well as their international corporate policies. Solicitations for exploration licenses and production sharing agreements from companies with previous exploration licenses should also be vetted for their eligibility based on their historic track record of social and environmental responsibility.

Tullow Oil plc., the exploration company operating in the Albertine Graben with the largest reserves recently transformed itself into a production company. The company's lack of an environmental track record in oil production is risky, but not detrimental. However, The Chinese National Offshore Oil Company CNOOC, which recently bought 33% of Tullow's oil development blocks, has a poor environmental reputation in the South China Sea. The *Wanted China Times* reported on October 27th, 2011 that CNOOC's rapid expansion in the South China Sea has resulted in safety oversights linked to 46 oil spills between 2006 and 2010 including a few persistent leaks that have not yet been halted.¹²³ Total SA bought another 33% of Tullow's oil blocks. The company has a poor track record and reputation regarding complicity for human rights abuses in Burma. The NGO Earth Rights accused the company in 2010 of paying soldiers guarding Total's natural-gas pipeline in Burma who allegedly "murdered locals and forced others to do backbreaking, unpaid labor in order to keep the gas exports flowing smoothly."¹²⁴

Although the NOGP states that company selection will be based on environmental and social track records, in practice this process appears to be weak or absent, as companies with poor or no track records have been awarded the most significant production sharing agreements. This suggests that the intentions stated in the NOGP must be translated into law. This should be done within the current petroleum legislation or in the form of a new *Petroleum Environmental and Social Safeguards Act*.

Recommendation 32: Create strong criteria for which companies are eligible to bid on oil and gas exploration licenses and production sharing agreements. The criteria for eligibility should be strongly influenced by the company's social and environmental track records in previous operations in other countries. Solicitations for production sharing agreements from companies with previous exploration licenses should also be vetted for their eligibility based on their historic track record of social and environmental responsibility during exploration.

¹²³ "CNOOC continues to undermine its environmental record and reputation." *WantChinaTimes.com*. Web. 30 Apr. 2012.

¹²⁴ Walt, Vivienne. "Chevron, Total Accused of Human-Rights Abuses in Burma." *Time*. Time, 06 July 2010. Web. 30 Apr. 2012.

5.4 Adapt the Environmental Planning and Assessment Process for the Petroleum Sector

Determining the potential negative environmental impacts of oil and gas exploration and production before activities begin is essential for determining how to avoid, mitigate and offset impacts. Determining this through Environmental Impact Assessments (“EIAs”) creates the framework for monitoring companies’ compliance in implementing necessary safeguards. Uganda has a well-developed legal framework for doing this. The *National Environmental Act* mandates that all developments of oil and gas must be subjected to an Environmental Impact Assessment.¹²⁵ This gives NEMA the power to require an EIA before exploration commences, which it has exercised. The fine for failing to prepare an EIA is 180k-18M shillings (~\$70USD- ~\$7,000USD) and the court may cancel any licenses held by a violator.¹²⁶ Although the fee for non-compliance is too low to be a deterring factor for companies and should be raised, oil and gas companies have produced EIAs for all exploration wells.¹²⁷

5.4.1 Enhance Access to Environmental Impact Assessments

All EIAs are made public in the NEMA headquarters in Kampala and regulations exist regarding public commentary and public hearings. However transparency still needs to be enhanced. The documents are large and indigestible by interested parties in Project-Affected Communities (“PACs”) while access to information by remote communities is limited. The decision of who to disseminate EIA results to for public comment and for how long lies in the executive director and should rather be elaborated within the criteria of the EIA regulation to ensure all relevant parties are given the document, particularly those in PACs. The major impacts should be distilled and rendered more accessible by using simplified tables and languages of those living in PACs. The government should partner with NGOs and local councils to distill and distribute information.

Oil and gas operators should publish all EIAs on their websites. Tullow is the main operator for oil and gas production in Uganda as well as in Ghana, where it has published one EIA of its Jubilee-1 offshore production well on its website in an extremely detailed and easily accessible manner.¹²⁸

Parliament should redefine access to information provisions in order to ensure the highest possible level of transparency with regards to environmental impact assessments. According to the Constitution, Parliament has the power and obligation to define the legal terms that set the criteria to assess whether access to information poses a threat to national security, sovereignty, personal privacy, or commercial interests. Parliament should define these terms in a way that upholds the government’s constitutional obligation to use natural resources for the public good, and limit exclusions to issues that could immediately provoke war or put a

¹²⁵ Uganda, *National Environmental Act*. 1995, section 19.

¹²⁶ Uganda. National Environmental Management Authority. *Environmental Impact Assessment Regulation*. 1998.

¹²⁷ Interview. NEMA official. March 13th, 2012. This was also based on observational assessment of public EIAs in the NEMA library.

¹²⁸ <http://www.tulloil.com/index.asp?pageid=61>

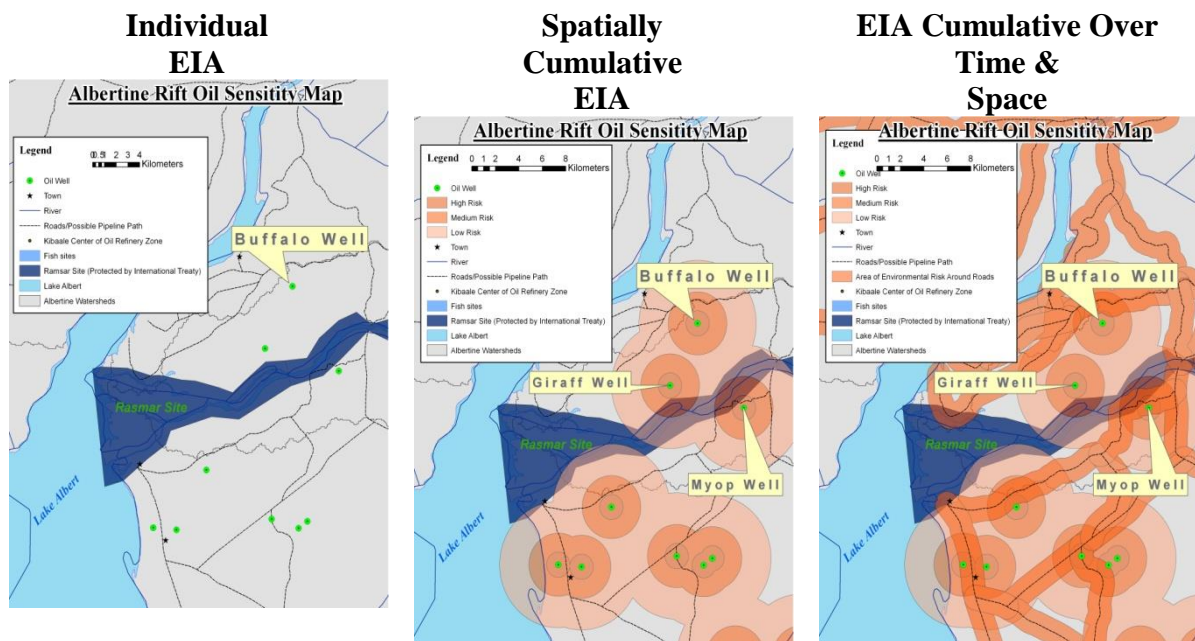
citizen's life in danger, or reveal companies' technological trade secrets. However, the Access to Information Act's restriction of access to information in cases where a company could be put "at a disadvantage in contractual or commercial negotiations" is overly broad and should be eliminated or challenged as unconstitutional given that it favors company rights over the rights of the people to enjoy a fair contract that is in the common good.

Recommendation 33:

- Require the same criteria and format as Tullow's Jubilee-1 well in Ghana for EIAs conducted by the oil and gas industry in Uganda, to enhance the government's capacity to ensure thorough EIAs, translate results into regulations, and more efficiently monitor obligatory mitigation measures.
- Redefine access to information provisions in order to ensure the highest possible level of transparency with regards to environmental impact assessments

5.4.2 Include an assessment of cumulative impacts of activities over time and space as a detailed schedule to the Environmental Impact Assessment.

The scope of EIAs can often be misleading and misrepresentative of the total future impact of a well should it find quantities of oil fit for production. The time horizon for the impact assessment has thus far only been exploratory.¹²⁹ EIAs of exploration sites should also require an analysis of the potential future impact on the environment should that site turn into a production site including scenarios of auxiliary requirements for production such as roads, pipeline and truck transport.



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

¹²⁹ See the "Environmental & Social Impact Assessment of Buffalo-1 Onshore Oil Exploration Well in Murchison Falls National Park in Amuru District, Uganda" (August 2008) as an example of the scope of EIAs for Oil and Gas thus far. ("Buffalo-1 EIA")

The current state of the EIA does not fully disclose the long-term impacts and tends to downplay the full extent of eventual impacts for the evaluator of the assessment. This risks allowing momentum for exploratory wells to turn into production wells due to sunk costs in the project up to that point. Developments such as oil pipelines or truck/tanker transport will have to be built and used to ship oil from its point of origin. Transport of oil carries with it many more risks of small to medium spillage that is more disruptive to the local wildlife than the proposal for an exploratory well.¹³⁰ Experts agree that although gas blow-outs get the most media attention for their blatant environmental impacts, transporting oil via trucks from wells to storage facilities tend to cause the most incidents of spills during tanker filling and plausible accidents, theft or sabotage in transit, and thus pose the most consistent risks of environmental damage over time. If a pipeline is to carry oil from wells to a refinery, it will require electrification for heating due to the waxy composition of the oil. Given the lack of power in the National Parks where a number of oil wells have been drilled, power lines will have to be constructed alongside any such pipeline.

Recommendation 34:

- Disclose potential options for transporting oil offsite before the exploration phase begins such that those making decisions about whether or not oil exploration is right for sensitive areas such as Murchison Falls National Park can be fully informed of the decision they are making and debate surrounding that decision can be public and fully informed.
- Require that EIAs include an analysis of the potential future impacts on the environment should that site turn into a production site including scenarios of auxiliary requirements for production such as roads, pipeline and truck/tanker transport.

5.4.3 Institutionalize and mandate Strategic Environmental Assessments and spatially cumulative assessments.

The Sensitivity Atlas created by NEMA in association with the PEPD, the Ministry of Water and Environmental, the Uganda Wildlife Association and the Wildlife Conservation Society, is a very good first step at attempting to identify sensitive areas in which petroleum development is occurring. However, the Sensitivity Atlas is not a solution in itself because it does not overlay sensitive areas with prior or planned developments, nor makes any recommendations as to necessary measurements for avoiding irreversible impacts in sensitive areas, nor does it call for any areas to be off-limits to oil development. It merely states that sensitive areas exist and describes their sensitivity in terms of the human and natural environment.

As stated previously, EIAs tend to look at one well during one phase of the project. This is necessary to understand the environmental hazards associated with that phase, but it creates an environmental scenario for the project as a whole that appears less severe than if the long term and collective impacts of all wells are analyzed. For example, the Buffalo-1 EIA states that the possible impacts of an oil well blow-out are severe yet the likelihood of one occurring is low and they do not anticipate one happening. A gas blow-out occurs when an unanticipated high-pressure natural gas pocket forces its way out of the well and bursts the

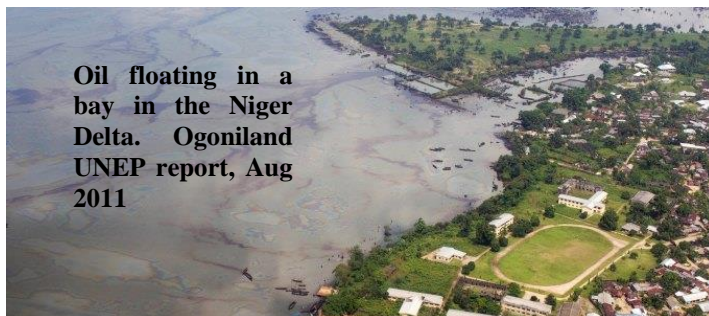
¹³⁰ Interview. International Oil and Gas Consultant. 4/13/12.

well head open causing an oil spill at the well head.¹³¹ The Buffalo-1 EIA describes a potential situation in more detail:

“When gas blow-out occurs, flow outside the casing usually results in severe situations such as a damaged well and rig. In addition, flow can exit to the surface through fault planes or around poorly cemented casing. Cratering occurs when flow outside the casing displaces large volumes of surface sediment. The eruptive force of blowouts is large and very destructive, often leading to large hydrocarbon spills.

Although not anticipated, a large spill following a well blow-out could cause extensive damage to wildlife, drilling infrastructure, onsite soil and sensitive offsite environment (the Delta and Victoria Nile) [which is less than 4 kilometers away]. An oil spill migrating into the Nile and Delta would affect fish spawning grounds, kill fish fry [fish spawn] and affect levels of dissolved oxygen in affected part of the lake. Lake Albert is an important ecosystem that should be protected because it is home to some fish species such as Alestes boreomose which are endemic to this lake and not found elsewhere in Uganda.”¹³²

While it may be true that the risk of a gas blow-out from this particular well is low, it is disturbing that this EIA mentions that it is not even anticipated. The area exposed to the risk of a disaster increases with more wells. Blow-outs can range in size, yet a large blow-out in one of the 15 wells that borders Lake Albert, the Albertine Nile or Victorian Nile has the potential to affect the health of not only the immediate region but the entire Nile system through South Sudan, Sudan and even Egypt.



Oil floating in a bay in the Niger Delta. Ogoniland UNEP report, Aug 2011

A report by the United Nations Environmental Program (UNEP) indicates that there were more than 6,800 spills in the Niger Delta between 1976 and 2001.¹³³ The study found benzene levels (a known carcinogen) in drinking water 900 times that of WHO recommended limitations.¹³⁴

CNOOC has generated 41 oil spills in the South China Sea in the four years between 2006 and 2010.¹³⁵ These historic trends of catastrophic spills are troublesome and will be challenging for Uganda to escape. One method of mitigating environmental risk in Uganda could be to prioritize the development of those well sites with the least threat and most reserves. This could be done through a risk to reserve ratio that could inform a threshold for no-drill scenarios. For example, a well that has

¹³¹ Buffalo-1 EIA, p 104, above n 129.

¹³² Ibid.

¹³³ UNEP Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health." *United Nations Environment Programme (UNEP)*. Web. 02 May 2012.

¹³⁴ Ibid.

¹³⁵ "CNOOC continues to undermine its environmental record and reputation." *WantChinaTimes.com.*, October 27, 2011, Web.

100 barrels of oil reserves and an environmental risk score (which could be determined by the simple risk matrices in Figure 9: Risk Matrix Score Card for Risks and Figure 10: Environmental Risk Matrix: Natural Features Threatened by Major Risks Associated with Oil Activities, contained in the Annex) of 50 out of 100 is more desirable than a well with a 100 barrels of reserves and a score of 100.

Much of this work should be done in the SEA currently underway, which, according to NEMA officials will identify broad issues, look at cumulative impacts over time and space and make recommendations for reform in policies, programs and projects.¹³⁶ However officials agree that the SEA should have happened at an earlier stage, prior to exploration.¹³⁷

Recommendation 35:

- Establish a Strategic Environmental Assessment (“SEA”) regulation that puts a SEA processes in place whenever an important natural resource or infrastructural development is to occur.
- Strengthen the inter-ministerial “Oil Task Force” and the NEMA EIA review boards to include government agencies specialized in social security and more highly skilled leaders from governmental departments who specialize in environmental and social issues linked to oil and gas exploration and production.

5.4.4 Translate Mitigation Recommendations into a Legal Code of Conduct for Companies.

EIAs are vague in regards to mediation recommendations. The language is many times similar to this passage in the Buffalo-1 EIA; “The operators should try their best to use established tracks while driving through the park.” Mitigation recommendations should be rewritten as a code of conduct by NEMA with established legal consequences for deviating from it as well as for misrepresentations. It should also name the authorities authorized to indict for non-compliance. There is currently only one NEMA environmental auditor for the entire region. One individual could not possibly enforce the mitigation recommendations of the EIAs due to the vast area in need of monitoring and the vagueness of mitigation recommendations. Environmental consultants are not lawmakers, thus there seems to be a step missing between EIAs and establishing rules guided by mitigation recommendations for an oil and gas development zone.

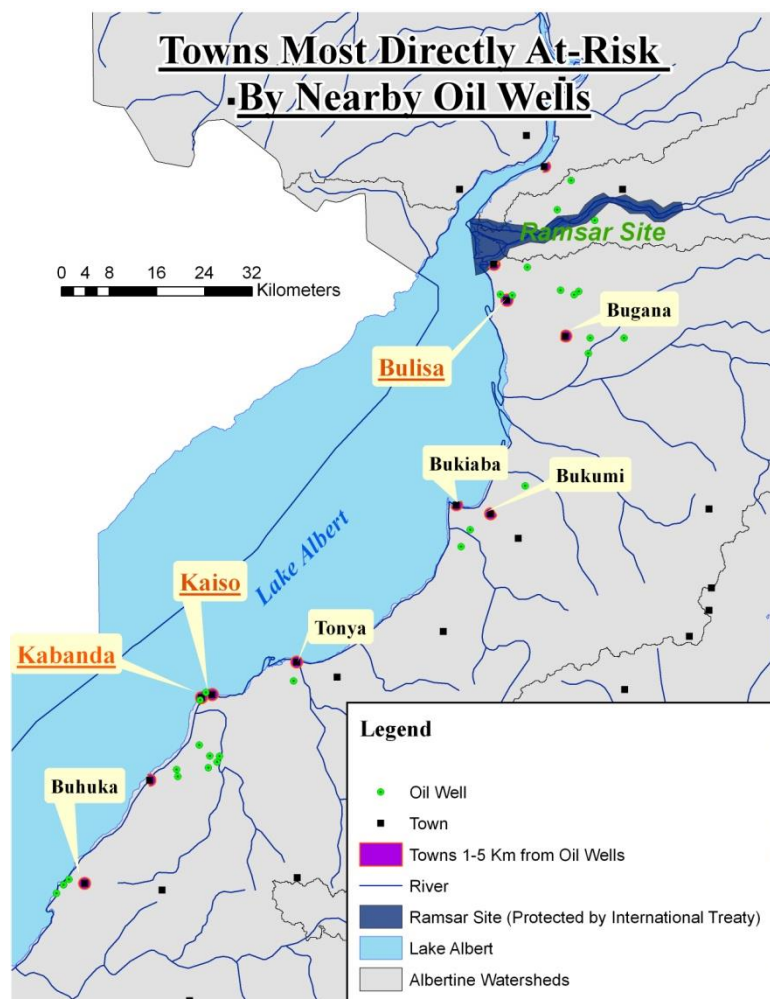
Recommendation 36: Adapt EIA mitigation recommendations into a legal code of conduct for oil companies with deterrent fines, criminal punishment, biodiversity offsets and environmental service payments associated with non-compliance.

