

Uganda's Civil Society Perspectives on International Reforms of Environmental and Social Safeguards for Development Finance¹

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Acronyms and Abbreviations

AESNP:	Applied Energy Services Nile Power Limited
AG:	Albertine Graben
BEL	Bujagali Energy Limited
CFR:	Central Forest Reserve
CSCO	Civil Society Coalition on Oil & Gas, Uganda
DEA:	Directorate of Environmental Affairs
DFR:	Department of Fisheries Resources
DRC:	Democratic Republic of Congo
DRWM:	Directorate of Water Resources Management
EA:	Exploration Area
FDP:	Field Development Plan
GIS:	Geographical Information Systems
GoU	Government of Uganda
HSE:	Health, Safety and Environment
IEPS	Initial Executive Project Summary
IOCs	International Oil Company
MAAIF:	Ministry of Agriculture, Animal Industry and Fisheries
MDAs	Ministries, Departments and Agencies
MEMD:	Ministry of Energy and Mineral Development
MEP:	Macro Economic Policy
MFPED:	Ministry of Finance, Planning and Economic Development
MIHUD:	Ministry of Lands, Housing and Urban Development
MPs	Members of Parliament
MWE:	Ministry of Water and Environment
NATOIL:	Uganda National Oil Company
NEMA:	National Environment Management Authority
NFA:	National Forestry Authority
NOGP:	National Oil and Gas Policy
NORAD:	Norwegian Agency for Development Cooperation
OD	Operational Directive
OfD:	Oil for Development
OMS	Operational Manual Statement
OSD:	Occupational Safety and Health
PAD	Project Appraisal Document
PAU:	Petroleum Authority of Uganda
PCC:	Programme Coordination Committee
PEPD:	Petroleum Exploration and Production Department
PGI:	Petroleum Governance Initiative
PPA:	Power Purchase Agreement
PSA:	Production Sharing Agreement
SAR	Staff Appraisal Report
UWA:	Uganda Wildlife Authority
WGI	Water Governance Institute
WRI	World Resources Institute

Executive Summary

For many years now, the donor world and international institutions involved in development finance have embraced economic, environmental and social safeguards. In particular, the World Bank's (WB) and African Development Bank's (AfDB) environmental and social safeguard policies are the cornerstone of the two Banks' support to sustainable poverty reduction and ensuring development effectiveness in recipient/ beneficiary countries. Safeguard policies are intended to identify, avoid, minimize and mitigate harm to people, the economy and the environment of bank financed projects on a recipient/ beneficiary country. They provide guidelines for the banks and borrowers in the identification, preparation, and implementation of programs and projects.

Banks also put in place mechanisms, policies and procedures through which the project-affected communities and beneficiary countries can voice their complaints or concerns regarding bank financed projects prior to or during project implementation. The mechanisms put in place include the World Bank's Inspection Panel (IP), International Finance Corporation's Compliance Advisor Ombudsman (CAO), and the African Development Bank's Independent Review and Mediation (IRM) and Compliance Review and Mediation Unit (CRMU).

The mechanisms were intended to monitor and evaluate compliance with Bank safeguard policies and procedures during project appraisal and implementation. The mechanisms are triggered when a complaint is made by the project-affected or recipient/ beneficiary country. However, compliance with safeguards is one of the main challenges of the banks and the borrowers.

Uganda has over the years received and continues to receive significant amounts of financing from donors/ development partners and International Finance Institutions (IFIs) for development and large infrastructure projects in energy, roads, health, education, agriculture and other sectors of the economy. Some of the largest IFI investments were dedicated to the Owen Falls rehabilitation, construction of Owen Falls Extension (Kiira) and Bujagali hydropower projects. As part of project appraisal and approval, these power projects were subjected to an evaluation of their compliance with Bank safeguard policies and procedures as a means of ensuring that they did not harm the people, the economy and the environment of the country. Despite this, the projects were found to have only partially complied with the Bank safeguards. This formed the basis of a petition to investigate the hydropower projects by Ugandan civil society organisations and individuals to the World Bank Inspection Panel (IP) in 2001 and 2007 and to the African Development Bank Independent Review and Mediation (IRM) and Compliance Review and Mediation Unit (CRMU) in 2007.

