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ESID Working Paper No. 48

The political settlement and oil in Uganda

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March, 2015

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ISBN: 978-1-908749-48-2

Abstract

The capacity and commitment of Uganda to govern its oil in developmental ways has generally been discussed through a 'new institutionalist' prism that focuses on the dangers of the 'resource curse'. This paper argues that the developmental potential of oil in Uganda can be more insightfully understood through a political settlements framework which goes beyond a focus on institutional form to examine deeper forms of politics, power and ideas. Drawing on in-depth primary research, we focus in particular on the extent to which the interplay of interests and ideas within the ruling coalition in Uganda has enabled it to protect its national interest during negotiations with international oil companies. However, our reading of the underlying dynamics within Uganda's political settlement suggests that the impressive levels of elite commitment and bureaucratic capacity displayed to date are unlikely to withstand the intensified pressures that will accompany the commencement of oil flows.

Keywords:

oil, Uganda, political settlement, state capacity, elite commitment

Hickey, S., Bukenya, B., Izama, A. and Kizito, W. (2015). The political settlement and oil in Uganda. *ESID Working Paper No. 48*. Manchester, UK: University of Manchester. Available at www.effective-states.org

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Abbreviations

CNOOC	China National Offshore Oil Corporation
GDP	Gross domestic product
GoU	Government of Uganda
IOC	International Oil Company
KBPD	Thousand barrels (of oil) per day
MEMD	Ministry of Energy and Mineral Development
MOU	Memorandum of Understanding
NOGP	National Oil and Gas Policy
NRM	National Resistance Movement
PEPD	Petroleum Exploration and Production Department
PFOG	Parliamentary Forum on Oil and Gas
PSA	Production Sharing Agreement

1. Introduction

1.1 Understanding the politics of oil in Africa: beyond the resource curse

Most analyses of Africa's natural resource boom have tended to focus on whether countries will be able to avoid the economic and political dimensions of the 'resource curse' (Ross 2012), including the contracting of 'Dutch disease' and the apparent tendency of oil wealth to support patronage-based and undemocratic forms of rule. Inspired mainly by the new institutionalist thinking that historically underpinned the 'good governance' agenda within international development, such lines of enquiry tend to produce standard recipes for how countries can avoid the resource curse, particularly in terms of adopting best-practice type institutions of the kind that have been seen to work well in more democratic countries. The same tendency is apparent within recent studies of oil in Uganda (Batageka and Matovu 2011, Collier 2011, De Kock and Sturman 2012, Sheperd 2013). We argue that it might be more useful to avoid according 'oil' a specific sense of political agency that is somehow independent of contextual factors (Watts 2012) and go beyond an obsession with institutional form to focus instead on the deeper forms of politics and power relations that underpin institutional performance.

The value of this approach to understanding the politics of natural resource governance in Africa has already been demonstrated by Amy Poteete, whose research challenges the mainstream argument that Botswana has been largely able to avoid the resource curse regarding its diamond wealth, due to the character of the country's institutional arrangements (Robinson et al. 2003). Poteete argues that: "Behind policies, institutions, and state building lie political coalitions" (2009: 455-456), and shows how the nature of the ruling coalition at the moment when natural resources were discovered was much more significant than levels of either institutional capacity or democracy per se, neither of which were entrenched at the critical time in Botswana.

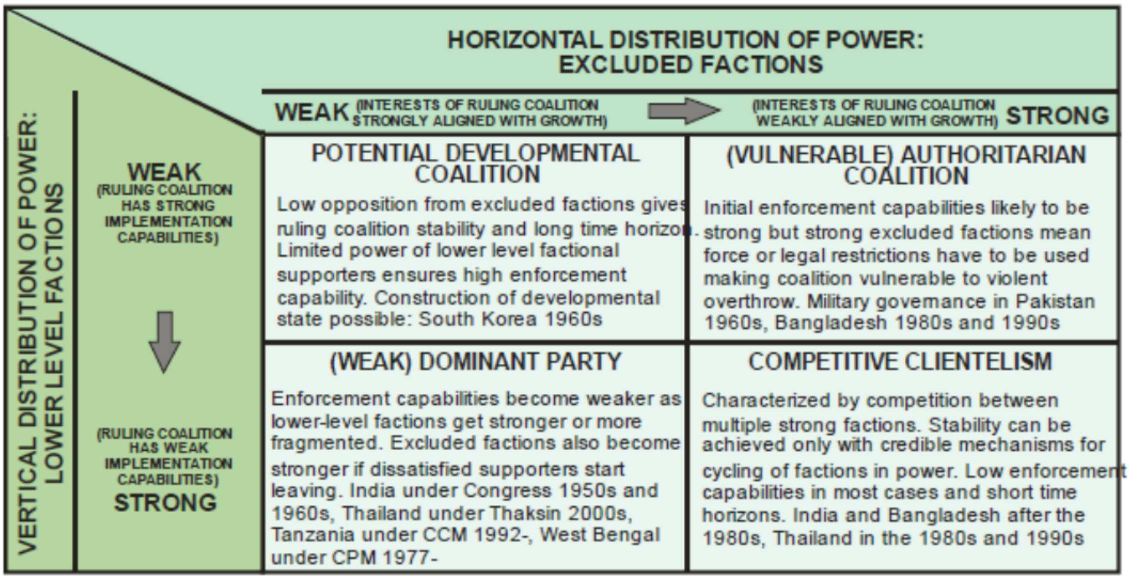
This focus on the political coalitions which shape the emergence and performance of institutions forms part of a wider theoretical challenge to new institutionalist thinking, within which the notion of 'political settlements' plays a prominent role.[1] A political settlement refers to "the balance or distribution of power between contending social groups and social classes, on which any state is based" (di John and Putzel, 2009: 4), which is arrived at initially through a process of struggle and bargaining between elite groups. Within any political settlement, the organisation of the ruling coalition is critical, particularly in terms of the 'horizontal' and 'vertical' power of different groups, whereby horizontal power refers to the capacities of groups excluded from the coalition and vertical power refers to the power of lower-level factions which support the ruling coalition from within. For Khan,

[1] This new move comprises both a rethinking of new institutionalism from within, as with the new focus on politics within the work of Acemoglu and Robinson (2012) and North, Wallis and Weingast (2009), and from long-standing critics (e.g. Khan 2010).

> These dimensions are important for understanding the likely time horizon of the ruling coalition and its implementation capacities. These 'political' differences may be more important than differences in formal political institutions (2010: 64).