¹³⁶ Interview. NEMA official. March 13th, 2012. This was also based on observational assessment of public EIAs in the NEMA library.

¹³⁷ Ibid

5.5 Adopt effective environmental safeguards that avoid, mitigate and offset environmental harm

5.5.1 Prioritize towns facing a direct threat from oil activities for enhanced environmental and human health management.



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

According to EIAs, towns in the area of oil development face serious environmental and health risks associated with oil activities. The map of “Towns Most Directly At-Risk By Nearby Oil Wells” uses visual proximity to display towns within 1-5 km of oil wells, which could be the most directly impacted by 1) waste and fuel spills, 2) flaring during production, 3) gas blow-out 4) visual impacts from 24 hour lighting on fauna 5) noise, air pollution and vibrations, 6) speeding by employees, off road travel, and poaching by employees, 7) flaring during testing 8) fires, and 9) poor handling of mud-cuttings. All the towns face major threats, yet Kairo, Kabanda and Bulisa are towns with the most sources of severe direct threat associated with oil activities and therefore require deepened attention toward environmental management and external assistance in achieving sustainable development.

Recommendation 37: Create a participatory social and environmental safeguard plan for Kairo, Kabanda, and Bulisa that strengthens environmental protection, generates adequate compensation for negative impacts and prioritizes development programs with donors to offset harmful impacts of oil activities to livelihood sources.

5.5.2 Create Strong Safeguards for Protected Areas through detailed management plans that include defining areas that are too sensitive for oil activities.

The Oil for Development program, NEMA and the Ugandan Wildlife Authority (“UWA”) have committed goals towards overhauling the Protected Areas Management Plans in order to ensure the least harm possible to national parks from oil activities. Progress has been made, and overarching policies such as green camouflaged drill rig equipment, tourist areas moved outside visibility of oil activities, and no overnight worker camps inside national parks have been established by declaration.¹³⁸ NEMA has also decided to ban oil activities inside the ecologically sensitive Victorian Nile Delta area, protected by the international wetland protection treaty popularly known as Ramsar, to which Uganda is a signatory.¹³⁹ This decision was up to the discretion of the Executive Director, who also decided to prohibit offshore drilling in Lake Albert. However both decisions will likely be revised after the Strategic Environmental Assessment and, according to NEMA officials, drilling in both the Ramsar site and offshore in Lake Albert are likely to be permitted.¹⁴⁰

Despite progress there is concern that the cumulative impacts of oil activities on protected areas could generate irreparable harm. Local residents in the town of Bulisa and surrounding communities have complained that displaced elephants are destroying crops.¹⁴¹ Oil activities pose a number of serious threats to the national parks and protected areas, and allowing oil activities to occur puts into question the reasoning behind giving a protected area the status of national park, unless the harmful human activities inside the area are kept to an absolute minimum. (See Figure 17: Risk Zones of Oil Wells and Roads Inside Protected Areas in the Annex).

Protected Area	IUCN Category*	Oil Wells inside or 1-5 km from border
Murchison Falls National Park (MFNP)	II	1) Jobi (Buffalo)-1 Inside 2) Rii (Giraffe)-1 Inside 3) Mpyo (crocodile)-1 Inside 4) Awaka-1 Inside 5) Ngege-1 Inside 6) Ngara-1 >1km from border 7) Kigogole-1 >2.5km from border 8) Kigogole-3 >5km from border
Bugungu Wildlife Reserve	III	1) Karuka-1 Inside 2) Karuka-2 Inside 3) Waki-B-1 >5km from border
Kabowya Wildlife Reserve	III	1) Mputa-1 Inside 2) Mputa-2 Inside 3) Mputa-3 Inside

¹³⁸ Interview. UWA officials. 4/14/12.

¹³⁹ Interview. NEMA officials. 4/13/12.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

Protected Area	IUCN Category*	Oil Wells inside or 1-5 km from border
		4) Mputa-4 Inside 5) Mputa-5 Inside 6) Nzizi-1 Inside 7) Nzizi-2 Inside 8) Ngassa-1 >1km From border 9) Ngassa-2 >1km From border
Kaiso-Tonya Community Wildlife Management Area	VI	1) Ngassa-1 Inside 2) Waraga-1 Inside 3) Ngassa-2 >1km from border

The International Union for the Conservation of Nature (“IUCN”) categorizes protected areas based on the domestic governments’ stated objectives in line with international protected area standards recognized by the United Nations.¹⁴² The relevant categories are defined below:

IUCN Category II	IUCN Category III	IUCN Category IV
<p>This category is reserved for national parks, defined as protected areas that are large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.</p>	<p>This category is reserved for protected areas, which are set aside to protect a specific natural monument, which can be a landform, seamount, submarine cavern, geological feature such as a cave or even a living feature such as an ancient grove. They are generally quite small protected areas and often have high visitor value.</p>	<p>This category is reserved for protected areas which conserve ecosystems and habitats, together with associated cultural values and traditional natural resource management systems. They are generally large, with most of the area in a natural condition, where a proportion is under sustainable natural resource management and where low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area.¹⁴³</p>

¹⁴² IUCN, the International Union for Conservation of Nature." *IUCN*. Web. 02 May 2012.

¹⁴³ All definitions taken from: IUCN, the International Union for Conservation of Nature." *IUCN*. Web. 02 May 2012.

5.5.2.1 Perform and publicize more in depth cost-benefit analyses on oil revenue in contrast to tourism revenue and oil well environmental risks to revenue ratios.

Beyond natural conservation for its own sake, the protection of biodiversity maintains the regions' allure as a tourist destination. From 2006 to 2009 tourism in Murchison Falls National Park grew from 26,256 annual visitors to 39,237, with an annual growth rate of 11%.¹⁴⁴ Revenue from park visits during that same period grew from \$302,112 in 2006 to \$623,438 in 2009 (a 6.18% annual growth rate).¹⁴⁵ However between 2009 and 2010 annual visitation grew from 39,237 to 53,460, an annual growth rate of 36.25%. If the average visitor spent the same \$15.88 in 2010 as they did in 2009, then revenue for the national park in 2010 may have been close to \$850,000. This number only represents park entrance fees, which vary from \$35 for foreigners to \$5 for Ugandans. The total contribution to the economy of the region and country in normal tourism expenditures must be much higher, although there are no exact figures on the value of Murchison Falls National Park to the economy.

Murchison Falls National Park experienced an unprecedented growth in tourism between 2009 and 2010. Tourists during the early 2000s were afraid to travel to the national park because of a number of attacks on tourists by the Lord's Resistance Army as recently as 2005.¹⁴⁶ Since the end of the war and a return to peace in the park, tourism is starting to recover, multiple new guesthouses and backpackers lodges have set up shop in the last few years, and the tours through the park are cheaper, require less time to arrive from Kampala. Furthermore, the animal sighting is famed to be better than the famous Queen Elizabeth National Park in the distant south-west of Uganda, thanks to the presence of giraffes that cannot be found in other parks, and to the breathtaking landscape created by Murchison Falls, where the entirety of the Nile is squeezed through a 6 meter wide crevasse. The recognition by tourists that peace is likely to be maintained in the park along with the slow recovery from the international financial crisis of 2008, means that Murchison Falls National Park is only beginning to see the full potential for tourism in the area.

The Buffalo-1 EIA attempted to perform a cost-benefit ratio analysis of tourism versus oil production inside the national park, but careful analysis shows that the assessment woefully underestimates the full potential contribution of MFNP tourist dollars to the local and national economy, while greatly over estimating revenue generation capacity of the oil wells within its borders. The assessment looks at national tourist revenue related to the entirety of the revenue generating capacity of the total 46 oil wells, out of which, as we have seen above, eight (8) are inside of the National Park, and three (3), including the Buffalo-1 well, are a direct threat to the most visited site in the national park; Murchison Falls and the Victorian Nile Delta's teeming biodiversity (The Buffalo-1, Giraffe-1 and Mpyo-1 wells. See Figure 15: Wells that Pose Highest Risk to Ramsar Site).

The EIA notes that the tourism industry "fetched about \$500 million" in 2007/2008 and is one of Uganda's "highest foreign currency earners."¹⁴⁷ Given the leap in tourist visitation

¹⁴⁴ Stastics from the Ugandan Bureau of Statistics and Ugandan Wildlife Association online at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/Mig_T1_2011.pdf>.

¹⁴⁵ Ibid

¹⁴⁶ "British National Killed by LRA in Murchison Falls National Park" Uganda Radio Network. Nov 2005.

¹⁴⁷ Buffalo-1 EIA, above n 129.

noted previously in 2010, the number in 2012 is likely to be much higher. The EIA then determines the Net Present Value of Ugandan tourism to be \$31 billion over the next 25 years, while the Net Present Value of oil assuming the Buffalo-1 oil well has 1 billion barrels of reserves, 0.5 billion barrels and 0.25 billion barrels (later reports have estimated the total proven reserves of the Buffalo-1 well to be between 116-200 million barrels of oil; however, total reserves from the Buffalo, Giraffe, Crocodile (Mpyo), and Nzizi wells are estimated to be 1 billion combined).¹⁴⁸

Assuming the price of oil stays at \$100 dollars per barrel the total value of the oil in or around the Victorian Nile Delta and Murchison Falls is \$100 billion. However this estimate does not divorce revenue that will stay in Uganda from that which will end up exported back to the home countries of the investors and siphoned away in foreign contractor salaries. The actual figure cannot be known until the petroleum finance bill is completed and the production sharing agreements are made public, however many accounts put the figure for the government's share of petroleum revenue at \$2 billion per year (or \$50 billion in the 25 year life span of the oil production). Given that the find under the falls represents one billion barrels in reserves out of 2.5 billion (the estimated total proven reserves in Uganda at the moment) the actual total value of the aforementioned wells to the government of Uganda maybe less than \$20 billion.

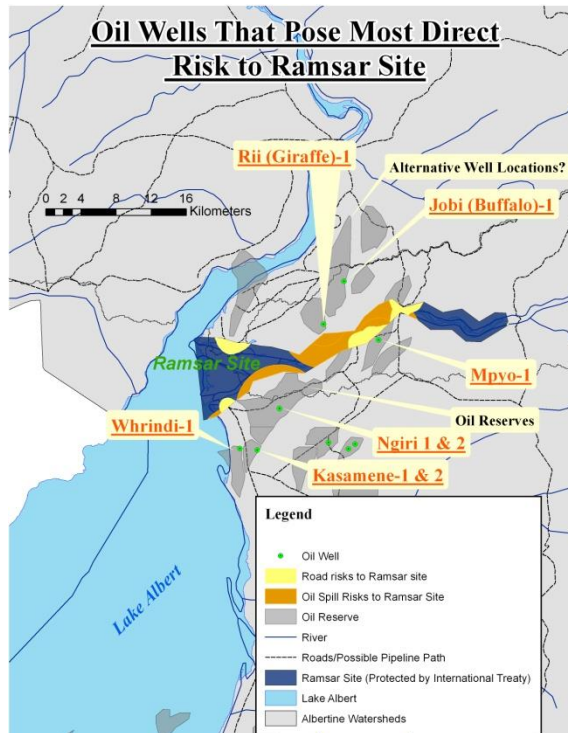
It is difficult to assess what percentage MFNP represents out of Uganda's total tourism income, but it is safe to state that the park is an extremely popular destination that will continue to draw tourists to Uganda at an accelerating pace. If we assume that MFNP represents ½ of Uganda's tourism draw, than the park has a net present value of \$15.5 billion over the next 25 years, a figure that begins to look closer to the \$20 billion in expected revenue. A major problem with the Buffalo-1 EIA's estimation for tourism is that it only calculates the value of tourism over the estimated life cycle of oil production, whereas the true net present value of MFNP cannot have an end date. Oil activities do have an end date and also run the risk of irreparably damaging the parks biodiversity and thus tourism revenue. A large question emerges when embarking on this type of Cost Benefit Analysis; *what would happen if Uganda invested the same amount of money into tourism as it is investing in oil development that may threaten tourism?*

Recommendation 38: Conduct an adequate study of the cost benefit ratio of oil revenue versus risks to wildlife and thus tourism dollars. The Buffalo-1 EIA's cost benefit analysis is a good beginning, and more well specific cost benefit analyses should be done and published widely for public scrutiny, however further study, updated data, and a more rigorous methodology is needed in the future on existing and proposed wells in order to demonstrate the full economic risks posed by oil activities.

¹⁴⁸ Gismatullin, Eduard. "Tullow Advances After Finding Oil, Gas in Uganda Well" (Update2). Bloomberg.com. Dec 2008.

5.5.2.2 Use International Treaties as Guidelines for Determining No-Drill and Intensive Management Sites.

All international environmental treaties signed by Uganda should be incorporated into all laws, regulations and oil contracts. Uganda is a signatory to The International Convention on Wetlands, popularly known as Ramsar, which obliges the country to protect and preclude development in any wetland site of agreed international importance.



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

Notably, NEMA does have the authority to prohibit drilling in certain areas –i.e. wetlands protected by the Ramsar treaty.¹⁴⁹ During interviews with government officials, the designation of a Ramsar wetlands site was the only criteria given for prohibiting all forms of natural resource extraction. Section 106(1)(b) of the *National Environmental Act* says that “where Uganda is a party to any convention or treaty concerning the environment, after the convention or treaty has been ratified under article 123 of the Constitution where such ratification is required, the Minister may, by statutory order, with the approval of Parliament by resolution [...] give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of law in Uganda.”¹⁵⁰

Oil wells that pose the most direct threat to the internationally protected Ramsar wetlands site are indicated in the map above as well as the areas of the Ramsar site that are under the most direct threat from these nearby wells and roads.¹⁵¹ The Ramsar site is the heart of Murchison Falls National Park, and is the life source of much of the biodiversity in the park. Thousands of hippopotamuses and crocodiles live in the site, mega fauna such as elephants, zebras and wildebeests use the site for drinking and staying cool, while hundreds of birds use the site for nesting, feeding and resting during their migrations across Africa and the world. A disaster at one of the wells listed in the map could devastate the vital ecosystem of the Ramsar site, not to mention tourism revenue in general.

¹⁴⁹ *National Environmental Act*. Government of Uganda. Sections 96 and 105. 1995.

¹⁵⁰ *Ibid*

¹⁵¹ Oil risk zones are assumed to have three different categories of intensity, 0-1 kilometers from oil well, 1-2.5 kilometers from oil well, 2.5-5 kilometers from oil wells. Environmental risks from oil well access roads and pipelines that will use existing access roads is assumed to be 0-1 kilometers from the road. These assumptions were made by the creator of the map based on assumptions made in the Environmental Impact Assessments of wells in the area.

Uganda has promoted compliance with the Ramsar treaty by hosting the treaties conference of parties in 2005. The government must ensure that oil wells within the proximity of 5 kilometers of the Ramsar site undergo heavy scrutiny.

The Giraffe, Buffalo, Mpyo (Crocodile), Nigiri, Kasamene, and Wahrindi wells must have strict codes of conduct associated with them regarding blow-out prevention, fuel spills, improper waste management, human activity, noise, light, vibrations, and flaring. The wells must have a far higher rate of inspection and violations should result in the immediate loss of production license and steep fines. Companies should pay a bio-diversity offset fee that sponsors the increased management of the Site and other high-biodiversity sites in the national park.

Furthermore, the law should strictly prohibit oil activities inside of the site. The above map shows oil reserves to which each well is affiliated. The government should mandate that the company prove they have found the spot of least impact for the production well within the given reserve, using the matrix of future impacts and risks associated with each impact (Figure 9: Risk Matrix Score Card for Risks and Figure 10: Environmental Risk Matrix: Natural Features Threatened by Major Risks Associated with Oil Activities).

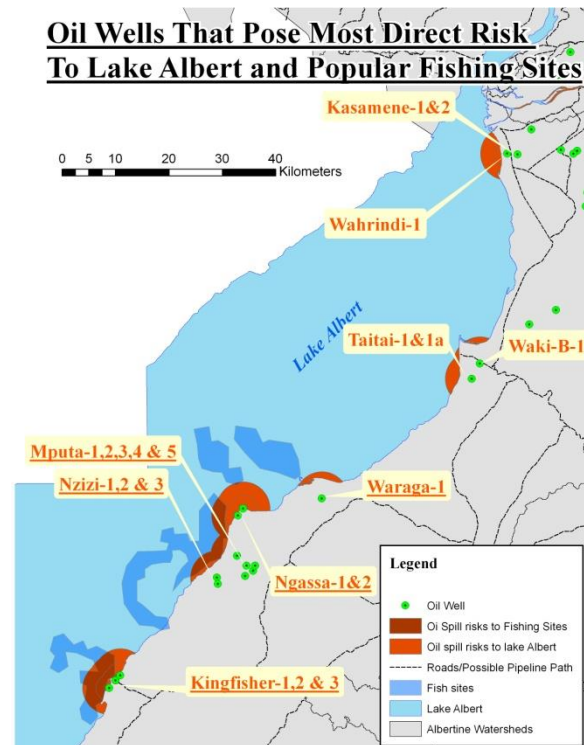
Because of the multiple severe risks they impose, the Giraffe, Mpyo (crocodile), Buffalo and Kasamene wells should be analyzed by an impartial third party, at the company's expense, but not on the company's behalf, to determine the feasibility of alternative drill sites, horizontal drilling, alternative technologies and a thorough cost-benefit analysis of a no-project scenario before production begins in 2016.