The investigations revealed areas of compliance and non-compliance of the projects to Bank safeguards. During the 2001 IP investigations, the issues where the project complied to some extent with Bank Safeguard policies and procedures included:

- Categorisation of the projects.
- Dam safety.
- The need to conduct environmental studies.
- Assessment of cultural issues and property.
- Economic evaluation of investment operations, mainly because the World Bank's Operational Policy and Procedure on Economic Evaluation of Investment Operations (OP10.04) was not operational at the time (June-July 1990) of appraising and approving funding for Owen Falls rehabilitation and construction of Kiira hydropower projects, but became operational in September 1994. Instead, Bank Management was found compliant to the Operational Manual Statement (OMS 2.20) on project appraisal and OMS 2.21 on economic analysis. In

this regard, Bank Management failed to comply with the policy on poverty reduction (OD 10.00).

- In other cases, the Bank was not found to have violated any policies, because it did not have specific policies to address such issues. For example, the Bank did not have a specific policy on cumulative impact assessment, so it could not make a conclusion of non-compliance.

The policies that the Inspection Panel found to exhibit non-compliance on the part of the Bank Management and project sponsors included:

- The need for Strategic Environmental Assessment (SEA) to form the basis of developing the energy sector in Uganda, which was in violation of some of the terms and conditions on which the Bank Board approved the Bujagali project. The Panel concluded that management's failure to ensure that an SEA was carried out led directly to the many concerns related to the Bujagali project.
- The need for a cumulative analysis of a cascade of dams along the same River Nile. The Panel observed that while each hydropower project on the River Nile required a separate project-specific environmental assessment, a series of hydropower projects on the same river would give rise to cumulative effects that should formally be evaluated. The Panel concluded that the cumulative effects analysis was the weakest part of the Bujagali hydropower facility.
- The assessment of the hydrological regime that would be applied once Bujagali project became operational.
- The need to include costs of resettlement, loss of white water rafting businesses, environmental mitigation measures and other local income sources in the calculations of the project's economic return.
- The need to create an environmental off-set for the loss of Bujagali Falls and its surrounding natural habitat that would be flooded once Bujagali became operational.
- The need to make the tariff of the electricity accruing from the hydropower projects affordable to the majority of Ugandans.
- The need to assess alternative hydropower designs, capacities and energy options including wind, solar, medium to small-scale hydropower, geothermal, biogas, and co-generation as part of the decision-making processes of whether or not to finance the Bujagali hydropower project.

Similar, concerns were discovered during the second joint investigation of the Bujagali hydropower dam and transmission line (interconnection) project conducted in 2007 by the World Bank IP and African Development Bank IRM/CRMU. Lessons learnt from this engagement with the IP and IRM/CRMU included:

- Both the Bank and borrowers experience challenges in applying safeguards to projects they support and finance, mainly due to limited enforcement of decisions of the investigation panels and an inadequate monitoring and evaluation process for application of safeguards on the part of the Bank. Borrowers may be better-off not applying what is believed to be a time consuming, costly and laborious process of applying safeguards to projects they sponsor.
- The application of safeguards is concentrated more at the project inception, appraisal and approval stage as compared to during and after implementation. This has the tendency of delaying a project reaching financial closure (approval) and minimises the influence of safeguards on the project during and after project execution.
- These IP and IRM mechanisms provided project-affected people and loan recipient/beneficiary countries an avenue to voice their concerns about projects financed by the

International Finance Institutions. These mechanisms needed to be promoted and enhanced.

- Safeguards are a means of ensuring that projects that are likely to be harmful to people, the economy and the environment are avoided and therefore need to be promoted and enhanced at the national and international levels.
- There is a growing trend among donors and international institutions involved in development finance to shift away from applying traditional and internationally accepted safeguards with a view of relying on country-based safeguard systems. There is also a tendency to shift from project to programme financing. This has an effect of making it difficult to evaluate the actual contribution to national development of funds derived from development partners, since these funds could be comingled with those generated within the country. The shift from project to programme support is a recipe for mismanagement and corruption. The reliance on country-based safeguards systems could be a challenge especially in countries where there are weak or dysfunctional governance systems. This calls for improving and scaling up country systems to be equivalent or better than the traditional internationally accepted safeguards arrangements.
- While Uganda has fairly good social, economic and environmental safeguard policies, legal and institutional frameworks at the national level, they are challenged by their weak enforcement, political interference, and their being inadequate to meet the demands of new emerging economic sectors such as the oil & gas industry that were not originally covered in the existing frameworks. This calls for overhauling or scaling up the existing frameworks in order to meet the demands of the new emerging economic sectors.

