

Business, Human Rights, and Uganda's Oil

Part I: Uganda's oil sector and potential threats to
human rights (Updated October 2013)

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Editorial

Business, Human Rights, and Uganda's Oil. Part One: Uganda's oil sector and potential threats to human rights

This paper is Part One of a four part series on business, human rights and oil in Uganda:

Part One: Uganda's oil sector and potential threats to human rights

Part Two: Protect and Remedy: Implementing State duties under the UN Framework on Business and Human Rights

Part Three: Respect and Remedy: Implementing corporate responsibility under the UN Framework on Business and Human Rights

Part Four: Civil Society: Holding the State and businesses to account

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Front Cover image: The future of this boy in this Lake Albert fishing village will certainly be determined by oil. This village falls within the 29 square kilometres of land that has been earmarked for the construction of an oil refinery (*Oil in Uganda*, 2013)

Antwerp, July 2013

ActionAid International Uganda is an anti-poverty agency that takes sides with poor people in Uganda to end poverty and injustice together. A human rights based approach defines our way of working because eradication of poverty and injustice can only happen if the rights of the poor and excluded people are protected, promoted and fulfilled.

International Peace Information Service (IPIS) is an independent research institute, providing governmental and non-governmental actors with information and analysis to build sustainable peace and development in Sub-Saharan Africa. The research is centred around four programmes: Natural Resources, Business & Human Rights, Arms Trade & Security, and Conflict Mapping.

Executive Summary

The following report is the first of a series of four collaborations between IPIS Research and ActionAid International Uganda. The series sheds a light on the oil sector in Uganda, its possible impact on human rights, and how government, companies, and civil society can best enable a positive bond between oil and the welfare of the Ugandan people.

This first report opens by providing a situational analysis of the oil sector in Uganda; its history, location, and the major oil companies operating in Uganda. It then looks at the legislation surrounding oil extraction in Uganda, followed by future developments in the industry, most notably a Ugandan refinery.

The second half of this report introduces the human rights concerns that often surround the oil industry, including case studies of oil's thorny relationship with human rights in other countries. Following this, the paper explores human rights and other social or environmental issues that are vulnerable to neglect or damage in Uganda as a result of the oil industry. These include governance and democracy, water, health, livelihoods, community structure and dynamics, indigenous populations, land use, labour, health and safety, wages, freedom of association and expression, freedom from arbitrary detention, and conflict sensitivity. These are accompanied by relevant clauses in international human rights law that guarantee their sanctity.

Reports Two and Three of this series respond to this analysis by exploring the actions that States (primarily Uganda) and oil companies present in the country can play in ameliorating this relationship. These are based on the UN's Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights. Report Four concludes the series by exploring the role of civil society in encouraging the State and companies, and holding them to account.

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Introduction

Uganda's oil was first discovered in 1938, but it is in recent years that oil production has truly come into sight. Full-scale oil production is not expected to start until 2016-17,¹ but oil is already central in the country's long term planning agenda, as well as a prominent political issue. Contracts have been signed, companies have moved in, legislation is being passed, and Uganda's government is presenting a vision of a country transformed by oil.

In their "Uganda Vision 2040", the National Planning Authority present a map to create a land of wealth and stability. Eighty percent of roads (rather than the current 4%) should be paved; all Ugandans, urban and rural, should live in planned settlements. Tourism should bring in \$12bn (up from the current \$622m), managed by a Uganda Tourism Authority.

International airports should increase from one to four with high-speed trains linking Uganda to ports in neighbouring countries. Young people should be equipped with globally competitive skills from centres of excellence in health, education and science, and a universal health insurance system should be built.² Although the plan points to the commercialisation of agriculture, revenue from tourism, and the benefits that can be drawn from uranium, oil is the accepted driver of this transformation.

Amongst the celebration, a firm voice of concern has persisted; oil's effect on the people of Uganda – their rights, environment and governance – might not be purely positive. From land deprivation to the role of women in decision-making, labour rights to potential impacts on conflict-sensitivity, many sections of civil society are raising alarms over sensitive areas of human welfare.

The following report, the first in a four-part series, highlights that fears for the rights of Ugandans are neither uncommon nor unfounded. The history of oil, like that of many natural resources, has been thorny; extraction, management, and the money derived from its sale have repeatedly been linked to grave human rights abuses. States and companies, both in union and individually, have been charged with responsibility for this harm. In response, the international community has sought to find ways to mitigate the power, and potentially negative influence, many businesses now have over human lives.

As a result, recent decades have seen the relationship between business and human rights gain recognition as a key area of international law and social concern; corporate powers are both seen as part of the gradual realisation of a higher level of human rights, and as one of the greatest threats to their protection. Meanwhile, the role of States and international institutions in effectively regulating businesses has been subject to scrutiny.

Since 2008, the UN's "Respect, Protect and Remedy" or "Ruggie" Framework (named after Special Representative John Ruggie who was at the helm of the Framework's creation) has offered a lens through which to view this complex problem, whilst the accompanying 2011 "Guiding Principles" provide an outline of how these standards might be implemented by States and companies alike. The Framework describes how all involved actors have specific roles to play in order to ensure that the impacts of oil extraction fall on the side of enabling and benefiting, rather than depriving, human rights.

First and foremost, the Framework points to the Ugandan State and its primary duty to protect human rights within its territory from abuse by third parties, including businesses. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. For example, Uganda needs to ensure that domestic laws and policies provide this protection, in addition to encouraging good practice from business. Ugandan ministries should be aware of human rights principles and priorities, so that businesses encounter departments that put human rights at their centre, and deliver coherent messages and advice. Meanwhile it has increasingly been argued that home states – the countries that multinational oil companies originate

¹ Choudhury C., Coca N., Jeanson M., Kawomoto K., Lanier F., Smith I.D., Swaminathan S. and Wilhelmsen F., *Oil: Uganda's Opportunity for Prosperity*, School of International & Public Affairs, Columbia University, May 2012, p. 7.

² Mwesigye S., "Ugandans to earn Shs 25m a year by 2040", in: *The Observer*, last updated 17 April 2013 (http://www.observer.ug/index.php?option=com_content&view=article&id=24797:-ugandans-to-earn-shs-25m-a-year-by-2040&catid=34:news&Itemid=114).

from – have extraterritorial human rights obligations to prevent the violation of the rights of Ugandans by their companies.

The Framework then moves on to the responsibility of companies to respect human rights. Tullow, Total, and CNOOC (British, French, and Chinese companies respectively) are currently the three key oil companies involved in Uganda's oil industry. Under the Framework they have a responsibility to develop and publicise human rights policies, implement human rights impact assessments, consult with the communities they affect, and offer effective remediation for any wrongdoing. This is a long stride away from philanthropic or charitable measures that, although often useful, do not engage the root of human rights harms.

Thirdly, the Framework asserts that, if human rights abuses do occur, victims should have access to remedy. This can take place through State based judicial or non-judicial mechanisms, non-State grievance mechanisms, at the operational level or, alternatively, at the local, community-based level. Across these paths of remedy, the Ugandan State has a responsibility to ensure authenticity and effectiveness. Finally, home States also have a role to play in potentially taking on cases regarding the conduct of their companies abroad.

It is clear that the Principles help to elucidate the baseline measures that companies and States should meet to safeguard human rights from business activity. They set a template for how States and companies linked to Uganda's oil sector can focus their attention to ensure that destructive patterns of the past are not repeated. However this analysis also notes where they fall short and puts forward other standards that offer useful complementary guidance.

The Framework, in meeting its objective of asserting the UN's expectation from mighty companies and national legal systems, includes little mention of the role civil society can play in the business and human rights nexus. Yet civil society is vital. A fourth report therefore closes the series by calling attention to the role that civil society can play in ensuring respect for human rights by businesses in the oil sector. Education amongst other NGOs and within communities about the responsibility of businesses and the State's role to legislate appropriately is core to this. Likewise monitoring, offering a means by which to receive complaints from the public, and making these complaints available to the global public, form another pillar by which civil society can carry the progression of business and human rights. Engaging the government through feeding back information and reviewing governmental human rights reports can complement these processes. And lastly, taking action when violations have occurred, whether through working with businesses and authorities, or via litigious channels, will also ensure remedy for violations should they occur.

This paper is the first of a four-part series collaboration between IPIS Research and ActionAid International Uganda. Interviews were undertaken in Kampala by IPIS in February 2013, and further research by ActionAid International Uganda, via the Oil in Uganda Project, has been ongoing. The succeeding three reports will map the role of governments, businesses and civil society. This first report sets the scene for Uganda's oil sector – its history, its present, and its potential future. Specifically, a future in which the sector has the capacity to either enhance or compromise the rights of Ugandans.

Uganda³

Uganda is a resource rich country. In addition to the likely future oil exports, it produces copper, cobalt, coffee, tea, cotton, limestone, salt and gold⁴, generates hydropower, and bears arable land with tropical rainfall.⁵ Agriculture is currently the most important sector of the economy, employing 80% of the workforce⁶ in a country with over 35 million inhabitants.⁷ Uganda's official language is English, but it is home to many groups and one of the most ethnically diverse countries in the world.⁸

On the 18th February 2011, Uganda held its fourth presidential and parliamentary elections since the current President, Yoweri Kaguta Museveni, took power in 1986. Museveni was again declared the winner with 68% of the votes.⁹ Museveni's rule has overseen economic reforms, with economic growth since 1990, based on investment in infrastructure, improved incentives for production and exports, lower inflation, domestic security, and the return of exiled Asian-Ugandan entrepreneurs, academics, and other skilled members of the workforce.¹⁰ Over the decades, Uganda has received around \$2 billion worth of multilateral and bilateral debt relief, yet the UN still lists Uganda as one of the world's forty-eight Least Developed Countries (LDC).¹¹

In the 1970s, Uganda suffered severe human rights violations. In 1978 the International Commission of Jurists estimated that more than 100,000 Ugandans had been murdered during Idi Amin's eight-year rule through state-sponsored violence;¹² the BBC claims that this figure may have been up to half a million.¹³ Since President Museveni's rule, although concerns persist, there have been major improvements in Uganda's human rights situation, most notably with the reduction of abuse by the army and police forces.¹⁴

³ Iain Clarkson, Antwerp, Belgium, 2012

⁴ Economy Watch, 'Uganda Trade, Import, Export', in *Economy Watch*, last updated 9 April 2010 (http://www.economywatch.com/world_economy/uganda/export-import.html).

⁵ U.S. Department of State, 'U.S. Relations With Uganda', in *Bureau of African Affairs*, last updated 28 November 2012 (<http://www.state.gov/r/pa/ei/bgn/2963.htm>).

⁶ Central Intelligence Agency, 'Uganda', in *The World Factbook*, last updated 10 July 2013 (<https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>).

⁷ *Ibid.*

⁸ Blake M., 'Worlds apart: Uganda tops list of most ethnically diverse countries on Earth while South Korea comes bottom', in *The Mail Online*, last updated 17 May 2013 (<http://www.dailymail.co.uk/news/article-2326136/Worlds-apart-Uganda-tops-list-ethnically-diverse-countries-Earth-South-Korea-comes-bottom.html>).

⁹ BBC, 'Uganda election: Yoweri Museveni wins fresh term' in: *BBC News Africa*, last updated 20 February 2011 (<http://www.bbc.co.uk/news/world-africa-12516562>).

¹⁰ CIA (2013) *op. cit.* (n.6)

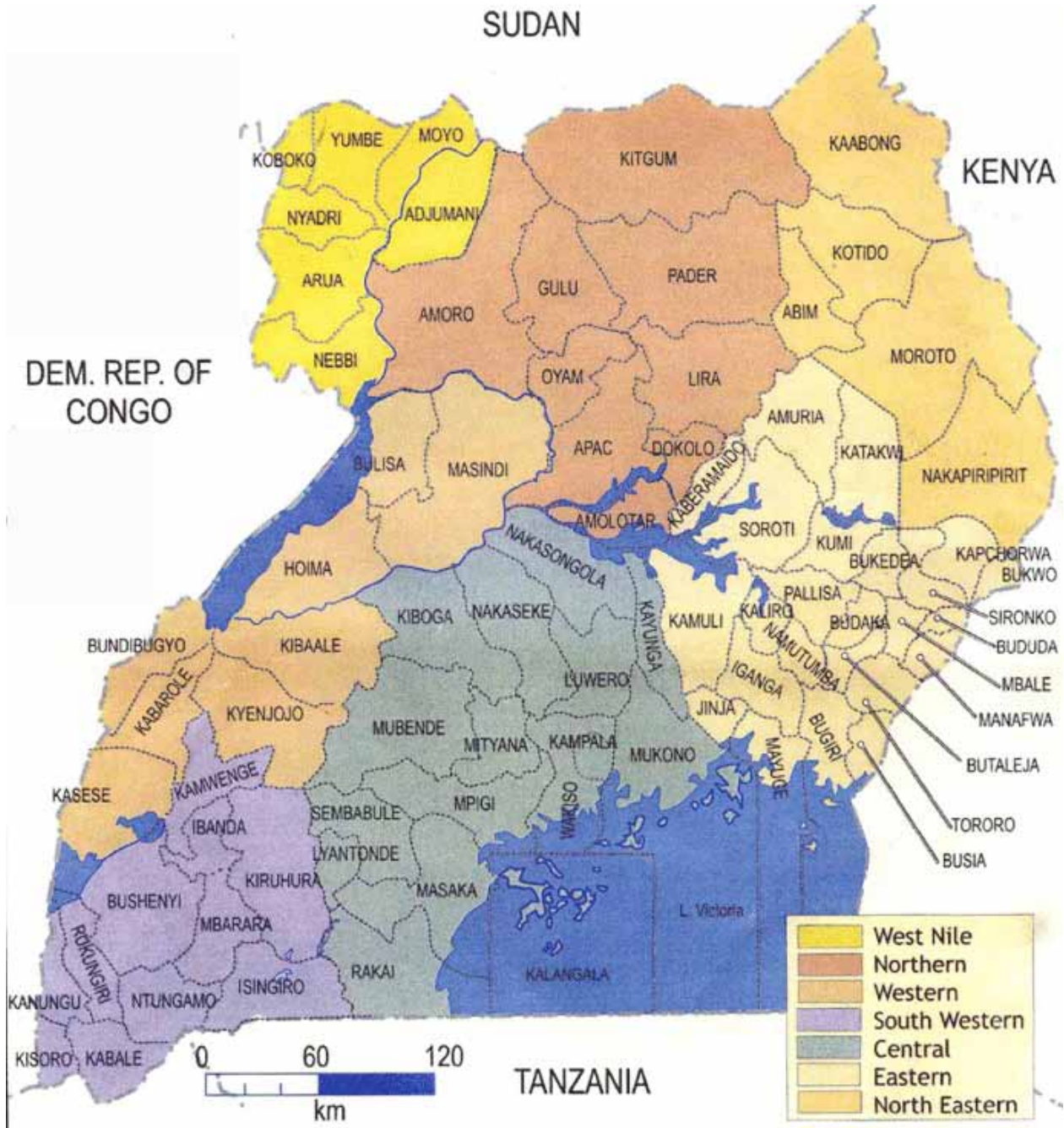
¹¹ UN-OHRLS, 'About LDCs' in *UN-OHRLS*, accessed 1 August 2012 (<http://www.unohrls.org/en/ldc/25/>).