Recommendation 39:

- Incorporate all international environmental treaties signed by Uganda into all laws, regulations and oil contracts.
- Ensure that oil wells within the proximity of 5 kilometers of the Ramsar site undergo heavy scrutiny.
- Enact strict codes of conduct for the Giraffe, Buffalo, Mpyo (Crocodile), Nigiri, Kasamene, and Wahrindi regarding blow-out prevention, fuel spills, improper waste management, human activity, noise, light, vibrations, and flaring. Violations should result in the immediate loss of production license and steep fines.
- Enforce bio-diversity offset fees that sponsor the increased management of the Site and other high-biodiversity sites in the national park.
- Prohibit oil activities inside of the Ramsar site.
- Analyze the Giraffe, Mpyo (crocodile), Buffalo and Kasamene wells to determine the feasibility of alternative drill sites, horizontal drilling, alternative technologies and a thorough cost-benefit analysis of a no-project scenario before production begins in 2016.

5.5.3 Protecting fish stock, marine biodiversity and fishing.

The region's largest lake, Lake Albert, and the wetlands that surround it protect ecosystems



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

important for the livelihoods of local residents. The villages bordering Lake Albert rely predominately on fishing and fish processing for their subsistence. 15% of Uganda's total fish stock is harvested in Lake Albert alone.¹⁵² One Nile Perch processing facility on the shore of Lake Albert employs 150 people and processes 40-50 tons of fish daily.¹⁵³

Sensitivities exist regarding oil and gas production's proximity to human activities and dependencies such as fresh water sources and fisheries.

Researchers have indicated that the areas of the lake in which fish populations most heavily depend are shallow breeding grounds on which virtually all fish in the lake depend.¹⁵⁴ The shallow breeding ground coincides with the fish landing sites

immediately offshore from the town of Kaiso and will experience acute direct and indirect pollution and risk of spill from a variety of sources, including increased sewage.¹⁵⁵ Tullow has stated its desire to drill offshore in one of the tens of reserves purported to exist

inside of the lake, and NEMA has stated that it will probably allow for such activities to occur in the not too distant future.¹⁵⁶ The above map demonstrates the intersection of oil risk zones with Lake Albert and popular fishing sites. The indicated wells listed above pose the most direct risk to the Lake Albert system should spills, blow-outs or improper waste management occur.

The indicated wells in the above map should have more stringent environmental and social safeguard plans and increased intensity and frequency of inspections than wells that do not interface with sensitive areas. The feasibility of alternative drill sites, horizontal drilling, alternative technologies and a thorough cost-benefit analysis of a no-project scenario should be done by an impartial third-party auditor and should be conducted before production begins in 2016.

¹⁵² Sensitivity Atlas 2010, above n 109, p. 28.

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ Ibid

¹⁵⁶ Interview. NEMA Official. 3/14/12.

5.5.3.1 Increased management and monitoring of fish stocks in Lake Albert should be accompanied by programs to replace illegal nets with regulation nets.

Thus far, road access to the fishing site has contributed to a rapid increase in over-fishing in the last 6 months since a series of roads into the area were completed. According to local NGOs and fishermen, daily catch has dropped dramatically from 100 fish daily for a single fisherman, to one or two if any.¹⁵⁷ As a response to stresses on the fish population of Lake Albert, the Ugandan Department of Fisheries Resources has more strictly implemented laws around fishing net size, so that fishermen cannot use nets that capture immature fish. In order to enforce the regulation, the authority goes into villages using illegal nets, destroys them by burning them and confiscates the illegal fish to distribute for free, which forces villagers to eat little food until they can afford nets again. The policy has angered local villagers and fishermen.

Recommendation 40: Have the Department of Fisheries Resources replace confiscated nets with regulation size nets.

5.5.3.2 Compensation should be given for fishing exclusion zones

According to local villagers, a similar situation occurred when Tullow Oil created an exclusionary zone around a 3D seismic survey area in the lake.¹⁵⁸ Villagers argue that doing so kept them from accessing some of their most lucrative fishing sites, and thus impacted their ability to adequately feed themselves and their families, and are demanding compensation for the lost access. Restricting access to the natural resources that communities depend on daily can create serious deprivations not typically planned for by companies and governments.

Recommendation 41: Compensate villagers' livelihoods for legitimate denial of resources.

5.5.4 Create an action plan to protect against contamination of drinking water.

An oil spill in one of the regions indicated by NEMA as being a first strike zone could be disastrous for residents of the area.¹⁵⁹ In some areas of the oil development zone, shallow bedrock formations create aquifers particularly close to the ground surface.¹⁶⁰ These shallow aquifers are highly vulnerable to the smallest oil or fuel spill, which could contaminate the drinking water for hundreds to thousands of local residents. NEMA's Sensitivity Atlas notes that 80% of the Albertine Graben's ground water is highly vulnerable to fuel and oil spills.¹⁶¹

¹⁵⁷ Interview. Kaiso Fisherman. 4/17/12.

¹⁵⁸ Ibid.

¹⁵⁹ See Figure 17 in annex, First Strike Map of the Sensitivity Atlas 2010.

¹⁶⁰ Sensitivity Atlas. 2010, above n 109,. p. 71.

¹⁶¹ Ibid. p.72.

Recommendation 42: Design and implement a government action plan for protecting and enhancing clean drinking water in the area of first-strike risk. (See Figure 16 for areas highly vulnerable to oil and fuel spills).

5.5.5 Prohibit gas flaring while creating incentives for gas capture, storage, sale, and use for electricity generation.

In contrast to the PEPD and the NOGP which have both publically stated their opposition to burning off unwanted natural gas flows associated with oil extraction (something known in the industry as gas flaring), officials from the Ugandan Wildlife Authority have stated that gas flaring had been decided upon as the method of disposing of associated gas in Murchison Falls National Park and elsewhere. The reason officials gave in interviews is that allowing the gas to simply vent into the atmosphere is worse for the environment in terms of greenhouse gas emissions, and that the companies had informed the Authority that gas capture and storage is not cost effective given the high cost of infrastructure and small amounts of recoverable gas. It may be true that gas recovery, processing and sale is not profitable from a corporate perspective, yet experience in other associated gas flare projects shows that gas flaring causes human health impacts, wildlife repercussions, and destruction of crops and property due to acid rain, which far outweigh the costs of gas capture. Consequently, prohibiting gas flaring from the public perspective is an absolute necessity.

A 2001 study on the environmental impacts of gas flaring in the Niger Delta found that gas flaring negatively impacts soil fertility, plant species diversity, and creates a dramatic decline in the productivity of crops in the surrounding area (100% loss within 100 meters of a gas flare and 10% loss within 1km of a gas flare).¹⁶² Human health impacts from flaring are severe and can include “cancer and non-cancer, neurological, reproductive, and development effects.”¹⁶³ The Climate Justice Program estimates that gas flaring is producing air pollution in the form of particulate matter and chemical carcinogens that could be causing 49 premature deaths, 8 additional cases of cancer, and 4690 additional cases of respiratory illness among children per year in the Niger Delta.¹⁶⁴ Studies done on rabbits living within 1 kilometer of gas flares showed a variety of negative health impacts that suggests other types of wildlife would suffer in areas within a kilometer of a flare.¹⁶⁵ (See Figure 11: Toxic Compounds Found in Gas Flares and Figure 12: Health Impacts of Toxic Compounds Commonly Found in Gas Flares, for more detailed explanation of gas flare chemical composition, toxicity and human health impacts).

A 2010 report on gas flaring in the Niger Delta found that flaring caused increased deterioration of tin roofs due to increased acid rain resulting from sulfur dioxide emissions from flares.¹⁶⁶ Confronting claims by local communities that roofing was deteriorating

¹⁶² Ologunorisa, Tami E. “A Review of the Effects of Gas Flaring of the Niger Delta Environment”. International Journal of Sustainable Development and World Ecology. 8:3. P 250-252.

¹⁶³ Ishisone, Michiko. “Gas Flaring in the Niger Delta: The Potential Benefits of its Reduction of the Local Economy and Environment”. 2004, Senior Research Seminar Paper at the University of Berkley.

¹⁶⁴ The Climate Justice Programme. Gas Flaring in Nigeria: A Human Rights, Environmental, and Economic Monstrosity. 2005. p 24.

¹⁶⁵ Ologunorisa, above n 162

¹⁶⁶ Ekpoh, Imo J; Obia, Ajah E. The role of gas flaring in the rapid corrosion of zinc roofs in the Niger Delta Region of Nigeria. Environmentalist 30. 4 (Dec 2010): 347

unusually rapidly, the major regional oil operator of the Niger Delta, Shell Oil, had claimed for decades that the composition of its “sweet gas” was low-sulfur (as opposed to high sulfur content gas referred to as “sour gas”), which should have a lower tendency to generate regional acid rain downwind from gas flares.¹⁶⁷ Research showed that acid rain was indeed occurring and sulfur content in the flares was high enough to produce the phenomenon.

The studies on human health and acid rain damage as a direct result of gas flaring in Nigeria suggest that the region around Lake Albert, which currently possesses 46 oil wells, can expect much of the same impacts should flaring be permitted. Gas flaring presents a threat to both human life and wildlife in the area around Murchison Falls National Park, the adjoining wildlife reserves, and communities in the area.

Recommendation 43:

- Draft regulations that explicitly prohibit flaring except under situations that pose significant safety risks.
- Incentivize gas recovery through cost recovery programs for associated gas recovery infrastructure so that gas can be captured and sold to local communities or used for electricity generation that benefits the region.

5.5.6 Generate and widely distribute a waste oil and toxic mud cuttings management plan and allow for civil society, media and citizen monitoring of compliance

Tullow, the UWA and NEMA have all reiterated their concern for the lack of a waste disposal plan for hazardous waste associated with drilling however a plan has yet to be elaborated and instituted.¹⁶⁸

Many accusations of open waste oil pits have been made in the past, and it is difficult to say whether or not improper waste disposal is occurring because journalists and researchers are not allowed onto oil well or waste sites without proper authorization from the Permanent Secretary of Energy. Once proper authorization is given, responsible government agencies organize a guided tour for journalists.¹⁶⁹ It seems unlikely that unannounced audits of oil waste management are being conducted and subjected to public scrutiny. Regardless of whether oil is being stored in illegal waste pits or legitimate lined concrete pits and containers, haphazard and unregulated storage of hazardous waste is threatening ground water, streams, rivers, the Ramsar wetland site and the entire marine habitat of Lake Albert.

Recommendation 44: Elaborate a hazardous waste and mud cuttings disposal plan as a top priority. A waste site must be identified and an environmentally sound system of transport and disposal must be elaborated. Monitoring of compliance should be done rigorously and in partnership with civil society and project affected communities.

¹⁶⁷ Ibid

¹⁶⁸ Interview. Tullow Oil Uganda. 3/13/12. & Interview. NEMA Officials. 3/13/12.

¹⁶⁹ Interview. Journalist. 3/12/12.

5.5.7 Prevent and prepare for oil spills

5.5.7.1 Generate and widely distribute an oil spill disaster preparedness plan for every well-site based on its unique conditions and ensure the expertise and facilities to clean up a spill are on site at all times.

Creating an oil spill disaster preparedness plan is the stated goal of the Oil for Development program, NEMA and the UWA. The Buffalo-1 EIA recommends that the Uganda Government “embark on a process of developing a *National Oil Spill Emergency Response Plan* and ultimately a fully functional *National Oil Spill Response Center*” that uses the Sensitivity Atlas as a guideline. This recommendation should be followed and the process of its creation kept open to public debate and expert advice. As previously discussed, the environmental and human health sensitivity of the Albertine Graben is particularly high and response to any level of spill occurring from tanker spills, pipeline damage, hazardous waste containment pits, or blow-out, must be dealt with immediately to prevent extensive ecological harm and economic damage.

Recommendation 45: Create a *National Oil Spill Emergency Response Plan* and ultimately a fully functional *National Oil Spill Response Center* as soon as possible. Meanwhile all well-sites must be stocked with state-of-the-art oil spill disaster response equipment and trained personnel. Compliance of this should be held to public scrutiny.

5.5.7.2 Ensure that the financial burden of environmental fines outweigh the benefits of non-compliance in order to prevent oil spills and environmental damage.

The impacts of spills on the natural environment and human health of the Albertine Graben could be catastrophic. However the risk, severity and timeliness of cleanup is heavily dependent upon the strength of laws, regulations and contracts to place the burden of responsibility for spillage squarely on the company as opposed to the government in all circumstances. This is the only way a company will internalize the cost associated with the risk of spillage into the production cost of the oil, and thus take the necessary precautionary steps to avoid oil spills.¹⁷⁰ “If a company perceives it can get away with a spill and/or that the government will not enforce a complete clean up requirement then they will worry less about investing in prevention,” notes Erakpoweri Okugo, a risk management analyst and economist. Fines that make the burden of pollution higher than the economic gain from polluting are “widely recognized as crucial to preventing regular and large oil spills. A US academic study found that a fine increase from US\$1 to US\$2 per gallon for large spills decreased spillage by 50 percent.”¹⁷¹ In addition, managers’ personal liability should be sought as further deterrence.

Recommendation 46: Ensure that the financial burden of environmental fines outweigh the benefits of non-compliance in order to prevent oil spills and environmental damage.

¹⁷⁰ Okogu, Bright Erakpoweri. "Oil Spill Hazards at the Upstream Level." *Energy Policy* 22.5 (1994): 393-402. Print.

¹⁷¹ Ibid

5.5.7.3 Create Biodiversity Offsets and Environmental Service Payments system as part of the polluter pays principle that generates social and environmental benefits

Biodiversity Offsets and Environmental Service Payments are financial mechanisms that force companies to pay for the negative environmental and human health consequences of their operations. Like fines that deter environmentally damaging behavior, offsets and environmental service payments have the same result in forcing companies to internalize costs associated with damage to the environmental public goods and services. Yet unlike fines, offsets and service payments are channeled back to enhance and protect those same environmental goods and services in the same location, or in another similar location. Further research and development of such a program should begin immediately by the Oil Task Force and the Oil for Development Program. The Katoomba Group and Forest Trends Collaborated on a 2011 Reference Book for Uganda entitled “Introduction to Payments for Ecosystem Services” made for NEMA and financed by NORAD, USAID, UNDP, UNEP, NEMA and others.¹⁷² This study should be followed, and a program should be adapted to the needs of the oil sector.

Recommendation 47: Create Biodiversity Offsets and Environmental Service Payments system as part of the polluter pays principle that generates social and environmental benefits.

¹⁷² Vonada, Rebecca, and Sissel Waage. "Introduction to Payments for Ecosystem Services: A Reference Book for Uganda." *Forest Trends*. Forest Trends and The Katoomba Group, 2011. Web. 06 May 2012

6 Ensuring Social Equity in Oil Development

6.1 Land-related issues

6.1.1 Clarify land ownership, redress land alienation and establish transparency in the land market

The epicenter of Uganda's oil-belt currently consists of the districts of north-western Uganda, which were part of the erstwhile Bunyoro kingdom, as well as some districts of northern Uganda. The government has also announced prospecting in newer areas including areas of north-eastern Uganda.¹⁷³ It is crucial that the GOU put in place a framework that upholds the Constitution's guarantees, protects the land rights of Ugandans living in current and prospective oil-rich areas¹⁷⁴, and prevents unfair land alienation and malpractices, emanating from the move towards oil development and related activities. This is particularly critical since land is not just the primary source of livelihood but also defines the way of life for many rural Ugandans. When one looks at other resource-rich nations, issues of access to land and related resources, and forced displacement have emerged as a major reason of conflict. By providing for just and equitable practices around land, Uganda can prepare to avoid similar problems.

The current situation has several challenging aspects to it. A range of customary land ownership patterns exist on the ground, and in 1995, the Ugandan Constitution recognized the land rights of the people, including such customary ownership. This is a very important and valuable guarantee made to the people. However, this has not translated into physical land surveying on the part of the government and awarding of land titles to people. This process remains prohibitive in terms of financial, legal and social resources and therefore cannot be undertaken by the common Ugandan villager – a significant barrier in protecting himself or herself from exploitation and land alienation,¹⁷⁵ and something which the GOU needs to seriously examine and address.

Fieldwork in Hoima as well as interviews with governmental and other authorities in Kampala indicate that land speculation and land grabbing by non-locals or outsiders, sometimes by the misuse of state support or force, is already underway in the oil belt. Land values have increased many-fold, so that land in villages in the district is now as expensive as

¹⁷³Uganda to Prospect for Oil in Karamoja, East African Business Week, 12 March 2012

¹⁷⁴ While the oil belt is geographically wider, this section draws upon fieldwork done in Hoima and Kabaale

¹⁷⁵ Interviews with villagers, district council representatives and advocacy groups in the oil belt, the former Minister of Land, Government of Uganda, Ministry of Land official and the Bunyoro Prime Minister. Mar 2012.

land on the outskirts of the capital of Kampala. Locals, especially in the villages, who have either no access or inadequate access to information on the possible future values of that land, and also lack the power to resist displacement, have begun to be affected, even though oil development is yet to begin. Complaints following specific cases of land grabbing in the region made by Bunyoro authorities to the GOU have not resulted in investigations or action¹⁷⁶, creating a sense of unfair treatment of the region, at the hands of the powers at the center, and evoking memories of historical injustices suffered by the Banyoro people.



The oil-rich belt along the shores of Lake Albert in Hoima district
Photo by Chitragada Choudhury

The GOU should categorically reiterate the rights of the people to land, as currently enshrined in the Ugandan constitution, and take immediate measures to stop unfair practices around land from creating the grounds for dispossession, unrest and possible social conflict. In fact, land rights should be frozen to a date prior to the date of first knowledge of oil development to prevent speculation and thwart land grabbing.