In terms of horizontal power, "If excluded coalitions are weak, the ruling coalition is likely to feel secure and act with a longer time horizon. This means that the interests of the ruling coalition are more likely to be aligned with growth and development" (op.cit). However, if they are strong, this is likely to reduce the time horizons of the ruling coalition and incentivise short-term moves to retain power. In terms of vertical inclusion, "The greater the relative power of higher over lower levels within the ruling coalition, the greater the implementation and enforcement capacities of the coalition" (Khan 2010: 65). This flows from "the pyramidal structure of patron-client organizations", which means that "the more powerful lower level factions become, the greater the number of points at which the enforcement of particular rules can be blocked." As such, the highest levels of state capacity for development should be found where there are weak levels of horizontal and vertical power in relation to the ruling coalition.

Figure 1.Different types of political settlement



Source: Khan (2010: 65).

As we show below, this form of analysis is particularly helpful for generating insights into the ways in which the underlying configuration of power shapes the national-level incentives to which political elites respond when it comes to governing resources. However, this perspective tends to underplay at least three other forms and dimensions of politics that are significant in shaping the developmental capacity and commitment of governments, namely: the role of transnational and local as well as national actors; the extent to which ideas as well as incentives can shape political behaviour; and also the ways in which the tendencies that flow from political settlements become refracted in different ways through the coalitions and governance arrangements that form within specific sectoral or policy domains.[2] As Michael Watts (2004, 2012) has shown, these dimensions are particularly important in shaping oil governance, whereby the presence of abundant natural resources leads to new sets of governance relationships between actors at multiple scales, in ways which actively reshape the political imaginaries of elite and popular actors alike, particularly around notions of 'modernity', 'development' and 'sovereignty' (also Ferguson 2006). Watts (2012) shows how these relationships and flows coalesce around the 'oil assemblage', or 'a regime of accumulation and a mode of regulation…with particular properties, actors, networks, governance structures, institutions, and organizations' (440-441), which involves 'a variety of actors, agents, and processes that give shape to our contemporary iteration of hydrocarbon capitalism' (442-443). This includes major oil companies, politicians, technocrats, oil communities, the military, and civil society organisations. It is within this assemblage that new alliances and coalitions are formed, such as between oil companies and political powers at national and local levels, in ways that reflect and reshape both the broader political settlement and political ideas around sovereignty, rights and development. This need to emphasise the role of ideas and the spatiality of governance arrangements involved in struggles over natural resource governance[3] resonates strongly with recent work on the 'negotiated' character of statehood in Africa, [4] whereby both long-term processes of state formation and everyday governance processes in Africa are intensely transnationalised and localised, and involve discursive as well as material efforts to build legitimacy for specific political projects.

This literature provides a strong rationale for exploring the ways in which the political settlement and dominant ideas shape the governance of oil over multiple scales and, in doing so, recast debates over oil in Africa in relation to deeper forms of politics and power relations than has hitherto occurred within contemporary debates over 'good governance'. The next section sets out the interplay of incentives and ideas which we take to constitute the broad political settlement in Uganda before describing the emergence of its oil assemblage. We then draw on primary research to explore how the politics of oil is unfolding in Uganda, with a particular focus on the nature of contracts and agreements drawn up between the government and oil companies, and conclude by considering the likely developmental capacity and commitment of Uganda to governing oil in the national interest, once oil actually starts to flow. Our evidence is drawn from interviews with key players within Uganda's oil assemblage, including politicians, bureaucrats, oil company representatives and civil society actors, as well as documentary evidence. Names are not used and direct quotations are attributed in a general manner intended to prevent the identification of sources. Data was collected during a series of research trips to Uganda over 2013 and 2014 by the first author and over a longer and more sustained period by the second, who works as an energy journalist based in Kampala.

[2] See Hickey et al. (2015) (Introduction) for an elaboration of this critique of a standard political settlements approach
[3] Also see Bebbington (2015) on this.
[4] Hagmannand Peclard (2010).

1.2 The dynamics of Uganda's political settlement

Since around 2000, Uganda's political settlement seems to have been in transition from what Khan terms a largely 'developmental coalition' to a 'weak dominant party' settlement, involving power accruing both horizontally and vertically vis-a-vis the ruling coalition, in ways that have reduced the extent to which the government is capable of forming and implementing a long-term vision for development.[5] On arriving to power in 1986, the National Resistance Movement (NRM) under President Yoweri Museveni sought to establish a broad-based ruling coalition which incorporated representatives of all dominant groups, with the significant exception of the north (Lindemann 2011). This incorporation of most elite factions, along with the fact that a decade of conflict and state decay had reduced the economic and organisational capacities of most social and economic groups in Uganda, meant that the ruling coalition faced few obstacles to undertaking significant economic reforms (Dijkstra and van Donge 2001). The macroeconomic stability, and significant levels of growth achieved by Uganda over the late 1990s and 2000s, reflected the NRM's ability to establish order through processes of elite bargaining across most of Uganda, with the obvious exception of the northern region, but also the formation of a lower-level policy coalition. This involved an internal deal between the President and leading technocrats, whereby 'islands of effectiveness' were built through high levels of donor assistance within the Ministry of Finance, Planning and Economic Development and the Bank of Uganda (Mosley 2012). This capacity to establish and maintain the conditions for growth also required a commitment from the President to protect this economic technocracy, within a wider context within which economic reform processes such as privatisation were also being used to strengthen particular alliances within the business community and reward highly connected political elites, including senior politicians and army officers (Mwenda and Tangri 2005). Following the global transition from the Washington to a Post-Washington Consensus, and the rise of the poverty agenda in the late 1990s, this 'pro-growth coalition' was extended into a 'pro-poor' and tripartite coalition of donors, civil society organisations and government, which, underwritten by the President's apparently ideological commitment to development, secured a pro-poor focus within government expenditure via Uganda's 'homegrown' Poverty Eradication Action Plan (Hickey 2005).

However, the relationships and political conditions that underpinned both the ruling coalition and these policy-level coalitions would become progressively undermined from the early 2000s onwards. In terms of the ruling coalition, a factional split within the NRM led to the acrimonious departure of some influential NRM actors, who then formed an opposition force (the Forum for Democratic Change) which mounted credible challenges in the 2001 and 2006 elections. Although the FDC was soundly defeated in the 2011 elections, there have since been a number of further high-profile exits from the ruling coalition, most recently the ex-Vice President in 2011 and the Prime Minister in September 2014. With the possible exception of the disputed 2006 elections, excluded elites in Uganda have struggled to either form the horizontal

[5] See Golooba-Mutebi and Hickey (2013) for a fuller account of the ruling coalition in Uganda.

alliances amongst themselves or to mobilise the popular support required to generate a coalition capable of challenging NRM incumbency. Nonetheless, their presence influences the strategies and form that the ruling coalition adopts, with one response to elite-exit being a narrowing of the 'coalitional core' upon which the President relies to rule and, as discussed in the next paragraph, increasingly populist moves to capture the loyalty of subordinate groups and so remove the potential support base available to excluded elites. The President operates through an inner and outer circle within his ruling coalition, with only the former able to influence decision-making in strategic areas (Golooba-Mutebi and Hickey 2013). This inner circle, consisting of certain family and party members, military actors, leading bureaucrats and a few others, has reflected an increasing bias towards those from the President's own ethnic group and region as the perceived level of threat from excluded elites has grown (Lindemann 2011).