¹² USDS (2012) *op. cit.* (n.5)

¹³ BBC, 'Uganda Profile' in: *BBC News Africa* accessed 1 August 2012 (<http://www.bbc.co.uk/news/world-africa-14107906>)

¹⁴ *Ibid.*

Figure 1. Map of Uganda. Copyright, The Electoral Commission of Uganda¹⁵



¹⁵ The Electoral Commission of Uganda, Registration Statistics, last updated 1 July 2009 (<http://www.ec.or.ug/regstat.html>)

The Emerging Oil Sector¹⁶

Oil is potentially present in four basins in Uganda. The main focus of oil exploration is the Albertine Graben – a depressed crust of the earth’s surface lying between two geological fault lines. The Albertine Graben is about 500 km long, 45 km wide, and stretches along Uganda’s Western border with the DRC, from Lake Edward up through Lake Albert to the North, bordering South Sudan. There may also be oil deposits in the Hoima basin (to the east of Lake Albert), the Lake Kyoga basin (further east, in the centre of the country), and the Kadam-Moroto basin, still further east, in the Karamoja sub-region.¹⁷ The Lake Wamala and Lake Victoria Basins have been deemed not prospective by the Petroleum Exploration and Production Department (i.e. any oil present is not commercially viable for extraction).¹⁸

Within the Albertine Graben, five blocks are currently licensed out to companies (from north to south): Lyeck Area, which is 85 sq. km and operated by Total; Paara Area, which is 598 sq. km and operated by Total; Buliisa, which is 427 sq. km and operated by Tullow; Kaiso-Tonya Area, which is 1,100 sq.km and operated by Tullow; and Kingfisher Area which is 344 sq.km and operated by CNOOC. A further 14,000 sq.km remains unlicensed in the Albertine Graben; the government states that this unlicensed acreage will be subject to a competitive bidding round once the country’s new petroleum legislation has been enacted.¹⁹ This legislation is divided into three laws, described later in this section.

Although Uganda’s petroleum potential was first documented in 1925,²⁰ it has only been in recent years that the potential of oil flow has truly started to be put into effect. In the late 1990s several small oil companies started exploration in Uganda. In 2006, by which time a number of licences had changed hands, oil was discovered in blocks that were jointly licensed to the Anglo-Canadian Heritage Oil and the Anglo-Irish company, Tullow Oil PLC.²¹ Heritage sold their stake to Tullow for US\$ 1.5 billion, after which Tullow brought in investment from bigger players. Total SA (French) and China National Offshore Oil Corporation (CNOOC) each agreed to pay US\$ 1.45 billion to split the area three ways.

It is these three companies – Tullow, Total and CNOOC – that this paper will focus on; they will manage the sites of oil extraction and ultimately make strategic decisions for which they are accountable. However it cannot be underemphasised that other major players will be present in Uganda. For example, oil companies need to hire firms to provide drilling and other expensive services, such as seismic surveying (mapping the geological structure beneath the water or earth), transport, etc. Halliburton, Schlumberger, Baker Hughes and (sometimes) Weatherford are the “big” three or four in the oil services and drilling industry. These companies are already operating in Uganda and could equally qualify for this analysis. Service firms are also accountable for the actions of their company and staff in Uganda. However, in order maintain the focus on this series, Tullow, Total and CNOOC will be central to the critique.

¹⁶ Iain Clarkson, Antwerp, Belgium, 2012

¹⁷ Oil in Uganda, ‘How much oil (and gas) does Uganda have, and where is it?’ in: *Oil in Uganda*, last updated 5 March 2012 (<http://www.oilinuganda.org/facts-faqs/uganda-oil-facts-faqs/how-much-oil-and-gas-does-uganda-have-and-where-is-it.html#more-597>).

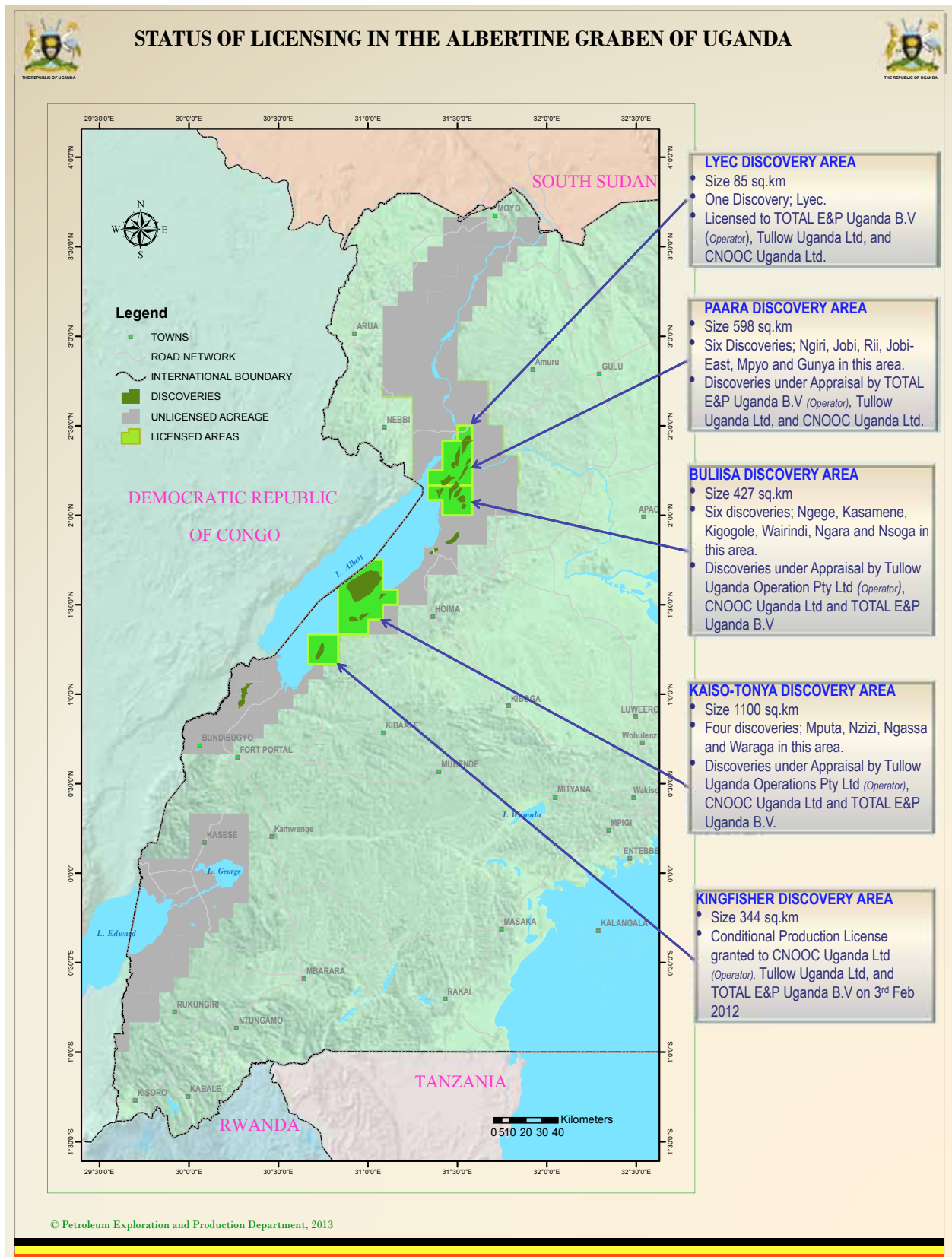
¹⁸ Petroleum Exploration and Production Department of the Ministry of Energy and Mineral Development, ‘Common Frequently Asked Questions’ in: *PEPD. MEMD*, accessed 10th April 2013 (<http://www.petroleum.go.ug/page.php?k=faqs>).

¹⁹ These bills are in the later or completed stages of enactment, so it can be assumed that this bidding round will take place shortly after the publication of this research.

²⁰ Petroleum Exploration and Production Department of the Ministry of Energy and Mineral Development, ‘The history and progress of petroleum exploration and development in Uganda’ in: *PEPD. MEMD*, accessed 10th April 2013 (<http://www.petroleum.go.ug/page.php?k=abthistory>).

²¹ Oil in Uganda, ‘Who are the main international oil companies in Uganda?’ in: *Oil in Uganda*, last updated 5 March 2012 (<http://www.oilinuganda.org/facts-faqs/uganda-oil-facts-faqs/who-are-the-main-international-oil-companies-in-uganda.html>).

Figure 2. Status of licensing in the Albertine Graben of Uganda



Copyright Petroleum Exploration and Production Department of Uganda*

*Petroleum Exploration and Production Department of the Ministry of Energy and Mineral Development, 'Status of licensing in the Albertine Graben of Uganda,' in: PEPD. MEMD, accessed 10th May 2013 (www.petroleum.go.ug/uploads/Status%20of%20Licensing%20Map%20Feb-2013-2.pdf).

Information Box: Oil

Oil, in the context of this paper, is petroleum, present underground in Uganda. Discussing the oil sector might also include natural gas as this is sometimes extracted alongside oil. These products are processed into the kind of fuel used in a car (petrol / gas / gasoline) or into other products such as solvents for plastic, asphalt for roads, and other petrochemicals.²²

A **PSA** or **Production Sharing Agreement** is a contract between a State and an oil company. It will cover a set time period and will set out what the company is obliged to do (prospect / explore / extract oil) within that time. Generally, a PSA will stipulate that both land and oil are owned by the government, and that companies have a right to a share in the profits as and when the oil is extracted.²³ In view of this, PSAs have different levels of risk and return within them. If, for example, oil exploration were risky, expensive and tough, and extraction was unlikely, a company would expect a high rate of return on their investment and a large share in profits. However, in a situation where oil should be quick and easy to extract, with little risk involved, a PSA should reflect this in terms of the proportion of profits the company would enjoy.

Stabilisation clauses are often parts of a production sharing agreement. They are clauses requested by companies to ensure that, if certain domestic laws change within the duration of a contract, the company is “insulated” from adverse changes.²⁴ This would commonly involve a “freeze” in all laws applicable to the contract from the day of signing, or else would assure an “economic equilibrium” whereby the economic consequences of changes to law will be calculated, and either the contract will be amended accordingly, or economic compensation will be given. There have been problems with stabilisation clauses and their validity, with critics pointing to the ways in which they undermine sovereignty, and their potential incompatibility with international norms.²⁵

An **oil refinery** is a processing plant, which enables oil to be converted from crude oil into something useable (and therefore sellable). Often countries do not refine their own oil, but rather sell their crude oil, and buy petrol etc. on the national market, subject to market price.

A **farm down** is a term used when an oil company, having struck oil or gas, sells a share in their rights over the discovery to other companies. Farm downs are common practice amongst oil companies, especially small exploration companies, as they enable the spreading of investment costs, risk and the challenges of extracting the oil.

²² Oil in Uganda, ‘Who are the world’s biggest oil producers and consumers?’ in: *Oil in Uganda*, last updated 13 February 2012 (<http://www.oilinuganda.org/facts-faqs/global-oil-facts-faqs/who-are-the-worlds-biggest-oil-producers-and-consumers.html>).

²³ Oil in Uganda, ‘Who does the oil belong to?’ in: *Oil in Uganda*, accessed 5 March 2012 (<http://www.oilinuganda.org/facts-faqs/uganda-oil-facts-faqs/who-does-the-oil-belong-to.html>).

²⁴ Clinch D, and Watson J., ‘Stabilisation clauses – issues and trends,’ in: *Lexology*, accessed 20 December 2012, (<http://www.lexology.com/library/detail.aspx?g=c5976193-1acd-4082-b9e7-87c0414b5328>).

²⁵ *Ibid.*

Key oil companies in Uganda

Tullow Oil plc²⁶

Tullow Oil plc (herein after 'Tullow') was founded in Ireland in 1985 by its current CEO, Aidan Heavey, and in 1987 was listed on the London and Irish Stock Exchanges. Throughout the 1990s, Tullow steadily expanded into eight countries and in the 2000s it continued to grow. In 2004 Tullow doubled in size by acquiring Energy Africa and in 2007 completed a US \$1.1 billion acquisition of Hardman Resources Ltd.²⁷ "As of December 31, 2012, the company had acquired acreage in Kenya and Ethiopia with the first well in Kenya making an important discovery at Ngamia-1. In January 2013, it acquired Spring Energy Norway AS exploration portfolio."²⁸

Tullow operates in three geographical segments: Europe, South America and Asia; West and North Africa; and South and East Africa. By 2013, the company had grown to operate in 25 countries, with over 100 production and exploration licences, and annual revenue of \$2.3 billion.²⁹ Tullow's presence grows ever stronger in Africa, spanning 15 countries, including interests or operations in Ghana, Ethiopia, Kenya and Sierra Leone.

Total Exploration and Production

While Tullow is a relatively modest global player (ranking 147 in the Platts ranking of top energy companies³⁰), Total SA is a giant, placed at number seven. Present in Uganda as Total Exploration and Production (herein after 'Total'), the organisation is a subsidiary of Total SA, a French company listed on the Paris and New York Stock Exchanges. Founded back in 1924, by 2012, Total reported revenues of \$208,618 million, and profits of \$15,377 million.

Total's functions are divided into three segments: upstream, downstream and chemicals. The upstream segment includes exploration, development and production of petrochemicals, renewable energies and coal. The downstream segment involves refining, marketing, trading and shipping of petrochemicals, and also produces speciality products such as lubricants, jet fuel, etc. Total downstream holds interests in 20 refineries and operates 14,819 service stations across Europe, the US, France, the West Indies, Africa and China. The chemicals segment produces base chemicals including petrochemicals and fertilisers.³¹ Total has stakes in exploration and production in Kenya, Tanzania and the Democratic Republic of Congo.

CNOOC Uganda Limited

CNOOC Uganda Limited (hereinafter referred to as 'CNOOC') is a subsidiary of CNOOC Limited,³² a Chinese state-owned company and, itself, a subsidiary of China National Offshore Oil Corporation (CNOOC).³³ CNOOC was formed by China's State Council (cabinet) in 1982, to serve as the Chinese partner of international oil companies exploring and extracting oil and gas in Chinese waters.³⁴

²⁶ Iain Clarkson, Antwerp, Belgium, 2012

²⁷ The Telegraph, *Tullow in £581m bid for Hardman*, last updated 25 September 2006, (<http://www.telegraph.co.uk/finance/2947860/Tullow-in-581m-bid-for-Hardman.html>).