Specifically, the establishment of a quasi-magisterial body, explicitly charged with addressing the emerging land concerns in the oil-belt, and possessing powers of oversight needed to prevent abuses. This body should have the power to summon individuals and compel production of official documents, and adjudicate on complaints including on land alienation and unfair practices, prevention of access for any amount of time to communal areas (grazing lands and water bodies) in the oil belt. It should be based in the oil belt, and have a toll-free helpline number to ease access for local residents. The body should also issue

¹⁷⁶ Interview with the Bunyoro Prime Minister. Mar. 2012.

a ‘Citizens Charter of Rights’, translated into local languages, which should be publicly displayed in all villages where oil prospecting has happened, is underway, or might be sought to take place in the future.

Recommendation 48: Establish a quasi-magisterial Land Rights Board under the Ministry of Land, with the mandate to address land concerns in the oil belt. It should make itself accessible to local residents, and should issue a Charter of Land Rights in the oil belt, specifically relating to the activities of oil prospecting, drilling and development. It should provide copies translated into local languages in every village, while also publicizing it through the mass media. The Land Rights Board should have the power to compile evidence and issue binding adjudications.

6.1.1.1 Conduct a land survey and issue titles to customary owners

In the past, the GOU began a pilot process of participatory, community-led surveying and land titling, which was very successful. But due to lack of budgetary commitment, the program did not extend to the whole country.¹⁷⁷

The process needs to be re-established at the earliest, beginning with the sites of oil prospecting and the district towns, to understand the extent of land alienation on the ground. In particular, the survey will reveal land bought by outsiders, who do not live in the region, as well as land purchased to be leased out to industry for oil development, and related activities, such as warehouses and parking spaces. This should be done on an urgent basis and before any land is acquired by the state or private parties (outright purchase or lease) for oil development, including the proposed refinery, and auxiliary development.

Recommendation 49:

- Conduct a land survey, with the participation and testimonies of the community, on an urgent basis in the oil-belt, and make its findings public.
- Issue ownership certificates (or titles) to individual customary land owners in the oil belt district in accordance with the Constitution, and in cooperation with an ongoing effort by the Bunyoro kingdom officials for issuing these.

6.1.1.2 Address skewed information flows

In response to a specific query on the amount of land they need in the oil belt to carry out their operations, a Tullow representative said they did not have the information.¹⁷⁸ This is a troubling area of opaqueness, and one which facilitates abuses on the ground and wrongful economic gains. This information should automatically be available at the district and county levels as well as at the actual village sites of land requirement. Moreover, transparency in

¹⁷⁷ Interview with the former Minister of Land. Mar. 2012.

¹⁷⁸ Team meeting with Tullow representative, Mar 2012

details of lease terms and signings will reduce potential for locals to agree to unfair transactions, lower than the market price.

Recommendation 50: Oil companies and the Ministry of Land should issue regularly updated public statements in the local languages on the amount of land that is required and in what areas of the oil belt, in order to prevent profiteering on the basis of the current privileged access to such information. In villages, or towns where land is leased out for oil prospecting and allied activities, information on the terms of annual leases, as well as the names of the lessor and the lessee, should be made available to local residents. This could take the form of a public signboard at the specific site, among other measures.

6.1.1.3 Make the functioning of District Land Boards transparent and accountable

Article 204 of the Constitution provides for the decentralization of the administration of land to District Land Boards. Because there is a lot of opaqueness about the functioning of these boards, their offices have been at the center of alleged malpractices and bias in the wrongful transfers of land from locals to powerful outsiders. In the light of the upcoming oil development, there is a need to focus on these offices, and make their powers and operations more transparent and sensitive to locals.

Recommendation 51: Appoint ombudsmen to liaise with the public, issuing directives for them to make mandatory disclosures about the land purchase applications the District Land Boards receive, the surveys they conduct of locals' land, the land sales that they certify, as well as their communications with the Ministry of Land in Kampala.

6.1.2 Develop norms for land use and acquisition compensation, resettlement and other entitlements

As Uganda pivots from the pre-production to the production phase, there will be a crucial shift in land use patterns in the oil development area. The government needs to regulate and mediate this process so as to balance the needs of the industry and the new economic actors with the rights of locals and protections against the threats they face. Currently there is an unresolved tension between the rights of the people to land, as enshrined in the Ugandan Constitution and the rights of the state (on behalf of the Ugandan republic) to the mineral wealth below the land, as proposed in the upstream bill. Given the powerful dynamic that the oil development process will take on, once it begins, the GOU should look to act now to ensure that the rights of the state (executed via the oil companies) do not run roughshod over the rights of Ugandan citizens. This is especially important “since the balance of power and information between these two parties is so tilted.”¹⁷⁹

There are further challenges to the constitutional guarantees posed by the EDP Bill: section 137(1) (v) lays down that if the land owner “unreasonably” withholds consent, the Minister

¹⁷⁹ Interview with Ministry of Land official. Personal interview. Mar. 2012.

may authorize the licensee (oil company or other body/individual) to exercise all or any of the rights under the license on the land, subject to conditions as the Minister may deem fit. Without any legislative definition of ‘unreasonable’, there is little to prevent the possibility of subjective interpretations and abuse of the clause in a way that might be detrimental to existing and genuine landholders on the ground, who might be powerless to defend their rights. It seems prudent to dilute this discretionary judgment with a better set of checks and balances, including perhaps in the form of the aforementioned Land Rights Board.

Similarly, section 138(1) provides that the land owner of any land in an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of the land, insofar as the grazing or cultivation does not interfere with the exploration or development operations or safety zones in the area. However, while a clear hierarchy of activities is laid down here, there is no mention of compensating the land owner if the oil company’s operations prevent him or her from carrying out cultivation, grazing and fishing – all of these are activities critical to local livelihoods.

Furthermore, the local ecology is a source of a range of resources used by locals in daily life, which are often not valued, but whose loss will impact the quality of life of the people. The clause also needs to be amended so as to uphold section 244(2) of the Constitution, which states that “minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners...”.

In fact, published testimonies by women in the villages of the oil belt¹⁸⁰ and personal interviews have already pointed to inadequate compensation and loss of agricultural and fishing income. While the proposed upstream bill lays down the terms of ‘fair and reasonable compensation’, it does not say how this will be determined, and what redress will be available in case people are not compensated.

Interviews with people on the ground indicate that they currently feel like they are tossed between representatives of the oil company and of the government, in the absence of clear, transparent and accessible guidelines on who is responsible for determining and ensuring compensation, addressing violations, and enforcing accountability on the matter.¹⁸¹ There are deep fears on the ground of disruption of lives, (especially in the area of proposed land acquisition of 29 square km of land for an oil refinery, by displacing current villages such as Kabaale – see

Figure 5 in the Annex) without involving the people in the process of land valuation and other key decisions, including adequate social safeguards and economic provisions for the future.¹⁸²

Clear mechanisms, which ensure responsiveness on the part of the state and the oil companies and peoples participation in the current and future changes around land, would help to address the issue.

¹⁸⁰ *Women's Conference on the Governance of Uganda's Oil Sector*. Proceedings Report. Africa Institute for Energy Governance, 24 Nov. 2011. Accessed 6 May 2012.

¹⁸¹ Interview with residents in Hoima. Mar. 2012.

¹⁸² Interview with residents in Kabaale. Mar. 2012.



The site of a proposed refinery around, which will displace villages over 29 sq. km.
Photo by Chitrangada Choudhury

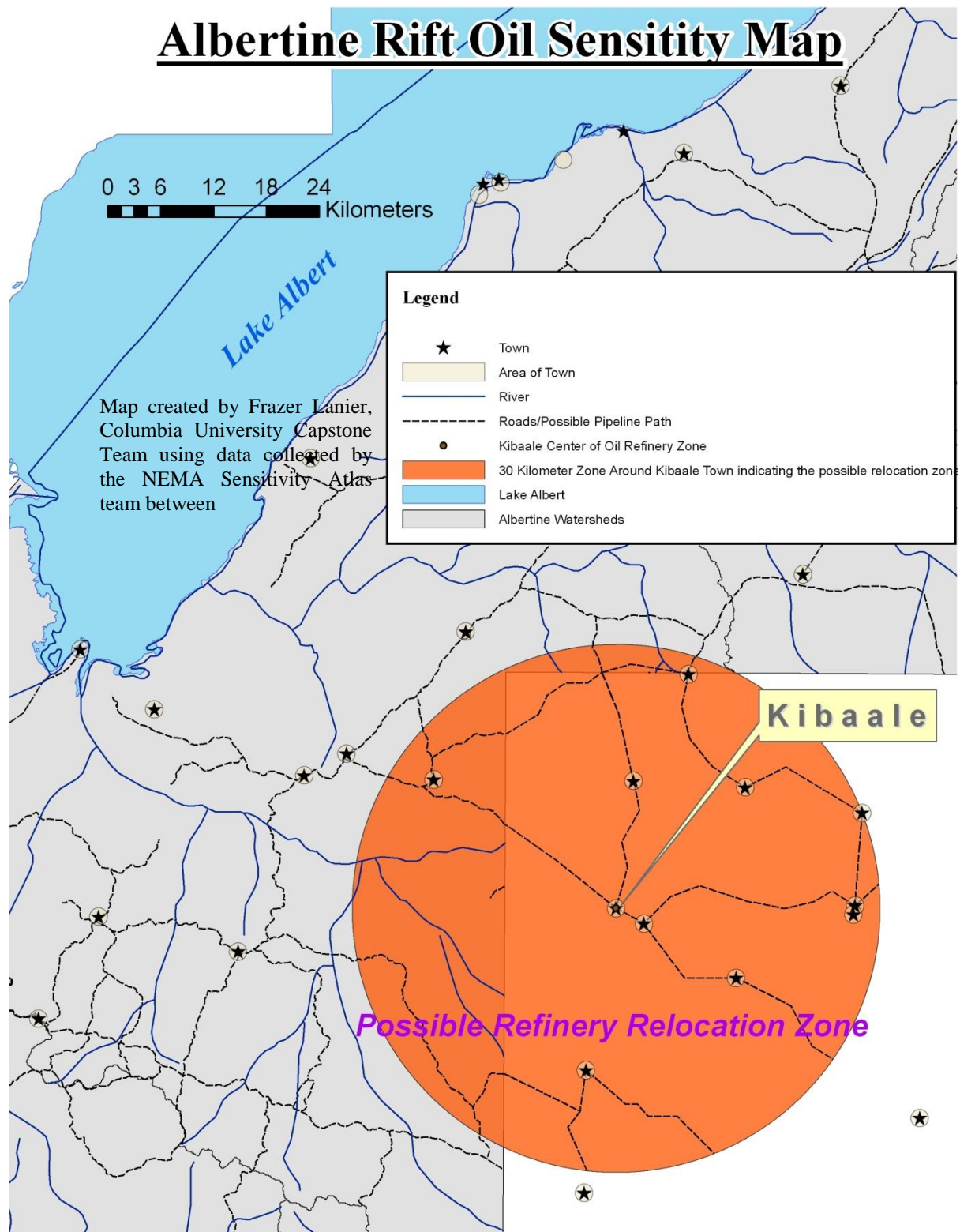
Recommendation 52:

- Lay down the categorical principle of compensation prior to acquisition, drawing on the guarantee of the customary and other rights to land laid down in the Constitution of Uganda.
- Define guidelines for prior and informed consent to land acquisition, including the guarantee of an open and transparent public hearing. During these hearings, provide full information in local languages on the proposed development, its potential benefits and its potential impacts at the local, regional and national level, as well as the proposed resettlement and compensation measures for affected people. Place a special emphasis on the involvement of women residents in public hearings, and the incorporation of their perspectives on resettlement and compensation measures.

Recommendation 52 (continued):

- Urgently devise a policy of compensation, incorporating constitutional guarantees, and a comprehensive range of compensation measures including:
 - (i) The land-for-land or money-for-land principle. Carry out valuation of land, in dialogue with its current landholder, as well as the location of alternate resettlement sites, in particular with affected women. Currently the EPD Bill only provides for valuation by the government expert – this should be altered to also make space to include the land-owner’s input, in order to make the process more participatory. The quasi-magisterial Land Rights Body proposed earlier could oversee this process and ensure that the valuations are fair.
 - (ii) Terms of compensation for other lost assets, including the season’s crops (during prospecting), the home/homesteads, water sources, fruit and other trees, livestock and grazing areas, schools and other village communal infrastructure. The valuation process should be participatory.
 - (iii) Jobs (and free-of-cost or subsidized vocational training) in the proposed development for which current residents are being displaced – e.g. jobs in the refinery, and in the allied developments.
 - (iv) Providing debentures in the proposed future development, as well as training sessions for all adults, including the women, on money management.
 - (v) Publicize the rights and entitlements under the compensation regime on the mass media, especially radio stations operating in the affected districts. In addition, hold mandatory information sessions in the affected villages, along with local civil society groups, elected representatives and church organizations.
 - (vi) Issue guidelines for social audits of compensation programs, with officially recognized spaces for monthly feedback on progress and compliance, and official responses. This will not only ensure that the programs are designed more democratically, but also check corruption and give people an opportunity of participation and ownership, and a sense of say. (Countries which have recently issued such guidelines on carrying out social audits and acting on its findings include India).

Figure 5: Possible Refinery Relocation Zone



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

6.2 Ensuring local entitlements

6.2.1 Recognize the oil industry's differential impact on Banyoro, Acholi and other locals

Current oil discoveries and the proposed development, including a refinery to be built by displacing current villages of over 29 square km, are located in the western districts, which falls in the Bunyoro region, as well as parts of districts further north like Amuru, which are home to the Acholi communities.¹⁸³ The erstwhile Bunyoro kingdom has a rich history and a distinctive identity, though greatly reduced powers. Its districts of Buliisa, Hoima, Kibaale, Kiryandongo and Masindi are also historically marginalized compared with the rest of the country, as indicated by the fact that more than 92% of the local are categorized as poor, and about 50% categorized as lacking formal literacy. This socio-economic profile suggests that the GOU will have to pay careful attention to ensuring that the region can adapt to the economic changes planned for the region, as well as participate, and not be further marginalized, in the new economy.



Oil production will take place next to existing farming and fishing villages, bringing economic changes to the area: Photo by Chitragada Choudhury

Locals fear that oil development can represent, or already represents, a threat to them, with regard to their access to land, fishing areas, farms and other resources in the richly bio-diverse Albertine Graben. For example, while a proposed refinery in Kabaale will draw on

¹⁸³ This section draws upon fieldwork done in the Bunyoro areas of Hoima and Kabaale, though the oil belt is wider, and expanding.

water from Lake Victoria for its operations, villages in this area today are water-scarce, often making do with just one water pump for the entire community. These sharply contrasting prospects of skewed access to resources would certainly fuel discontent among locals.

The deployment of state security forces (mostly from non-Banyoro communities) next to the oil wells, enhances this fear of having to pay excessive costs for the development, of not being able to express one's views, and in the process facing the threat of further marginalization as the country approaches the phase of oil development. This is the classic resource curse on the ground, wherein communities are rendered worse off than before, once natural resource exploitation kicks off. The GOU should be alert to the actions it needs to take to prevent such a scenario.

It is educative to note that interviewees on the ground repeatedly made references to the example of the troubled Niger Delta communities, whose fates they asserted they wanted to avoid. In effect, people on the ground are already aware and getting mobilized for greater involvement in decision-making, so that they can ensure that the development of oil positively impacts their lives. As one statement by local youth groups put it:

*“...as the country prepares to embark on full oil production and earn billions of dollars in revenues, we call upon the government to recognize the many problems facing Bunyoro Kingdom including colonial mistreatment it suffered in the past, high levels of poverty, poor education, poor health, poor roads, lack of clean water, unemployment to its youth, poor farming, lack of fertile land for cultivation because most of the land was gazetted as protected areas and lack of resources by the kingdom to help its people out of poverty.”*¹⁸⁴

The state should pay attention to and act on such concerns, so as to reduce the chances of unrest and conflict. Further, recognizing that people are starting to become aware of the developing situation, and enlisting their greater participation will help the GOU to ensure that the planning of oil development and oil revenue expenditure takes place in a transparent and equitable manner, while keeping the inevitable costs imposed by the industry on the local people at a minimum.

6.2.2 Ensure local involvement through information sharing

Much of the disquiet appears to be driven by a lack of information on the ground. Locals on the ground are already agitating for better information provisions, from publication of the PSAs and how these might impact them, to more transparency on the oil companies' activities in the villages. A memorandum from Bunyoro youth groups submitted to the Speaker of the Parliament early this year argued that “that the lack of transparency and accountability in the oil and gas sub-sector development processes on the part of government and oil companies currently constitute the single biggest challenge undermining the sector in the country.”¹⁸⁵

¹⁸⁴ *Bunyoro Youth Statement on Oil Governance*. Publication. Africa Institute for Energy Governance, Nov. 2011. Web. 6 May 2012.

¹⁸⁵ *Ibid.*

While the right to information is a fundamental right guaranteed in the Constitution, Uganda's current access to information law is very inadequate to meet the information needs of locals in the run up to and during actual oil development. Implementation of the law and awareness about it is poor and more importantly, access very difficult.

The GOU needs to proactively provide information to citizens about its policies and processes of decision-making, while also making it possible for citizens to request and access information under the law. This could be done by setting down clear areas of automatic disclosure on issues that affect local residents, including:

- i. amount of land needed by company/government department
- ii. compensation yardsticks,
- iii. safety safeguards,
- iv. redressal mechanisms,
- v. other rights and entitlements

Certain days of the week could be designated as document inspection days, when citizens can make requests to come and examine official documents. Designated government officers would be responsible for providing information. Such provisions should be implemented first in crucial offices, such as the District Land Offices.

An independent appellate body should be established outside the government to deal with grievances regarding access to information. Branches of the appellate should be set up in all districts of the oil-belt to speedily deal with citizen's appeals. This system has been deployed as part of India's Right to Information regime, which provides for the establishment of an independent watchdog body for implementation of the RTI law.