The return of multi-party elections and the lifting of presidential term limits in 2005-06 significantly altered both the nature of vertical power in Uganda, with deepening competitive pressures helping to increase the significance and influence of lower-level factions within the ruling coalition. Always aware of the extent to which his popularity and electoral fortunes are closely tied to the rural poor, successive elections since 1996 have been used by the President to make populist appeals to this base through increasingly high levels of social expenditure, particularly on education and health. More recently, Museveni has sought to deepen the extent and loyalty of his network on the ground, through appointing Deputy Resident District Commissioners, making payments to local councillors whilst protecting them from electoral competition, or directly reaching out to poor people and communities through his 'anti-poverty tours'. An important effect of these strategies to secure regime survival and legitimacy has been a further politicisation of the bureaucracy and a tendency towards 'inflationary patronage' (Barkan 2011, Kjaer and Katusiimeh 2012). This latter was particularly apparent at the 2011 elections: after the backlash that greeted Museveni's repressive approach to the opposition in the 2006 elections, the perceived need to win the next elections through non-violent means saw the regime expend huge amounts of budgetary resources in pursuit of re-election (Izama 2011). These tendencies are already intensifying ahead of the forthcoming 2016 elections, which provide the political context within which deals around oil are being negotiated, with the President manoeuvring to ensure both that a credible challenge does not emerge from within and that lower-level popularity is secured. These dynamics seem to have catalysed what one observer called a 'gold rush', particularly amongst old-guard members of the 'super-elite' or 'ruling families', who are frantically seeking to secure a soft financial landing by capturing rents, with the energy and oil sectors prime candidates for such efforts.

These changing dynamics within Uganda's political settlement since the mid-2000s, along with important changes in the country's broader geopolitical context that occurred at the same time – namely the discovery of commercial levels of oil and the entry of new geopolitical players such as China – have also significantly altered the composition and influence of the tripartite policy coalition, which had hitherto dominated development policy. The Presidential preference for populist modes of service delivery ahead of the onerous task of building public institutions has further politicised the bureaucracy, and there are growing signs that erstwhile ‘islands of effectiveness’ are being undermined, in part as a result of the need to finance the increasingly expensive patronage machine. Civil society organisations, credited with bringing the voices of the poor within government policy processes, have found themselves with less room for manoeuvre under multi-partyism, with the regime increasingly hostile to any activities that might be deemed ‘oppositional’. Lastly, international donors have also suffered a significant decline in influence since the mid-2000s, the point at which Uganda graduated from debt, discovered commercial levels of oil and became a signatory to the broader Sino-Africa Pact. By 2010, China had become the biggest single investor in Uganda. Capitalists from China, but also other emerging powers, have become increasingly involved in often highly secretive negotiations with the government around major contracts, particularly but not only in the transport and energy sectors.

As has occurred elsewhere in Africa (Carmody 2009, Taylor 2014), these new geopolitical configurations and economic opportunities have catalysed an ideological shift, with the government promoting an increasingly muscular form of ‘economic nationalism’ alongside the neoliberal forms of economic management that have largely prevailed since the early 1990s. The advent of oil seems to have re-energised Museveni’s political imagination concerning his developmental ambitions for Uganda. Although this shift may have a tactical geopolitical element, in that it fits the ideological orientation and investment priorities of Uganda’s new economic partners, this can be read as an ideological rather than purely strategic shift, in that it involves Museveni returning to his long-standing ideological attachment to development as a process structural transformation (Hickey 2013).

Uganda’s shift from a largely ‘developmental coalition’ to a ‘weak dominant party’ political settlement has generally weakened its capacity and commitment to delivering development, particularly in terms of the increasingly short-term pressures being exerted on the ruling coalition and the capacity of bureaucratic agencies to perform their roles effectively. Although this would seem to augur badly for the developmental prospects of oil, there are also signs that the presence of oil has re-ignited a nationalist desire to promote development, within a new configuration of national-transnational power relations. The aim of this paper is to explore more closely the interplay of these different incentives and ideas within Uganda and how they are shaping the governance of oil to date.

2. Oil in Uganda: the basics

2.1 The materiality of oil in Uganda

Although oil was identified within Uganda in the 1920s, it was not until 2006 that major deposits were discovered. Uganda’s estimated petroleum reserve capacity is currently 6.5 billion barrels, of which 1.4 billion barrels are projected to be recoverable.[6] Current supplies are expected to be exhausted by around 2040, although as these estimates are based on an exploration of less than 40 percent of the Albertine Graben, this may increase further.[7] The blocks in the Albertine Graben in western Uganda were initially jointly licensed to Anglo-Canadian, Heritage Oil and the Anglo-Irish company, Tullow Oil. Heritage sold their stake to Tullow for US$ 1.5 billion, after which Tullow brought in investment from two bigger players, Total and the China National Offshore Oil Corporation (CNOOC), each of which agreed in 2011 to pay US$ 1.45bn to split the area three ways (Vokes 2012; Wass and Musiime 2013). Of the ten exploration areas in the Albertine Graben (see map in Figure 2), the government has licensed five of them to oil exploration companies.[8] Around 14,000 sq. km remains unlicensed (Wass and Musiime 2013), with the Ministry of Energy currently (as of early 2015) seeking to award production licences for the remaining discovery areas (MEMD, 2014).

