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The politics of governing oil after 'best-practice' reforms: Can 'pockets of effectiveness' survive within Uganda's political settlement?

Sam Hickey[1]

Angelo Izama[2]

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[1] The University of Manchester
Email correspondence: sam.hickey@manchester.ac.uk

[2] Independent researcher
Email correspondence: izama.angelo@gmail.com

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email: esid@manchester.ac.uk
Effective States and Inclusive Development Research Centre (ESID)
Global Development Institute, School of Environment, Education and Development,
The University of Manchester, Oxford Road, Manchester M13 9PL, UK
www.effective-states.org

Abstract

Uganda is frequently lauded for adopting a rules-based approach to oil governance, despite having failed to move to production after discovering commercial quantities of oil in 2006. This has been closely associated with the political support and autonomy offered to a 'pocket of bureaucratic effectiveness' (PoE) within the Ministry of Energy that has managed to secure favourable deals with international oil companies. However, since 2013 Uganda's oil assemblage has undergone significant institutional reforms in line with international best-practice, with new entities established to ensure that the policy, regulatory and commercial dimensions of the sector are now handled separately. This paper explores whether best-practice reforms make sense within a country like Uganda, particularly given its changing political settlement dynamics in recent years. We find that the interaction of these reforms with the increasingly vulnerable and factionalised ruling coalition in Uganda has led oil governance to become more fragmented and personalised in certain respects, but also that its previous investment in building a PoE has enabled government to manage the process better than expected, often through the continuity of informal practices. Whilst the nascent move to build the new regulatory and commercial entities into PoEs is potentially promising, tensions between these two organisations, and the fact that this process has involved hollowing-out capacity within the policy department, has weakened the coherence of oil governance in Uganda, and undermined its ability to undertake policy reforms and the further exploration required to secure the viability of the oil sector.

Keywords: oil governance, pockets of effectiveness, best-practice reforms, politics, Uganda

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Abbreviations

CNOOC	China's National Offshore Oil Company
GoU	Government of Uganda
IOC	International oil company
MEMD	Ministry of Energy and Mineral Development
MOU	Memorandum of understanding
NOGP	National oil and gas policy
NRM	National Resistance Movement
PAU	Petroleum Authority of Uganda
PD	Petroleum Directorate
PEPD	Petroleum Exploration and Production Department
PSA	Production sharing agreement
PoE	Pocket of effectiveness
UEGCL	Uganda Electricity Generation Company Limited
UNOC	Uganda National Oil Company

1. Introduction

Uganda's approach to governing oil represents something of a paradox. Despite having failed to move to production after discovering commercial quantities of oil in 2006, and being criticised for its weak commitment to good governance and democratisation, Uganda has been lauded for adopting a rules-based approach to oil governance, particularly through its success in getting good deals from international oil companies during the 2012-2015 period. This capacity to negotiate effectively was directly shaped by the support and autonomy that President Museveni offered to oil technocrats located within a high-performing department in the Ministry of Energy. This in turn suggested that Uganda's 'dominant' political settlement had enabled Uganda to take a longer-term view of governing the sector in the national interest, as indicated by the relatively tough fiscal regime put in place via production sharing agreements and taxation policy and a robust approach to negotiating with oil companies (Global Witness 2014, Hickey and Izama 2016, Hickey et al. 2015, Patey 2017).

However, the oil sector in Uganda has undergone significant institutional reform over the past three years. In line with international principles of best-practice, the oil department has been broken up into three new entities to ensure that policy, regulatory and commercial functions are handled separately. These reforms were certainly promoted strongly by international actors, including Norway, which provides the model for this form of oil governance, but the reforms were also warmly embraced by government officials. This occurred despite growing concerns that the Norway model may not be suitable in developing countries. Research by Thurber et al. (2011) examined the effect of adopting new institutional arrangements on oil sector outcomes in 10 large oil-producing countries. They found that the 'separation of functions' approach was successful only in contexts where bureaucratic capacity was high and political competition had been strongly institutionalised over time; that is, in countries that looked a lot like Norway at the time the reforms were undertaken. Where these conditions did not hold, Thurber et al. argued that a consolidation of functions within one bureaucratic unit might offer a 'better-fit' approach.

This paper explores whether best-practice reforms make sense within a country like Uganda, particularly given the changing nature of its political settlement dynamics in recent years. Whilst inspired by Thurber et al., our starting point is somewhat different. First, we hypothesise that formal governance institutions are less likely to shape the quality of oil governance in developing countries than (a) the underlying political settlement and (b) the presence of specific PoEs. A political settlement can be defined as a 'reproducible political order' that is sustained by the ways in which the configuration of power interacts with institutions (both formal and informal; Khan 2010). Political settlements analysis, which emerged as a critique of new institutionalism, focuses on the underlying set of power relations that shapes how institutions emerge and actually function, rather than the form that they take. This approach has yielded important insights into oil governance (e.g. Lewis 2007, Macuane et al. 2018, Mohan et al. 2018, Poteete, 2009), and we seek to test this approach further here. PoEs, meanwhile, can be defined as

> 'public organizations that are relatively effective in providing public goods and services the organization is officially mandated to provide, despite operating in an environment in which effective public service delivery is not the norm.' (Roll, 2014: 24)

Again, recent work on oil governance has identified PoEs (rather than aggregate levels of state capacity) as being critical to whether oil is governed effectively within developing countries (Hertog 2010, Hickey et al. 2015, Hout 2013, Lewis 2007, Soares de Oliveira 2007). A hypothesis emerging from this line of work would be that as ruling coalitions become more vulnerable to elite fragmentation, their commitment to investing in 'growth-enhancing institutions' such as PoEs in critical sectors is likely to diminish.