Finally, there should be legal protection for whistleblowers, as already noted, and local activists. The upstream Petroleum Bill penalizes those who provide information on oil development, without the permission of the Minister. This must to be balanced with the importance of protecting potential whistleblowers within and outside government who may see wrongdoing on the ground. In addition, activists and civil society groups would be vulnerable because of their work, and would need greater protections against possible intimidation and harassment. Protecting such independent voices is especially important as the country approaches the actual phase of oil development and builds its capacities for monitoring on the environment and other areas. Civil society groups act as eyes and ears on the ground, providing vital information which can help raise attention to emerging issues for the government to act on, or pay greater attention to. As such, they are allies of the government, and can assist it in fulfilling its mission to protect Ugandans' interests.

Recommendation 53: The government should recognize the need for greater information flows to local communities, and commit to systems that suo moto disclose critical information in a timely and accessible manner. Compliance should be monitored by an independent, accessible authority. Whistleblowers and civil society groups need to be protected from legal threats and criminal proceedings for disclosing information regarding the oil industry when such information is in the larger public interest.

6.2.3 Develop and enforce local content provisions

Since oil was discovered, locals have already begun demanding for a fair share of the proceeds from the oil revenues, greater transparency, and inclusion in decision-making. The problem with extractive industries in general is that they are less labour intensive than what might commonly be expected given the multibillion-dollar nature of projects. For instance, Tullow's operations only employ 223 staff, including contractors.¹⁸⁶ While this will increase as production ramps up and both Total and CNOOC increase their presence, one should be careful not to overestimate the employment impact of the incoming investments.

Nevertheless, oil producing regions do undergo demographic and economic challenges which increase both the purchasing power and demand in these regions for agricultural produce and health and construction services, among others. Therefore oil production can serve as a vehicle for employment more generally for a local economy, and a stimulant for the establishment of more public services.

A central government official in Kampala, who is also a Banyoro from Hoima district, put it this way:

My people (the Banyoro) should be the first beneficiaries of oil exploitation, as much as they would also be the first sufferers, since the industry will suck in a lot of resources, including land and water. Oil could potentially create a new market for local things. If we get organized, we could get jobs, and supply necessities like food. But for this, we have to position ourselves properly – people have a lot of hope from oil, but it is not like President Museveni will be showering notes of money from the sky. People have to understand the new opportunities. Similarly, the onus is on the state to prepare people for these opportunities. The locals should be targeted and selected for better education, health and job opportunities as well as local schemes to attract more and better teachers.¹⁸⁷

Local content provisions in contracts ensure that investment projects generate employment and business opportunities for the local economy. Foreign licensees that adhere to local content provisions strengthen their social licence to operate by complying with provisions. It is vital to have clear reporting requirements for the investor and all subcontractors to aid government authorities monitor compliance with contractual provisions. Any cases of non-compliance should be dealt with by the imposition of deterring financial penalties.

Local content provisions should apply to labor, training and goods and services, consistent with the recommendations of the GOU's 'Enhancing National Participation in the Oil and Gas Industry in Uganda' study.

In the case of labor, the provisions should; "1) require that priority is given to local nationals in recruitment, training opportunities and promotions, 2) set specific percentage targets for positions reserved to local nationals, 3) establish sliding scales, whereby the local employment percentage targets are increasing over the duration of the project and increasing

¹⁸⁶ Tullow Oil plc, above n 75, p. 21.

¹⁸⁷ "Interview with official in Kampala." Personal interview. Mar. 2012.

in skilled positions, 4) require minimum annual financial commitments to open up professional development opportunities, and 5) require compliance with local labor laws.”¹⁸⁸

With regards to training, provisions should require the investor to pay government in order to establish scholarship endowments for locals, including advanced overseas exchange programs.

For goods and services, it is important that the licensee feels that local content does not result in lower quality or higher cost. This requires a government to be flexible perhaps by including percentage targets or bandwidths to which local goods and services must be sourced.¹⁸⁹ This also lends credence to the argument that there is a role for government to assist SMEs to become suppliers to the oil industry. It may do so through investing in education, training and technology transfers. The establishment of county-level bodies of agriculture and industry to liaise with the companies on their needs for personnel, supplies and services can also facilitate local companies to become suppliers.

Moreover, it should be mandatory for government departments and the oil companies to issue job advertisements, tenders and announcements for the above in the local media, as well as to publicize them through community networks such as the church and academic institutions.

One challenge with local content policy in the oil and gas industry, however, is that it disproportionately empowers the male sector of the population. Host countries see increased labor participation in construction-oriented jobs, which are less conducive to female participation.¹⁹⁰ Excluding female population from newly created job opportunities is in itself an economic loss. Moreover, economic growth and labor force participation is correlated with reduced fertility rates, which are alarmingly high in Uganda and present a future demographic challenge.

Recommendation 54: Uganda must enforce local content provisions in all oil production contracts, covering labor, training and local supply, and facilitate local individuals and businesses to participate in the oil economy. The government must ensure that it legislates and develops the ability to monitor and enforce local content provisions.

¹⁸⁸ Cotula, Lorenzo. *Investment Contracts and Sustainable Development: How to Make Contracts for Fairer and More Sustainable Natural Resource Investments*. London: IIED. Natural Resource Issues No. 20. 2010. Web, p. 47-48.

¹⁸⁹ Ibid.

¹⁹⁰ See Ross, Michael L. *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*. Princeton UP, 2012. Print, chapter 4 (“Petroleum Perpetuates Patriarchy”). Ross concludes that increase in oil income leads to decreases in female labor force participation. The Middle Eastern countries, in particular Saudi Arabia and Kuwait, influence the result.

6.2.4 Align national development expenditure with local needs

Given that the bulk of the population works in agriculture, the government needs to ensure that agricultural development features prominently within the national development plan so that petroleum fund capital investments flow toward the sector employing the bulk of the population.

This could be done by making greater investments in agricultural training, agri-processing and agri-products, and infrastructure links, which will directly increase agrarian incomes, and thus directly benefit the largest section of Ugandan people.

District level scholarship and low-interest education loan schemes should be made available for local youth to enroll in appropriate training programs, not limited solely for employment in the oil industry but also fields which would help avoid the resource curse such as environmental management, law, social work, journalism, human rights and teacher training.

Investment in faculty and infrastructure should be prioritized at the proposed Petroleum Institute at Kigumba in the oil belt. In addition, technical training institutes are required so that locals may be equipped with job skills required for the oil and allied industries.

Recommendation 55: When applying oil revenues to development priorities, focus on agriculture as a prime generator of employment, and education schemes to allow locals to participate in the oil industry and beyond.

6.2.5 Implement accountable and impactful revenue sharing

Local grievances may escalate if residents in impacted regions do not feel that they are being justly compensated for the oil activities that affect their lives and livelihoods. The PF Bill proposes a revenue sharing mechanism that allocates 7 per cent of royalties to local governments located with the oil production areas. A rough estimation indicates that between \$25 and \$38 million may be distributed to local governments affected by oil operations.¹⁹¹

Furthermore, the PF Bill lays out provisions concerning the disbursement and management of the local royalty flows. However, it does not detail how local government will go about spending the revenues. It will be important to establish institutional mechanisms that consult local actors and interest groups in order to ensure that oil revenues are disbursed in a manner that addresses local demands that might be overlooked by the national budget.

¹⁹¹ Assuming that the royalty rate is between 10 - 15% and the oil price is \$100 per barrel, 800 million recoverable barrels will generate between \$8 and \$12 billion in gross royalty revenues. Local governments get 7% which equates to \$560 – \$840 million over a 22 year lifespan of oil. This translates to between \$25 and \$38 million annually.

Revenue Sharing in Liberia

The establishment of Dedicated Funds Committee structures for social contributions from mineral development agreements in Liberia offers an innovative model for local revenue sharing and project development that minimizes leakage and mismanagement. In this set up, mining companies contribute up to \$3 million annually for social development purposes in the counties that are affected by mining operations. Twenty per cent of these funds are earmarked for communities that are directly impacted by the operations, and the rest is evenly distributed locally according to a county development agenda. The DFC, which is composed of senior representatives from relevant sector ministries, the company and civil society, oversees decisions to select projects proposed by a Country Advisory Committee, which is composed of broad representatives including the county development officer, a corporate liaison officer, civil society actors, and members of a women, youth and tribal groups. Once they are authorized, a Project Implementation Unit manages projects. This professional body staffed by people with project management experience and based on competitive selection procedures, operates independently to minimize corruption and leakages

Specifically, the government must involve the Bunyoro kingdom authorities formally in the process of policy formulation, decision-making, community awareness, grievance redressal, and the protection of cultural sites. The Bunyoro authorities currently enjoy no administrative and financial powers, but they have respect and cultural authority in the eyes of the people. Moreover, they intimately know the local landscape and local norms. The central government should enlist their participation in the above areas so as to ensure that policies and executive actions around oil development are locally sensitive and responsive.

Recommendation 56: Revenue sharing should be supported by structures that meaningfully involve existing and respected local community institutions in the process of policy formulation, decision making, grievance redressal and cultural protection.

Conclusion

With government revenues expected to double once oil production reaches peak capacity, the commercialization of Uganda's oil reserves holds great promise for the country's future economic growth. As the prospect of these substantial money inflows creates strong expectations for increased standards of living among Uganda's rapidly growing population, stakes are high for Uganda to establish a platform that will deliver concrete and sustainable benefits for its people.

Uganda is at a critical juncture: licenses have started being issued, infrastructure is being built and people displaced, and yet the oil sector still operates under the purview of outdated legislation that does not address critical environmental concerns, nor establishes a concrete revenue management system to shield oil profits from the threat of corruption and misappropriation.

Uganda has a short window of opportunity until oil revenues start flowing in 2016 to establish the necessary economic, institutional, environmental and social safeguards that will enable it to extract the full value from its oil endowment and avoid the pitfalls of the resource curse. The country is off to a good start: the petroleum bills currently being considered by Parliament offer a solid foundation for the industry's sustainable development, but much work remains to be done. The framework that Uganda sets up today will have repercussions past the oil age. As such, decisions must be made with a long-term perspective.

Our recommendations are inspired from lessons from other oil-producing countries and international best standards and based on our fieldwork. They form an overall strategy that we hope will provide Uganda with the best available tools to transform its oil reserves into a blessing for future generations to come.

Priorities

Given that some issues, such as population displacement and environmental protection, are more pressing than others, we suggest the following roadmap towards the implementation of our recommendations.

Section	Short Term (6-12 months)	Medium Term (1-2 years)	Long term (2+ years)
Legal	Enact updated Petroleum Bills that apply to all PSAs		
		Design bidding process	
Institutions	Strengthen checks and balances through a clear separation of powers between agencies and the creation of an oversight role for Parliament	Build capacity in key institutions	
	Adopt a nomination process that includes a prequalification process, parliamentary approval and security of tenure	Refocus donor aid towards capacity building and transparency	
	Strengthen institutions' enforcement powers		
	Increase transparency by granting greater access to information and conducting better communication campaigns		
	Complete EITI's sign-up phase	Complete EITI's preparation phase	Complete EITI's disclosure, dissemination, review and validation phases in order to become fully compliant with all EITI requirements
Economics	Optimize government take by building a competitive bidding process and conducting strict cost audits	Establish a revenue management system by putting in place a Petroleum Fund	Determine public expenditure priorities
		Foster the right conditions to harness a beneficial economic impact from refining activities	Establish a National Oil Company
Environment	Create a strong and legally binding company selection		

Section	Short Term (6-12 months)	Medium Term (1-2 years)	Long term (2+ years)
	process that highlights companies' environmental and social track records		
	Adapt the environmental planning and assessment process for the petroleum sector		
	Adopt effective environmental safeguards that avoid, mitigate and offset environmental harm		
Social	Conduct a land survey and issue titles to customary owners	Implement local content provisions through training, specialized education and other measures	Align national development expenditures with local needs
	Establish a quasi-magisterial Land Rights Board under the Ministry of Land, with the mandate to address land concerns in the oil belt		Implement accountable and impactful revenue sharing
	Evolve norms for land use and acquisition compensation, resettlement and other entitlements		
	Develop local content provisions		

Next steps

Our team hopes to continue its dialogue with the Natural Resource Committee of the Ugandan Parliament when Prof. Jenik Radon returns to Kampala in June 2012. Furthermore, two students, from Columbia and Stanford universities, will spend the summer in Uganda under Prof. Radon's guidance to continue this team's efforts.

Given the relatively short timeframe given to research and write this report, we were forced to restrict our scope. In doing so, we identified the following areas as warranting further desk and field research:

Sector	Potential research topics
Institutions	Research measures to guarantee the independence of the judiciary and to improve the efficiency of the legal system as a mean to reduce corruption in the oil sector
	Assess donor interest in re-orienting aid towards transparency and capacity building
	Identify and measure capacity gaps within institutions charged with overseeing the oil sector and oil agencies
Economics	Study the impact of the recent discovery of oil in Kenya on the regional energy market, pipeline trajectory, refinery location and government take
Environment	Evaluate the feasibility of establishing bio-diversity offsets and environmental service payments and their deterrence effect. Propose a mechanism to redistribute funds thus collected.
	Measure Murchison Falls National Park's potential for tourism vs. oil development, both in terms of revenues and return on investment
Social	Analyze the impact of oil development on security issues in the oil belt, in particular as it relates to relations with the DRC and Al-Shabaab's resurgence in the East
	Monitor the government's resettlement action plan in the area of the proposed refinery, and Bunyoro kingdom's efforts to issue customary land ownership certificates in the absence of the state issuing formal titles
	Evaluate the need to expand company dispensed training and to reform the country's education system in order to ensure a greater proportion of local labor and local firms within the oil industry and its supply chain

Annex

Figure 6 Government Revenue

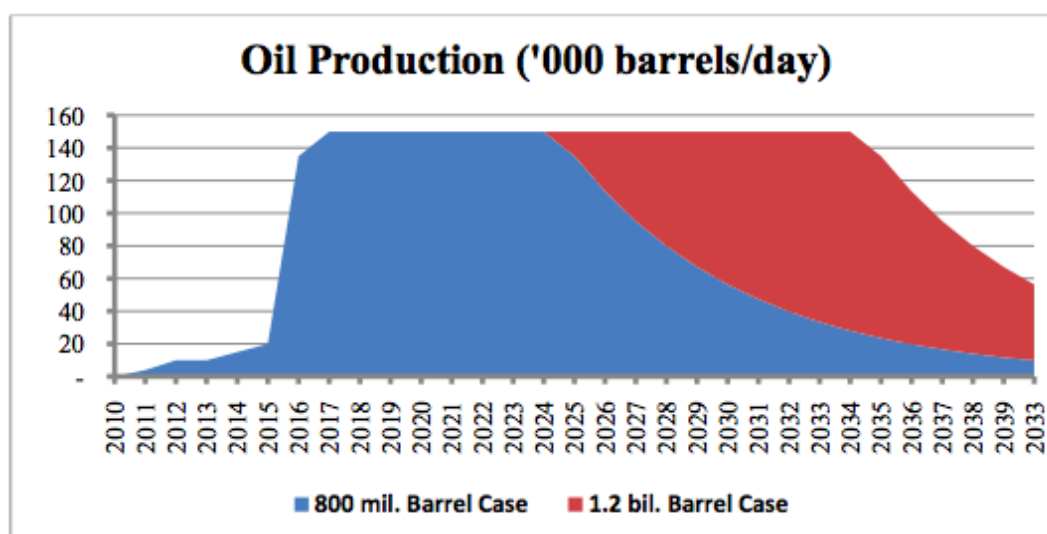
Indicative Central Scenario of 800 million barrels at US\$75/Bbl

Year	Oil Production '000 bpd	Gross Revenue US\$ million	Capital & Operating Costs US\$ million	Investor Cash Flow US\$ million	Government Revenue US\$ million
2010	-	-	200.0	(200.0)	-
2011	4.0	89.2	305.8	(236.5)	19.9
2012	10.0	223.0	314.6	(152.6)	61.1
2013	10.0	223.0	314.6	(152.6)	61.1
2014	15.0	334.5	521.9	(281.9)	94.5
2015	20.0	446.0	729.2	(411.1)	128.0
2016	135.0	3,010.7	897.1	864.5	1,249.1
2017	150.0	3,345.2	719.0	820.9	1,805.3
2018	150.0	3,345.2	319.0	805.6	2,220.6
2019	150.0	3,345.2	319.0	626.2	2,400.1
2020	150.0	3,345.2	319.0	596.2	2,430.1
2021	150.0	3,345.2	319.0	554.2	2,472.1
2022	150.0	3,345.2	319.0	528.7	2,497.6
2023	150.0	3,345.2	219.0	548.5	2,577.7
2024	150.0	3,345.2	219.0	544.3	2,581.9
2025	135.0	3,010.7	197.1	492.1	2,321.5
2026	113.4	2,529.0	165.6	418.8	1,944.6
2027	95.3	2,124.4	139.1	356.6	1,628.7
2028	80.0	1,784.5	116.8	303.6	1,364.0
2029	67.2	1,498.9	98.1	262.7	1,138.1
2030	56.5	1,259.1	82.4	228.4	948.3
2031	47.4	1,057.7	69.2	199.5	788.9
2032	39.8	888.4	58.2	175.2	655.1
TOTAL		45,240.9	6,961.8	6,891.1	31,388.0

Source: World Bank COCPO Estimates

Source: World Bank. "International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency Country Assistance Strategy for The Republic of Uganda for the Period FY 2011 – 2015, Report No. 54187-UG." Web. Apr. 2010.

Figure 7 Example of Baseline and High-Case Scenario for Oil Production



Source: World Bank. "International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency Country Assistance Strategy for The Republic of Uganda for the Period FY 2011 – 2015, Report No. 54187-UG." Web. Apr. 2010.

Figure 8: Gas Flaring in the Niger Delta



Figure 3. Gas flare of Obama, where a gas scrubber was not equipped
Un-scrubbed gas flares at the Obama well in the Niger Delta¹⁹²

¹⁹² Ishisone, above n 163.