²⁸ Reuters, Profile: *Tullow Oil PLC (TLW.L)*, last accessed 4 July 2013, (<http://www.reuters.com/finance/stocks/companyProfile?rpc=66&symbol=TLW.L>).

²⁹ Tullow Oil, 'Our history and performance' in *Tullow Oil*, accessed 2 August 2012 (<http://www.tulloil.com/index.asp?pageid=13>).

³⁰ Platts is a provider of energy and metals information and a source of benchmark price assessments in the physical energy markets.

³¹ Platts, 'Platts Top 250 Global Energy Company Rankings: Total', in: *Platts Top 250*, accessed 1 July 2013 (<http://top250.platts.com/Top250Companies/total>).

³² Bloomberg, 'Company Overview of CNOOC International Limited', in: *Bloomberg Business Week*, accessed 1 February 2012 (<http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=83479068>).

³³ Iain Clarkson, Antwerp, Belgium, 2012

³⁴ Oil in Uganda, 'CNOOC' in: *Oil in Uganda*, accessed 11 July 2013 (<http://www.oiluganda.org/oil-industry-2/international-oil-companies/cnooc.html>).

CNOOC has also grown to be a giant, ranking 13 in Platt's listings, with 2012 revenues of \$37.85 billion³⁵ and profits of \$11.04 billion. It is listed on both the Hong Kong and New York Stock Exchanges.³⁶ CNOOC engages in exploration, development, production and sale of petrochemicals and, like Total, has global properties, in offshore China and elsewhere in Asia, Iraq, Australia, Nigeria, USA, Canada and Argentina.³⁷

Figure 3. Directions to oil wells in Buliisa District (*Oil in Uganda, 2013*)



A Ugandan oil refinery or pipeline?

In January 2010, the government of Uganda contracted Foster Wheeler, a UK firm, to undertake a feasibility study on the development of an oil refinery in Uganda. The study assessed many factors, from crude oil production potential, social and environment impact, location, financing options, size, and configuration of the refinery. It found the refinery economically viable.³⁸

However, when the Ugandan Government expressed an interest in refining its own oil, it threatened to be another issue of tension between the government, companies and the public, and the cause of further delays in the development of the country's oil sector. President Museveni reportedly envisaged a refinery with the capacity to produce 20,000 barrels a day and progressively scaling up to 120,000 barrels per day.³⁹ He also described the envisaged refinery as being able to "export products ranging from bitumen to aviation fuel to the East African region, including landlocked Rwanda, Burundi, South Sudan and eastern DRC."⁴⁰ Oil companies reportedly felt that this was too ambitious and that the majority of the crude oil should be exported through a pipeline.

³⁵ According to US calculations of a billion, i.e. 1000 million.

³⁶ Platts (2013) *op.cit.* (n.31)

³⁷ *Ibid.*

³⁸ Wachira G, 'Why Uganda needs to reconsider its small refinery plan' in: *Business Daily Africa*, last updated 23 April 2013, (<http://www.businessdailyafrica.com/Opinion-and-Analysis/Why-Uganda-needs-to-reconsider-its-small-refinery-plan/-/539548/1756280/-/1ldkq6z/-/index.html>).

³⁹ Young N and Ongode B, Government and oil companies agree on refinery, pipeline strategy, in *Oil in Uganda*, last updated 15 April 2013 (<http://www.oilinuganda.org/features/infrastructure/government-and-oil-companies-agree-on-refinery-pipeline-strategy.html>).

⁴⁰ Young N, 'Analysis: Despite 'new' oil, government and companies remain deadlocked over refinery; Tullow's woes

The construction of such a refinery would be strategically advantageous for Uganda, enabling it to export fully processed oil, the benefits of which are distinctly local – creating Ugandan jobs, prosperity, and international independence. It would also enable Uganda to supply to the surrounding region. Museveni has also emphasised that oil-using industries will be attracted to the area around the refinery as a place to establish their activities. There is a strong perception in Uganda that a domestic refinery will fast-track Uganda's growth.

However, some have also opposed proposals for a refinery, mostly for economic and political reasons. Most notably, a refinery would reduce the amount of oil flowing through a pipeline from Uganda, slowing down the investment return for the involved oil companies. Moreover, as George Wachira points out, there is "more transparency in oil exports cash flows than in local refining, which makes exports a more preferred option by investors."⁴¹ Refineries are also expensive to build.

For some months, it appeared that oil companies were in a deadlock with the government over the pipeline vs. refinery question. However in April-June 2013 an agreement was reached that a \$6 billion project would include both a pipeline and a refinery with an initial capacity of 30,000 barrels per day (bpd) (operational in 2016/17) to be increased in 60,000 bpd.⁴² CNOOC Ltd. (note, not CNOOC Uganda Ltd.) has expressed an interest in financing both the refinery and the pipeline.⁴³

Controversy in the oil sector

Oil licensing in Uganda has caused a stir since its outset. In October 2011, during an oil debate in Parliament, Prime Minister Amama Mbabazi, Minister of Foreign Affairs Hillary Onek, and the Foreign Affairs Minister Sam Kutesa, were accused of accepting bribes from Tullow.⁴⁴ However in July 2012, following investigation by the Uganda Police, Parliament, Interpol and the UK Serious Crimes Office, the Ministers and Tullow were exonerated.⁴⁵ Tullow has also shared documentation via their website intended to cement their innocence. Specifically, Tullow claims that "the submission and the supporting documents prove unequivocally that the allegations made against Tullow were false and based on forged documents."⁴⁶

Meanwhile, complaints from all parties were on-going over the lack of an adequate revenue oversight framework. On October 11th, Parliament passed a resolution to halt all oil transactions until proper revenue management, empowerment and participation of Ugandans, and environmental regulations had been achieved (in addition to their demand for investigations into the above corruption allegations).⁴⁷ President Museveni did not take the decisions of the Parliament favourably and, despite a number of MPs walking out, the ruling party held (and won) a vote to overturn the Parliament's moratorium.⁴⁸ Thus on 3 February 2012, before legislative oversight of the oil sector had been passed, the Executive signed production licences with Tullow.⁴⁹

The contract with Tullow – a production sharing agreement or "PSA" – when signed, was also the subject of significant condemnation. Firstly, the PSA was not made available to the public, with the Ugandan Independent newspaper reporting the Ministry of Energy Permanent Secretary, Kabagambe Kaliisa, to have asserted that uncensored information on agreements could scare away investors or reduce

accumulate' in: *Oil in Uganda*, last updated 2 October 2012 (<http://www.oilinuganda.org/features/infrastructure/analysis-despite-new-oil-government-and-companies-remain-deadlocked-over-refinery-and-tullows-woes-accumulate.html>).

⁴¹ Wachira (2013) *op.cit.* (n.38)

⁴² Bariyo N., 'China's Cnooc Mulls Uganda Oil Refinery, Pipeline Investment - Uganda Govt', *The Wall Street Journal*, last updated 3 July 2013, (<http://online.wsj.com/article/BT-CO-20130703-702230.html>)

⁴³ *Ibid.*

⁴⁴ Atuhaire A., 'Museveni's Oil Spin', in: *The Independent*, last updated 25 October 2011 (<http://www.independent.co.ug/News/news-analysis/4778-musevenis-oil-spin%27>).

⁴⁵ Etukuri C., 'Ministers Mbabazi, Onek, Kutesa cleared of oil bribery claims', in: *New Vision Uganda*, last updated 8 July 2012 (<http://www.newvision.co.ug/news/632766-ministers-mbabazi-onek-kutesa-cleared-of-oil-bribery-claims.html>).

⁴⁶ Tullow, "Ad Hoc Committee", in Tullow Oil Website, accessed 7 October 2011 (www.tulloil.com/index.asp?pageid=481)

⁴⁷ Mann S., 'Ugandan Parliament Sparks Controversy over Oil Moratorium', in *The Access Initiative*, accessed 9 November 2011 (<http://www.accessinitiative.org/blog/2011/11/ugandan-parliament-sparks-controversy-over-oil-moratorium>)

⁴⁸ *Ibid.*

⁴⁹ Biryabarema E., 'Uganda's planned laws face fresh delay – lawmakers', in *Reuters*, accessed 15 October 2012 (<http://uk.reuters.com/article/2012/10/15/uganda-oil-idUKL5E8LF8HU20121015>)

government's chances of negotiating better deals in future. "We cannot give out classified information and most of the information that we get in operation is classified," Kabagambe reportedly said.⁵⁰ Moreover, the paper claims, "Several MPs say they have failed to get the PSAs in the parliamentary library where Energy Minister Irene Muloni and Speaker of Parliament Rebecca Kadaga say they are."⁵¹

Secondly, leaked model Uganda PSAs were analysed by an NGO, *Platform*, and deemed to fall short of a standard that would secure the best deal for the Ugandan people. The analysis reported a significant portion of revenues to be signed over to the private companies unnecessarily.⁵² For example, should an individual or institution in Uganda, including a Government Ministry, feel it necessary to take the oil company to court, this would be a cost that the company could claim under "cost oil", thereby reducing the amount of profit it will share with the Government.⁵³

Platform also explains that Uganda, when splitting the cost of profit oil, has not included adequate provisions to base profit sharing on variable factors such as the market price of oil. The profit sharing is simply based on the number of barrels produced per day (after cost oil). Platform asserts that this further undermines the revenues accruing to Uganda. The structure of the contract reportedly confers the "downside" that comes with low market prices for oil onto Uganda, whilst the oil company would capture the "upside" should oil prices rise. A report by the Norwegian Agency for Development Cooperation (NORAD) in 2008 warned the Ugandan government of this element of its model PSA,

"[a PSA which] does not provide for the Government to capture economic rent as a consequence of higher prices, cannot be regarded as being in accordance with the interests of the host country. The enormous increase in oil prices during the last 5 years have fully demonstrated the need for production sharing models that adequately protect the interests of the host country by securing the economic rent for the country. By economic rent is meant the profits of an investment that remain after deducting that income for the oil company which corresponds to return necessary to a tract investment to the project in the first place... The economic rent should be for the benefit of the host nation owning the petroleum resources, and not the oil companies, which should only be secured the fair return on their investments. We are not aware of the PSA terms that were applied for the latest license award in Block 4B. It is in our view unfortunate, however, if the model PSA terms were applied also for that license, and not a modern production sharing model protecting the economic rate rent for the state."⁵⁴

Platform's analysis also compares Government revenues accrued (based on these Ugandan PSAs) to those in Iraqi Kurdistan and Syria. Platform claims that companies have fared better in the contracts of the latter countries, despite operating in fragile or unstable States. In such States, companies can demand a 'risk premium' they should not be able to obtain in Uganda.⁵⁵

Further issues highlighted by Platform's analysis include the cost to individuals and environment. Platform asserts that one of these risks is gas flaring, "a human rights abuse that leads to severe health problems, environmental degradation, local toxic rain, as well as high levels of carbon emissions."⁵⁶

Flaring occurs when the gas associated with oil production is burned. This can occur at low levels for limited safety reasons, and during exploration or under other non-routine operations. However flaring has primarily been criticised when oil companies do not or cannot commoditise the gas (for technical or financial justifications), and subsequently flare continuously. Concerns over gas flaring provisions in the

⁵⁰ Bariyo (2013) *op. cit.* (n.42)

⁵¹ *Ibid.*

⁵² Lay T. and Minio-Paluello M., *Contracts Curse. Uganda's oil agreements place profit before people*, Civil Society Coalition on Oil in Uganda and Platform, February 2010, p.8 (See: http://www.acode-u.org/documents/oildocs/CSCO_oilcurse.pdf).

⁵³ *Ibid.* p.10. The concept of cost oil (as explained by Platform): after payment of a royalty to the Government, up to 60% of the remaining oil can go towards covering costs incurred by the company during exploration, development and operation. When the cost oil total is increased, this reduces the quantity of oil remaining as 'profit oil'. Profit oil is split between the companies and the state. The more costs that are 'expensible' the better (in terms of profit) for the company.

⁵⁴ 'Mid Term Review of Project 0329 regarding Capacity Building Programme for strengthening the State Petroleum Administration of the upstream petroleum sector in Uganda', *Norad*, August 2008, (http://www.norad.no/en/_binary?download=true&id=49168) in *Ibid.* p.17.

⁵⁵ *Ibid.* p.13.

⁵⁶ Lay and Minio-Paluello (2010) *op. cit.* (n.52) p.20.

PSAs regard the fact that flaring can take place with governmental consent. Moreover, this consent must not be “unreasonably withheld or delayed.”⁵⁷

Notably, Tullow have informed this report that they only permit flaring at limited levels or for safety reasons. Total are partners of the World Bank’s Global Gas Flaring Reduction public-private partnership. CNOOC, having obtained a production license for the Kingfisher oil field - the first such license in Uganda - has explained that it is studying different options for the utilisation of the associated gas. These include on site and off site power generation as well as setting up facilities to produce Liquefied Petroleum Gas (LPG).⁵⁸

Yet CNOOC have still committed to the most “technically feasible and economic option” (rather than the most environmentally sound).⁵⁹ Most significantly, despite the fact that dedication to minimising flaring has been discussed by the major relevant oil companies, the fact that gas flaring has still been technically permitted by the government has concerned various commentators.

The contracts appear to lack security provisions, which can, as the chapter on “Human rights risks in Uganda” (p. 27) elucidates, have a strong human rights impact. Platform’s paper also expresses unease over the lack of specificity or a quota regarding the rate and speed at which local staff should replace expatriates. The analysis underlines vague environmental provisions that allow companies to cut corners, and found no clear description of fines for environmental damages despite their proven efficiency in prevention.⁶⁰

Lastly, Platform reflect on the “undermining of sovereignty” conferred by the contracts. One way in which this presents is through contractual provisions for the transferral of disputes to international arbitration courts. Platform asserts that, “Moving the resolution of disputes to London undermines Ugandan sovereignty, treats the Ugandan state as a commercial entity of equal standing to a private corporation, removing concepts of public interest, responsibility or sovereignty.”⁶¹ The other way is through the use of “stabilisation clauses” which mean that, if Uganda develops new and/or improved regulations that affect oil companies and increase their costs, the government must cover these costs.⁶² These clauses are explained in more detail on p.13; they have been broadly criticised for their capacity to restrict the government from passing progressive laws.

Reflecting on Platform’s analysis, the Institute of Human Rights and Business, in their recommendations for Uganda’s Periodic Review, encourage the Government to:

“Renegotiate existing contracts with oil companies to address concerns about the social and environmental impacts of oil extraction, including removing stabilization clauses that could impede the government’s ability to pass future legislation that strengthens environmental and human rights protections.”⁶³

Strains between different parties’ interests regarding the licensing of oil have been complemented by further intra-industry and government-industry disagreements. When Tullow acquired Heritage Oil’s Ugandan licences, the Uganda Revenue Authority (URA) demanded a sum of US\$ 404 million for capital gains on the transaction. Heritage disputed the assessment, but complied with legal demands to pay a third, with the intention to then contest the case on court. Tullow, who were in the process of a farm down (see p. 11) with Total and CNOOC, paid the outstanding two thirds, stating their intention to recover these funds from Heritage.