The following sections briefly discuss Uganda's current political settlement and its oil assemblage.[1] We then examine the process through which the new institutional arrangements for governing the sector were formulated, before offering an assessment of how these new arrangements have played out since being implemented. This includes an evaluation of how well the three main entities – namely the Petroleum Directorate (PD), the Petroleum Authority of Uganda (PAU), and the Uganda National Oil Company (UNOC) – have performed in delivering on their mandate since the unbundling, and on the overall coherence of governance in the sector. Our evidence draws mainly from around 50 key informant interviews undertaken between 2017 and 2019 with stakeholders directly involved in oil governance in Uganda, including government officials working within the Ministries of Energy and of Finance, the Office of the Auditor General and the new entities, PAU and UNOC, as well as international agency staff, actors working within IOCs and investigative journalists with expertise in the sector.

2. Uganda's transnationalised political settlement

After the National Resistance Movement (NRM) captured power in Uganda in 1986, it established a new political settlement that was sufficiently inclusive to impose stability after more than a decade of political and civil conflict, with the notable exception of the northern region (Lindemann 2011). This first period resembled a 'dominant-developmentalist' type of political settlement (Khan 2010), in that the NRM faced few pressures from elites beyond the ruling coalition or from powerful factions within it, and was thus able to implement wide-ranging and largely developmental reforms in line with its ideological platform (Golooba-Mutebi and Hickey 2013, Kjaer 2015, Whitfield et al, 2015). During this period, President Museveni established a modus operandi of governing the economy through hand-picked senior bureaucrats who were both politically loyal and highly competent (Grindle 2012). This proved to

[1] For more in-depth accounts of Uganda's political settlement, see Kjaer (2015) and Golooba-Mutebi and Hickey (2016).

be a key feature of the country's developmental success and also of the transnationalised nature of its political settlement since the early 1990s, with international development agencies providing critical support to a few PoEs within the economic technocracy (Golooba-Mutebi and Hickey 2016, Bukenya and Hickey 2019).

The oil sector was arguably the first to benefit from this selective investment in bureaucratic capacity-building. During his first days in office in 1986, President Museveni received offers from international oil companies keen to exploit Uganda's oil reserves. On discovering that Uganda lacked the geoscientists capable of leading the exploration effort, he turned the oil companies away. According to a leading technocrat who met with Museveni at the time, 'When we had the historical meeting, when he was two days in office, we met for three hours, I said let us train not proceed with the IOCs. I was empowered to start training and recruiting'.[2] The Petroleum Exploration and Production Department (PEPD) was formed in 1991 as part of the Ministry for Energy and Minerals Development. Political attention to PEPD waned during the lengthy exploration effort, leaving PEPD reliant on support from the World Bank, India and Norway. These years of relative hardship catalysed a strong organisational culture, forged through the patriotic and professional commitment of its leadership, which shared the difficulties of this period with their staff, whilst generating training opportunities for them (Kashambuzi 2010: 3). PEPD was largely protected from external political influence, and after 2001 its leadership persuaded government to fund increased salary levels, allowances and technical support for their activities. Even after commercial quantities of oil were discovered in 2006, the president continued to offer PEPD considerable autonomy. PEPD has become widely respected by international actors within the industry and has proved capable of gaining better deals for Uganda than in many other countries in Africa (Hickey et al. 2015) and securing its interests in battles with IOCs (Hickey and Izama 2016).

This protection of a high-performing PoE in Uganda's oil sector has been largely against the grain of Uganda's shifting political settlement during the past decade (Hickey and Izama 2016). Since the early/mid-2000s, Uganda's ruling coalition has become much more vulnerable, both to threats to its hold on power from excluded elites and from increasing levels of internal factionalism. These shifts were catalysed by processes of elite exit from the NRM before the 2001 elections, and growing pressures from its large client base. A key policy response was one of 'districtisation', where new districts were created to meet these demands, resulting in a doubling of Uganda's districts from 56 to 112 within around a decade. The main response to factionalism within the NRM was to return to multi-party elections in 2005, which Museveni saw as a means of restoring discipline to the movement (Makara et al. 2009), a move that he coupled with the removal of presidential term limits. These developments did little to address the growing factionalism within the inner core of Uganda's ruling coalition, known as the 'first family', with reference to the president, his wife, brother and sons-in-law, and also the Minister for Foreign Affairs, who is

[2] Interview, 10 November 2017.

related to the president through marriage. This group has become renowned for its rapacious approach to the new flows of finance that have entered Uganda since the mid-2000s, including via Chinese investment for major infrastructure projects. In-fighting amongst these players has come to characterise elite-level politics in Uganda in ways that have weakened any long-term vision that the NRM may have previously been pursuing.

Importantly, the politics of regime survival catalysed by these pressures has directly undermined the use of PoEs, the most blatant example being the capture of the Ministry of Finance and Bank of Uganda in order to finance the buying of the 2011 poll (Golooba-Mutebi and Hickey 2016, Bukenya and Hickey 2019). In this context, the apparent commitment to governing oil through competent and autonomous bureaucrats in line with a longer-term vision seemed to represent an outlier, a throwback to the earlier dominant-developmental political settlement. As argued by Michael Watts (2004), the advent of oil can have profound effects on the political imaginaries of political actors, re-energising political and developmental projects. We may well have seen this in Uganda, with regards to the developmentalism that directly followed the discovery of commercial quantities of oil in 2006, and the ambitious focus on 'transformation' within Uganda's new National Development Plan (Hickey 2013). This is also evident in Museveni's resource nationalist insistence on a refinery that can help add value to Uganda's oil resources, and willingness to withstand pressures from IOCs to make deals quickly and prioritise the export pipeline (Hickey and Izama 2016). The question for this paper, then, is the extent to which this capacity and commitment to governing oil has been maintained during a period of shifting political settlement dynamics – including a closely fought presidential election in 2016 – and the introduction of new institutional arrangements for governing oil that would involve breaking up PEPD. The next section briefly sets out the nature of Uganda's oil assemblage and the process through which the new arrangements were introduced.