Figure 9: Risk Matrix Score Card for Risks

Impact	Likelihood Low - 1 Medium - 2 High - 3	Severity Minor - 1 Medium - 2 Major - 3	Area Site only (1km)- 1 Local (2.5-5km)- 2 Regional (30km+)- 5[1]	Term Short-1 Medium-2 Long-3	Score (Likelihood + Severity + Area + Term)
Oil Well					
Visual [2]	3	3	2	3	11
Waste Oil/Fuel Spills	2	3	5	3	13
Mgmt of Drilling Muds	2	3	1	1	7
Blow-out	1	3	5	3	12
Noise, air emissions, vibrations	3	3	2	3	11
Fires	2	3	2	2	9
Flaring during testing	3	3	2	1	9
Flaring during production	2	3	5	3	13
Road/Pipeline Impact					
Speeding, night travel, poaching and off-road driving	3	3	2	3	11
Pipeline	2	3	5	3	13

[1] Impacts that contain the likelihood of regional spatial risks obtain a score of 5, because these are oil spill risks that could disturb the entire Lake Albert and Nile marine system

[2] The Buffalo EIA notes that 24hr lighting can impact nocturnal animals, hippopotamus breeding and lion predatory patterns.

Source: Analysis by Frazer Lanier, Columbia University Capstone Team. Based on Data from the “Environmental & Social Impact Assessment of Buffalo-1 Onshore Oil Exploration Well in Murchison Falls National Park in Amuru District, Uganda” (August 2008)

Figure 10: Environmental Risk Matrix: Natural Features Threatened by Major Risks Associated with Oil Activities

	Features	Soils	Fish stock*	Bio-diversity intersect	Air	Water body	Town	Ramsar Site	Vulnerable Water Table	Tourism \$
Impact	Score									
Oil Well										
Visual	11			1						1
Waste Oil/Fuel Spills	13	1	1	1		1	1	1	1	1
Mgmt of Drilling Muds	7	1	1	1		1	1		1	
Blow-out	12	1	1	1		1	1	1	1	1
Noise, air, emissions, vibrations	11			1			1			1
Fires	9			1			1			1
Flaring during testing	9			1	1		1	1		1
Flaring during production	13			1	1		1	1		1
Total Oil Well-Feature Intersection score*		96	96	680	44	96	518	188	96	595
Road/Pipeline Impact										
Speeding, night travel, poaching and off-road driving	11			1						1
Increased access to markets and population growth**	5		1							
Pipeline	13	1		1		1	1	1	1	1
Total Road-Feature intersection score		13	5	30	0	13	13	13	13	25

* The intersection score for oil well will be multiplied by 1 if within 5 kilometers of the sensitive feature, 2 if within 2.5 kilometers and 3 if within 1 kilometer.

**Increased access to fishing was considered a positive impact in the Buffalo Environmental Impact Assessment, but access to markets has led to degradation

The Matrices show the different environmental risks associated with Oil Exploration and Production wells and the different bio-physical and human health-related features that are put at the greatest risk of disturbance from oil activities. The first chart rates the threat posed by different risks based on the likelihood, severity, area, and longevity of impact should the risk occur. Scores are based on analysis conducted the Environmental Impact Assessment of the Buffalo-1 Well in the Albertine Rift, as well as research done in the Niger Delta on future risks of gas blow-outs, pipeline leakage and gas flaring. The simple risk analysis ranked the greatest risks in the following order: 1) waste and fuel spills, 2) flaring during production, 3) gas blow-out 4) visual impacts from 24 hour lighting on fauna 5) noise, air pollution and vibrations, 6) speeding by employees, off road travel, and poaching by employees, 7) flaring during testing 8) fires, and 9) poor handling of mud-cuttings. The analysis then compared these impacts to 9 natural features in order to see which natural features maybe the most severely at risk of environmental damage. The analysis found that biodiversity, towns, tourism and then Ramsar site at the greatest sources of sever threat, followed by soils, fishing, the water table and air. The analysis has many flaws due to its simplification of the issue and assumptions; in the end it suggests a deepened commitment to strengthen the management of oil well activity in relation to these natural features that provide the backbone for human health in the area.

Source: Analysis by Frazer Lanier, Columbia University Capstone Team. Based on Data from the “Environmental & Social Impact Assessment of Buffalo-1 Onshore Oil Exploration Well in Murchison Falls National Park in Amuru District, Uganda” (August 2008)

Figure 11: Toxic Compounds Found in Gas Flares

VOCs	Amount (mg/m ³)	PAHs	Amount (mg/m ³)
Acetylene	53.7	Acenaphthene	2.9
Benzene	144.5	Acenaphthylene	23.2
Ethylene	29.0	Anthracene	42.1
Hexane	8.5	Benz(a)Anthracene	17.3
Naphthalene	99.4	Benzo(g,h,i)Fluoranthene	10.2
Styrene	75.5	Chrysene	2.2
Toluene	18.2	Fluoranthene	51.4
Xylene	29.8	Pyrene	32.4

Table 5. Predominant VOCs and PAHs compounds measured 5 m above of the sweet gas flare in Alberta (Stroscher 1996)

Source: Ishisone, Michiko. *Gas Flaring in the Niger Delta: The Potential Benefits of Its Reduction on the Local Economy and Environment*. Rep. Web. 6 May 2012. <nature.berkeley.edu/classes/es196/projects/2004final/Ishone.pdf>. Original Source from reference: Stroscher, M. 1996. Investigation of flare gas emissions in Alberta. Alberta Research Council, Alberta, Canada.

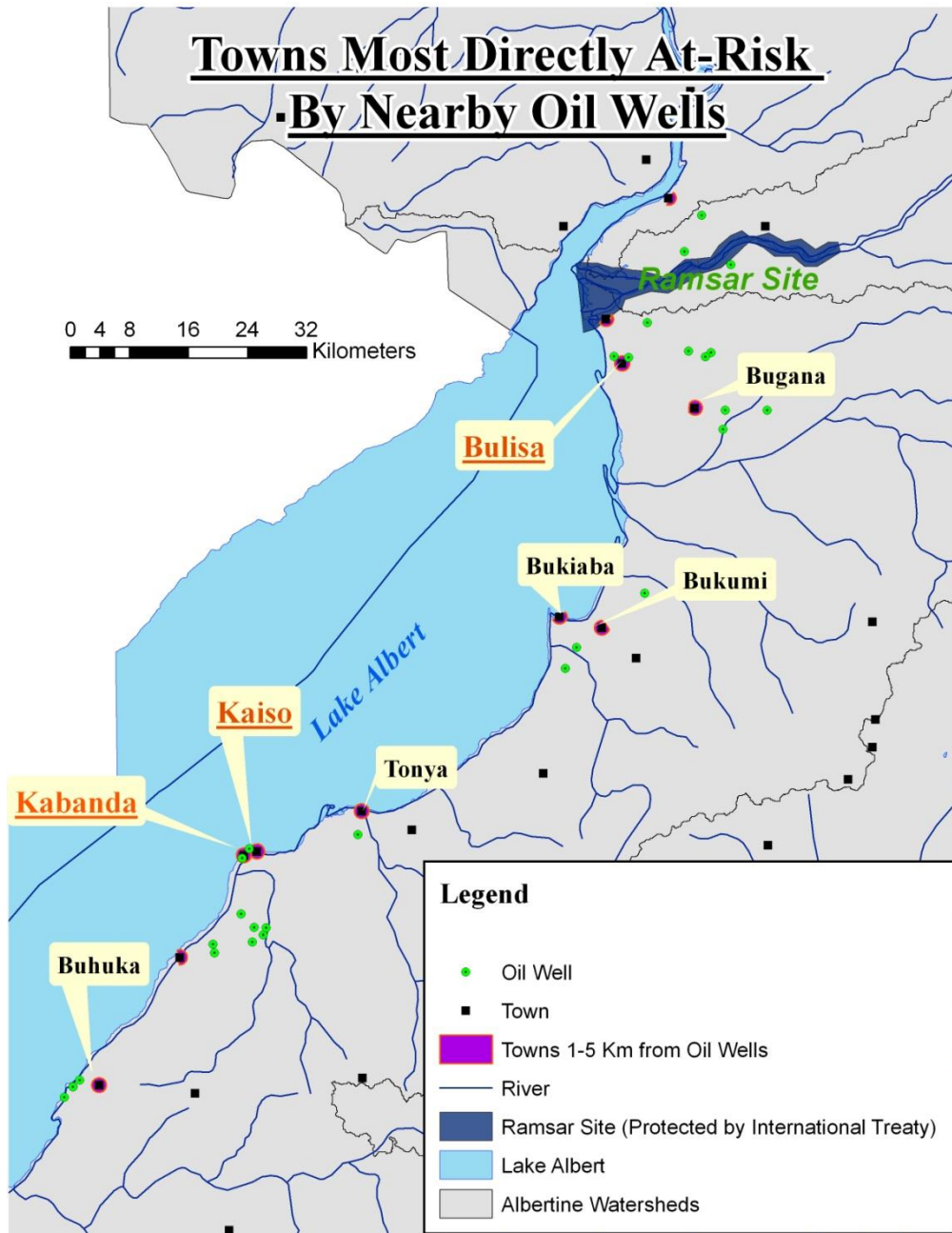
Figure 12: Health Impacts of Toxic Compounds Commonly Found in Gas Flares

Compound	Health Effects	Volume of Acceptable Daily Intake
Benzene	Blood disorder, including reduced number of red blood cells and aplastic anemia, pancytopenia, leukemia	Not established but toxicant any level
Naphthalene	Destroying the membrane of the red blood cells with the liberation of hemoglobin, cataracts, headache, confusion, excitement, malaise, profuse sweating, nausea vomiting, abdominal pain, irritation of bladder	0.096 µg/m ³
Styrene	Irritant of the skin, eyes, and mucous membranes, and central nervous system effects	Not established
Toluene	Central nervous system effects which leads to narcosis, incoordination, emotional liability, headache, and fatigue	0.12 µg/m ³
Xylene	Central nervous system effects which leads to delayed development, decreased fetal body weight, and altered enzyme activities	0.12 µg/m ³

Table 6. Potential health effects for hydrocarbon compounds measured above a sweet gas flame (USEPA 2003)

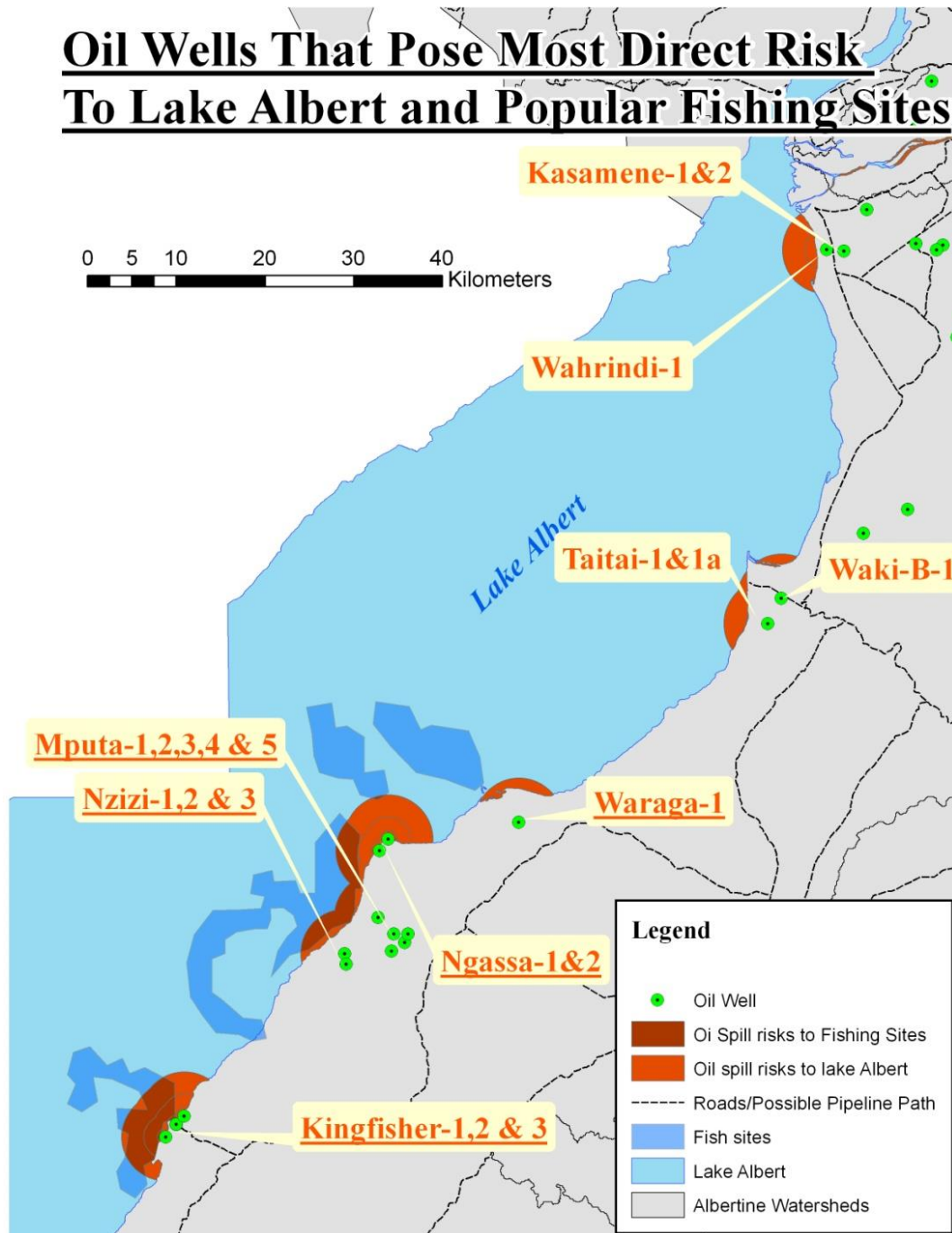
Source: Ishisone, Michiko. *Gas Flaring in the Niger Delta: The Potential Benefits of Its Reduction on the Local Economy and Environment*. Rep. Web. 6 May 2012. <nature.berkeley.edu/classes/es196/projects/2004final/Ishone.pdf>. Original Source from reference: USEPA. <http://www.epa.gov>, accessed February 7, 2004

Figure 13: Map of Towns in the Albertine Graben at Most Risk



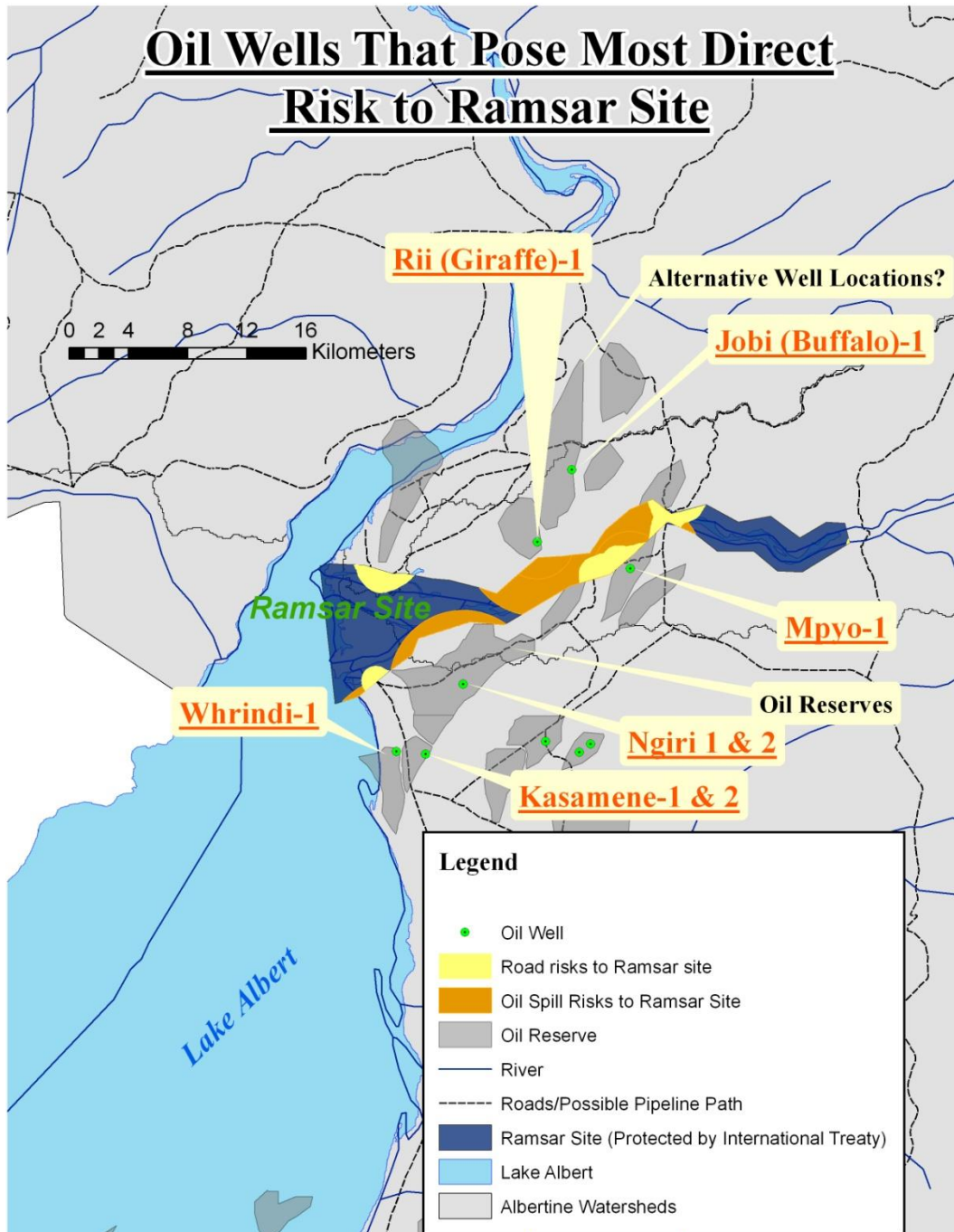
Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