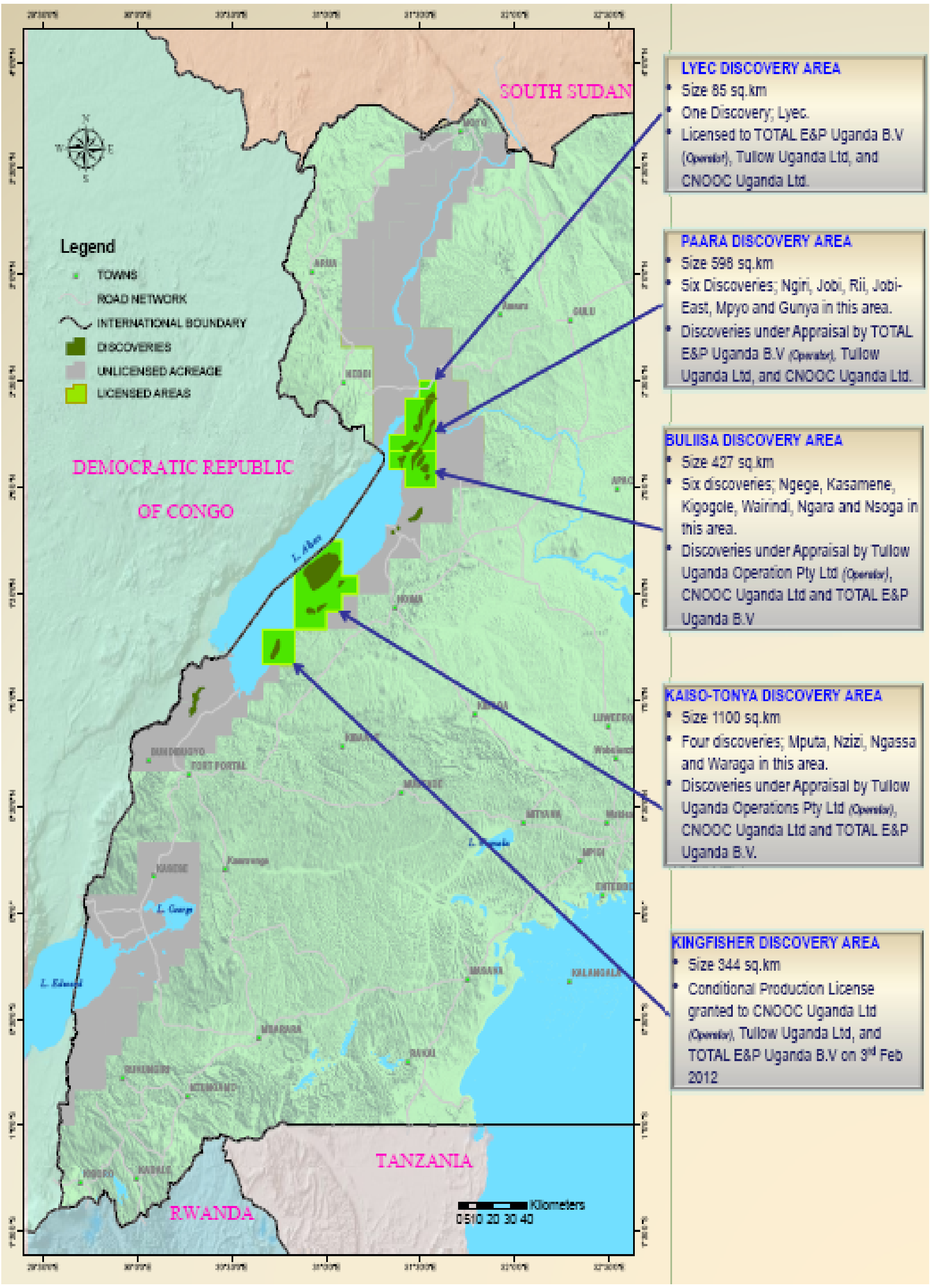
Oil is unlikely to start flowing until around 2018. Original estimates suggested that if it is extracted at its estimated peak of over 100,000 barrels per day at current prices, "revenues are likely to be in the order of US$2 billion per year (around 12 percent of GDP)" (Vokes, 2012: 1), although such estimates have since been downgraded to around 6 percent of gross domestic product (GDP). Whilst this remains a significant contribution to the country's finances, and could potentially replace a good deal of aid money (currently around 11 percent of GDP), it seems unlikely that Uganda will be reconstituted as a new petro-state along the lines of Nigeria (which has 37 billion barrels) or even Angola (with nearly 8 billion barrels of recoverable oil).

[6] From an article on PEPD website: 'Uganda's petroleum resources increase to 6.5 billion barrels oil in place', dated 28 August 2014 (www.petroleum.go.ug; accessed 21 October 2014).

[7] Uganda's oil is potentially present in four basins, namely, Albertine Graben, and the basins of Hoima, Lake Kyoga, and Kadam-Moroto; but the main focus of the current exploration is in the first of these.

[8] From north to south: Lyec 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, who have been granted their Field Development Plan (FDP) (Independent, 2014).