3. The oil assemblage in Uganda: Heading towards Norway?

With up to 6.5 billion barrels of oil reserves in the western part of the country, of which between 1.4 and 1.7 billion barrels are probably recoverable, Uganda sits within the mid-range of Africa's oil producers (Patey 2017). Uganda has entered a joint venture partnership with three oil companies: French Total E&P, Tullow Oil of Ireland/United Kingdom and China's National Offshore Oil Company (CNOOC). The partners signed a memorandum of understanding (MoU) in 2014, which sets out a plan for the commercialisation of Uganda's oil, a crude export pipeline and a mid-size refinery.[3] This opened the way for first oil exports by around 2023, pending the completion of a regional pipeline. However, this process has been heavily delayed amidst falling oil prices, strong disagreements between GoU and IOCs and also a limited degree of cooperation amongst IOCs themselves.[4]

[3] See Hickey and Izama (2016) for a detailed account of this process.
[4] The ongoing negotiations between GoU and the IOCs are dealt with in a companion paper (Hickey and Izama 2020, forthcoming).

The decision to separate out the commercial, policy and regulatory functions of oil governance in Uganda oil was formally inscribed within the 2008 National Oil and Gas Policy. This started life as a PEPD working document, developed internally with support of the Norwegian Government's Oil for Development Programme (GoU 2008). Norwegian support was heavily focused on building the capacity of Uganda's oil technocracy alongside this emphasis on institutional reform. However, the Policy also states that it is '... in line with Government's institutional reform policy of Regulatory Best Practice', with reference to Uganda's experience of unbundling the energy sector in the early 2000s (op. cit.). Responsibilities for both energy and oil rest within the same Ministry of Energy and Mineral Development, and the same permanent secretary, Dr Kabagambe Kaliisa, oversaw both processes:

> 'I don't think we needed external advice on this (laughs); we had some good advice from Norway but they did not expect that we already had plans. It was our ideas back in 2008 with regards the separation of functions. I had been involved in the reforms of the electricity company re unbundling – I used this experience and that model.'[5]

The 2008 policy was largely reformulated into the legislative bills for Midstream and Upstream activities, which were eventually passed in 2013 after a highly contested process. Parliament made the passing of the legislation a pre-condition for any approvals of further oil deals and civil society actors accused the executive of seeking to retain too many powers and allowing too little transparency (de Vibe 2013). 'Clause 9' of the proposed Upstream Act was particularly controversial as it gave the executive broad powers over the new institutions. The President became directly involved, addressing parliament in December 2012 and inviting oil technocrats to help explain the case for greater executive control. They undertook this task willingly: having benchmarked their position against Norwegian best practice, they were convinced that they were acting in the best interests of the country as well as the sector. Indeed, even before the laws had been passed, in 2012, PEPD had reorganised itself into units that mirrored the functions to be taken up by the policy, commercial and regulatory entities in order to lay the groundwork for the new arrangements.

The Upstream and Midstream laws established the Minister of Energy as the political head of the oil and gas sector and created three institutions: the regulatory Petroleum Authority of Uganda (PAU), the Petroleum Directorate (within the Ministry of Energy) and the Uganda National Oil Company (UNOC), to hold all commercial aspects of Uganda's interest in oil. UNOC is a private firm rather than a statutory enterprise, which MPs had campaigned for on the basis that this would offer greater public scrutiny. Technocrats insisted instead on the Norwegian model of an ordinary company, in which the state would hold a majority stake. PAU will advise on the quality of all agreements that UNOC may enter into. The Petroleum Directorate is the

[5] Interview, 10 November 2017.

policy arm and also responsible for new exploration and management of data from all fields.

In the following sections we track how oil governance has played out in Uganda since the new entities have been established. This involves setting the promise of the reforms – which, according to one senior bureaucrat, would strengthen the capacity of Uganda to govern oil effectively: 'It helps you to build capacity, more institutions, the base is wider'[6] – against the warning that adopting best-practice reforms in developing countries may lead to capacity being spread too thinly and lower levels of performance (Thurber et al. 2011).

4. Implementing the Norway model in Uganda 2015-2019: An interim assessment

It remains relatively early to be assessing the new institutional arrangements for governing oil in Uganda, which, although legislated for in 2013, only started to be implemented two or three years after this. However, there has been a high level of activity within the sector during this period: in addition to establishing the groundwork for major midstream projects, Uganda has issued three new production licences, developed a new local content policy, sought to regulate the cost recovery activities of its upstream IOCs and tried to restart exploration activities in new potential oil fields. This offers an instructive basis on which to start assessing the new reforms and we focus here on the process through which the new entities were established, and overall levels of coordination in the sector, before examining the performance of each entity in turn.

Putting the laws into practice: Informal challenges

It took around two years to simply establish the terms for the boards of the new regulatory and commercial entities and to make appointments to them, which meant that they did not become operational until around 2016. This delay was caused in part by the jockeying amongst oil technocrats for the highly paid posts within the PAU and UNOC, which ex-PEPD staff saw as a backdated reward for their poorly remunerated struggle during the lengthy exploration phase and essential to being competitive within the industry. Many ex-PEPD officials left the Ministry to take up posts in PAU and NOC, leaving behind a somewhat skeletal and less well-paid staff within the Ministry's policy unit, the Petroleum Directorate. However, the most controversial staffing move came in November 2016, when the president sacked the man who had been permanent secretary of MEMD since 1997 and head of PEPD (1984-1997) before then. Dr Fred Kabagambe Kalissa had been a trusted confidant of the president and had been responsible for establishing the new reforms. His sacking in November 2016 reflected a breakdown of trust with the president within the context of increasingly fractious relationships within the inner core of the ruling coalition.

[6] Interview, 10 November 2017.