⁵⁷ Lay and Minio-Paluello (2010) *op. cit.* (n.52) p.20.

⁵⁸ ‘Statement on Kingfisher Production License’, *Water Governance Institute*, last updated 26 September 2013 (available at: <http://www.watervgovinst.org/news/177-uganda-has-awarded-a-production-license-for-the-kingfisher-oil-field-in-lake-albert-to-chinas-national-offshore-oil-corporation-cnooc-uganda>)

⁵⁹ *Ibid.*

⁶⁰ Lay and Minio-Paluello (2010) *op. cit.* (n.52) p.23.

⁶¹ Lay and Minio-Paluello (2010) *op. cit.* (n.52) p.26.

⁶² Lay and Minio-Paluello (2010) *op. cit.* (n.52) p.27.

⁶³ Institute of Human Rights and Business, ‘Submission to the United Nations Human Rights Council Universal Periodic Review Session: Uganda’, on: *IHRB*, last updated March 2011 (http://www.ihrb.org/pdf/Uganda_UPR_14March2011-IHRB-FINAL.pdf).

Tullow succeeded in recovering the part of the transaction tax they had paid - US\$ 313 million - from Heritage in a London court case.⁶⁴ However the proceedings themselves brought further issues to the surface.⁶⁵ For example, Heritage accused Tullow and the Ugandan Government of a “questionable” and “collusive” relationship,⁶⁶ an accusation Tullow strenuously denied. Light was also shed on lobbying practices in the oil industry. This included the extent of UK Ministers’ mandate to lobby for British companies, and the appropriateness of similar lobbying by Ugandan Ministers.

Tullow also remains in dispute with Uganda regarding the amount it owes the government in capital gains tax from farming down to Total and CNOOC. Tullow disputed the US\$ 472.7 million demanded by the government, however Tullow explained at the point of sale that they would, “pay 30% of this amount (US\$141.8 million) within five business days after completing the sales to CNOOC and Total. Tullow will then follow the normal tax dispute resolution process in Uganda. (The material part of the dispute between the Government and Tullow focuses on the validity of the Capital Gains Tax exemption in EA-2).⁶⁷

Meanwhile, Tullow is also in other tax litigation proceedings with the Ugandan government. The Petroleum Exploration and Production Department of the Ministry of Energy and Mineral Development of Uganda has been taken to the World Bank’s International Centre for Settlement of Investment Disputes by Tullow Uganda Operations.⁶⁸ Although the details of the case are private, it would appear that the Ugandan government in claiming unpaid taxes from Tullow that the company claims are unjust. Specifically, the tax seems to relate to Uganda’s demand for an 18% value added tax (VAT) on machinery imported into the country for exploration. According to a spokesman from the Ministry of Energy and Mineral Development, Tullow should not claim taxes on supplies as recoverable costs before oil production starts.⁶⁹

Legislative Reform

Equal to the importance of contracts with oil companies, the development of legislation governing the sector has been a central political issue. Prior to 2011, the key legislation governing the sector was the Petroleum (Exploration and Production) Act of 1985.⁷⁰ This Act regulated the exploration and production of petroleum and the issuing of licences. Given the wide-spread call for efficient management of the sector, the government set about to draft new laws.

In 2012, two laws were finalised in parliament: the Petroleum (Exploration, Development and Production) Bill 2012 (herein after referred to as the Upstream Act) and the Petroleum (Refining, Gas Processing and Conversion Transportation and Storage) Bill 2012 (herein after referred to as The Midstream Act). The Upstream Act was signed in March 2013 and the Midstream Bill in July 2013.

Scrutiny of the draft Bills was rigorous. On the one hand, their development was praised for creating a stable, concrete legislative framework for the industry. Critically, the Upstream Act provides for a competitive licencing bidding process for companies (something the Midstream Act is only vague on). Section 42 of the Upstream Act also provides for the creation of a National Oil Company. The Energy Ministry’s Petroleum Exploration and Production Department has said, “Production-sharing agreements

⁶⁴ Senelwa K. and Abdallah H. ‘Tax row: Heritage to pay Tullow Oil \$313m million’ in: *The East African*, last updated 22 June 2013 (<http://www.theeastafrican.co.ke/news/Tax-row-Heritage-to-pay-Tullow-Oil-USD313m-million/-/2558/1891210/-/ypk124z/-/index.html>).

⁶⁵ The New Republic Liberia, ‘Liberia: Tullow Oil and Heritage in Tax Battle’ in *The New Republic Liberia, All Africa*, last updated 17 March 2013 (<http://allafrica.com/stories/201303181106.html>).

⁶⁶ Callus A., “Collusion” charge ignites Uganda oil tax trial, in *Reuters*, last updated 12 March 2013 (<http://uk.reuters.com/article/2013/03/12/tullow-heritage-uganda-idUKL6N0C4G6820130312>).

⁶⁷ Tullow Oil, ‘Farmdown to CNOOC and Total’, *Press Releases*, last updated 30 March 2011 (<http://www.tulloil.com/index.asp?pageid=137&newsid=695>).

⁶⁸ London, 31 October 2012, *Tullow Uganda Operations PTY LTD v. Republic of Uganda (ICSID Case No. ARB/12/34)*, International Centre for Settlement of Investment Disputes, (<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtIsRH&actionVal=ListPending>).

⁶⁹ African News Agency, ‘Tullow Oil and Ugandan government in second tax row’, in *African News Agency*, accessed 8 January 2013 (http://www.africannewsagency.co.uk/news_details.php?nid=11165).

⁷⁰ Iain Clarkson, Antwerp, Belgium, 2012

provide for state participation of between 15 to 20 percent during production... It is the national oil company that will take forward state participation."⁷¹ On the other hand, their content was censured for lacking key clauses to ensure a safe and efficient oil sector. Global Witness provided a thorough analysis detailing potential issues.⁷²

Firstly, the laws provide tight ministerial control with an absence of parliamentary oversight over the Minister responsible for petroleum activities. This Minister wields the power to make decisions with an extraordinary influence over the sector including control over relevant institutions (most notably the Petroleum Authority and to a lesser extent the National Oil Company), to dictate future regulations, and to negotiate the terms of licences and other agreements.⁷³ The legislation does not give Parliament oversight over these decisions nor over the relevant institutions.

Despite a competitive bidding process having been put in place, the Upstream Act enables the Minister to accept direct bids under certain conditions. This effectively allows the Minister to circumvent this important process.⁷⁴

The laws also lack guarantees on contract and financial transparency; Ugandans will not have access to information about the nature of contracts between the government and companies, nor on the country's oil revenues. Availability of information clauses are also described as "inadequate," with Global Witness stating,

"Firstly, they contain commercial confidentiality clauses which are not defined, leaving scope for unnecessary secrecy. Secondly, whilst the Upstream Bill allows the Minister to make information available it does not oblige the Minister to do so meaning that information will not necessarily be public. Finally, the transparency requirements in the two Bills do not cover financial transparency relating to the sector. This means there is no guarantee that the Ugandan public will have information about the revenues generated from the industry."

Of particular relevance to this series, the Acts include no provision requiring companies to meet certain environmental or social standards before being able to apply for licences or being granted them. Global Witness points out that this would have offered an opportunity for the government to check companies' suitability and track record.⁷⁵ The laws also often refer to 'best petroleum industry practice' but are no more specific than this, thereby offering no benchmark.⁷⁶ Although they make reference to fines for the violation of social and environmental provisions, Global Witness states that these are "insufficient to act as a successful deterrent."⁷⁷ Lastly, the laws have been criticised for inadequate consultation processes. Although consultation occurred in October 2013, the Acts changed significantly between that year and their enactment. Moreover, commentators have maintained that the government has not adequately acted upon critique of the laws - in consultations, or by other means.

The government has also drafted a third law, the Public Finance Bill, consolidating existing public finance management laws and addressing the management of oil revenues, the role of Parliament in this process, and emergency responses.⁷⁸ Again, this draft has been criticised for lacking Parliamentary oversight and transparency. As *International Budget Partnership* elaborates,

⁷¹ Ojambo F., 'Uganda Draws Up Plan for National Oil Company to Steer Industry' in: *Bloomberg*, last updated 6 June 2013 (<http://www.bloomberg.com/news/2013-06-06/uganda-draws-up-plan-for-national-oil-company-to-steer-industry.html>).

⁷² Global Witness, *Uganda's petroleum legislation: Safeguarding the sector*, 28 February 2012, (available at: http://www.globalwitness.org/sites/default/files/library/Ugandas%20petroleum%20legislation%20-%20Safeguarding%20the%20sector_0.pdf). p.1.

Assessment of Global Witness analysis provided by Iain Clarkson, Antwerp, Belgium, 2012.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* p.2.

⁷⁶ Global Witness suggests the following: International Finance Corporation Performance Standards; The IMF's Guide on Resource Revenue Transparency; The Natural Resource Charter; Extractive Industry Transparency Initiative; The Citizens Checklist from the Global Witness Report; *Rigged: The Scramble for Africa's Oil, Gas and Minerals*. Taken from *Ibid.*

⁷⁷ *Ibid.* p.3.

⁷⁸ The Republic of Uganda, *The Public Finance Bill*, 2012, File No: FPC/230/213/02 (available at: http://www.acode-u.org/documents/oildocs/Public_Finance_Bill_2012.pdf).

“While the new Bill has many major issues – including the lack of a formal framework for public participation – the function of supplementary budgets is one of the largest issues. The purpose of the supplementary budget is to provide padding for unforeseeable issues, but the new Bill attempts and fails to address the abuse of supplementary budgets for foreseeable issues. The new Bill’s supplementary budgets clause also directly contradicts Uganda’s constitution, casting even more doubt on the ability of the Bill to fix this problem.”⁷⁹

At the time of publication, the future of this law was being debated, although it seemed that it was likely to be passed with some amendments.⁸⁰

Although Uganda’s petroleum legislation is now in place, there is concern that it does not strengthen the sector nearly as much as it could have done. The oil laws form the foundation of what defines the strength (or lack therefore) of governance over Ugandan oil, and the lack of transparency, democracy and openness that they have created does not foster a climate conducive to respect for human rights.

It should be noted that, in April 2013, two Members of Parliament were expelled for “indiscipline” two of whom were vocal critics of the Petroleum, Exploration and Development Act. The two MPs - Theodore Ssekikubo and Wilfred Niwagaba - were also members of the Parliamentary Forum on Oil and Gas (PFOG), a pressure group of legislators who have been advocating for greater transparency in the oil and gas sector. *Oil in Uganda* reported, “Among the charges brought against Hon. Ssekikubo, was his role as chairman of PFOG. Hon. Niwagaba was also accused of belonging to the same Forum, which “is opposed to the NRM position on oil.” The two were further accused of being “agents of foreign interests to the detriment of the party or country.”... Ssekikubo and Niwagaba vehemently opposed Clause 9 of the Petroleum Law, which sought to create a ‘super energy minister’ with absolute control over the oil and gas sector.”⁸¹

⁷⁹ International Budget Partnership, *Can Uganda’s Public Finance Bill Achieve Its Goals?* accessed 4 July 2013 (<http://internationalbudget.org/2012/09/can-ugandas-public-finance-bill-really-do-what-it-purports-to/>).

⁸⁰ Kigambo G, ‘Uganda MPs divided on Public Finance Bill,’ in *The East African*, last updated 15 June 2013 (<http://www.theeastafrican.co.ke/news/Uganda-MPs-divided-on-Public-Finance-Bill/-/2558/1883910/-/mf51p/-/index.html>).

⁸¹ Nalubega F, ‘Ruling party expels rebellious ‘Oil MPs’ in *Oil in Uganda*, last updated 17 April 2013 (<http://www.oiluganda.org/features/governance/ruling-party-expels-rebellious-oil-mps.html>).

Oil and human rights: a thorny relationship

Uganda's oil sector is growing rapidly and will soon be one of the key organs of its economy and at the heart of its politics. Already it is clear that there is both hope and concern about the impact this will have on the every day life of Ugandans and their human rights – scrutiny and constant media coverage of oil policies, laws, and production agreements is testament to this.

This paper is warranted by the reality that oil and human rights have historically shared an often-thorny relationship. Like many natural resources, its extraction, management and the money derived from its sale have repeatedly been linked to grave human rights abuses. This is by no means a simple phenomenon, wherein the presence of oil automatically leads to greed and violence. Indeed the concepts of a “resource curse” or the “paradox of plenty” are gradually becoming somewhat out-dated in their simplicity. However it is certainly often observed that many oil-producing countries, for example the Sudans, Nigeria, Angola and Iraq, are renowned for political instability, authoritarian rule, poverty, human rights abuses, and conflict.⁸²

Jeffrey Sachs has attributed these phenomena to three overlapping causes.⁸³ The first is “Dutch Disease”, where growth in income deriving from the sale of natural resources affects the overall economy, damaging other sectors such as agriculture. This is due to increased revenues from natural resources escalating the value of the nation's currency, making exports more expensive and therefore less competitive in world markets. Secondly, Sachs points to the volatility of commodity prices, and thirdly, to the potentially negative effects of resource abundance on fragile political institutions.

Compounding this potentially negative relationship, in April 2013 the World Bank reported that poverty in sub-Saharan Africa declined faster in countries *without* minerals than in those with them in the 10 years leading up to 2011. Speculating on whether Kenya should rely on their mineral resources to eradicate poverty, the Kenyan newspaper *Daily Nation* explained, “The World Bank report released last week says poverty in the poor countries declined by 16 percentage points to an average of 49% in 2011 compared to 65% recorded in 2000. In those with minerals, poverty declined by only seven percentage points in 10 years.”⁸⁴

In light of this historically complex relationship, when oil fields were discovered in Uganda,⁸⁵ in addition to celebrating the riches that would ensue, focus was also immediately tuned to the effect this would have on the country. The second half of this paper will review where these risks lie.

Information Box: Oil's Thorny History – Case Studies⁸⁶

The Shell Petroleum Development Company (SPDC) has been extracting oil from **Nigeria's** Niger Delta since 1956. Since the 1960s, the estimated total revenue generated by oil companies is thought to be at least US \$600 billion, yet the majority of Nigeria's 31 million-strong population still live in poverty.⁸⁷ Over the past decades, an alleged average of 240,000 barrels of crude oil are spilled in the Niger delta every year;⁸⁸ the spills have had a ruinous impact on the environment and contaminated surrounding land and rivers.

⁸² Brown K, 2008, 'Escaping the Resource Curse – Review', *ECSP Report*, Issue 13, p.98 (available at: http://www.wilsoncenter.org/sites/default/files/ECSPReport13_Brown.pdf).