Now the government of Uganda has discovered commercially viable oil & gas reserves in the Albertine Graben in the western part of the country. The oil & gas discoveries have been financed by International Oil Companies' (IOCs) equity, with no financing from the IFIs. Therefore, if IOCs apply internationally accepted safeguards in project development, it will be a matter of choice of the IOCs. While IOCs may have internal safeguards, whether or not they will be adhered to at all times in project development remains to be seen. In addition, whether or not the internal IOC safeguards are equivalent to or better than the internationally accepted safeguards are a matter that needs to be tested.

The main purpose of this paper is to look back at Uganda's past experience with IFI safeguards, their application in the energy sector, including the emerging oil & gas sub-sector with a view of making recommendations towards Uganda's safeguard policies and regulatory framework and for IFIs that are currently reforming their safeguards.

Research for this paper involved a desk review of existing literature and consultations with key informant respondents including project-affected people, civil society organizations, civil society organizations and individuals that requested the World Bank Inspection Panel and African Development Bank Independent Review and Mediation mechanisms to investigate the Owen Falls, Kiira and Bujagali hydropower projects, and government officials.

The paper concludes that the effectiveness and development impact of projects supported by International Finance Institutions have substantially improved as a result of the attention to safeguard policies. Uganda needs to scale up its existing safeguard policy, legal and institutional provisions in order to avoid developing projects that are likely to cause harm to people, the economy and environment, especially now that the country is experiencing an emergence of the new oil & gas industry that was originally not adequately addressed in the current regulatory frameworks. The paper recommends that as international donors and IFIs rethink and reform their safeguard policies, they need to consult widely to ascertain whether or not this is right thing to do.

1.0 Introduction

For a long time now, International Finance Institutions (IFIs) such as the World Bank, African Development Bank (AfDB), International Finance Corporation (IFC), and African Development Bank (AfDB), among others have applied safeguard policies in the evaluation and appraisal of projects that they finance. The safeguard policies are intended to identify, avoid and minimize harm to people, the economy and the environment of bank financed projects on recipient/ beneficiary country. Banks also put in place mechanisms, policies and procedures through which the project-affected communities and beneficiary countries can voice their complaints or concerns regarding bank financed projects prior or in the middle of project implementation. In Uganda's experience, these include the World Bank's Inspection Panel (IP), International Finance Corporation's Compliance Advisor Ombudsman (CAO), and the African Development Bank's Independent Review and Mediation (IRM) and Compliance Review and Mediation Unit (CRMU).

Significant amounts of financing have been and continue to be provided by IFIs to the Government of Uganda to develop its energy sector. Some of the largest investments were dedicated to the Owen Falls dam rehabilitation, construction of Owen Falls Extension (Kiira) and the Bujagali Hydropower projects. These investments and projects were subjected to bank safeguard policies and procedures.

However, recent oil and gas developments in Uganda have received no funding from these IFIs and therefore have not been subjected to bank safeguard policies and procedures. All the financing in Uganda's oil and gas industry has originated from International Oil Companies (IOCs) that may not necessarily integrate their internal safeguard policies and procedures into contracts with Government of Uganda. The oil and gas industry in Uganda is developing at a brisk pace without clear and effective social, economic and environmental safeguards and regulatory mechanisms at the country level.

Now, the questions for the IFIs, the oil & gas sector and Government of Uganda are:

For the IFIs

- What safeguard issues arose in past World Bank and African Development Bank investments in Uganda?
- How were the issues addressed?
- What challenges were met in addressing the issues that arose?
- What opportunities exist to make future bank investments better?

For the Oil & Gas Sector

- What safeguard policies have been applied in the oil & gas sector and by whom?
- Is it the industry operators or governments that have applied the safeguards, if any?

For Government of Uganda

- Has the government learned lessons from IFI safeguards and applied them to the oil and gas industry?
- Where has the government increased capacity, and where do the gaps remain?
- Going forward, what safeguards should be in place for foreign oil and gas investments in Uganda?

It is on this basis that Water Governance Institute (WGI) was commissioned by the World Resources Institute to produce a paper on Uganda's energy sector focusing on civil society's experiences with and perspectives on the role of safeguards on investments in the sector. For the purpose of this

paper, we focus on the World Bank and African Development Bank, because they are major financiers in Africa, in general, and Uganda in particular. These banks have financed large-scale projects such as hydropower dams, roads, and oil and gas infrastructure. We examine ways to apply the lessons from the past to Uganda's emerging oil & gas industry. The paper is not intended to repeat what is already written and is in public domain, but to elucidate the experiences of civil society working with safeguards in Uganda.