Figure 2. Status of licensing map

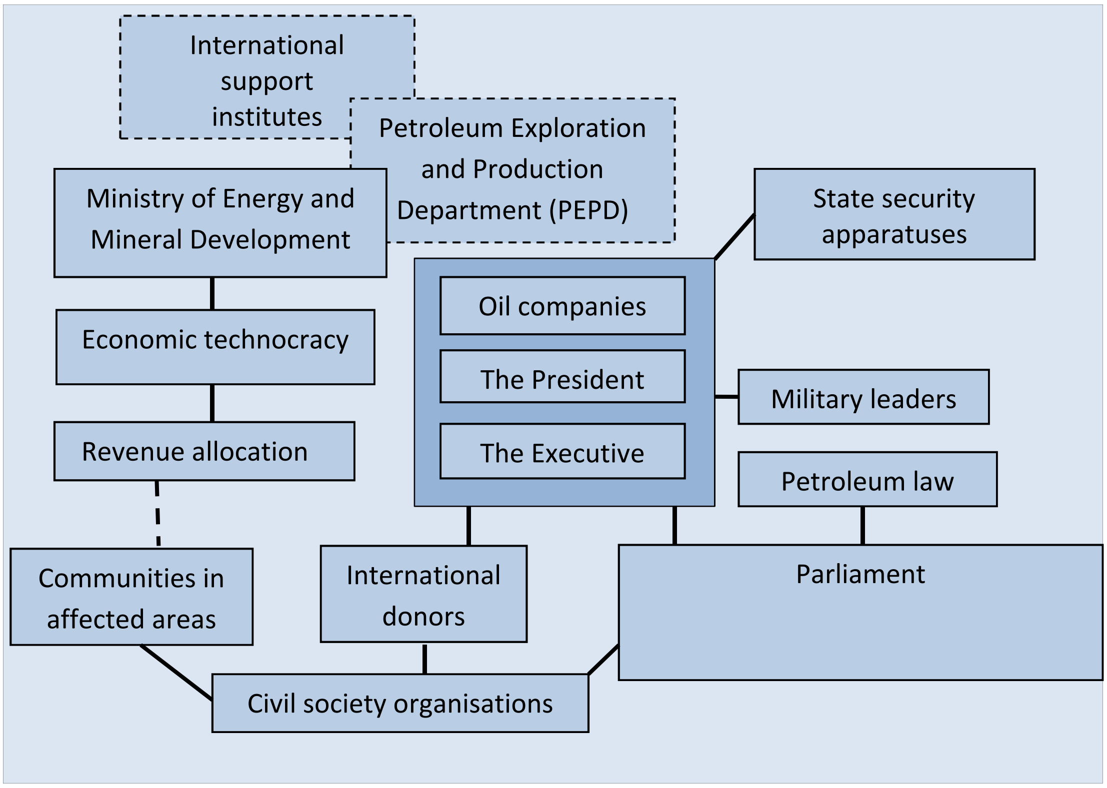


2.2 The oil assemblage: key actors and governance arrangements

The key actors within Uganda's oil assemblage comprise the President and some military leaders, various government agencies, international oil companies, international donor agencies, parliament and civil society (see Figure 3). The relative power of these actors vis-a-vis the ruling coalition helps explain the nature of negotiations over oil governance in Uganda to date. Unsurprisingly, the President has played a key role in all dimensions of oil governance to date, from identifying suitable partners to work with and negotiating contracts with them, to setting out a strategy for distributing oil revenue. Key ministers and technocrats from within the Ministries of Energy and Mineral Development (MEMD) and Finance are involved, along with the Bank of Uganda and Uganda Revenue Authority. Within MEMD, the primary agency involved in Uganda's oil sector is the Petroleum Exploration and Production Department (PEPD). PEPD was established in the mid-1980s, when it became clear to GoU that it had oil reserves worthy of investment, with a mandate to establish and promote the country's petroleum potential. PEPD has earned the respect of many observers and stakeholders for its high level of capacity, particularly concerning its well-trained staff, all of whom have trained to postgraduate level, mainly as geologists. As discussed below, the interplay between the President and PEPD has been a key part of Uganda's oil trajectory to date.

Both parliament and civil society became increasingly mobilised around oil once commercial quantities of oil were discovered. Civil society actors supported parliamentarians to form the Parliamentary Forum on Oil and Gas, a pressure group of legislators advocating for greater transparency in the sector. The late 2000s also saw the formation of groups like Civil Society Coalition on Oil and Gas, and Uganda Oil Watch Network, which have advocated for greater transparency and accountability amongst GoU and oil companies and sought to shape the passing of oil-related legislation (Van Alstine et al. 2014). In terms of legislative arrangements, the government adopted the National Oil and Gas Policy (NOGP) in 2008, which obligated it to enact enabling laws that moved beyond the provisions of the earlier Petroleum (Exploration and Production) Act of 1985. In 2012, two bills were finalised in parliament: the Petroleum Exploration, Development and Production (or Upstream) Bill; and the Petroleum Refining, Gas Processing and Conversion Transportation and Storage (or Midstream) Bill, both of which were signed in 2013. The Public Finance Management Bill, which consolidated existing public finance management laws and addressing the management of oil revenues, was passed in November 2014. As discussed in the next section, the process of formulating and implementing these arrangements has been highly revealing of how the political settlement influences institutional performance.

Figure 3. Uganda's oil assemblage



Source: adapted from Watts (2004).

3. How is the political settlement in Uganda shaping and being reshaped by oil?

3.1 Introduction

There is clear evidence that the governance of oil in Uganda to date has reflected the worst tendencies within its political settlement, particularly the ways in which the process is dominated by key actors from within the ruling coalition, who negotiate with rentier oil companies in a highly secretive manner, show scant regard for issues of transparency, oversight and accountability, and adopt a repressive approach to those who oppose its plans and activities in the sector at both local or national levels. The President has taken a direct and prominent role throughout the process, claiming the resource as 'my oil' and entreating citizens to entrust him (rather than government institutions) to manage it effectively. Pre-empting the prediction that "…where oil reigns supreme, the military are sure to follow" (Watts 2004: 200), and reflecting the fact that the military played a key role in establishing security in Uganda and remains a critical player within the ruling coalition, the President has directly involved the military. Whereas there was no discussion of oil in the Cabinet until 2010 (de Vibe 2013), military high command has been consulted and briefed throughout the process and had access to the first round of production-sharing agreements long before they were lodged with Parliament. An effort to securitise oil is apparent within Uganda's first "Foreign Policy Review", undertaken in 2013 by the Ministry of Foreign Affairs, which included a call to classify oil as a 'strategic resource', a move that would place it under the control of the presidency and the military high command. The military has also been deployed within the oil-producing regions:

> Near Kingfisher, there is a huge land issue, you have a military attachment, and UPDF pushing for a bigger base there. Last month they evicted around 60,000 people in Hoima. This is putting them in control. They have a Special Oil Protection Unit, like a political and intelligence as well as security arm. They collect intelligence at a very local level, monitor local councillors and their involvement in oil issues at the local level, including who's talking to who like CSOs (interview with leading oil journalist, 8 November 2013).

Lucrative security contracts around oil installations have been handed to a company associated with the President's brother, while his son commands the Special Forces unit overseeing security in oil exploration areas.

Charges of high-level corruption against leading members of government involved in oil negotiations have gone unpunished,[9] and the government has been reluctant to enable oversight bodies to engage in the process, both refusing to become a signatory to the Extractive Industries Transparency Initiative and repressing civil society activities in the sector. Civil society actors and parliamentarians were able to exert a considerable influence over elements of the 2013 legislative arrangements on oil, forcing the President to spend considerable amounts of energy and political capital in seeking to retain key elements of the Upstream Bill in particular (de Vibe 2013). However, the President was ultimately successful in ensuring that the Executive branch would maintain control over key aspects of oil governance, and has subsequently taken effective steps to neutralise the most challenging actors from civil and political society. In short, much of what has unfolded reflects the predictions of political settlements analysis, which takes it as axiomatic that powerful actors within the ruling coalition will seek to ensure that institutions distribute resources in their interest and will be immune from prosecution for as long as they play an important role in securing the regime's longevity.

However, we also find compelling evidence that Uganda possesses relatively high levels of state capacity and elite commitment to govern oil in the national interest. This is particularly apparent in terms of its systematic efforts to explore, map and market its oil from the late 1980s onwards and, above all, the securing of deals with reputable oil companies that seem to be more advantageous to government than many others signed in Africa. We argue here that these achievements directly reflect the dominant leader form of political settlement in Uganda, in terms of the space this

[9] The main case involved charges of corruption made in 2011 against the Minister for Foreign Affairs, and the then Prime Minister and Minister of Energy, all powerful players both within the ruling coalition and with regards to oil negotiations. All were subsequently cleared by a parliamentary investigation, although a minority report argued that the investigation was compromised by the fact that it did not uncover any new data, but relied instead on evidence generated by the same ministries under the control of those charged.

offers for longer-term vision to emerge and be pursued, and also a concerted effort to overcome some of the pressures that the settlement is under, in both horizontal and vertical directions. As discussed below, the key strategies employed by Museveni have involved a deliberate centralisation of access to oil-related rents, the protection and promotion of an 'island of effectiveness' within the oil sector of the civil service, and an apparent reluctance to play to lower-level factions, in terms of promising a populist redistribution of oil wealth via social expenditures. Nonetheless, it is important not to overstate these positive findings, which are specific to a particular set of relationships and arrangements within the oil assemblage. Given the political settlement tendencies identified above, and the fact that Uganda has yet to experience the challenge of actually managing and distributing flows of oil wealth, it would be unwise to predict too positive a future for oil governance in Uganda.