⁸³ *Ibid.*

⁸⁴ Masinde J., 'Oil, minerals may not reduce poverty: WB', in: *Daily Nation*, last updated 20 April 2013 (<http://www.nation.co.ke/business/news/Oil-minerals-may-not-reduce-poverty-WB-/-/1006/1753876/-/gxctdlz/-/index.html>).

⁸⁵ Biryabarema, E, 'Uganda insists planned oil refinery is viable', in *Reuters*, accessed 2 August 2012, (<http://af.reuters.com/article/investingNews/idAFJ0E86J00Z20120720?feedType=RSS&feedName=investingNews&pageNumber=1&virtualBrandChannel=0>).

⁸⁶ Case Studies provided by Iain Clarkson, Antwerp, Belgium, 2012

⁸⁷ Amnesty International, 'Clean up the Niger Delta Now!' in: *Amnesty International*, accessed May 2012, (<http://www.amnesty.org.nz/files/Niger%20Delta%20-%20Shell%20Clean%20Up%20FactSheet2012.pdf>).

⁸⁸ Ordinoia B, Brisibe S., 'The human health implications of crude oil spills in the Niger delta, Nigeria: An interpretation of published studies', *Niger Med J.* 2013 Jan;54(1):10-6 (available at: <http://www.ncbi.nlm.nih.gov/pubmed/23661893>).

Gas flaring continues despite the Nigerian High Court ruling against it,⁸⁹ polluting the air and contributing to climate change and acid rain. Local people have reportedly suffered vulnerability to respiratory disease, skin infections and an increased risk of cancer.⁹⁰

Shell, and the head of Shell's Nigerian subsidiary, Brian Anderson, have been accused of complicity in human rights abuses including summary execution, crimes against humanity, torture, and assault and battery.⁹¹ These landmark examples of alleged corporate misconduct have given rise to litigation in the Nigerian Courts,⁹² at the African Commission on Human and Peoples' Rights⁹³ in the Netherlands (where Shell are registered), in the UK (where their main headquarters are) and in the US⁹⁴ (by way of the alien Tort Claims Act). In 2009, the legal case *Wiwa v. Shell*, in which Shell was accused of having collaborated in the execution of the writer Ken Saro-Wiwa and eight other leaders of the Ogoni tribe of southern Nigeria, settled for \$15.5m.⁹⁵

Angola is often referred to as a country subject to severe corruption, with mismanagement of its substantial oil revenues accompanied by inadequate accountability.⁹⁶ Despite steps towards reform, Transparency International lists Angola as 157th out of 176 in their 2012 Corruption Perceptions Index.⁹⁷ Angola's laws require companies to provide their own security, leading to a proliferation of private security companies. These armed private actors, present due to the oil, and especially diamond, industries, have been embroiled in the conflict issues that have plagued Angola.⁹⁸

Total and Chevron Oil are amongst the many companies implicated in human-rights violations in **Burma**. Organisations including EarthRights International have claimed that soldiers guarding Chevron and Total's natural-gas pipeline in the country have murdered locals and forced others into backbreaking, unpaid labour. Many human rights campaigners also assert that the revenues from these operations have propped up the country's oppressive military government.⁹⁹

Exxon Mobil Corporation operate a large natural gas extraction and processing facility in the Aceh province of **Indonesia**. In 2000 – 2001, fifteen Indonesian villagers claimed that Exxon were complicit in crimes of murder, torture, sexual assault, battery and false imprisonment.¹⁰⁰ Exxon is alleged to attract responsibility for these crimes on the basis that it hired and used private security forces that were under the company's guidance and effective control. These forces reportedly comprised members of the Indonesian military known to have committed human rights abuses in the past.

A claim was settled in 2008 between 29,614 residents of the **Ivory Coast** and Trafigura Ltd. for the negative effects felt from the disposal of the company's waste material. Trafigura is a global trading business, specialising in petrochemicals and base metals. After struggling to find a company to destroy the chemical waste in Europe and other places, Trafigura was alleged to have hired a local Ivorian firm to dispose of 528 tonnes in and around Abidjan. After the material was dumped, thousands of residents complained of an unpleasant sulphurous odour, illnesses, and the government of Ivory Coast have states that 16 people died.¹⁰¹

⁸⁹ *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005).

⁹⁰ IRIN, 'Gas flares still a burning issue in the Niger Delta', on: *IRIN*, accessed 8 March 2012 (<http://www.irinnews.org/report/95034/nigeria-gas-flares-still-a-burning-issue-in-the-niger-delta>).

⁹¹ *Wiwa v. Shell*, 'The Case Against Shell', on: *Wiwa v Shell*, accessed 10 June 2012 (<http://wiwavshell.org/about/>).

⁹² *Supra* note 1 and Supreme Court Judgment *Umudje v Shell-BP Petroleum* (1975) 9/11 S.C. 155.

⁹³ The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria, Communication 155/96.

⁹⁴ *Kiobel v Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010).

⁹⁵ Pilkington E, Shell pays out \$15.5m over Saro-Wiwa killing, in: *Guardian*, accessed 9 June 2009 (<http://www.guardian.co.uk/world/2009/jun/08/nigeria-usa>).

⁹⁶ *Human Rights Watch*, 'Transparency and Accountability in Angola: An Update', April 2010

⁹⁷ Transparency International, 'Angola Corruption Measurement Tools', in: *Transparency International*, accessed 19 June 2013 (<http://www.transparency.org/country#AGO>).

⁹⁸ Berg J, 'Angolan policing overview' in *Overview of plural policing oversight in select Southern African development (SADC) countries*, University of Cape Town, December 2005 (<http://www.apcof.org/files/Angolanpolicing.doc>).

⁹⁹ Walt V, Chevron, Total Accused of Human-Rights Abuses in Burma, in *Time*, accessed 6 July 2010, (<http://www.time.com/time/world/article/0,8599,2001962,00.html>).

¹⁰⁰ *John Doe et al. v Exxon Mobil Corporation*, United States Court of Appeals for the district of Columbia Circuit, decided, 8 July 2011.

¹⁰¹ *Yao Essaie Motto & Ors v Trafigura Limited* [2011] EWCA Civ 1150, 12 October 2011.

Human rights risks in Uganda¹⁰²

The impact of oil exploration and extraction on human rights will differ according to country context, however it is possible to identify a pattern of human rights concerns typically linked to the extraction of natural resources.

This section will review the human rights risks that may be encountered by the extraction of oil in Uganda. The review will make broad reference to rights enshrined in various international conventions and the African Charter on Human and Peoples Rights, which Uganda ratified on 10 May 1986.¹⁰³ The analysis also goes further than pure human rights, and incorporates areas of social and environmental concern such as the effect of rapid development on democracy. Moreover these issues often interact with one another, for example, an area of particular concern near oil extraction is water pollution, which would have a knock on effect on the right to health should people ingest dangerous water, and the right to work, if livelihoods such as fishing are affected.

Democracy, transparency and governance

Firstly, Uganda's **governance** may be impacted by a shift in its economy as a consequence of oil production. Oil-rich Nigeria, for example, has been completely changed by its natural resources. Often, upon mention of the resource curse, the degenerative effect of the sudden influx of money, and therefore power, springs to mind. As commentators have explained, "The empirical connection between a state's petroleum endowment and its tendency toward poor economic performance and domestic unrest is well established."¹⁰⁴ This has led to the coining of the term "resource curse," in which the extraction of petroleum and other resources allegedly endow affliction on the owning State. Yet there is nothing inherently destabilising about the resources themselves. Rather, resources, in this case petroleum, lend themselves to mismanagement.¹⁰⁵

Whether Uganda's governance could deteriorate in such a way is the subject of high-level debate. On the one hand, Uganda is relatively stable. President Museveni has led for decades under the National Resistance Movement Party, who came into power with an agenda for reform, democracy, decentralisation of power, and infrastructural development.¹⁰⁶ Museveni's government has claimed to recognise the dangers that come with

The Right to Democracy

UDHR Art 21: The will of the people shall be the basis of the authority of government.

HRC Resolution 2000/47: Promoting and consolidating democracy

¹⁰² Throughout this section, boxes (put together by Iain Clarkson, IPIS, 2012) will note international human rights instruments that collectively make up the human rights principles businesses are obliged to respect. Please note that the Government of Uganda is a party to the following UN and regional human rights instruments: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights (as well as the First Optional Protocol on the ICCPR with reservations on Article 5); the Convention on the Elimination of all forms of Discrimination against Women; the International Convention on the Elimination of Racial Discrimination; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention Against Torture; the Convention on the Rights of Persons with Disabilities; the Convention on the Rights of the Child, as well as both of its optional protocols (the optional protocol on involvement of children in Armed Conflict and the optional Protocol on the sale of children, child prostitution and pornography); the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child; and the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa. Uganda has also ratified all eight core conventions of the ILO.

Institute of Human Rights and Business, 'Submission to the United Nations Human Rights Council Universal Periodic Review Session: Uganda,' on: *IHRB*, accessed March 2011 (http://www.ihrb.org/pdf/Uganda_UPR_14March2011-IHRB-FINAL.pdf).

¹⁰³ African Commission on Human and Peoples' Rights, Legal Instruments, 'Ratification Table: African Charter on Human and Peoples' Rights' *African Commission on Human and Peoples' Rights Website*, last accessed 9 June 2013 (<http://www.achpr.org/instruments/achpr/ratification>)

¹⁰⁴ Kathman J. and Shannon M., 2011, Oil Extraction and the Potential for Domestic Instability in Uganda, *African Studies Quarterly*, Volume 12, Issue 3 (<http://www.africa.ufl.edu/asq/v12/v12i3a2.pdf>).

¹⁰⁵ *Ibid.*

¹⁰⁶ Golooba-Mutebi F, 'Background: governance in Uganda,' on: *Guardian*, accessed 6 March 2008 (<http://www.guardian.co.uk/katine/2008/mar/06/katinegoalbackground.background3>).

oil production and stated an intention to avoid the path taken by Nigeria and other countries with a similar fate.¹⁰⁷ Instead they look towards Norway, a success story, with depoliticised and transparent management of oil revenues, “We must be Africa’s Norway. We must manage our oil resources in the stellar manner in which Botswana has managed its wealth from diamonds,” Emmanuel Mutebile, Governor of the Bank of Uganda has said.¹⁰⁸

Yet Museveni has increasingly come under fire for his rule. Uganda’s 2011 election was criticised for irregularities and accusations of corruption. Museveni abolished term limits in 2005 and is now the fifth longest serving African leader of recent years to still be in power.¹⁰⁹ Yet in his inaugural address Museveni declared that “the problems of Africa, and Uganda in particular, are caused by leaders who overstay in power.”¹¹⁰ A commentator has explained, “President Museveni [has inferred that], ‘I discovered the oil and must ensure that it benefits all before I leave power.’ Such a ploy of securing a life presidency could only be sustained through a very expensive patron-client system. In order to keep his sycophants happy, Museveni will have to handsomely dish out expensive goodies or allow them to indulge in corrupt practices.”¹¹¹

Concurrently, alarm over **corruption** in Uganda appears to be growing ever stronger. Recent corruption scandals in the Office of the Prime Minister have revealed the deep-seated graft in government offices, causing some donor countries to withdraw their support to Uganda as well as demand that the funds that were stolen by government officials be returned. A number of funds, such as UK Aid and the Global Fund to Fight Aids, Tuberculosis and Malaria have cut aid to Uganda in response to concerns about financial mismanagement and democracy.¹¹² DfID, the UK’s development arm, has stated, “We are extremely concerned by these preliminary findings... Unless the government of Uganda can show that UK taxpayers’ money is going towards helping the poorest people lift themselves out of poverty, this aid will remain frozen and we will expect repayment and administrative and criminal sanctions.”¹¹³

Museveni’s critics accuse him of turning away from the promised constitutional and institutional restraints towards patronage and coercion; his trajectory of leadership has started to be compared to that of other dictatorial regimes, “beginning with policies of tolerance and inclusion that gradually change to exclusion and repression.”¹¹⁴

The oil market also perceives these tensions and is open about concern over Uganda’s potential **political stability**. For example, Market Watch encourages “brave” investors to look into Uganda and lament that “Uganda’s appeal for investors is declining, because the policy environment has become very murky.”¹¹⁵

Recently, this “murkiness” has translated into the aforementioned lack of parliamentary oversight the new oil laws offer. More genuine openness would have been an important indicator of the government’s willingness to place democracy at the centre of oil management but, instead, oil is shrouded in a disgruntling cloak of secrecy. Furthermore, measures put in place to enable governments to shed accusations of secretive management, such as the Extractive Industries Transparency Initiative (EITI),¹¹⁶ have not been incorporated by the government. Buying into the EITI – a coalition of governments, companies, civil society groups, investors and international organisations, who put standards in place

¹⁰⁷ Kathman J. and Shannon (2011) *op. cit.*, (n.104). p. 24.

¹⁰⁸ Kathman J. and Shannon (2011) *op. cit.*, (n.104).

¹⁰⁹ Espipisu I., ‘Who among the seven longest serving African leaders will be deposed next?’ in *Reuters News Blog*, accessed 21 October 2011, (<http://blogs.reuters.com/africanews/2011/10/21/who-among-the-seven-longest-serving-african-leaders-will-be-deposed-next/>).

¹¹⁰ Kron J., ‘President of Uganda Coasts Into a Fourth Term,’ in *New York Times*, accessed 11 February 2011 (http://www.nytimes.com/2011/02/21/world/africa/21uganda.html?_r=0).

¹¹¹ Okumu W, 2010, ‘Uganda May Face Oil Curse,’ in *AfricaFiles*.

¹¹² BBC, ‘Uganda’s Yoweri Museveni in profile’ in *BBC News Africa*, accessed 12 May 2011 (<http://www.bbc.co.uk/news/world-africa-12421747>).

¹¹³ Tran M and Ford L, ‘UK suspends aid to Uganda as concern grows over misuse of funds’ in: *Guardian*, accessed 16 November 2012 (<http://www.guardian.co.uk/global-development/2012/nov/16/uk-suspends-aid-uganda-misuse>).

¹¹⁴ International Crisis Group, ‘Uganda: No Resolution to Growing Tensions,’ *Africa Report*, N°187, 5 April 2012 (available at: <http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/uganda/187-uganda-no-resolution-to-growing-tensions.pdf>).

¹¹⁵ Lesova P, ‘Ghana, Uganda offer brave investors risks, rewards,’ in: *MarketWatch*, last updated 12 December 2012 (<http://stream.marketwatch.com/story/markets/SS-4-4/SS-4-17479/>).