2.0 Approach and Methodology

The information contained in this paper was generated using a number of approaches including the following.

2.1 Author's personal experiences in Uganda

The author is an active member of Ugandan civil society, and draws on his personal experience in monitoring the energy sector. In particular, the author played an active role in bringing a complaint about the Bujagali hydropower dam and transmission-line project to the World Bank Inspection Panel in 2001 and 2007. He was also instrumental in submitting a similar complaint to the Independent Review Mechanism and Compliance Review and Mediation Unit (IRM/CRMU) of the African Development Bank in 2007. The author currently works as the Executive Director of the Water Governance Institute (WGI) in Uganda. WGI is a research, training, advocacy and consultancy non-governmental organization that focuses on water related issues, including the interaction of the oil & gas industry with water, hydropower and biogas energy, among others². The author also served as chairperson for the Ugandan Civil Society Coalition on Oil and Gas (CSCO). He has been involved in several research projects, trainings, advocacy and consultancy activities that accorded him great insights and knowledge-base in Uganda's water and energy sector.

2.2 Literature review

The study reviewed documents, reports, policies and procedures related to social and environmental safeguards in Uganda. The documents reviewed included reports on the Bujagali, Owen Falls (Kira), and Karuma hydropower projects. Documents also included relevant policy, legal and institutional provisions, e.g. the 1995 Constitution, Uganda's energy policy (2002), the mineral policy (2002), national oil and gas policy (2008), and associated laws; ministerial reports and statements; strategic sector plans; investment plans; budgets and budgetary performance reports; as well as recent reports by Ugandan civil society on the subject.

2.3 Consultations with Bujagali Hydropower Project-Affected People

The author consulted with the Requestors³ and Project-Affected communities⁴ of the Bujagali Hydropower project supported by the World Bank and African Development Bank. This was done to learn from their experiences with the World Bank and African Development Bank safeguard policies and procedures.

² Additional areas of work for WGI can be found on the organization's website www.watervgovinst.org.

³ Individuals and civil society organizations that compiled a request to the Inspection Panel of the World Bank and the Compliance Review Mechanism Unit (CRMU) of the African Development Bank for inspection of the compliance of the Bujagali project to bank safeguards.

⁴ These are communities that are involuntarily displaced and/or compensated by the Bujagali Hydropower project for the land-take or property damaged in the process of constructing the dam and power transmission lines.

The consultations involved visits to the project-affected communities in Naminya Resettlement site close to Jinja Town (i.e. those displaced by the dam project) in Bwikwe district⁵ and Kira Bulindo Resettlement site (i.e. those affected by the Bujagali Transmission Line) in Kiira Parish Wakiso District. The consultations also involved face-to-face interviews with selected requestors to the World Bank and African Development Bank over the Bujagali project.

As part of the consultations, respondents were asked whether or not the social and environmental safeguards were useful and an effective means of voicing people's concerns about IFI or government investments, and avoiding harm to the people by IFI or government supported projects. In addition, their opinions on whether there were gaps or inadequacies in the current safeguards approach and how the gaps (if any) needed to be addressed in the country's safeguards were sought.

2.4 Consultations with government officials on their experiences with IFI Safeguards

The author interviewed government officials in the Ministry of Water and Environment (MWE)⁶, Ministry of Energy and Mineral Development (MEMD),⁷ Ministry of Lands, Housing and Urban Development (MLHUD),⁸ Ministry of Justice and Constitutional Affairs (MJCA),⁹ Ministry of Gender and Social Development (MGSD),¹⁰ Ministry of Agriculture, Animal Industry and Fisheries (MAAIF),¹¹ and the Ministry of Finance, Planning and Economic Development (MFPED), to learn from their experiences and perspectives working with IFI safeguards.