3.2 Negotiating with oil companies

The government's approach to negotiating with international oil companies (IOCs) to date reveals a concerted effort to protect and promote Uganda's national interest. Most negotiations have taken place at State House and involved only powerful players from the President's inner circle and selected players from the oil assemblage. By 2013, the range of those involved had narrowed further as a result of two corruption scandals, the first involving charges that Cabinet ministers involved in negotiations were involved in taking bribes from oil companies (New Vision 2013). The second case involved two Chinese companies allegedly bribing senior public officials and family members of the ruling coalition in pursuit of the contract for constructing Karuma dam, Uganda's largest hydropower project. Once this bidding war became public knowledge and was subject to investigation by the Inspector General of Government, both the President and Chinese ambassador took steps to rein in the actors involved. According to one observer of energy politics in Uganda:

> …the Chinese ambassador called a time out, and set down rules for how their companies should operate, to determine which firms would be able to bid where there was competition. So one got Karuma, the other got Simba: this was possible because of the control exerted over government-owned companies…their (the Embassy's) anger was around how the process had been discredited and got too public. There has now been a retraction and a change in operating style. They now get ground rules in place first. Less public. The ambassador is the official clearing house for deals (interview with first author, November 2013).

After this episode, one Chinese embassy official stated that from now on "we deal only with the President". Likewise, the President has sought to cut out the type of 'middlemen' involved in this episode, with only one close family member now empowered to explore options with different companies in advance and a smaller ministerial team involved in oil negotiations in a bid to centralise rent-seeking behaviour in line with a strategy of 'developmental patrimonialism' (Kelsall 2013).

This approach seems to have paid dividends in terms of the outcomes of negotiations. Our interviews with close observers and participants in the process indicate that GoU has been able to secure very good terms for the country in terms of the production sharing agreement (PSA) with Tullow of 2012, the farm-down to CNOOC and Total and the more recent Memorandum of Understanding between GoU and all three companies that was signed in February 2014. With reference to the PSA with Tullow, one oil company source told us that:

> Government of Uganda's revenue share is one of the highest in Africa – see IMF report on that. Uganda's cost recovery is 80 percent per barrel, but it is only 60 percent in Ghana. We have very small profit margins here. GoU VAT imposition is impossible in this context (it) will add $4bn to a $22bn deal (interview, November 2013).

The government's success in protecting the national interest in these negotiations (cf. PLATFORM 2010), is supported by research undertaken by at least three different organisations, including the International Monetary Fund, an independent consulting agency from Nassau (which, in its comparison of production- sharing agreements across a range of countries, found those secured in Uganda to be amongst those most heavily weighted in the government interest) and most recently the civil society organization, Global Witness (2014). Our research suggests that there are two key reasons for this, namely, bureaucratic capacity and presidential commitment. According to a senior oil technocrat, the head of Heritage oil at one stage in the negotiations turned to the executive and said "Mr President you have a very tough team," with reference to oil ministry officials and their legal team (interview, April 2014), whilst oil company officials involved in the current round of negotiations expressed their surprise to us at the level of direct involvement by the President himself in negotiations. We explore these dynamics in more depth through an in-depth account of the process through which the current MoU was established.

3.3 Towards a Memorandum of Understanding: debating the refinery and international arbitration

The current MoU establishes the terms of engagement between government and the oil companies regarding the roadmap for the commercialisation of petroleum resources. Eventually signed in February 2014, the negotiation process was a highly conflictual one that spanned over a year. The main points of contention centred on three issues, namely, the oil refinery, the use of international arbitration, and the process for approving the field development plans of the IOCs. The first issue concerned government's desire to establish an increasingly large oil refinery, which would have first call on oil once it starts flowing from the currently contracted areas. This plan reflects GoU's desire to add value to its oil locally before exporting it in crude form, including through the manufacturing of petroleum-related products, both for domestic consumption and for export within the region. The President has repeatedly identified the proposed refinery as a means of avoiding Dutch Disease effects and the country's wider project of securing socio-economic transformation.

The proposal is inscribed in the 2008 NOGP, the 2012 Midstream Bill and in the initial PSA with Tullow, and as such the dispute during the 2013-14 negotiations was not about the establishment of the refinery per se: as one oil company representative notes, “The refinery was a political issue: we never questioned that it was significant and strategic for the country, we questioned the size of the refinery”. The government wished to start with a 20 thousand barrels per day (kbpd) refinery, before expanding its capacity to 60, later to 120 and 180 kbpd to meet domestic and regional demand for petroleum products. It also insisted that the refinery must be serviced before other export options would be considered, most notably via a pipeline. According to a government source, this position was communicated to industry in the Minister’s letter of 27 January 2012, immediately prior to the new PSAs being signed in February 2012 (interview, June 2014). The IOCs were wary of a large refinery, as their preference was to export the oil as swiftly as possible via a pipeline to the Kenyan coast. They were also concerned that there would be insufficient reserves left for export once the refinery had been serviced. They also sought a commitment from GoU that companies gaining licences to exploit oil from new fields would also be responsible for supplying the refinery: as one oil company source noted whilst the negotiations were ongoing,

> …we disagree around who should supply the oil to the refinery: we want to de-risk our relationship with it by sharing our supply contribution to refinery with those (IOCs) coming in next phase. (interview, 7 November 2013).

The second main point of contention concerned the insistence by IOCs that international arbitration be made available within the MoU as a means of settling disputes between the government and themselves. The IOCs were insistent that this is a norm within the industry, which was essential to protect both their interests and rights over property gained through the production-sharing agreements. GoU was reluctant to accede, keenly aware of the spiralling costs that arbitration can involve through the long-running struggle with Heritage concerning who was responsible for paying the tax associated with the sale of Heritage assets to Tullow. The final, and arguably less controversial, point of contention concerned the preference of IOCs for a ‘basin-wide’ approach to the production phase, whereby all plans and projects (including the refinery and the pipeline) would be approved and operationalised in an integrated way to achieve economies of scale. GoU was opposed to this, as it wanted to ensure that oil could start flowing for energy projects and the refinery as soon as possible and did not want delays in one area to hold up progress in others.

We now offer a detailed account of how the negotiations around these issues actually played out and how this shaped the final agreement. We draw on interviews from key informants directly involved in the negotiations on both sides and also on official documentation that relates directly to the negotiation meetings.