¹¹⁶ EITI, ‘What is the EITI?’ in: *EITI*, accessed 19 June 2013 (<http://eiti.org/eiti>).

to ensure a transparent extractive industry, and “make resources work for people” – would have been a wise step for Uganda. Yet there has been no substantive step taken so far to fully comply with the EITI principles.¹¹⁷

It is not only the oil laws that have received criticism for their effect on governance. The draft Wildlife Bill, which is being amended, in part, to accommodate the presence of some 31 oil wells in protected areas, has also been criticised for giving too much power to central government. For example, Uganda Wildlife Authority has historically managed Uganda’s wildlife fund. Under the new draft Wildlife Bill these powers may now be transferred to the board of trustees, who answer directly to the relevant minister, again centralising power into a minister’s hands.¹¹⁸

Vague, opaque and centralised governance frameworks offer fertile ground for corruption. Without an open governance framework in place, it cannot be verified that money is being democratically spent, or that financial decisions are taken for the good of the people. For example, in Nigeria, despite almost 80% of the country’s revenues coming from oil and gas, approximately 70% of the population live under the poverty line,¹¹⁹ calling into question who receives the majority of this wealth. Nigeria’s context is one of acute corruption: a leaked diplomatic cable from a top Shell executive in Nigeria claimed that the company had inserted staff into all of the country’s main Ministries.¹²⁰ Transparency International’s Corruption Perceptions index often features oil rich countries.¹²¹ In 2012, Uganda scored very low, at 130 out of the 170 countries reviewed; Uganda’s score was 29 on a 0-100 scale, with 0 equating to being perceived as highly corrupt, and 100 as very clean (i.e. not corrupt).¹²²

Commentators have also pointed to the potential problems associated with switching from a governance model based on tax-revenue collection, to one (at least in part) rooted in oil wealth, in which revenue is not required as much by way of tax. In the former, the government is beholden to the public in order to maintain power – the public expects a return for their tax contributions. In the latter, power becomes increasingly centralised in the President’s hands. Access to this revenue enables a consolidation of power, which increases the ability to retain tight grip on power for increasingly extended periods. These effects, commentators argue, are exacerbated in a state where the presidential system is strong and does not rely on the legislature, as is the case in Uganda.¹²³

Good or bad governance is key to whether human rights are either held as paramount or deemed disposable. The central fabric of a country in which the extractive industry and human rights cohabit harmoniously embodies respect for strong and fair governance. Human rights legislation, policy and action is symbolic of a government for whom disposal of natural resources is, in line with the African Charter, exercised in the exclusive interests of the people, rather than for the enrichment of a political elite. Moreover, where a culture of patronage and hidden financial transfers prevails, it is not easy (nor appealing) for companies to operate in a manner that is free from CSR controversy. Uganda’s ability to

The Right to Free Disposal of Wealth and Natural Resources

GA Resolution 45/94: Right to Free Disposal of Wealth and Natural Resources

ICESCR and ICCPR Common Article 2: All peoples may, for their own ends, freely dispose of their natural wealth and resources

African Charter Art 21: All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people.

¹¹⁷ Telephone Interview IPIS with Turyatamba L.K., *Ugandan policy and legislation regarding the oil sector*, 8 April 2013.

¹¹⁸ Musasizi S, ‘Uganda: Poachers to Get Tougher Fines in New Tourism Law,’ in: *The Observer (Kampala) in allAfrica*, last updated 29 January 2013 (<http://allafrica.com/stories/201301291559.html>).

¹¹⁹ Rees E, ‘How oil and corruption have become so closely linked,’ in *The Ecologist*, last updated 19 October 2011 (http://www.theecologist.org/News/news_analysis/1092214/how_oil_and_corruption_have_become_so_closely_linked.html).

¹²⁰ Smith D, ‘WikiLeaks cables: Shell’s grip on Nigerian state revealed,’ in *The Guardian*, last updated 8 December 2010 (<http://www.guardian.co.uk/business/2010/dec/08/wikileaks-cables-shell-nigeria-spying>).

¹²¹ Rees (2011) *op. cit.* (n.119).

¹²² Transparency International, ‘Corruption Perceptions Index 2012,’ accessed 20 June 2013 (<http://cpi.transparency.org/cpi2012/results/>).

¹²³ Kathman J. and Shannon (2011) *op. cit.*, (n.104). p.27

avoid this (i.e. that all money goes to the political elite rather than the people) will determine the extent to which it is able to genuinely comply with the right its people to freely dispose of natural resources in their own interests.

Economics and wealth

Once countries start extracting oil, **economic impacts can be dramatic**; these can have a knock-on effect on many factors, most notably long term economic stability, employment rates, and GDP. In Ghana (a new oil exporter), the IMF have found the country's GDP to have grown by an estimated 14.4% in 2011, and is expected to exceed 8% in 2012.¹²⁴ According to asset management strategists, this has changed Ghana's economic landscape, with the public spending that results from higher oil revenues creating quite a lot of activity in construction, retail, consumer goods and so on.¹²⁵

Uganda's economy is currently highly dependant on agriculture - the sector contributes around 22.9% of the country's total GDP and employs 66% of the population.¹²⁶ However, there is no doubt that in the next few years oil production will drastically affect the country's economic landscape. Although this is not a problem in and of itself, there are some key issues linked to the switch from one sector of an economy to another.

Firstly the aforementioned "Dutch disease" is a term often linked to economies that build a reliance on natural resources: "The malady involves commodity exports driving up the value of the currency, making other parts of the economy less competitive, leading to a current-account deficit and even greater dependence on commodities."¹²⁷ In Uganda this could translate into a situation where natural resource extraction leads to growth in national income, but damages other sections of the country's economy.¹²⁸ The problem would stem from an increase in the real value of Uganda's economy as a result of increased exports.

One result of this in Uganda might be that exports, such as agricultural products, are rendered more expensive and therefore less competitive in world markets. At the same time, imports would become cheaper, undermining local markets, producers and manufacturers.¹²⁹ It may also be the case that demands for certain industries, such as construction, would rise, to the detriment of poorer citizens who would no longer be able to afford them.

Discussing the problems related to potential macroeconomic exchange rates, Museveni has stated, "Nigeria had this problem...it caused their exchange rate to appreciate. Uganda will not allow this."¹³⁰ Yet, aside from Uganda Vision 2040, no plan is provided to address these changes to the economy, and certainly no detailed one.

Over reliance on the oil sector is a very real risk in Uganda. Raw materials are notoriously prone to price variability, making an economy vulnerable to instability.¹³¹ However the primary problem can be that dependency on oil could steadily increase. This is problematic because oil is a capital-intensive industry which generates relatively few jobs.¹³² Most importantly, however, oil is a finite resource and therefore long-term strategies for shifting to other economies are vital.

¹²⁴ Kathman J. and Shannon (2011) *op. cit.* (n.106).

¹²⁵ Kathman J. and Shannon (2011) *op. cit.* (n.106).

¹²⁶ Mining Journal, 'Uganda,' December 2012 (http://www.mining-journal.com/__data/assets/supplement_file_attachment/0017/360503/Uganda2012_scr.pdf).

¹²⁷ The Economist, 'It's only natural,' last updated 9 September 2010, (<http://www.economist.com/node/16964094>).

¹²⁸ Oil in Uganda, 'What are the 'natural resource curse' and 'Dutch disease?'' last updated 11 February 2012 (<http://www.oilinuganda.org/facts-faqs/global-oil-facts-faqs/what-are-the-natural-resource-curse-and-dutch-disease.html>).

¹²⁹ *Ibid.*

¹³⁰ Mahumza (2010) in *op. cit.* Kathman J. and Shannon (2011) (n.104), p.25.

¹³¹ The Economist (2010) *op. cit.* (n.127).

¹³² The Economist (2010) *op. cit.* (n.127).

Environment, ecology, and wildlife

Environmental, ecological and wildlife concerns are closely linked to human rights, and are often affected by oil extraction. Human rights and the environment are inextricably linked; the right to a healthy environment is recognised in Article 24 of the African Charter on Human and Peoples' Rights.¹³³ Such concerns can determine the long-term ability of Ugandan nationals to enjoy their land, live in health, enjoy a sustainable future, and benefit from the income that land and tourism bring. Among other instruments, Uganda is a party to the Vienna Convention for the Protection of the Ozone Layer, the United Nations Framework Convention on Climate Change and the African Convention on the Conservation of Nature and Natural Resources.

Environmental issues currently facing Uganda include the draining of wetlands to support agriculture, deforestation, overgrazing, soil erosion, water hyacinth infestation in Lake Victoria and widespread poaching.¹³⁴ Once oil production begins it is probable that new ecological issues will arise, or existing ones will become complicated or entrenched.

For example, Uganda's Murchison Falls National Park harbours buffalos, elephants, lions and leopards, and contains the oil wells Jobi I and II.¹³⁵ Uganda's 1996 Wildlife Act is being amended, and in order to address the presence of the 31 oil wells that lie within protected areas, policies are being altered. Previously, mining was not allowed in protected areas, however updated rules propose the allowance this, provided that appropriate environmental impact assessments are completed.

As James Lutalo, the Commissioner in charge of reviewing the Act has stated: "We are creating a provision that harmonizes the activities of oil and gas together with wildlife conservation because when the law was made, oil and gas wasn't an issue. So, we are providing for coexisting of sustainable wildlife conservation and extraction of oil.... Oil has come and it will have to be extracted. What we want is to minimize the damage it will cause. We are legalizing it so that activities can take place in a legal framework."¹³⁶ In Murchison Falls National Park, the Wildlife Conservation Society notes the vulnerability of this surrounding environment in the context of the energy industry's development and has expressed concern over the park's biodiversity and sensitive ecosystems.¹³⁷

Environmentalists have also been worried about how the inevitable waste products of oil production will be dealt with. This waste includes the mud and rock removed when wells are drilled, chemicals used to assist drilling, and the water and mud that become mixed with oil when forcing the oil out of well. According to Frank Muramuzi, Executive Director of the National Association of Professional Environmentalists, "All the requirements for environmental management must be in place and properly understood before petroleum production starts. Currently, we do not have the facilities, frameworks and mechanism to handle any oil waste." The government has stated that they have advised companies to use environmentally friendly practices, and NEMA has put some simple guidelines in place, but the latter are, according to Muramuzi, not detailed or strong enough.

Oil spills can have a devastating impact on the environment. Positively, in April 2013, The

The Right to a Satisfactory Environment

African Charter Art 24: All peoples shall have the right to a general satisfactory environment

Declaration of the UN Conference on the Human Environment Principle 1: Man has the fundamental right to ... an environment of a quality that permits a life of dignity and well-being.

¹³³ African Charter on Human and Peoples' Rights, *OAU Doc.* (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (available at <http://www.achpr.org/instruments/achpr/>).

¹³⁴ CIA, 'The World Factbook: Uganda,' last updated 10 June 2013 (<https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>).

¹³⁵ Nyanzi P, 'Uganda: Oil – So Near but So Far,' in: *The Independent in allAfrica*, last updated 4 August 2012 (<http://allafrica.com/stories/201208050114.html>).

¹³⁶ Musasizi S, 'Uganda: Poachers to Get Tougher Fines in New Tourism Law,' in: *The Observer in allAfrica*, last updated 29 January 2013, (<http://allafrica.com/stories/201301291559.html>).

¹³⁷ Wildlife Conservation Society, 'Murchison Falls, Uganda' last accessed 20 June 2013 (<http://www.wcs.org/saving-wild-places/africa/murchison-falls-uganda.aspx>).

National Environmental Management Authority (NEMA) announced that they had drafted an oil spill contingency plan. The plan focuses on putting in place measures to avoid an oil spillage, but also included detection mechanisms and a quick alert system in case of a problem.¹³⁸

Water

Uganda's oil wells' proximity to water resources calls into question how the **right to water** might be impacted by oil extraction. For example, demands made by the extraction process on water resources could leave insufficient water to cover basic needs of local populations, such as drinking, sanitation, or washing. It might increase in price and become inaccessible to certain members of the population. As the General Comment of the Right to Water states, water is a prerequisite for other rights, and in this sense, if disturbed, the impact could have a ripple effect.¹³⁹

Health

Human health can be directly impacted by contaminated water when polluted by an oil spill or other chemicals used in the oil production process. Oil or gaseous oil compounds can be directly inhaled, or absorbed through the skin. When these compounds are absorbed by fish, they can bioaccumulate within the flesh, and if eaten, can be present in particularly high concentrations.¹⁴⁰

During its research, *Oil in Uganda* has found that such health concerns have already been raised. During a visit to Rhino Camp, where Neptune Petroleum had drilled a dry well, they found that drill cuttings had been piled (before being later moved) upon land which farmers then claimed had yielded more crops. A chairman from the village reported that the drill cuttings had been good fertilisers and contributed to a good yield of maize, yet drilling waste contains traces of heavy metals which are harmful to human health, such as lead and cadmium. Former NEMA Executive Director, Dr. Henry Aryamanya confirms that "The oil drill wastes were tested during the preliminary stages from various laboratories in Makerere (Department of Chemistry and Geology) and Houston (Texas),

The Right to Water

CESCR General Comment No. 15: The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights... the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

The Right to Health

UDHR Art 25.1: Everyone has the right to a standard of living adequate for the health and well being of himself and of his family.

ICESCR Art 12.1: recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

CESCR General Comment 14: Para 1: Health is a fundamental human right indispensable for the exercise of other human rights; Para 48: Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States; Para 51: Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdictions from infringements **of the right to health** by third parties.

African Charter Art 16: Every individual shall have the right to enjoy the best attainable state of physical and mental health.

¹³⁸ Kagolo F, 'NEMA drafts oil spill contingency plan' in: in *New Vision*, last updated 22 April 2013 (<http://www.newvision.co.ug/news/641882-nema-drafts-oil-spill-contingency-plan.html>).

¹³⁹ General Comment No. 15: The right to water, CESCR Committee on Economic, Social and Cultural Rights, *UN Doc.* (20 January 2003) E/C.12/2002/11 (available at <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94>).

¹⁴⁰ Environmental Pollution Centres, 'Oil Spill Effect on Humans', *Environmental Pollution Centres Website* last accessed 9 July 2013 (<http://www.environmentalpollutioncenters.org/oil-spill/humans/>).

and the reports indicated small amounts of lead and cadmium. These heavy metals can cause cancer and birth defects respectively.”¹⁴¹

Oil in Uganda has also stated that, in another case reported to them, Heritage Oil and Gas had buried waste on land belonging to a farmer, in Nwoya District, after paying him an amount of money. In this case, however, NEMA reportedly tested this soil and found no indication of pollution, although the results were not made public.¹⁴²

Livelihoods and employment

Oil production will inevitably have a profound impact on **livelihoods** in Uganda; as the section covering economic impacts outlined, it will be impossible for Uganda’s economies, both informal and organised, not to be heavily impacted by the emerging oil sector. Some of these, like agriculture, may be affected by economic shifts, whereas others, such as fishing or tourism, may be affected by the physical presence of production. Other livelihoods and community dimensions impacted will likely include livestock rearing strategies, hunting and ecotourism.¹⁴³ 22% of the communities around the Albertine Graben whose livelihoods will be affected earn less than UGX 50,000 per month (about USD 20); in Acholi and West Nile, 37%.¹⁴⁴ With such levels of poverty in the region comes a lesser resilience to shocks or abrupt changes in livelihood.¹⁴⁵ It is therefore all the more important to consider how local communities may be affected by oil.