The decision to replace Dr Kabagambe with Dr Steven Isabaliija was reported as resulting from a fall-out that involved a clash between the Uganda Electricity Generation Company Limited (UEGCL) and the Ministry of Energy, over which should supervise the country's two ongoing dam projects at the time (Wanambwa 2016). As the then chair of the UEGCL board, Dr Isabaliija had also briefed the president that Kabagambe was being insufficiently supportive of their efforts to find a buyer for the other major dam at Bujugali. However, this followed earlier incidents in Uganda's energy domain that had set more powerful players within Uganda's ruling coalition against Kabagambe. One involved an altercation with General Salim Saleh, the president's brother, over the level of charges being made by the national energy distributor. Saleh chaired a presidential committee to investigate the issue, but the president sided with Kabagambe's advice to raise charges, rather than Saleh's proposal to reduce them. Our interviewees suggest that disagreements between Kabagambe and members of the first family over energy sector deals went deeper still, including the controversial process through which tenders were awarded for the Karuma and Isimba dams. According to one high-level insider,

> 'First family in-fighting over energy projects matters here. With Karuma there were four brokers involved in this around/inside State House (each siding with specific Chinese companies).[7] Kabagambe squashed that and then did the same with a Nigerian company that Janet Museveni and Salim Saleh were backing via a false letter to the president. Janet insisted that Kabagambe goes to Nigeria to do due diligence as a PS would carry more weight, but then he (Kabagambe) squashed it. Janet and Saleh then mobilised against him to get their own person in Isabalija.'[8]

This account is supported by an investigative journalist:

> 'Kabagambe was sacked for the dam deal. He and Museveni were falling out around a few scandals … what happened with the procurement over Karuma was that Kalissa and other senior officials, including the minister, were reported to have taken bribes, also some members of the first family, from China Water …. the president ordered his team to do an investigation, and found out that they (China Water) had never built a dam, whilst Sino Hydro (the competitor bidder) had built many…' [9]

It seems that the president was no longer willing to protect Kabagambe from other players within the first family, with the ruling coalition increasingly fractious and driven by efforts to corner rents amidst wider uncertainty around regime survival. The experiment was short-lived, with the president sacking Isabaliija after eight months in post, replacing him as PS with an ex-commissioner within PEPD and protégé of

[7] This involved one of the president's sons-in-law; see Hickey and Izama (2016).
[8] Interview with senior ex-MEMD official, 23 November 2018.
[9] Interview, 6 November 2017.

Kabagambe (who was himself was appointed as presidential advisor on oil). Reflecting the personalised nature of governance within Uganda's political settlement, these appointments have closely shaped how well the sector has been governed in the post-reform period.

How are the new best-practice institutional arrangements working out for Uganda?

> 'It has created a lot more transactions, has increased the cost of managing the sector considerably. When it was PEPD they were in a small office in Entebbe … a few cars. Now we have 4x4 vehicles and new offices for PAU and UNOC. You are paying people well, so we are happy but it has increased the cost at a time when we are not doing much.'[10]

> 'The sector is falling apart, there is no-one who knows how to hold it together in terms of the three major issues: exploration and FID, pipeline and refinery. Have they got a plan for the whole sector? Out of their depth. There is PAU, UNOC, the Ministry…'[11]

Key stakeholders differ in their assessment of how the new institutional arrangements are currently playing out in Uganda. All acknowledge that there have been challenges, but whereas some international players and government officials refer to the sector as being 'in a mess', those working within the new entities tend to refer to these as teething problems that are steadily being addressed within the context of new rules providing clear guidance on the mandate, roles and responsibilities of each entity. The prior presence of PEPD as a high-performing PoE in the sector is identified as critical to the process being handled relatively well, with ex-PEPD staff going on to occupy influential positions within the new entities and Ministry, and all three 'new' units emerging directly from PEPD through the carefully planned transition process. The distribution of leaders has been particularly important: both the Petroleum Directorate and PAU are headed by senior ex-PEPD officials who have worked together for many years, which has helped smooth the transition and ensure a degree of continuity. This continuity is inscribed in informal relationships, rather than formal rules, and these have helped maintain greater coherence than would have otherwise been the case:

> 'The direct communication may be reduced (but) in most cases the relationships (between leaders of PAU and Ministry) are very good, they talk easily together, we have worked so closely together, it is communications that reduces the bureaucracy. It is like a family.' [12]

These relationships have in some cases enabled capacity problems in one entity to be offset through the (re)deployment of staff from another, as in the formation of

[10] Interview with UNOC Official, 19 October 2018.
[11] Interview with senior foreign diplomat in Kampala, 21 November 2018.
[12] Interview with senior MEMD oil technocrat, 27 April 2018.

teams to negotiate new PSAs in 2017 (as discussed below). Such relationships are not apparent between UNOC and the other entities, in part because the post of UNOC's CEO was awarded to an 'outsider' with no experience of the oil sector.

However, more critical observers note that the sector has become more incoherent and poorly governed as a result of both the new arrangements and the absence of an authoritative figure to play a convening role. According to one leading official:[13] 'They made a mistake by firing Kalissa. Before we moved in a phased manner. Regulator now is doing things with companies before they have a licence. We need someone to bring us altogether', before going on to describe how the processes of submitting budgetary requests had been slowed down by this problem. Although the formal arrangements for coordinating the sector remain in place, in terms of the Inter-Ministerial Committee on Oil and Gas, no-one has the authority to make this work effectively in practice. For one investigative journalist,

> '… It has changed tremendously: there is no convenor, the new (current) PS is not able to convene the sector, they (the heads of PD and PAU) are his contemporaries and at NOC she might even be more powerful, given her links to State House'[14]

This lack of oversight and coordination has directly informed the delays and problematic negotiations around both the pipeline and refinery projects, which we deal with briefly here (see Hickey and Izama [2020, forthcoming] for a detailed treatment). The most obvious failure to execute a deal with technocratic rigour and in the national interest during this period – with regards to the refinery project – occurred after the sacking of Kalissa, the government's most experienced oil technocrat and negotiator. His successor lacked expertise in the oil sector and favoured a more neoliberal and market-driven approach to that of his cadre of oil technocrats. Following a poorly handled bidding process, the new PS and also UNOC favoured a bid for the refinery from a US-led consortium, whereas government officials from PAU and PD preferred the rival Chinese bid. The president, influenced by some strenuous American lobbying, ruled in April 2018 that tender be offered to the US-led consortium. The deal does not withstand much scrutiny: it includes insufficient financing from private sector investors, no commitment of technical support from a company experienced in building refineries and no sovereign guarantee from GoU (MEMD 2017, 2018). Some technocrats and presidential aides argue that the same PS undermined negotiations over pipeline, through his decision to dismiss the transaction advisor who had been helping GoU's negotiating team. Compared to the refinery project, however, oil technocrats have been able to perform their tasks in an effective and rules-based manner with regards to the pipeline, including persuading the president to reverse the initial agreement to route it through Kenya, rather than Tanzania.