Figure 14: Wells that Pose Highest Risk to Lake Albert and Fishing Sites



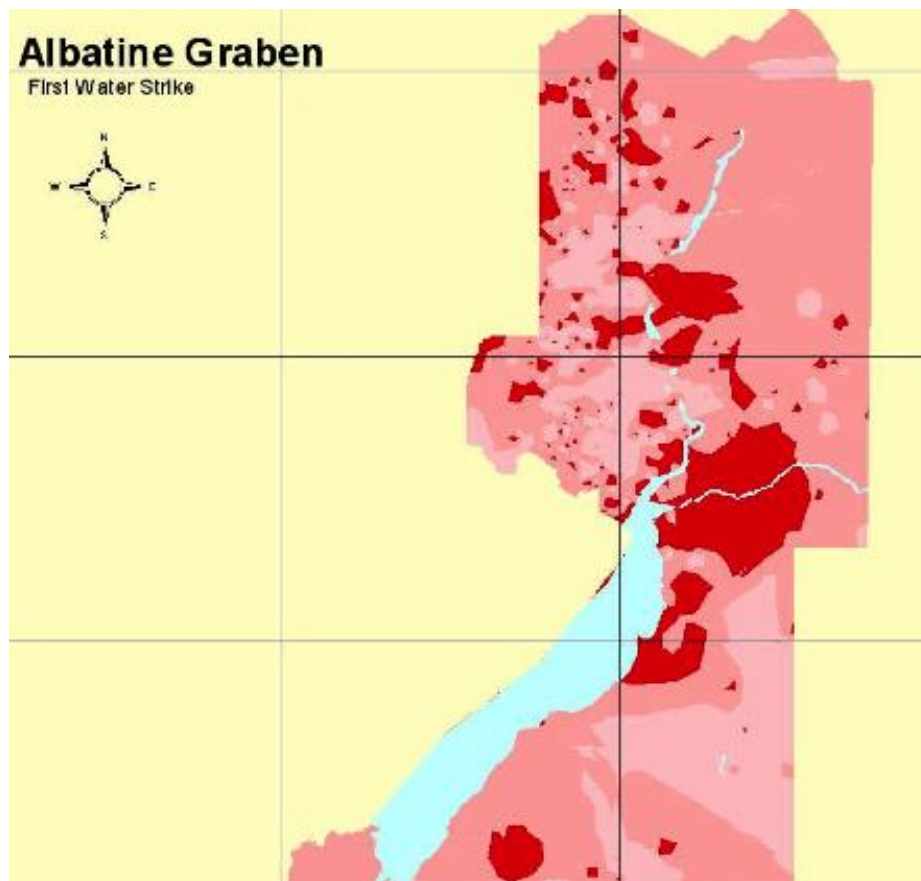
Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

Figure 15: Wells that Pose Highest Risk to Ramsar Site



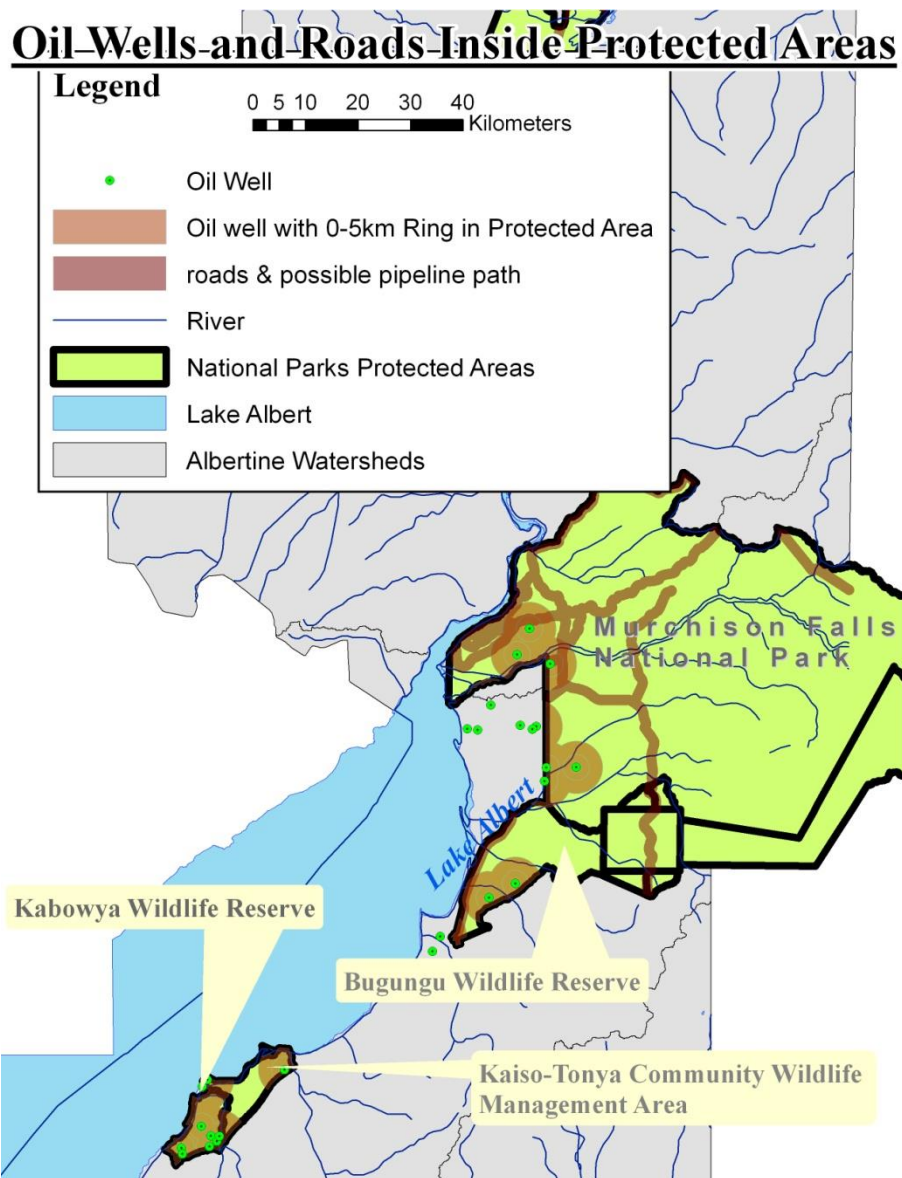
Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

Figure 16: Shallowest Aquifers, Darkest Red, Indicates Water Tables Most Sensitive to Oil Spills



Source: NEMA. Environmental Sensitivity Atlas for the Albatine Graben. Vol. 2. 2010, above n 109.

Figure 17: Risk Zones of Oil Wells and Roads Inside Protected Areas



Map created by Frazer Lanier, Columbia University Capstone Team using data collected by the NEMA Sensitivity Atlas team between 2008 and 2010.

COMMENTS DATED APRIL 10, 2012 ON UGANDA *PUBLIC FINANCE BILL 2012*

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The Public Finance Bill 2012 (the “Bill”) is generally well-drafted and contains some novel provisions to ensure that petroleum revenue is safeguarded for the best interests of the Ugandan people. Nevertheless, there are certain aspects that need to be reconsidered to ensure the legislation works as intended. It should be noted that this note focuses on petroleum revenue management aspects of the Bill, and should therefore not be seen as a comprehensive review. Moreover, it focuses more on areas that need strengthening rather than identifying issues that are handled well. However, from this focused perspective, it is recommended that the Bill, which is critical to the financial and economic health of Uganda, be reconsidered from a governance and management perspective and strengthened.

Potential issues with the “single bill” approach

By proposing a single *Public Finance Bill*, the Government has elected to address petroleum revenue management within the general budgeting legislation. This has the benefit of simplicity and should promote consistency between petroleum revenue management and general budgetary processes. However, given the likely size of petroleum revenues (which may equal or even surpass total non-petroleum revenues), it is arguable that such petroleum revenue management deserves its own, separate legislation, especially as petroleum earnings are in concept a one-off, not standard sources of tax revenue and therefore not ordinary budgetary items. It will challenge the capacity of lawmakers to consider changes to general budget legislation in conjunction with the complex issues raised by petroleum management. For these reasons, lawmakers may, and probably should, consider separating the section dealing with petroleum management into a separate Bill.

Charter of Fiscal Responsibility

Section 6(1) of the Bill requires the Minister to prepare a Charter of Fiscal Responsibility, including the principle that “the fiscal balance, calculated without petroleum revenues, is maintained at a sustainable level over the medium term” (section 6(3)). The annual budget is required to be consistent with the Charter (section 11(5)), and any deviation must only occur in “exceptional circumstances”, and must have the approval of the Cabinet (section 7(1)). The deviation must also be explained to Parliament (section 7(3)).

The intent is seemingly to entrench the important principle that petroleum revenues are an exceptional income source and should not be used to support additional recurrent or standard expenditure. In effect, it is a type of balanced budget mechanism.

However, the provision as currently drafted is too vague to achieve this purpose, lacking a definition of “fiscal balance” or “sustainable”. The person who determines whether a deficit is “sustainable” is unspecified, and hence presumably the Minister’s view on this is conclusive. Accordingly, there is no institutional constraint or check on the government’s ability to run persistent budget deficits, which is a necessity worldwide from member nations of the European Union to emerging countries.

Moreover, even if “sustainable” were strictly defined, the provision may have a perverse effect. If the budget were required to be in balance before taking into account petroleum revenue, this would mean that the government could not increase expenditure once petroleum revenue starts accruing. This is unlikely to be the government’s intention as Uganda has an urgent need to increase investment in critical areas (such as education, health and core infrastructure).

A better approach may be similar to that used in Chile, where copper revenues make up a large part of government revenues. To combat volatility in spending caused by fluctuating copper prices, Chilean budgetary rules require a structural balanced budget (that is, “the balance that the central government would have achieved if the economy was operating at potential, i.e. excluding ... cyclical fluctuations in economic activity [and] the copper price...”).¹⁹³ Importantly, the rule does not require Chile to run a balanced budget excluding copper revenues – rather, it constrains the ability of government to increase spending in response to an increase in copper prices.

Chile relies on two independent panels of experts to determine the existence and extent of any output gap, and how the price of copper compares to its medium-term (10 years) equilibrium. The country is only allowed to run a deficit if there is an output gap, or if the copper price is below equilibrium levels (and is expected to return).¹⁹⁴ When the economy is booming and copper prices are high, excess revenues are used to replenish a stabilization fund, which can only be drawn down in times of recession or low commodity prices.

Chile’s clear rules are credited with improving the country’s creditworthiness, stabilizing the business cycle, reducing GDP volatility and all but eliminating the effects of copper price fluctuations on the real economy.¹⁹⁵

To make the Charter of Fiscal Responsibility truly effective, the Bill should clearly define “sustainable” and “fiscal balance”. Lawmakers may consider the Chilean example of considering the “structural” fiscal balance. Moreover, the Bill needs to specify an independent arbiter whose job and responsibility is to determine whether structural deficits are present.

¹⁹³ Teresa Dabán, ‘Strengthening Chile’s Rule-Based Fiscal Framework’, IMF Working Paper WP/11/17, January 2011.

¹⁹⁴ Jeffrey Frankel, ‘A Solution to Fiscal Procyclicality: The Structural Budget Institutions Pioneered by Chile’, presented at the 14th Annual Conference of the Central Bank of Chile, Oct. 2010, Santiago.

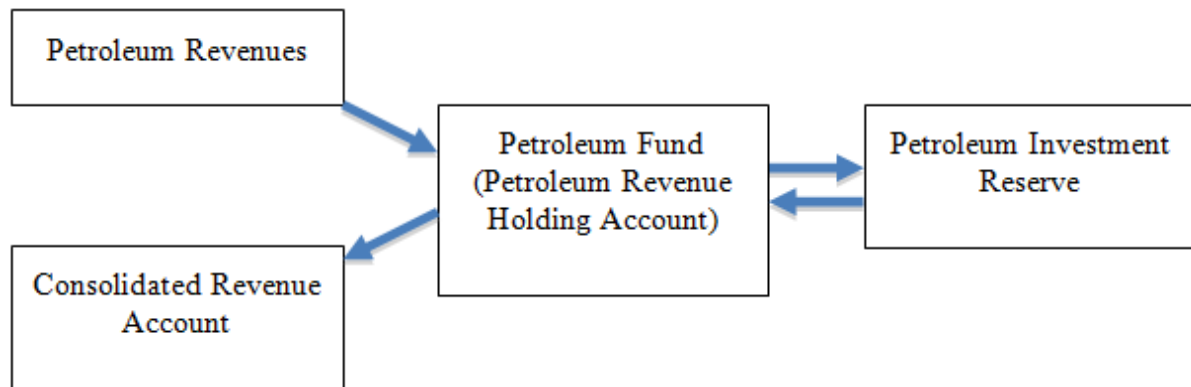
¹⁹⁵ Ibid.

Confusion over definition of Petroleum Fund

Section 53 provides that the Petroleum Fund (the “Fund”) consists of (a) the Petroleum Revenue Holding Account (an inward account for receiving payments); and (b) the Petroleum Investment Reserve (that holds investments).

This principle, that the Petroleum Investment Reserve (“PIR”) forms part of the Fund, is contradicted by other provisions in the Bill. For example, parliamentary approval is required to “withdraw” money from the Fund to the PIR (e.g. s56 (b), s61 (2)). This would not be appropriate if the PIR is in fact part of the Fund.

To resolve this confusion, the Bill could state that the Fund consists solely of the Petroleum Revenue Holding Account, which would be the only avenue for petroleum revenue to flow into the Consolidated Account. The legislation would also have to specify that funds in the PIR can only flow into and out of the Fund:



Two other important definitional issues should also be addressed. Firstly, the definition of “petroleum revenues” in section 52 should capture all oil related revenues. Accordingly, for the avoidance of doubt, the definition should also include company income tax and dividends paid by the National Oil Company to the government. Secondly, references to the “average price of petroleum” (for example in section 60(1)(a)) should be tightened –for budgetary purposes, the moving 3 or 5 year average price of petroleum may be the most relevant average.

Lack of specificity on location and management of accounts

The Bill does not specify any details on where the Petroleum Fund accounts are located. There is no specification of a governing body, namely trustees or directors, or their functions and responsibilities.

More generally, the Minister is designated responsible for “overall management of the Petroleum Fund” (s 53(2)), while the Bank of Uganda is “responsible for the operational management of the Petroleum Investment Reserve” (s 63(2)). Not only are these provisions vague, they also seem to invest great power in the Minister and in some respects conflict.

Further thought should be given to specifying the operating and governing structure of the fund. In particular, lawmakers may consider including other actors (additional to the Minister) in the governance process – for example on the Board of the fund –to create an

institutional checks and balances system. Inserting other actors increases transparency and trust in the system, as well as ensuring that alternative perspectives are taken into account, minimizing the risk of dangerous “groupthink”, which is again a phenomenon that occurs throughout the world.

Other countries such as Sao Tome and Principe, Timor-Leste and Chad have taken steps to formalize the involvement of other relevant actors in overseeing expenditure of oil revenues. For example, Chad originally established a joint government/civil society committee called the Petroleum Revenue Oversight and Control Committee that was mandated to “verify,” “authorize” and “oversee” expenditure of oil revenues. The committee included “Members of Parliament, the head of the Central Bank, the Director General of the Treasury, a member of the Supreme Court and four civil society members representing religious faiths, human rights organizations, trade unions and women’s organizations”.¹⁹⁶

Best practice is for the Petroleum Fund to be established as an offshore account,¹⁹⁷ at a reputable financial institution. For example, the Timor-Leste Petroleum Fund is held at the Federal Reserve Bank of New York. The World Bank may also be able to offer appropriate asset management services under its Fixed Income Portfolio Management scheme.

Petroleum fund outward payments: appropriations and supplementary appropriations

One of the most critical issues in designing, and, accordingly managing, a resource fund is defining the circumstances and procedures under which money can be withdrawn. The Bill sets the principle that Parliament retains ultimate authority over withdrawals from the Fund, and that money withdrawn from the Fund forms part of the Consolidated Revenue from where it is appropriated according to standard annual budgetary processes (section 57). Importantly, the Bill requires the Minister to develop a medium term expenditure framework that will set the parameters over a three year period for government expenditures.

To uphold the integrity of these provisions, and the effective control of Parliament over withdrawals from the Fund, it is important that amendments to budget documents are tightly controlled. The Bill specifies that payments from Petroleum Fund only to be made under Appropriation Act or Supplementary Appropriation Act and a warrant from the Attorney-General (s 56).

An Appropriation Act needs approval by Parliament, but a Supplementary Appropriation Act may be approved by the Minister up to 10% of the initial approved budget, without prior approval of Parliament (section 21(3)). This is only meant to be approved where there is an “unabsorbable, unavoidable and unforeseeable expenditure for which no amount has been appropriated”. However, there is no mechanism specified for deciding whether this criterion is satisfied. In practice, there is potential for very significant withdrawals from the Fund to occur under Supplementary Appropriations without Parliamentary approval.

This loophole presents a serious threat to the integrity of the budgeting process. The use of supplementary appropriation bills is not merely theoretical – press reports in February 2012 refer to Parliament being asked to approve supplementary appropriations for expenditures

¹⁹⁶ Ian Gary, “Oil and gas revenues, funds and state budgets: minimising leakages and maximising transparency and accountability in the hydrocarbon value chain”, UNDP Discussion Paper No 6 (2008).

¹⁹⁷ Teresa Dabán and Jean-Luc Héris, “A public financial management framework for resource producing countries”, IMG Working Paper WP/10/72 (2010).

that have already occurred.¹⁹⁸ If the Minister is able to bypass Parliamentary approval process for supplementary appropriations, especially significant amounts, then this detracts from, and imperils, the principle of Parliamentary supremacy over appropriations.

Petroleum fund outward payments: no limit on payments

While the Charter of Fiscal Responsibility contains the principle that petroleum resources should be managed “for the benefit of current and future generations” (s. 7(3) (c)), the Bill does not impose any specific limits on the amount of withdrawals from the Fund into the annual budget. This is a serious shortcoming. Over-spending of oil revenues in the domestic economy (greater than the country’s absorptive capacity) can lead to rapid exchange rate appreciation, damaging non-oil sectors and causing inflation. Moreover, it takes resources away from future generations.