Morrison Rwakakamba, then working for the think-tank Agency For Transformation, focused with particular concern on the impact that oil will have on smallholder agriculturalists. Around 70% of Ugandan households are engaged in farming, therefore he described how, should the percentage of Ugandan agriculturalists contributing to GDP reduce, a large amount of the population would not be engaged in a meaningful productive activity.¹⁴⁶ He also expressed concern regarding an increasingly high proportion of wealth being in the hands of a smaller segment of the population.

Figure 4. A Lake Albert fisherman readies his gear for a day’s catch (*Oil in Uganda*, 2013)



Fishing is a form of livelihood for many Ugandans living around Lake Albert. International Alert have already found that 54% of residents around the Albertine Graben have perceived an increased restriction on fishing activities.

¹⁴¹ Ongode B, 'Is Uganda ready to handle oil waste?' on GOXI, last updated 19 March 2013 (http://goxi.org/profiles/blogs/is-uganda-ready-to-handle-oil-waste?xg_source=msg_mes_network).

¹⁴² Oil in Uganda, 'Heritage Oil malpractice reveals waste management flaws,' last updated 18 May 2012 (<http://www.oilinuganda.org/features/environment/heritage-oil-malpractice-reveals-waste-management-flaws.html>).

¹⁴³ International Alert, *Governance and livelihoods in Uganda's oil-rich Albertine Graben*, March 2013, p.5. (available at http://www.international-alert.org/sites/default/files/publications/Uganda_2013_OilAndLivelihoods_EN.pdf).

¹⁴⁴ *Ibid.* p. 6.

¹⁴⁵ Ninno C., Marini A., *Household's Vulnerability to Shocks in Zambia*, Special Protection Discussion Paper No. 0536, September 2005, (available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Safety-Nets-DP/0536.pdf>).

¹⁴⁶ Interview IPIS with Morrison Rwakakamba, Kampala, February 2013.

Tourism is another industry that could be severely affected. The oil rich region is home to premier tourist destinations, including the Queen Elizabeth, Murchison Falls and Semiliki National Parks.¹⁴⁷ Fishing communities are another group who could be affected. Already amongst the most marginalised groups in Africa, they may lose their livelihood and income if they are unable to access water blocked by oil platforms or oilrigs, or forced to move away from their land. International Alert's research in the Albertine Graben reports that oil exploration had a clear effect, with 54% of respondents perceiving an increased restriction on fishing activities.¹⁴⁸

In the Hoima and Bulisa districts, women's livelihoods are being affected. A large portion of women in these districts earn money by cutting grass for thatching people's houses in the remote areas of Kaisotonya and Sabagoro near the shores of Lake Albert. Uganda's *Daily Monitor* has reported, "Security agencies led by security groups and the army guarding oil wells sometimes block communities from frequently accessing the park to pick grass because it is located near the oil wells. People found cutting grass are beaten and chased away from these areas."¹⁴⁹ Furthermore, whilst government attention was previously focussing on illegal fishing, once this was no longer a dominant focus of concern such illegal activity rose to higher levels, greatly reducing fish stocks in Lake Albert and taking the other main source of income away from the region's women – fishmongering.¹⁵⁰ This situation has improved, with lobbying for two days' access to the park for the women, and civil society organisations promoting alternative businesses such as bee keeping. However it is clear to see how easily subtle changes profoundly affect whole communities.

Community dynamics

The problem of how lives will be affected if people are relocated or have their land disturbed is broad, and covers more than livelihoods. It goes to the core of the social fabric of Uganda. The presence of oil can have a significant impact on **local communities' structure and dynamics**. Women, for example often carry the burden (of relocation, changes in employment etc.) more than men. Moreover, the benefits of such activities also accrue mostly to men, who are able to gain employment and are often awarded the compensation. They may also

Figure 5. Traders at Kyapaloni market in Buseruka Sub-County, Hoima district



(*Oil in Uganda*, 2013)

have rights over land and make decisions over whether to move and if so where to. Meanwhile, costs such as disruption to societies, families and the environment are felt by women. OHCHR reports, "it has been well documented that where extractive industries operate there often is a rise in levels of prostitution, gender based violence, human trafficking, child exploitation - particularly of the girl child, and an increase in the rates of HIV/AIDS infection amongst women.... In Uganda, OHCHR has already monitored cases where women are being adversely affected by the extractive sector."¹⁵¹

¹⁴⁷ Ongode (2013) *op. cit.* (n.141).

¹⁴⁸ International Alert (2013) *op. cit.* (n.143). p.6.

¹⁴⁹ Ssebuyira M, 'Nsima's efforts to transform and protect her community,' in *Daily Monitor*, last updated 13 April 2013 (<http://www.monitor.co.ug/Magazines/Full-Woman/Nsima-s-efforts-to-transform-and-protect-her-community/-/689842/1746438/-/item/0/-/xdxnt/-/index.html>).

¹⁵⁰ *Ibid.*

¹⁵¹ OHCHR, 'Analysis Of The Petroleum (Exploration, Development and Production) Bill, 2012 and the Petroleum (Refining, Gas

Oil in Uganda has affirmed this. In Hoima, residents and leaders of the town have confirmed that the sex trade has increased over the last couple of years. Many young women have moved to the district in search of opportunities, whilst the Mayor of Hoima has also explained, “I am told that some people go to Kampala, pick some sex workers and put them on a minibus and bring them to Hoima especially on Fridays. They return to Kampala on Sunday or Monday.”¹⁵² *Oil in Uganda*’s research reported that the prices charged by sex workers is too high for many local residents to employ the services, and they are almost exclusively used by foreign workers, for example, those from KOLIN Construction, a Turkish firm building the 92 kilometre Hoima-Kaiso Tonya road.

Sex workers’ rates can depend on whether the client requests protected or unprotected sex. Because of local perceptions within the industry, unprotected sex can be cheaper; according to some community workers, the sex workers appear to believe that clients who demand protected sex may be infected with HIV/AIDS and hence should be charged more money. Local HIV/AIDS organisations are worried about the effect this will have on the battle against AIDS and have expressed concern about moving backwards.¹⁵³

Land rights and indigenous populations

As the Institute of Human Rights and Business (IHRB) explains, “**Conflict over land use** arises because land has alternative uses, alternative values, and alternative significance... Land negotiations often occur in a context where the power equations are uneven, and that asymmetry has led to human rights abuses in many instances... While there is no specific, codified “right to land” under human rights law (i.e. human rights law does not explicitly recognize the human right to land per se), it is clear that ‘land’ includes a very broad range of rights.”¹⁵⁴ IHRB goes on to identify rights to property, an adequate standard of living, participation in political processes, non-discrimination, freedom from forced displacement, housing, work and food of being components, amongst others, of land rights.

When natural resources are extracted, if they do not lie upon or beneath sacred, protected or income generating land, they can often simply be situated where people’s lives are built. The complications and ethics involved in moving people out of their homes, resettling them elsewhere, and compensating them adequately are immense. A culturally sensitive, dignified process, where communities feel that they have been thoroughly consulted, compensated and are happy with their new settlements is rare to come across.

Issues of resettlement and compensation are key in Uganda, a country where land titles and rights are complex. Land for the refinery, for example, has been demarcated and concerns have been raised over the resettlement process and compensation. The rights of **indigenous populations** are also frequently cited as unrecognised and undervalued when extractive industries enter tribal territory, as ownership may have been passed down through generations but never officially registered.¹⁵⁵

Notably, Tullow’s reputation for handling land compensation has received criticism. Some report that, at times, Tullow have had a backlog of over 200 outstanding claims for compensation on its exploration land.¹⁵⁶ Tullow, however, maintains that it complies strictly with government compensation rates and procedures governing land, immovable property and crops, and there are no outstanding rental payments to any projected affected persons

Processing and Conversion, Transportation and Storage) Bill, 2012’, April 2012.

¹⁵² Musiime C., Nalubega F. and Ongode B., ‘Oil money lures sex workers to Hoima’, in *Oil in Uganda*, last updated 23 April 2013 (<http://www.oilinuganda.org/features/social-impacts/oil-money-lures-sex-workers-to-hoima.html>).

¹⁵³ *Ibid.*

¹⁵⁴ Institute of Human Rights and Business, *Preventing Conflicts Over Land: Exploring the role of business and the value of human rights approaches*, Draft Position Paper, November 2009, (available at: http://www.ihrb.org/pdf/Preventing_Conflicts_over_Land-Draft_Position_Paper_Nov09.pdf).

¹⁵⁵ Dreibelbis C, ‘Land Grabs Damage Indigenous Communities in Uganda’, in: First Peoples Worldwide, last updated 23 October 2012 (<http://firstpeoples.org/wp/land-grabs-damage-indigenous-communities-in-uganda/>).

¹⁵⁶ Confidential Interview IPIS, *Experience of oil companies in Uganda*, Kampala, February 2013. Please note that this claim has disputed by Tullow Oil.

It is therefore vital for companies and / or states to ensure that local people are consulted over how land is owned, who owns what land, how they will be resettled, how they should be compensated and so on. Protests and conflicts near oil and mining projects are extremely common. Just a month prior to this paper's date of publication, indigenous communities stopped production of nine Maple Gas oil wells in the northern Peruvian Amazon and Talisman Energy also withdrew, due to local communities and NGOs complaining of lack of consultation and failure to secure indigenous peoples' consent respectively.¹⁵⁷

Labour

Labour rights are integral to business engagement with human rights, being that which a business can directly control. It is the country's responsibility to set the requisite labour standards, and businesses must ensure that these are met. Health and safety is key in

the oil sector, where the processes involved are risky. Fortunately, over the decades, industry standards have built up, and it is rare to come across large oil companies who are not attentive to labour standards. However there is some specific uneasiness over the management of labour rights by some Chinese companies. In Zambia, for example, Human Rights Watch has documented routine flouting of labour laws and regulations in copper mine subsidiaries owned by China Non-Ferrous Metals Mining Corporation. These violations have included poor health and safety conditions, regular 12-18 hour shifts involving arduous labour, and anti-union activities.¹⁵⁸

In Uganda, labour officers reportedly receive too few resources to be sufficiently trained, and therefore **health and safety conditions** in the workplace cannot be monitored sufficiently, despite being reported as troubling. **Child labour** is widespread in Uganda, with an estimated 2.7 million children involved in economic activity.¹⁵⁹ **Acceptable conditions at work** continue to be a concern. Although a 2013 Minimum Wage Bill is reportedly being drafted, the last minimum wage was set in 1984 at 6000 Ugandan Shillings (approx. 2.25 USD) per day.¹⁶⁰ Because unemployment is high, workers have no choice but to accept minimum, and sometimes even lower, wages. This translates to a large number of workers who are unable to afford a decent standard of living.

Gender inequality is a distinct issue. Women also consistently receive lower **wages** than men,¹⁶¹ and "respect for rights to rest, leisure and reasonable limitations of working hours and the entitlement to maternity leave also remain challenges in the private sector."¹⁶² Dr. Consolate Kabonesa, the Head of Makerere University's Gender Department, carried out a study in the Bunyoro area of the Albertine Region in 2010. She discovered that women were missing out on jobs (amongst other benefits) in the oil and gas industry due to low education levels, inadequate skills, and the need to fulfil roles as mothers

ILO Declaration on Fundamental Principles and Rights at Work: four core standards

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour;
- (c) The effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation.

¹⁵⁷ Greenspan E, 'New research highlights more human rights commitments from oil and mining companies,' in *Oxfam America, Politics of Poverty*, last updated 26 September 2012 (<http://politicsofpoverty.oxfamamerica.org/2012/09/26/research-highlights-more-oil-and-mining-companies-human-rights-commitments>).

¹⁵⁸ Human Rights Watch, *Zambia: Workers Detail Abuse in Chinese-Owned Mines*, last updated 3 November 2011 (<http://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines>).

¹⁵⁹ IHRB (2011) *op. cit.* (n.102).

¹⁶⁰ IndustriAll, 'Minimum wage needed to push back exploitation in Uganda,' last updated 7 March 2013 (<http://www.industrialunion.org/minimum-wage-needed-to-push-back-exploitation-in-uganda>).

¹⁶¹ Reports provided by specialized agencies of the United Nations System on the Implementation of the Convention in Areas Falling within the Scope of their Activities, Committee on the Elimination of Discrimination against Women, 47th session, 4-22 October 2010, *UN Doc.*, CEDAW/C/2010/47/3/Add.4, pp. 12-13.

¹⁶² IHRB (2011) *op. cit.* (n.102).

and wives.¹⁶³ Dr Kabonesa also explained that corruption in the oil sector can be expected to hinder the delivery of social services, the impact of which would predominantly be felt by women.¹⁶⁴

Organisation, association, and collective bargaining

The right to freedom of association, specifically for employees to form and join trade unions, is key to ensuring that labour conditions and wages are fair. It is also crucial in giving employees a valid voice allowing them to be free from subjugation by employers. Although this is reflected adequately in Uganda's labour laws, there is evidence of employers and companies "blocking organizing or failing to recognize unions."¹⁶⁵ There is concern from the ILO and trade unions that the Ugandan government prioritises the attraction of foreign investment over the promotion of these rights.¹⁶⁶ Likewise, **the right to organise and bargain collectively** is also more of a legally recognised right than a lived one. In the flower-growing industry for example, despite unionisation, low pay and health and safety concerns persist.¹⁶⁷ Meanwhile, public service unions (e.g. for those working in the medical or teaching professions) have limited space to undertake collective bargaining and have, of late, been involved in industrial actions against the State to demand recognition their rights. .¹⁶⁸

Freedom of expression and from arbitrary detention

A problem currently connected to Uganda's oil industry is that those who engage in open criticism of the sector, connected politicians, or related companies, can face considerable harassment and intimidation, drawing into focus the rights to **freedom of expression** and **freedom from arbitrary detention**. This is a problem associated with the extractive industry

The Right to Organise and The Right to Freedom of Association

ILO Convention 87: Freedom of Association and Protection of the Right to Organise

ILO Convention 98: Right to Organise and Collective Bargaining

UDHR Art 23.4: Everyone has the right to form and to join trade unions for the protection of his interests.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

ICCPR Art 22.1: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

ICESCR Art 8: States Parties to the present Covenant undertake to ensure... the right of everyone to form trade unions and join the trade union of his choice.

The Right to Freedom from Arbitrary Detention

UDHR Art 9: No one shall be subject to arbitrary arrest, detention or exile.

ICCPR Art 9.1: No one shall be subjected to arbitrary arrest or detention.

HRC General Comment 8: Right to liberty and security of persons

African Charter Art 6: No one may be deprived of his freedom except for reasons and conditions previously laid down by law.

ECHR Art 5: No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.