3.4 Negotiating the Memorandum of Understanding

Official discussions around the Memorandum of Understanding began in early 2013. Meetings were usually chaired by the Minister of Energy and Mineral Development, with the support of the Permanent Secretary and the Commissioner of PEPD, along with senior representatives from Finance, Uganda Revenue Authority, Bank of Uganda and the Uganda Investment Authority. Each oil company was represented by national staff and lawyers, with support from international technical and legal experts. Both sides endeavoured to co-ordinate their approach prior to each meeting, with GoU working through a dedicated Inter-Ministerial Committee. By March 2013 the government had produced a draft MoU, which the President ordered to be signed by 11 April. The second page of the draft justifies plans for a refinery with reference to the existing PSA with Tullow, and also the agreement to allow partners to construct a crude oil export pipeline. Clause 4.1 stresses that the refinery will developed in two phases, to 30kbpd and then to 60kbpd, and will continue to have first call on oil, even if expanded further. On 17 April Tullow wrote to MEMD accepting the refinery, but demanding that it be small and permitted to grow beyond 30kbpd only if Uganda could prove that it had the market demand for extra supply. In response, PEPD cited a report that they had commissioned from the Norwegian consultancy agency, Foster Wheeler, which argued that the refinery was much more cost-effective and economically productive for Uganda than a crude-export pipeline, and noted that as Uganda could produce 180-220kbpd, there would be enough oil left to export after the refinery had taken its share.

At the next meeting, held on 25 April 2013 at Rwakitura, disagreements continued not only over the size of refinery, but also the pace of its development vis-à-vis the pipeline. The meeting failed to secure an agreement and in May the oil companies rejected the MoU, citing the refinery plans as ‘unacceptable’. By 10 May the President had once again rejected the oil companies’ demand that companies who were granted licences at a later stage would have to share the burden of supplying the refinery, as well as their demand for integrated development plans. In their response to the government’s draft MoU of March, the IOCs noted in their letter to MEMD on 10 May that: “we have also reinserted the reference to the sharing of the refinery supply obligations in the MoU on a pro rata basis with other licence areas outside the contract areas, which is consistent with the PSAs”.

The government opposed this, on the grounds that current agreements could not bind parties who were not involved in the negotiations and also because they feared it would tie their hands in later negotiations. At the next meeting, on 20 May 2013, with the President in attendance, GoU spelled out what it referred to as its ‘final position’ regarding the size and supply arrangement for the refinery, and also dismissed the use of international arbitration as a means to resolve disputes. GoU described the IOC insistence that future licensees contribute to the refinery as ‘“unacceptable”, although the wording within the revised draft was changed to allow that this “may be” the case. A similar position was taken with regards to the issue of integrated development plans, whereby “…His Excellency (the President) guided that wording be included in the MoU to recognise the need for integrated planning of the fields and projects, including other licensees", without actually committing to this. Finally, GoU threatened to stop discussing the MoU unless partners agreed to these terms, and reminded the oil companies that GoU had already made significant concessions regarding the reduction of the proposed scale of refinery from its original 190kbpd.[10]

These apparent concessions by GoU concerning supplying the refinery and integration seemed to encourage the oil companies to push harder: in a letter to the Minister for Energy on 9 September and through further revisions to the draft MoU, the IOCs continued to suggest that future licensees should contribute to the refinery. GoU responded strongly. The Minister of Energy wrote to the heads of three companies on 19 Sept 2013, "to correct the wrong impression created by this letter". With reference to the new Clause 4.5 inserted by oil companies, such that "production from future licensees' areas to contribute to the 60kbpd refinery on a pro-rata basis", the Minister wrote that: "This is not agreeable, MoU is based on production of the resources currently established in contract areas and it is wrong to bind future licensees in an agreement to which they are not party". The Minister again noted that the President had stipulated in the meeting of 20 May that the MoU include a form of words which allows for the linking of refinery supply to later fields without making this compulsory. The Minister also reiterated that even when the refinery expanded beyond 60kbpd, it should have first call on any additional reserves in the contract areas, once demand is confirmed. The final point of contention was around dispute resolution, with the Minister once again stating that it is wrong to solve by arbitration, as there are "too many unknown variables" in such processes. The letter concluded with: "…before going back to the President, it is important that these differences are streamlined." By the time the oil companies met with the Minister of Energy on 23 October, they had accepted both scale of the refinery and the government's rejection of the necessity of a basin-wide approach. As one government representative put it: "They saw we wouldn't move. PEPD proved that we could consume the 30k. We stuck to our guns" (interview, June 2014).

When negotiations continued at a meeting between the companies and the President on 1 December 2013, with a follow-up the next day involving the Attorney General, it was the issue of international arbitration that remained as the main sticking point. On 16 January 2014, Tullow wrote to the Minister of Energy with reference to both early December encounters, stating that they would be happy to sign the MoU as long as the clause around this issue could be amended to ensure that Subsequent Agreements to the MoU should include the possibility of international arbitration. The signing of the MoU was scheduled for 3pm on 3 February 2014, but even as all

[10] GoU had stopped referring to the larger refinery under pressure from the IOCs, who complained that the Foster-Wheeler Report's advocacy of an 180kbpd refinery "was nonsense". According to one oil company source, "We told them we did not agree. Given our industry experience, we had to fight this report. We produced our views, our figures, our economics, so many workshops etc., to try and convince. Took a year!" (Interview, June 2014.)

parties gathered at State House, there was a last-minute disagreement: the government had strong reservations on Clause 12.3, which stipulated that "Government and Partners hereby agree that subsequent agreements to be entered into between the parties arising from this memorandum will incorporate international arbitration as a mechanism for dispute resolution". A party to the events recounts how the meeting broke up.

> We had hit a dead end around the arbitration clause. Members did not want international arbitration regarding the Heritage-Tullow case, also another one with Tullow. Somehow the President remained behind, and greeted and talked to these lawyers (for Tullow and Total). As we were getting out of State House, he called us back and said "I have been talking to these young girls (the lawyers), they seem to have convinced me" (parentheses added).

The lawyers had suggested differentiating between disputes over legal matters, which could be dealt with locally, and disputes over the terms of the actual contract, which could be sent for international arbitration. This would allow the country to retain all sovereignty over laws whilst the company could protect itself with regards its contracts. According to the same source, "She split it so well, the President was convinced and no-one said anything. Then we agreed to come back in a few days and sign… the Solicitor General was also asked to give an opinion." The MoU was signed at State House at 7.14pm on 7 February 2014 by the Minister of Energy and three oil companies. Following a champagne toast, the President congratulated the parties and thanked the oil companies for agreeing to terms of MoU and their support for Uganda's transformation process.

4 Commitment and capacity within Uganda's weak dominant party settlement

> The Government (of Uganda) has good, well trained civil servants, good external support and a President who has been very strong, very patriotic (oil industry source, 7 November 2013).