[13] Interview with senior MEMD oil technocrat, 22 November 2018.
[14] Interview, 20 March 2018.

State House itself, which had previously acted as the ultimate arbiter in any final decisions within the oil sector, has become a more volatile influence. One senior oil ministry official noted that the close relationship that they had previously enjoyed with the president had become disrupted:

> 'There are some people, his State House advisors, they make it difficult to meet with the president – that is the challenge. People who feel they are losing because we have rejected them, they go through their network. It is friends and relatives … some foreign advisors also.' [15]

Perhaps the most pressing issue is that the oil technocrats that were concentrated within PEPD have now been distributed across three entities: 'This limited resource is now being spread around … (we need) to train people again, get that capacity up again',[16] an issue we return to below.

Although the new rules demarcate the roles and responsibilities of each constituent entity, the process of implementing them has been a conflictual one, with each entity seeking to secure its own turf and in some cases encroach on that of others:

> 'The rules are very clear among the three institutions … but we are in the stormy phase. UNOC and PAU want to have authority. The Minister is supposed to do promotion, yet UNOC is there also doing promotion. So the distinction between them is not clear and it is testing the institutional framework.'[17]

Several examples attest to this, including the development of the national content policy and the ongoing farmdown of assets by Tullow. According to the new rules, MEMD is responsible for establishing policy on national content policy, with other government units assigned specific roles, including a role for UNOC in building local expertise. However, PAU has used its oversight over compliance to take control of the agenda, establishing a fully operational National Content Directorate, with a dedicated staff that manages the National Supplier Data Base, and exercising its influence to reject contracts that do not comply with national content thresholds. Similarly, UNOC signed an MoU offering CNOOC rights to a particular oilfield, despite PD's desire to preserve its right to license the field openly in the future.[18]

This overview suggests that the capacity of government to operate relatively effectively rests as much on the informal relationships established within PEPD through a system of mentoring, career development and interpersonal relationships as with the formal rules. Problems have emerged where these informal rules have been disrupted, both by the formal separation of powers, but also the premature

[15] Interview with senior MEMD oil technocrat, 27 April 2018.
[16] Interview with leading oil technocrat, 10 November 2017.
[17] Interview with UNOC official, 19 October 2018.
[18] Interview with UNOC Official, 19 October 2018.

removal of a key player involved in formulating and enforcing rules (formal and informal) within the sector over the past two decades, due to shifting political settlement dynamics. We turn now to assess whether each new entity has received the political and technical support required to deliver on their respective mandates, with a particular focus on efforts to maintain pockets of effectiveness within the sector.

The Petroleum Directorate

> 'PEPD, as we speak today is almost non-existent.'[19]
>
> '… we have seen our senior colleagues crossing to UNOC and to PA, all those commissioners, have worked here for 15-16 years, have left the Ministry weaker … you can amputate an arm, a leg; but if you amputate the head, then how can you bring in investors? What will they regulate?'[20]

The Petroleum Directorate (PD) is led by a longstanding PEPD commissioner, who, having headed the proto-Policy Unit within PEPD prior to the reforms being implemented, was well prepared for the role. Although this continuity meant that PD has operated more effectively than would otherwise have been the case, the Ministry's organisational capacity within the oil sector has been significantly weakened since the new institutional arrangements, most obviously through the hemorrhaging of staff to the two new entities. An official memo reveals that, between mid-2016 and late 2018, PD lost over 30 permanent members of staff and over 40 contracted employees, with 37 joining PAU and 14 going to UNOC.[21] PD currently has 42 staff, less than half of those now employed by PAU. This is unsurprising, given that the salary differences between PD and the new entities are huge, in some cases by multiples of between 15 and 20; staff who were paid UGX700,000 per month at PD can earn UGX20m at PAU. Many employees at PAU earn more than officials of more senior standing at PD.

This shift of emphasis makes sense to some extent. The Ministry had already discharged one of its most significant policy functions through the establishment of the new legal framework itself and the move of Uganda's oil sector towards production inevitably shifts the focus to the regulatory and commercial functions. Nonetheless, new laws still need to be developed, including around the issue of downstream regulation, and PD remains responsible for other functions that are critical to the sector, including negotiating new licences with oil companies and developing further oilfields to attract new investment.

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[19] Interview with ex-PEPD official, now employed at UNOC, 19 October 2018.

[20] Interview with senior official within MEMD, 23 March 2018.

[21] PD memo entitled 'List of technical officers who have left the Directorate for other employment since mid-2016' (March 2018).

There are clear signs that PD is struggling to deliver on this mandate, in ways that are likely to cause significant problems for the sector. In relation to further exploration, for example:

> 'Where we had seven geophysicists now we have one, had seven geologists now only three, we had petroleum economists, they are not there, all gone. If we want to do resource evaluation of what is there, commercial and non-commercial, we don't have the people, the software, so we are getting more challenged.'[22]

This lack of capacity to undertake exploration in new basins matters in terms of the sustainability of the sector and the economic logic of current infrastructure investments. Uganda cannot attract new investment unless fresh rounds of exploration are undertaken, and it also needs greater flows of oil to ensure that the midstream pipeline and refinery projects constitute value-for-money investments.