¹⁶³ Oil in Uganda, 'Stop ignoring women, urges Gender Don', last updated 2 April 2015 (<http://www.enr.com/energy/resources/interviews/stop-ignoring-women-urges-gender-don.html>).

¹⁶⁴ *Ibid.*

¹⁶⁵ IHRB (2011) *op. cit.* (n.102).

¹⁶⁶ ITUC, *2010 Annual Survey of Violations of Trade Union Rights*, 8 June 2011 (available at: <http://www.ituc-csi.org/worldwide-survey-repression-of>).

¹⁶⁷ Haywood K, 'Not Such a Rosy Picture,' on *The Daily Monitor*, last updated 3 March 2010, <http://www.monitor.co.ug/Magazines/Farming/-/689860/872020/-/wudf5v/-/index.html>).

¹⁶⁸ IHRB (2011) *op. cit.* (n.102).

worldwide. Global Witness has found that in the past decade, 711 individuals defending their own or other people's human rights in relation to environmental, specifically land and forest, matters have been reported killed globally. This is an average of more than one killing per week and of these, 106 people were killed in 2011.¹⁶⁹ Global Witness also reports an increasing involvement (directly and indirectly) of the private sector in the killing of human rights defenders, accompanied by a culture of impunity.¹⁷⁰ For example, many issues requiring human rights monitoring stem from land bought by a private sector organisation from the government. In Latin America, Global Witness found reports of killings by men in uniform – often private security companies – acting on behalf of private sector interests.¹⁷¹

To the knowledge of the authors, no killings related to the oil sector have been reported in Uganda. Nevertheless, civil liberties are certainly under threat. Two Ministers have been quoted in the Ugandan press warning NGOs working in oil rich areas that they would face closure for sabotaging the oil sector. Notably, the NGOs in question are those encouraging the local communities to reject unfair compensations for their land and property in the refinery area.¹⁷²

Near oil sites, access, authentic assessment of activities on the ground, and criticism of industry processes are recognised as being likely to be met either with intimidating practices, such as arrest, or else meetings are shut down and open information exchange prevented.¹⁷³

Defend Defenders has monitored and investigated the situation facing those who criticise the oil industry in Uganda in their attempts to monitor regulatory frameworks, policy making, and abuses. It has reported that this is often not safe work. One Ugandan human rights defender working in a rural area undergoing development for oil extraction told Defend Defenders that “only the brave talk about oil.”¹⁷⁴

Human Rights Watch has documented how research and advocacy groups in Uganda have faced “forced closure of meetings, threats, harassment, arrest, and punitive bureaucratic interference.”¹⁷⁵ The NGO has pointed to obstructive behaviour on the part of the Ugandan government, noting that Ugandan legislation and regulations are inhibitive. For example, the NGO Act was amended in 2006 and requires lengthy and convoluted registration procedures for NGOs. It has been challenged before the Ugandan Constitutional Court on the basis that some provisions are inconsistent with the Constitution, the International Covenant on Civil and Political Rights, and the East African Community Treaty.¹⁷⁶

The Right to Freedom of Opinion and Expression

UDHR Art 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ICCPR Art 19: 1. Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression.

ACHPR Art 9: 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

ACHPR Resolution 62: Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa.

¹⁶⁹ Global Witness, *A hidden crisis? Increase in killings as tensions rise over land and forests*, June 2012 (available at: http://www.globalwitness.org/sites/default/files/library/A_hidden_crisis-FINAL%20190612%20v2.pdf).

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.* p. 8.

¹⁷² Nalubega, F, ‘Compensation remains messy, ‘noisy’ NGOs risk closure’, Oil in Uganda, last updated 7 October 2013 (available at: <http://www.oilinuganda.org/features/infrastructure/compensation-remains-messy-noisy-ngos-risk-closure.html>)

¹⁷³ Confidential Interview (2013) *op. cit.* (n.156).

¹⁷⁴ Defend Defenders, “Only the Brave Talk About Oil”: *Human Rights Defenders and the Resource Extraction Industries in Uganda and Tanzania*, December 2012 (available at: <http://www.defenddefenders.org/only-the-brave-talk-about-oil/>).

¹⁷⁵ Human Rights Watch, *Uganda: Growing Intimidation, Threats to Civil Society*, last updated 21 August 2012 (<http://www.hrw.org/news/2012/08/21/uganda-growing-intimidation-threats-civil-society>).

¹⁷⁶ *Ibid.*

The NGOs affected cover a broad range of issues, but oil transparency, land, governance, and human rights groups are highlighted as those experiencing increasing difficulty in doing their work. For example, ACODE (Advocates Coalition for Development and Environment), a prominent organisation working on, amongst other topics, oil accountability, has been investigated for “suspected” “suspicious transactions.”¹⁷⁷ In 2012 relevant cases began to reach the national press. The Guardian reported that Oxfam Land Alliance were told to formally apologise for their research into land-grabbing.¹⁷⁸

Defend Defenders’ view that bravery is required to speak frankly is not shared by all. Many would argue that Uganda is fairly open, with a relatively free and un-inhibited press. Yet reports are accumulating that it is not possible for civil society to challenge oil effectively in such an intensely suspicious climate, and there is a risk that as oil production looms nearer and oil grows ever more invaluable to Uganda’s economy, the situation could worsen.

The Right to Peace

The Human Rights Council: At its twentieth session, the Human Rights Council took note of the draft declaration prepared by the Advisory Committee (A/HRC/20/31) and decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations Declaration on the Right to Peace.

Conflict

Historically, the presence of “black gold” - has often intersected with **conflict**. The Persian Gulf post World War I, the Iraq invasion in 2003, civil conflict or unrest in Angola¹⁷⁹, Colombia, Nigeria, Mali, Sudan and South Sudan and disputed territory in the Falklands¹⁸⁰ can all be linked to oil. The greed and grievance theories of conflict explore this relationship in depth.¹⁸¹

Uganda is currently a relatively stable and peaceful State, but violence is not foreign to the country. Northern Uganda – Acholi – was, for over 20 years, wracked by violence at the hands of the Lord’s Resistance Army – a rebel group.¹⁸² Hundreds of thousands of people lived in IDP (internally displaced person) camps, and children lived in terror of being recruited into rebel forces. The UN now states that 98% of IDPs have been moved from the camps and, with the help of local initiatives and some foreign organisations, normality has returned to the region.¹⁸³

Two of Uganda’s neighbouring countries are also embroiled in conflict. Whilst extolling the potential rewards on investing in Uganda, Market Watch notes that a “destructive war in Congo rumbles threateningly on [Uganda’s] southwestern border.”¹⁸⁴ Moreover South Sudan, directly north of Uganda, is a recently formed State that has separated from Sudan, and has been through its own devastation. Whilst one country, the Sudanese state was beset by war for decades; two north-south civil wars claimed 1.5 million lives. Conflict continues in the Sudan’s western region of Darfur; 200,000 have died and 2 million been displaced.¹⁸⁵ Meanwhile conflict over the border between Sudan and South Sudan has

¹⁷⁷ Matsiko H, ‘Acode Under Investigation,’ *The Independent Uganda*, last updated 9 April 2012 (<http://www.independent.co.ug/news/news-analysis/5549-acode-under-investigation>).

¹⁷⁸ Vidal J, ‘Uganda threatens to expel Oxfam and NGOs over land-grabbing claims,’ *The Guardian*, last updated 10 May 2012 (<http://www.guardian.co.uk/global-development/2012/may/10/uganda-oxfam-land-grabbing-claims>).

¹⁷⁹ Global Witness, *A Crude Awakening*, December 1999, (available at: <http://www.globalwitness.org/sites/default/files/pdfs/A%20Crude%20Awakening.pdf>).

¹⁸⁰ Kelley M, ‘Look At The Conflicts That Were And Will Be Caused By Oil,’ in *Business Insider*, last updated 28 June 2012 (<http://www.businessinsider.com/how-oil-has-driven-global-conflict-for-the-past-100-years-presentation-2012-6?op=1>).

¹⁸¹ For example see: Murshed S.M and Tadjoeddin M.Z, ‘Reappraising the Greed and Grievance Explanations for Violent Internal Conflict’ *MICROCON Research Working Paper 2*, September 2007 (available at: http://www.un.org/esa/policy/wess/wess2008files/mansoob_postconflict.pdf).

¹⁸² Deibert M, ‘In northern Uganda, a difficult peace,’ in *Le Monde Diplomatique*, last updated February 2012 (<http://mondediplo.com/blogs/in-northern-uganda-a-difficult-peace>).

¹⁸³ *Ibid.*

¹⁸⁴ Lesova (2012) *op. cit.* (n.115).

¹⁸⁵ BBC News Africa, ‘Sudan Profile,’ last updated 14 March 2012, (<http://www.bbc.co.uk/news/world-africa-14094995>).

swelled, and is often on the brink of war.¹⁸⁶ Notably, oil has played a central role in Sudan and South Sudan's conflicts. Most of the oil lies in South Sudan or along the contested border between the two countries, whilst downstream operations such as refineries and pipelines lie in Sudan.¹⁸⁷

These seem distant threats to Uganda, and many would dismiss the risk of oil and conflict becoming intertwined in Uganda. But others are not so sure. Firstly, in some contexts, extractive sites have a strong tie to rebel activity. Petroleum cannot lend itself to rebel financing in the same way that minerals, narcotics and other natural resources might, due to its sheer mass and the complex infrastructure required to process it. However extractive areas do overlap with previous activity by the LRA (in the north) and the Allied Democratic Forces (ADF) on the Ugandan side of Lake Albert. Oil straddles the border between DRC and Uganda; DRC was hit again by intense violence following the M23 rebel movement's formation in 2012.

It is therefore plausible (however unlikely at present) that, with recruits from previous insurgencies just across borders, rebel activity might play out as it did in Nigeria. This includes attacking pipelines, refineries, pump stations, and other fixed emplacements. In Colombia, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) rebel organisations have engaged in or committed bomb attacks on oil pipelines, kidnappings of oil company employees for extortion, and civilian killings. Such measures could be acts stemming from old grievances, or part of measures to weaken a government's power.

International Alert have turned their attention to minimising cross-border tensions between DRC and Uganda. In partnership with RICE-WN, dialogue was held between (on Uganda's side) members of civil society, representatives from Uganda's Petroleum Exploration and Production Department (PEPD) of the Ministry of Energy and Mineral Development, and representatives from the border districts of Nebbi, Buliisa, Zombo and Nwoya, and (on DRC's side) 18 delegates from a cross-section of organisations, including civil society. Issues raised included the need for greater cooperation between the two countries based on the fact that, according to the 2008 addendum to the 1986 agreements on cooperation, during exploration, oil teams are currently permitted up to four kilometres into each other's territory. DRC representatives expressed concern about the porosity of their border, and resultant arms-flows potentially fomenting conflict.¹⁸⁸

In order to maintain security, both companies and the government will be compelled to use whichever means they deem appropriate to both appear in and retain control. Companies often employ private security companies for this, a phenomenon that has been linked to human rights abuses to such a severe extent that voluntary principles have been put in place to ensure rights-respectful conduct.¹⁸⁹

Meanwhile the Ugandan police (and possibly army) forces will be increasingly present around oil sites. In 2012, the Uganda Police announced it had formed an Oil and Gas Protection Directorate to secure the Albertine Region. Although the Force is reluctant to reveal the Directorate's strength, some media reports claim it is made up of 20,000 men. Reports of the police potentially setting up security barracks in oil regions have been queried by communities; such barracks would take up space and possibly be perceived as intimidating.¹⁹⁰

Lastly, as oil's effects on the economy will likely decrease competitiveness of other sectors such as agriculture, increased urbanisation may occur:

"For many petroleum-rich, underdeveloped states, exploitation has reduced the competitiveness of previously productive economic sectors, leading to declining wealth, social and political unrest,

¹⁸⁶ Marinkovic N, 'Tensions between the Two Sudans,' *Enough Project*, last updated September 2012 (<http://www.enoughproject.org/conflicts/sudans/tensions-two-sudans>).

¹⁸⁷ Sameen Ali, 'South Sudan: Oil, the Environment and Border Conflicts,' *National Geographic*, last updated 22 March 2013 (<http://newswatch.nationalgeographic.com/2013/03/22/86550/>).

¹⁸⁸ International Alert news, 'Uganda and DRC discuss oil and gas exploration,' *International Alert*, last updated 30 May 2013 (<http://www.international-alert.org/news/oil-great-lakes>).

¹⁸⁹ Voluntary Principles on Security and Human Rights, 2000 (available at: http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf).

¹⁹⁰ Interview IPIS with International Alert, Kampala, February 2013.

increasingly disaffected populations, emergence of rebel organizations, government corruption, and destabilized domestic security.”¹⁹¹

Areas may become increasingly congested; migrants are already moving from outside the oil region towards areas they expect to be rich in oil in order to obtain future rents from oil revenue.¹⁹² The Banyoro people along the Ugandan side of Lake Albert are reportedly disquieted by this influx and fear for their jobs and power. Commentators also highlight the lack of transparency and increased presidential power. These factors have the capacity to lead to tensions in urban centres and other densely populated areas, and general dissatisfaction over governance as a whole, with the possible consequence of civil unrest.

¹⁹¹ Kathman and Shannon (2011) *op. cit.* (n.104).

¹⁹² Kathman and Shannon (2011) *op. cit.* (n.104). p.30.

Conclusion

This paper has introduced the Ugandan oil sector in its political and social context, the sector's legislation, and the controversies already resulting from preliminary oil production. The complicated relationship between oil and human rights has also been explained, accompanied by illustrative examples.

The shape that Uganda's oil sector will take is becoming increasingly clear. However the trajectory of human rights' sanctity in Uganda as a result of the oil industry is uncertain. The human rights risks that may be encountered as Uganda's oil sector continues to develop have proved to be broad. Democracy and governance risk being eroded as oil wealth and development take centre stage, meanwhile Uganda's economy will certainly change drastically as oil revenues flow. Uganda's environment and wildlife are sensitive to such an enormous industry, with the quality of water and soil, and resultant impact on health, a matter of concern.

Local livelihoods are already affected by the presence of oil sites, and related factors such as employment and community dynamics will likely be similarly influenced. Land rights have also been a central theme in civil concern over the impact of the oil sector and it remains to be seen how the Ugandan State and present oil companies will deal with issues such as the relocation of communities. Once production becomes more intense, labour rights will be a focal point of the business and human rights discourse in Uganda. Lastly, grave issues such as arbitrary detention and conflict sensitivity require careful attention to ensure that the welfare of Ugandan citizens is assured.

The above analysis of vulnerable human rights has illustrated complex dynamics between government, companies and society. Clearly the Ugandan State has the most important role to play in ensuring that the oil sector positively impacts human rights. However the focus of this series is the impact of business activity, therefore the proceeding papers will explore how the State, business and civil society can each play their own role in business and human rights in Uganda's oil sector.