Other countries have embedded custodianship over Fund assets for future generations – for example, in Norway where “the portion of resource revenues used to finance the non-resource deficit cannot be larger than 4 percent of the resource savings over the medium term”, or Timor-Leste which limits annual withdrawals to an amount determined as “estimated sustainable income”, which is “the maximum amount that can be appropriated from oil savings in that fiscal year and still leave enough oil savings for an amount equal to the real value to be appropriated in all later fiscal years”.¹⁹⁹

Parliament may consider including specific language in the Bill (supplementing section 57(1)) that caps the annual transfer from the Fund to Consolidated Revenue. This also carries the added benefit of reducing political pressure to use Fund assets for short-term spending measures such as pet projects or tax cuts. Although no Parliament can legally bind its successors, lawmakers may consider including a super-majority provision in the Bill so that appropriations above the defined limit require a higher majority than 50% + 1.

On the positive side, the Bill contains strong language prohibiting the assets of the Petroleum Fund being “earmarked, pledged, committed, loaned out or otherwise encumbered by any person or entity”, and any contract or agreement to the contrary shall be null and void (s 58).

Management and investment procedures for Petroleum Investment Reserve

The Bill establishes some good procedures for regulating investment procedures for the PIR. However, certain provisions require further attention.

- | | | |
|-----------|------------|----------|
| (a) | Investment | Advisory |
| Committee | | |

The monies in the Petroleum Investment Reserve are invested “in accordance with the petroleum investment policy issued by the Minister” (s 62(1)). The policy is prepared “in consultation with” the Investment Advisory Committee (s 62(2)), but there is no requirement for the Minister to take the Committee’s advice into account. There is a risk that the Committee’s role is sidelined under this approach. Parliament may consider requiring the Minister to explain to Parliament if the Minister does not follow the Committee’s advice.

¹⁹⁸ David Tash Lumu, “Now Parliament gets Shs 28 billion in extra allowances”, The Observer, 24 February 2012.

¹⁹⁹ IMF paper, above.

Moreover, members of the Investment Advisory Committee are appointed and determined by the Minister (section 66), which means there is no real independence for the Committee. Parliament may consider granting security of tenure, or granting appointment/removal powers to another body (perhaps Parliament).

(b)

Petroleum investment policy

The petroleum investment policy restricts the types of instruments that the fund can invest in to investment grade instruments in convertible currencies issued by or guaranteed by a government or Central Bank (s 62(3) (a) and (b)). Section 62(5) specifies that the PIR cannot invest in any instrument issued by a bank or corporation or individual resident in Uganda or controlled by a Ugandan national.

However, s62 (3) (c) imperils these positive provisions by giving very broad discretion to the Minister to authorize investments in “any other qualifying instrument”.

The Bill could require that investments are (a) offshore; (b) investment grade; (c) liquid and (d) completely separate from any Ugandan interests. This includes instruments that are controlled by family members of Ugandans or subsidiaries of Ugandan companies. In short, the PIR should only be investing in pension grade type securities.

(c)

PIR management

Section 63(1) (b) requires that “operational management” of the PIR “shall be in accordance with the principles of portfolio management”. Without a clear definition of these principles, the provision is too vague to be included in the law.

Section 63(2) of the Bill makes the Bank of Uganda responsible for “operational management” of the Petroleum Investment Reserve, and liable for paying damages to the Government for any losses due to “negligence or intent” on the Bank’s behalf or any external manager. However, in practice this liability is circular, as the Government ultimately suffers the loss in either case.

Section 63(7) appears to be aimed at preventing the PIR taking open-ended positions in derivative instruments. However as currently drafted, it is likely insufficient to achieve this end. More details are required (perhaps in regulations).

The Bank is authorized to appoint an external investment manager (s 63(8)), who should “have sufficient capital and adequate guarantee and insurance against operational risk” and “a sound record of operational and financial performance”. In addition to these requirements, the Bill should prohibit the external manager from having any connection or interest in Uganda to ensure investments are made in a completely impartial manner.

Sharing of revenues among levels of government

Section 73(1) provides that the central government shall retain 93% of royalty revenues, with the remaining 7% shared among local governments affected by oil production. However, tying local community payments to royalties also exposes local governments to volatility in

payments (as royalties are based on annual production). It may be preferable for local communities to receive steady payments rather than volatile royalty streams.

Conclusion

The Bill makes some substantial steps towards establishing a solid basis for petroleum revenue management in Uganda. However, more work is required before the Bill is fit for its purpose, remembering that the law must be robust to handle billions of dollars in annual cashflows and withstand the force of time, that is, a directional and operational law that should not be readily or regularly amended.

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COMMENTS DATED MARCH 16, 2012 ON UGANDA PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL 2012

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Introduction

The *Petroleum (Exploration, Development and Production) Bill 2012* (the “Bill”) is intended to create a sound and sustainable legal environment for the development of the oil industry in Uganda in a manner that will benefit Ugandans. There are several positive changes in this Bill compared to previous versions. However, the Bill, so that it can be a law for today and tomorrow, still requires significant revision before it is ready for ratification by Uganda’s Parliament. Once passed, oil industry legislation needs to be robust enough to support the development of the industry over several decades. Accordingly, it is prudent practice, as well as in the best interests of the people of Uganda, to invest more time up-front to get this crucial piece of legislation right the first time around.

Given the short time frame for response, these comments are preliminary and illustrative of the issues present in the Bill – they should not be regarded as exhaustive.

The comments in this submission are grouped around six main principles:

- (i) Reliable governance
- (ii) Increasing checks and balances
- (iii) Stronger enforcement provisions
- (iv) Greater transparency
- (v) Improved contractual practices
- (vi) Clearer transitional provisions

Reliable Governance

Like previous versions, the Bill naturally grants powers to certain authorities (including the Minister and the Petroleum Authority), but it should give guidance as to how these discretionary powers are to be exercised in order to provide, among other things, increased confidence. Such guidance is essential for several reasons. Firstly, lack of guidance increases uncertainty in investors, since it is more difficult to predict how authorities will act *ex ante* and the investors and their financing banks and other financial institutions require such assurance in order to make long term significant investments. Secondly, it decreases the administrative burden on public authorities, as they will not have to determine afresh how to proceed in each situation. Finally, it decreases the chances of inconsistent or unfavorable

decisions from being made. It is unreasonable to expect authorities anywhere with their extensive responsibilities to be able to exercise a wide discretion consistently without guidance given by law.

Specifically, section 9 of the Bill extends the Minister's power by defining the functions of the Minister in an overly broad manner (including grant and revocation of licenses, issue of petroleum regulations and negotiation of petroleum agreements), without specifying how that power is to be exercised. For example, section 59(1) allows the Minister to grant exploration licenses "on such conditions as he or she may determine", with consultation, which is not necessarily an effective guidance, with the Authority and approval by Cabinet the only apparent limits.

The Bill should specify the criteria against which the Minister is required to exercise his or her powers. This would, for example, specify a bidding process which obliges the decision maker to accept the highest bid for the natural resources, while at the same time complying with the most stringent safety and environmental standards, ones common in developed nations such as Norway, US and EU member states. Similarly, section 87 dealing with suspension and cancellation of licenses currently states that the Minister "may" suspend or cancel the license if the licensee is in default. This should be amended to state that the license is automatically suspended or cancelled in cases of serious or repeated breaches (these terms must also be carefully defined), and that the Minister is required to issue a notice confirming such suspension or cancellation. The reason is simple. Companies will otherwise not take a law seriously and try to exert pressures to prevent suspension and cancellation.

Inserting this kind of self-executing language into the draft places the burden of compliance on the oil companies. International oil companies are generally subject to requirements in their home countries to disclose in annual reports any local laws that they are violating that have a serious impact on their operations. Accordingly, the self-executing provision requires the oil companies to proactively monitor their compliance with all relevant regulations, not only to comply with Ugandan law, but also to comply with their home country law.

Increasing checks and balances

The Bill grants decision-making powers to several entities and authorities, but fails to establish an adequate system of checks and balances to monitor the exercise of those powers, which will also lessen the burden on any one authority and ensure that all bring their know-how and expertise to bear.

As discussed, the Minister is granted significant powers from policy development to license granting and enforcement. Moreover, the Petroleum Authority of Uganda (the "Authority") that is supposed to advise the Minister in carrying out his or her duties (see section 11 of the Bill) is not well equipped to fulfill this role. The Authority is meant to be "independent in the performance of its functions and exercise of its powers" (section 15), but is also required to comply with directions from the Minister on the policy to be observed and implemented by the Authority. Hence, all aspects of regulating the petroleum industry - from commercial to environmental to public health - ultimately fall on the Minister, which is an excessive burden if not an impossible one.

No single person can be reasonably expected to simultaneously achieve all of the functions granted to the Minister, let alone balance them appropriately. Expertise for regulating these

functions should lie with the most relevant, preferably expert, administrators, and need to be granted to co-equal Ministries or authorities as part of an institutional checks and balances system, a time-tested approach accepted throughout the world. Otherwise, commercial considerations, which do not take non-mandated externalities, whether environment, health, safety, social or cultural, into account, will become the dominant factors in the decision making of the Minister and the Authority, not only because of pressures to increase the budget, but also because success in the commercial realm is relatively easy to calculate and determine (especially since such calculations generally fail, as noted, to take future environmental and social costs into account).

While the concept of a “one-stop shop” to streamline the administrative process is often demanded by investors and appears appealing in concept, the ministries of health and safety, environment as well as social affairs need to be involved in the licensing, monitoring and enforcement process. This can either require oil projects to be subject to each of those ministries (in addition to the Minister/Authority), or require the Authority to involve the ministries in its decision-making process and to gain their consent prior to making decisions. The second option has the benefit of preserving the single point of contact for investors, while increasing accepted internal checks and balances within the government.

Furthermore, the functions of licensing, monitoring and enforcement must be structurally separated. The entity that grants a license is naturally biased towards ensuring its continuance, as to revoke the license at a later stage implies error in the initial grant. Ironically these pressures are also acute when a national oil company is involved as that company will lose public image or acceptance in such an event. For this reason, monitoring and enforcement of regulation and license conditions must be conducted by a totally different entity with true independence to carry out its functions.

Finally, section 7 of the Bill that allows the Government to enter into “agreements” regarding the grant of licenses and the conduct of petroleum activities may undermine checks and balances. The Minister is required to issue licenses “subject to any petroleum agreement” (see, e.g. section 59(1)). The agreement should not be a law unto itself or the guiding force. The Bill fails to specify how these petroleum agreements are structured, what terms they may include or how they are to be approved. Hence, they appear to reduce the ability of the Minister to carry out his or her functions in an objective way.

Stronger enforcement provisions

The Bill takes some positive steps to enhance enforcement provisions and ensure that penalties have bite. For example, section 127 now imposes strict liability on licensees for pollution damage, whereas previously the licensee was only responsible for pollution damage resulting from unlicensed activities. Section 162 increases the penalties for willful or negligent contravention of directives under the Act.

These are steps in the right direction. The key is to include enforcement provisions that will clearly and effectively incentivize decision makers to comply with the law, rather than accepting a fine.

For example, section 6(2) (b), prohibiting the conduct of petroleum activities without proper licenses, imposes a fine on companies for breach not exceeding 100,000 currency points. At present exchange rates, this equates to less than USD 1 million. For large oil companies, this

is the equivalent of a “parking ticket” and is not a real penalty. Unauthorized conduct of petroleum activities is equivalent to theft from the Ugandan people and must be punished severely. At a minimum, corporation executives should be subject to criminal penalties for breach of this provision. If there is no personal consequence for managers, unfortunately throughout the world, it has been demonstrated that managers will take unnecessary and serious risks at the public expense or cost.

Although unusual, government may consider imposing fines as a percentage of companies’ annual revenue to ensure that they are true deterrents, an effective concept adopted in several jurisdictions to punish speeding motorists.

In addition to increasing the level of penalties, the Bill needs to ensure that payment of fines is not cost recoverable or tax deductible.

Finally, the Bill must contain stronger protections for the environment. Companies should be required to comply with the terms of their environmental impact assessment, with strong consequences for breach (e.g. grounds for termination). Otherwise, the assessment is not binding on the companies. The burden of proof should lie on companies to prove that they are abiding by the best and highest operating practices. In that regard, the Bill improves on previous versions by replacing the term “good petroleum (or oil field) practices” with the term “best petroleum industry practices”, defined in s. 4 as the “best available practices that are generally accepted as good, safe and efficient in carrying out petroleum activities and that can be applied globally under similar circumstances”. This definition is however still lacking and inadequate in that it fails to refer to environmentally sound practices and to require the use of state-of-the-art technology. Moreover, the reference to “similar circumstances” is too vague, and should be replaced with the need to apply the best practices that are, among other matters, available under the geological and environmental circumstances of the operations in question. These practices should be in all matters no less rigorous than the standards used by licensees or their parent companies elsewhere around the world. Finally, it should be clarified that health, safety and environmental concerns must take precedence overall others when choosing which best practices to implement.

Greater transparency

Many commentators have noted that openness and transparency are the best ways to ensure a country enjoys the maximum benefit from resource extraction. The automatic publication of all relevant documents (including petroleum agreements and licenses), with very limited and specific exceptions for commercial confidentiality, ensures that government, citizens and civil society are all equally aware of the expected benefits of oil extraction, and can participate in its monitoring. In this way, transparency can actually reduce the administrative burden on the state by including civil society as an active participant. Transparency is an effective way to address the expectations of the public, which are not necessarily realistic in the absence of information.

The Bill makes some improvements in transparency, for example by requiring the Board of the Authority to submit audited financial reports to the Annual General Meeting (section 46). Section 151(5)-(6) obliges the Authority to prepare annual financial statements on royalties received and submit to Parliament.

However, at the same time the Bill also prohibits the disclosure of information from employees of the Authority and increases the period of non-disclosure following cessation of employment (section 33). There is no protection for whistleblowers. The Minister is permitted to make documents available to the public (section 148), but there is no requirement for this to occur. In this regard, it is interesting to note that the *Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill 2012* obliges the Minister to release these documents, a change that should be incorporated in the Bill as well. Section 149 for its part creates a blanket presumption of confidentiality over information exchanged between the Minister and the licensee which could stifle disclosure. In effect, there is little way for individuals or civil society to compel the release of information.

In addition, applicants for licenses should be compelled to disclose the identity of all of their shareholders (if a private company) as well as any lawsuits that they or an affiliate has engaged in over the last 10 years with host governments anywhere in the world in order to allow the government to evaluate their track record and with whom they are actually dealing.

Finally, although the Bill enjoins the Minister to publicly announce the opening up of new areas for petroleum activities (section 48) and exploration licensing (section 53), allows interested parties to have access to documents such as impact assessments and invites them to share their views or objections with the Minister in writing, in practice, the Minister can reject these objections for any reason. The establishment of an active consultation process is needed in order to ensure that interested parties' free prior informed consent is obtained.

Improved contractual practices

The Bill is silent on many crucial issues surrounding how contracts with oil companies will be negotiated. The government should consider enshrining certain key concepts in legislation, so that they are not bargaining chips to be traded away, or even ignored, during negotiations. These include:

- (1) Minimum royalty rate payable by companies (for example, not less than 10%), as well as income tax rate and super-profits tax that activates when oil prices increase beyond a stipulated amount, it being recognized that companies are investing on the basis of an assumed or anticipated internal rate of return;
- (2) Compulsory establishment of a dedicated escrow fund for paying safety costs (the initial capitalization may be deductible, but future replenishments must not be);
- (3) Abandonment fund that must be kept current;
- (4) Prohibition on grant of subsidizations, including tax holidays; and
- (5) Prohibition on stabilization clauses, except in very narrow circumstances and for limited times, and in any case never in a way that would constrain the ability of government to impose stricter health, safety or environmental standards.
- (6) The Government should not be party to a contract; it should be through the National Oil Company in order to limit its own liability.

More specificity in the legislation will actually make the Minister's job easier by reducing the scope of negotiations with oil companies.

The government may consider including reference to a Model Contract that includes these provisions, and can only be derogated from with approval of Cabinet. Parliamentary approval

of agreements should be avoided, as it grants contracts the force of law and reduces scope for subsequent amendments that may prove necessary. Still parliament needs to have oversight and supervisory control for significant national assets such as oil and gas.

Clearer transitional provisions

As they presently stand, the transitional provisions of the Bill can lead to conflicting interpretations. Indeed, section 188(1)(a) of the Bill provides that licenses issued under the previous petroleum legislation “shall have effect from the commencement of this Act as if granted under this Act”, which suggests that existing licenses should be subject to the provisions of the new law. However, paragraph 2 suggests the opposite by stating that “the terms and conditions including the rights and obligations under a license or petroleum agreement in force immediately before the commencement of this Act, shall not be less favorable than those that applied immediately before the commencement of this Act”. This lack of clarity and contradiction could potentially be used by licensees to argue, for example, that section 127 of the Bill, which provides for strict liability of the licensees in the case of pollution damage, should not apply to them because the obligations that it imposes upon them are more onerous than those that prevailed under the previous law. In short, this gives existing licensees extensive stabilization by law, even in the event such a clause is absent from their license or petroleum agreement.

Given that the Government of Uganda signed a Production Sharing Agreement with Tullow Oil on February 3rd, 2012 before the Bill could be finalized, it is imperative that the Bill clearly specifies that the new law applies in all respects to existing agreements.

Conclusion and Recommendation

At present, the Bill fails to respect the spirit and principles set forth in the February 2008 National Oil and Gas Policy for Uganda in that it does not adequately protect the economic and environmental interests of Uganda and its people.

Accordingly, it is imperative that the adoption of the Bill be postponed until appropriate modifications can be made. The revised bill should adopt the highest legislative standards in order for all Ugandans to benefit from the profitable and sustainable development of Uganda’s petroleum industry.

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