PD has struggled to regenerate the level of human resource capacity it requires to perform effectively. Unlike PAU and UNOC, it has to use the traditional and very slow process of civil service recruitment. The Ministry of Finance's decision to grant votes to PAU and UNOC within the budgetary process has further exacerbated the growing inequalities, with PD officials forced to 'ask MoF for a supplementary of UGX2m just to pay for basic things, software etc.', whereas 'for PAU, UNOC they (just) give … PD can't get money for basics whilst PAU, UNOC get these huge per diems!'[23] In some cases, the new entities have simply disregarded PD's role, as with UNOC undertaking downstream activities (e.g. establishing a storage facility at Jinja), despite the fact that the Ministry has not as yet developed a regulatory policy for the downstream elements of the sector. The uneven capacities of the three new entities have made it very difficult for the proper sequencing of functions between them to be maintained, with former PEPD officials now working at the new entities complaining that they are being held back by the failure of PD to discharge their responsibilities in a timely and effective manner.[24]

PD has had to rely on ex-employees now working with PAU to discharge certain functions effectively, including negotiating new deals with IOCs. During the latest round of licensing in 2016-2017, the first to be undertaken by the new entities, two new oil exploration licences went to Oranto Petroleum International Ltd of Nigeria and one to Armour Energy Limited of Australia.[25] The bidding round was characterised by a lack of interest from major players, apparently deterred by the tough terms that government had established in its 2013 production sharing agreement, as well as lower oil prices. The government seems to have secured good

[22] Interview with senior MEMD oil technocrat, 23 March 2018.
[23] Interview with senior MEMD oil technocrat, 22 November 2018.
[24] Interview with ex-PEPD official, now employed at UNOC, 19 October 2018.

[25] The East African (2017), 'Nigerian, Australian firms get oil search licenses in Uganda', 14 September.

deals. According to one party to the deals, there was hardly any difference between the model agreement and the one that was actually signed with Oranto.[26] This is unsurprising, given that the Ngassa block carried little risk, having already been explored by Tullow, and that Oranto's bargaining power was weak compared to larger IOCs. Instructively, the process was undertaken when the longstanding permanent secretary was still in place and with capacity developed within PEPD: Kagagambe ensured that PAU supported PD to form a strong negotiating team made up of several ex-PEPD officials with extensive track records of negotiating with IOCs.

The Petroleum Authority of Uganda (PAU): The new PoE within Uganda's oil assemblage?

The head of Uganda's new regulatory body was also the last director of PEPD, and he has moved swiftly to establish PAU as the premier entity in the sector. By June 2018, PAU was on track to meet its staffing targets, which are phased in line with the projected requirements of the sector. The majority of staff were recruited from PEPD, including five of the seven-strong management team. All of PAU's budgetary requests to date have been met:

> 'The Ministry of Finance has been quite supportive. We now have a vote and we have the funds that we need to begin. We don't have to go through the PS (of MEMD) for this. So we set our own work plans and budgets. You can talk to Finance directly for your needs, for PAU, with ease.'[27]

PAU seems to be executing its mandate effectively, particularly in terms of the challenge of cost recovery. This an area within which resource-dependent countries can lose significant sums to international oil companies, particular in countries like Uganda that operate on the basis of production sharing agreements (PSAs), as failing to prevent oil companies from claiming ineligible or inflated expenses reduces the levels of 'profit oil' that governments can accrue (Hubert 2017). Regulating CNOOC, Total and Tullow effectively in this regard is therefore critical if Uganda is to reap the benefits of the favourable PSAs that it negotiated with them earlier this decade.[28] A recent report on cost recovery practices amongst IOCs in Uganda found 'substantial evidence' that all three IOCs had been 'seeking to claim costs that should be non-recoverable under the terms of the PSAs' (Hubert 2017: 24). Alert to this, the Ugandan authorities ensured that the new 2016 model PSA included new provisions designed to tighten their grip on the cost recovery process, particularly in terms of highly detailed reporting requirements.

PAU's performance on cost recovery looks impressive so far, although staff acknowledge that more equipment is required for them to fully regulate IOCs and oversee their activities. According to the permanent secretary of MEMD, the

[26] Interview with authors, 23 November 2018.
[27] Interview with leading oil technocrat, PAU, 22 November 2018.
[28] Interview with head of PEPD's interim regulatory department, 14 May 2015.

government has so far been able to ensure that, in the context of an overall investment of $1.35bn to date, the return to IOCs has been less than $1 per barrel.[29] The claim by the head of PAU that this rate of cost recovery '… is very good, compares well with anywhere',[30] is supported by independent expert analysis: 'Uganda's approach to cost recovery audits has been getting stronger over time and looks impressive when compared with its neighbours', including Tanzania and Kenya (Hubert 2017: 31). GoU has only approved those work programmes proposed by IOCs that it deemed necessary and has ensured that the costs for each project were benchmarked. It has also committed a significant staff presence in the field, to help ensure that only those activities that had been agreed were being done, and to the required standard. The Ministry of Energy has received strong support here from the Office of the Auditor General, itself supported by Norway, which took responsibility for auditing accounts submitted by IOCs in 2009. This success on cost recovery suggests a degree of continuity in the post-reform period, given that it flows from the same factors that underpinned Uganda's earlier successes: the strong commitment of Uganda's political leadership to take a tough stance with IOCs and the provisions set out in the new institutional arrangements alongside the bureaucratic capability gained within PEPD before the new arrangements came into play:

> 'We used to do cost recovery before, so we knew its importance. The Cost Recovery Department, they have five to six people. But the numbers are going to grow. If we need staff for something we can go to board and get them according to the need.'[31]

The Uganda National Oil Company (UNOC)

> 'The UNOC team is accused of being friends of the IOCs. They say they are not part of PAU and the ministry. As a result, you have dysfunctionalities internally.'[32]

The establishment of a new national oil company constituted the biggest institutional change within Uganda's oil assemblage during the reform period. Keen to inject some commercial experience into the sector, the president appointed an electrical engineer and business executive as the first CEO of UNOC in June 2016. Josephine Kasalamwa Wapakabulo is the daughter of a previous speaker of parliament in Uganda, a politician who was close to the president. She had already been brought into State House in the run-up to the 2016 elections to work with the president on projects that extended beyond the oil sector.[33] Although some senior officials within UNOC were ex-PEPD staff, many have international commercial experience,

[29] Conference on Oil Governance in Uganda, Sheraton Hotel, Kampala, 21 November 2018; both authors were in attendance.
[30] Interview, 22 November 2018.
[31] Interview with leading oil technocrat, PAU, 22 November 2018.
[32] Interview with ex-IOC official based in Uganda, 31 January 2019.
[33] UNOC's CEO resigned from her post on 13 May 2019, apparently at the request of the president, who was dissatisfied with the advice she had given him on which companies to make a deal with over the refinery project.

particularly those leading on the delivery of large infrastructural projects like the refinery and pipeline.