Uganda thus successfully negotiated a MoU with IOCs which largely reflected its priorities, albeit with some concessions. Most critically, it secured the plans to establish a refinery of at least 60kbpd (developed in two phases without conditions), which would have first port of call on all oil produced up to that level, and which could be expanded further. Future licensees would not necessarily be expected to contribute, although this possibility was left open. GoU acknowledged that different projects *could* be approved and executed in an integrated way, but these would not be explicitly tied together. In practice, the exploitation of different fields has indeed proceeded at different paces in accordance with GoU preference, with CNOOC commencing drilling in early 2014, before the other companies had even secured agreement for their field development plans. However, the government was less successful around dispute resolution, with IOCs able to secure the option of using international arbitration should there be a dispute over contracts. This is partly explained by the fact that GoU never articulated its opposition to international arbitration as clearly and credibly as it did concerning the refinery, whereas the IOCs presented evidence on such a mechanism being an industry norm and pursued it aggressively as a red line. This suggests that the capacities of African governments to pursue 'economic nationalism' remains constrained by the rights of global capital to protect their deals (cf. Taylor 2014), particularly their acquisition of property rights, but also reflects the President's wider, somewhat confused, ideological orientation, which incorporates elements of both economic nationalism and neoliberalism.[11] Here the President emerges as a balancing force in the discussions, offering concessions to the oil companies at certain stages in recognition of their motivations:

> …he would listen to each side, he would moderate it very well. These are people who also have direct access to the President, he is very interested in investors from around the world. He does not want to be so hard on them, and on the other hand he does not want the country to be taken for a ride or to be exploited in his words. (*ibid*.).

The President was critical throughout the process, frequently intervening in meetings and forming a constant reference point in the official communications between MEMD and the oil companies. According to an oil company source,

> He took real interest in the negotiations. Never have they (oil company colleagues) seen negotiations which involved a President sitting in negotiations around an MoU for ten hours, it has never happened. He has been involved very directly and personally in negotiations, because it is a key issue for the country, as he considers it (interview, June 2014).

Museveni's involvement gave extra weight and credibility to the positions being taken by GoU, including threats of withdrawal. According to a government representative, "The President said, 'if we can't agree, then let's part company, we can find other people'. If it was not for him, then maybe…" (interview, June 2014).

The oil companies seemed surprised by the level of capacity and commitment exhibited by the government in the negotiations. According to one government participant, "…they (the IOCs) have been around the world and Africa, they said they have never had this kind of resistance and challenge…(the IOCs) present these things and governments accept" (interview, June 2014). The President and PEPD were critical in this process. One oil company representative noted that: "PEPD is definitely the agency that is running the oil business" in Uganda (interview, June 2014), and was able to negotiate so strongly both because of their in-depth

[11] Regional concerns also drove the President to ensure that Uganda does not fall behind its regional neighbours, particularly Kenya, which made rapid progress in developing a new pipeline whilst the negotiations were ongoing.

knowledge of the sector and having highly-trained staff.[12] In nurturing a bureaucratic 'island of effectiveness' within the oil assemblage, the President seems to have been driven by a combination of political interests and ideological commitments to promoting a more muscular project of structural transformation in Uganda. As one media observer of the oil and energy sectors notes, the President seems to see oil governance as a "nationalist cause" (interview, November 2014). Any analysis of how the incentives generated by the political settlement shape the governance of oil in Uganda therefore needs to be complemented by an examination of the role of ideational factors, particularly with regards to the apparent high level of presidential commitment to securing deals with oil companies that are more obviously weighted in the national interest than in any apparent desire to sign market-friendly deals as a faster route to securing rent-seeking opportunities.

This may to some extent be offsetting some of the more regressive influences of Uganda's political settlement, particularly regarding the politicisation of public institutions and policy processes. The forging of the MoU reinforces the broader sense that key elements of the political and bureaucratic elite have been able to collectively mobilise the capacity and commitment to strike favourable deals for Uganda in ways that run counter to assumptions underpinning mainstream 'good governance' analysis. Instead, the processes and outcomes to date tend to suggest that a form of political settlements analysis that incorporates a focus on ideas as well as interests, and which unpacks the links between the broader political settlement and the governance of specific policy domains, can offer more useful and balanced insights into the governance of oil. Despite some evidence that oil is tending to reflect and further deepen what might be characterised as regressive features of Uganda's political settlement – including presidentialism, the repression of dissent, and militarisation – the same political settlement has helped create the conditions for a relatively high level of capacity and commitment to managing oil (at this stage at least) in the national interest. Some of these tendencies overlap, as with the high level of presidential control, which both forecloses greater openness and is directly associated with securing good deals. To the extent that oil appears to have re-engaged the President's interest in a more ambitious project of development as modernisation and structural transformation, this opens at least the possibility that he will use the power afforded to him within Uganda's 'dominant leader' settlement to ensure that oil is governed in the national interest.

Whereas the main dynamics within Uganda's political settlement are tending to undermine the developmental orientation and capacities of the ruling coalition, the President has made countervailing efforts to centralise and control efforts by powerful members of the ruling coalition to extract rents from the oil sector and has also resisted the temptation to link incoming oil wealth to populist election pledges. Instead, he has repeatedly earmarked oil revenue for investment in agriculture and infrastructural development, while enabling the development of high-level technical

[12] The role of PEPD as an 'island of effectiveness' will be elaborated at greater length in a forthcoming paper.

bureaucratic capacity within at least one mainstream government agency, thus suggesting possible routes through which even ‘weakly dominant’ coalitions can promote institution-building and development (cf. Khan 2010). These moves are shaped not only by his dominance and his personalised version of a nationalist development ideology, but also by the structure of the oil assemblage itself. By their nature, negotiations over PSAs and MoUs involve high-level secretive negotiations that demand levels of power and expertise that are monopolised by leading politicians, bureaucrats and capitalists, and which are thus easier to control.

However, the ideas that have helped to shape these developments are not free-floating: the President is aware both that he has an increasingly expensive patronage machine to run, not least in the context of the forthcoming 2016 elections, but also regarding an apparent desire to leave a ‘legacy’ ahead of his potential departure from office after those elections. Centralising control over oil rents can help deliver both. Where the oil assemblage hits the ground, mainly in Western Uganda, it is notable that the Public Finance Bill adopted in November 2014 includes a promise to the resident Bunyoro kingdom that it will receive 7 percent of profits earned from oil underneath ‘its’ land, which suggests that the President’s capacity to resist vertical demands from within the ruling coalition is weakened when it comes to securing the support of the rural base that is central to his continued hold on power. Such pressures are likely to increase as the oil money actually starts to flow, and may challenge the tentative suggestion here that oil may have helped re-catalyse a form of ‘developmental patrimonialism’ (Kelsall 2013) in Uganda; not least as the deepening role of transnational capitalists is likely to further tip the balance towards the influence of rentier capital in ways that undermine Uganda’s stated developmental ambitions. Given these pressures, it seems unlikely that the government will be able to continue moving against the grain of its own political settlement dynamics for much longer.

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