UNOC has rapidly established its presence in all aspects of oil production and distribution in Uganda. In November 2017, it was reported that 'the firm's shareholders approved top oil and gas projects involving exploration, refinery, pipeline, storage and management of the industrial park in Hoima for investment'.[34] As a holder of government stakes in the oil sector it has committed to taking up the percentage (minimum 15 per cent) reserved for the state in the sector's projects, as exemplified with its lead role on the refinery project, for which it has established the Uganda Refinery Holding Company. It has also commissioned the expansion of the national petroleum storage facility in Jinja and plans to build a new plant outside Kampala.

UNOC's flurry of activity is not fully mandated by the new regulations. According to one report 'UNOC wants to go into exploration with interests far above what has been prescribed by the law'.[35] It moved beyond its mandate when signing an MoU with CNOOC in September 2018 involving joint exploration of a sizeable offshore area within Lake Albert. This controversial decision took place without the authority of the PD, which has responsibility for awarding contracts, and was seen as tipping the balance of power between IOCs within the sector. However, it seems to have had the support of a president arguably keen to smooth over relations with the Chinese following what they saw as GoU favouritism for Total with regards Tullow's proposed farmdown of its assets.[36] Despite receiving high-level political and financial support, UNOC officials argue that they are being held back by the lack of commercial experience elsewhere within GoU's oil assemblage.[37] With particular reference to the 'bureaucratic mindset' of PAU and PD, UNOC has requested external support for training GoU officials in the commercial aspects of oil production.[38]

5. Capacity and commitment within Uganda's reformed oil assemblage: Towards a new generation of PoEs?

The case of Uganda does not fully support the claim that 'best-practice' oil governance reforms will tend to perform poorly in contexts where levels of state capacity and democratisation are relatively low (Thurber et al. 2011). Despite generating some serious problems, the relatively high levels of capacity and commitment that characterised Uganda's approach to oil governance prior to the new

[34] The East African (2017), 'Uganda oil firm to increase its shares in the upstream oil and gas business', 4 December.

[35] The East African (2017), 'Uganda oil firm to increase its shares in the upstream oil and gas business', 4 December.

[36] See our forthcoming companion paper on deal-making in Uganda's oil sector.

[37] Others have also noted a lack of human resource capacity beyond the upstream realm (Patey 2017: 5).

[38] Interview with senior MFPED advisor, 22 November 2018.

reforms being implemented have to some extent been retained. Part of the divergence here might result from the presumption in Thurber et al.'s account that 'best-practice' institutional arrangements have been largely promoted by external actors, which in turn undermines the incentive for domestic actors to ensure their implementation. However, Ugandan technocrats played a leading role in formulating and promoting the new arrangements, with both themselves and politicians alike buying into their logic at an early stage. This likely helped to ensure an easier transition period than might otherwise have been the case. Above all, though, we find that the performance of the oil sector has been shaped primarily by the ways in which the new institutional arrangements have converged with changing dynamics within Uganda's transnationalised political settlement, rather than as a result of the country's aggregate levels of state capacity or democratisation.

Where performance levels have remained high – as in the case of securing good deals in the last round of licensing, choosing an optimal route for the pipeline and holding IOCs to account in relation to their cost-recovery activities – it has been because the capacity and modes of governance established under PEPD have been maintained, albeit through different routes. This is most apparent in terms of the continuity of PEPD staff now working for the new regulatory authority and the close relationship that certain leading technocrats enjoy with the president, who has largely allowed them to operate autonomously, despite the stakes having been raised as Uganda moves closer to first oil. Informal institutions have played an important role here. The relationships and strong organisational culture that were built within PEPD in the decades prior to the reforms have helped the sector to navigate the bedding-in of new rules. The ex-PEPD staff who lead PD, PAU and also the Ministry, have drawn on these personal and professional working relationships to help deal with the ruptures generated by the new arrangements and identify informal fixes to help resolve various issues, thus enabling some semblance of continuity and coordination. In contrast to UNOC, both PAU and PD have actively sought to maintain a strong esprit de corps within their organisations. It seems highly unlikely that the process would have been handled anywhere near as well if it had not been for the prior investment in capacity building and development of an organisational culture within PEPD, a move that bequeathed the newly configured sector a highly capable and committed, if small, workforce around which to build the new entities.

The main problems that have occurred – as with the declining capacity of the Ministry to perform its role, the fragmentation of the sector and turf war between the new entities, the (geo)politicised decision-making around the refinery project and the continued failure to move to production – have been caused by the interaction of the new institutional arrangements with specific changing dynamics within Uganda's transnationalised political settlement. The inevitable fragmentation brought about by the establishment of new entities was badly exacerbated by the sacking of the country's most senior oil technocrat, a move directly shaped by factionalism within the ruling family. Despite maintaining formal mechanisms for coordinating the sector, the lack of a senior figure with the authority to convene the new range of players within Uganda's oil assemblage has undermined the coherence of oil governance. In the absence of strong oversight, a degree of turf warfare has emerged, involving the new regulatory and commercial entities, in ways that have sometimes led to the new rules being contravened. Uganda lacks the human resource capacity to fully staff all three entities and in this context the PoE-building strategy of incentivising the most talented staff to join the new regulatory and commercial entities has hollowed out the Petroleum Directorate and undermined its ability to either generate the new rules required to govern the downstream sector or undertake new exploration activities.

The role of PoEs has been central to this unfolding story. Table 1 sets out the extent to which Uganda has continued to invest in building high-performing pockets of effectiveness within the oil sector following the enforcement of the new institutional arrangements. PD is currently unable to effectively discharge some core functions: lacking the autonomy of the two new entities, it has become increasingly mired in the problems of most mainstream ministerial departments in Uganda's public sector. The head of PD has tried to maintain a sense of the esprit de corps developed within PEPD, providing regular career enhancement training and support for travel. However, such efforts have been constrained, given the reduced budget that PD now receives for training: maintaining a positive organisational culture is much harder in a context of declining resources and blatant inequalities within the sector. The introduction of very large salaries and per diems within the new entities has helped generate a 'grasping culture', which emphasises financial incentives above more ideological forms of commitment.[39]

Table 1: Identifying PoEs in Uganda's oil sector[40]

PoE characteristics and performance	**PD (policy)**	**PAU (regulator)**	**UNOC (commercial)**
Political support and protection	✖	✔	✔
Organisational capacity	✖	✔	✔
Autonomy and differential pay	✖	✔	✔
Leadership, organisational culture	✔	✔	✖
Performance against mandate	✔ Deals ✖ Exploration, Policy	✔ Cost recovery	**?**

[39] Interview with senior official within MEMD, 22 November 2018.
[40] The criteria for identifying a PoE in the left-hand column are drawn primarily from Roll (2014).

Both PAU and UNOC share many features of a PoE, particularly in terms of being highly rewarded and autonomous enclaves with clear mandates and politically connected leaders (Roll 2014). However, and unlike PAU, UNOC has not sought to replicate the positive organisational culture institutionalised within PEPD. According to insiders, UNOC's leadership is far less hands-on and staff meetings are not used to empower more junior staff to have genuine inputs. For one ex-PEPD official now working with UNOC,

> 'The PEPD culture has left PEPD and has gone to the Authority. The times he (the head of PAU) calls me … to update me on stuff that we used to work on, my boss (of UNOC) doesn't, she doesn't. She always travels, she travels a lot. Little contact. The executive team wants to do everything, without us. This is top-down that was down-up. I told them I don't like this I can't innovate'[41]

PAU's mission arguably helps here: its mandate to protect the national interest through regulating IOCs is well aligned with a strategy of building a culture of performance based around patriotic imperatives.

Somewhat predictably, the new arrangements have meant that Uganda's oil assemblage is now experiencing a culture clash between the older civil service traditions that stood it in good stead during the exploration phase and the commercial realities of moving towards production, with regular battles between PAU and UNOC. This aligns with the wider tension between a resource nationalist and more neoliberal approach to oil governance that also characterises relations between GoU and IOCs, with oil companies blaming PAU for being over-zealous in its pursuit of the national interest:

> 'You get a sense that people want to feel that they are tough, patriotic but yet their actions are hurting the planned projects that are intended to benefit the country … you also have a situation where they feel they need to micro-manage each and everything. As a result, you have lengthy and heavy processes that delay each and everything.'[42]

From this perspective, the re-emergence of a PoE in the oil sector in the form of the regulator may have come at the cost of moving towards first oil.

6. Conclusion

Although Uganda's new institutional arrangements for governing oil remain a work in progress, there are already some identifiable trends. Bureaucrats remain largely empowered to undertake most of their duties without political interference and to pursue largely technocratic modes of governance and decision-making. The new rules are largely being operationalised and enforced; the three new entities have

[41] Interview with UNOC official, 19 October 2018.
[42] Interview with ex-IOC official based in Uganda, 31 January 2019.

been established and each has gone at least some way to performing the key tasks associated with their mandates, although the process has led to capacity being spread too thinly across the new entities, in ways that have directly undermined the performance of certain critical functions. In important respects, though, the changing dynamics of Uganda's increasingly vulnerable, populist and fragmented political settlement have undermined the quality of oil governance. Intense in-fighting amongst senior members of the ruling coalition over rents in the energy sector have made it very difficult to maintain a coordinated and long-term approach within the oil assemblage. An important feature of this internal factionalism is that the president is frequently subjected to contradictory briefings as a result of the competing interests of actors within his inner circle.[43] As one observer notes, 'Museveni does not have the time or capacity. He is also being fed disinformation.'[44] The transnational dimensions of both the oil assemblage and Uganda's politics of regime survival, informed by a strategic repositioning with regards to Uganda's relationship with China and the United States, also played a critical role here, undermining the quality of decision-making around the refinery. Serious challenges remain here and there is a pressing need to ensure a more balanced approach to building the capacity of the three key entities within Uganda's oil assemblage, to enable PD to deliver on its mandate, and a much stronger focus on strengthening coordination mechanisms across the sector.

We find that specific pockets of bureaucratic effectiveness matter more than overall levels of state capacity in shaping the quality of oil governance under best-practice arrangements, and that informal institutions often matter more than the formal rules (cf. Thurber et al, 2011). Where things are working out well, they are as a direct result of the symbiotic relationship between a strong and developmental leader and high-capacity bureaucrats achieved with international support under the dominant developmental phase of Uganda's political settlement from the mid-1980s through to the early/mid-2000s. The political effort to ensure that at least one new PoE emerges within Uganda's reconfigured oil assemblage during the same period within which the country's other PoEs have been undermined is intriguing. That this is progressing most clearly with the regulatory rather than the commercial entity might suggest an ideological commitment to governing oil in the national interest in line with a resource nationalist approach. However, any final judgement on this in advance of oil production would be premature: experience from elsewhere in Africa suggests that oil sector PoEs can sustain a politics of predatory patronage as readily as a politics of national development (Soares de Oliveira 2007).

[43] Interviews with key informants, November 2018.
[44] Interview with senior foreign diplomat in Kampala, 21 November 2018.

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Effective States and Inclusive Development Research Centre (ESID)
Global Development Institute, School of Environment, Education and Development,
The University of Manchester, Oxford Road,
Manchester M13 9PL, UK
www.effective-states.org