As part of the consultations with government officials, respondents were asked:

- To explain the World Bank's and African Development Bank's involvement in the energy sector, including the emerging oil and gas industry;
- Whether the social and environmental safeguards were a useful and an effective means of voicing people's concerns about IFI or government investments, avoiding harm to the people by IFI or government supported projects, and managing risks of IFI or government investment projects;
- Whether they support integrating IFI safeguard principles into Uganda's country safeguards;
- Whether the country has so far built capacity to effectively govern energy projects supported by IFIs, international companies and the government;
- To identify what capacities have been built so far and whether or not capacity gaps do remain; and if gaps remain, how to best address them;
- Whether the safeguard principles and practices have been applied to the emerging oil and gas industry, and if so, to identify which ones;
- To suggest safeguards that should be put in place for the oil and gas sector in Uganda.

⁵ Formerly Mukono District.

⁶ Including National Forestry Authority (NFA), National Environment Management Authority (NEMA), Directorate of Water of Development (DWD) & Directorate of Water Resources Department (DWRD).

⁷ Including Petroleum Exploration and Production Department (PEPD), Rural Electrification Agency (REA), Electricity Regulatory Authority (ERA), & Department of Energy.

⁸ These are usually involved in allocation of land for the project and resettlement of project-affected people, a reason they were consulted.

⁹ These usually provided legal advice to government in respect to the law, regulatory frameworks and government project investments.

¹⁰ This ministry is usually involved in assessments of whether or not social equity and development has been (is being) achieved by government project investments and whether or not the rights of the people have been (are being) infringed upon.

¹¹ This ministry provides advice to government on the impacts of its investments to agriculture, animal industry and fisheries and the communities that depend on these economic sectors.

3.0 Background on Uganda's Energy Sector

3.1 Sources of energy in Uganda

Uganda has abundant energy resources and the potential to harness them. The potential energy resources include hydropower (i.e. large, medium, and small), thermal, solar, wind, bagasse¹²-based co-generation, biogas, nuclear and biomass. Despite this, there is still widespread energy poverty all over the country (National Development Plan, 2010; Energy Policy, 2002).

Over 90 percent of the energy utilized in the country originates from biomass (charcoal and firewood). The remaining comes from hydro- and thermal power, imported petroleum products and Bagasse used to generate electricity by the sugar producing factories¹³. There is very little use of solar energy¹⁴ and no nuclear energy establishments. Biogas energy is still underdeveloped.

The current electricity demand in Uganda stands at 445MW, while the supply is only 334MW, mainly from Owen Falls and Kira hydro-dams (170MW) on River Nile, Bagasse and mini-hydro power plants (≤ 14 MW) and thermal Power stations (150MW installed capacity) strewn across the country. The shortfall of 111 MW is claimed by government officials to be attributed to the drought¹⁵ that affected hydropower generation and the failure by government to pay private sector thermal generating companies (Energy Sector Report, 2010). This notwithstanding, the country has for a long time experienced severe energy challenges attributed to:

- A sector planning approach that emphasizes large-scale centralized electricity supply systems at the expense of medium-to-small scale, decentralized, independent, and private sector power generation and grids. In addition, the government prioritizes powering urban and highly populated centres at the expense of rural and less densely populated areas;
- An inadequate and inefficient power supply system, arising from stunted generation capacity growth, a poor transmission and distribution infrastructure, poor utility commercial practices, and prevalent system and commercial losses;
- The sector is in dire need of a well established energy mix—not exclusively large infrastructure—that meets the needs of a diversity of consumers;
- Legal and institutional weaknesses and challenges associated with a multiplicity of poorly coordinated institutions,¹⁶ all benefiting from a single tariff and a legal framework riddled with gaps and difficulties in implementation and enforcement.

¹² Sugarcane wastes after extraction of sugarcane juice for sugar production.

¹³ Ibid.

¹⁴ Mainly at private and domestic level for lighting and water heating.

¹⁵ Drought is increasingly being used as an excuse for the hydropower generation failure, even when it is not the case. It is a deliberate refusal by government to openly acknowledge the inherent challenges cited in the energy sector.

¹⁶ Uganda Electricity Generation Company Limited (UEGCL); Uganda Electricity Transmission Company Limited (UETCL), Uganda Electricity Distribution Company Limited (UEDCL), and UMEME – the concessioner.

3.2 Uganda's energy sector policies and laws related to IFI Safeguards

The energy sector is governed by a number of policies, laws, and institutions. While this section does not exhaustively discuss all the national policies, laws and institutional arrangements of the sector, it briefly discusses the key sector policies, laws and institutional arrangements. These include:

1995 Constitution

The Constitution provides a mandate to the state to establish an appropriate Energy Policy when it states that “*The State shall promote and implement Energy policies that will ensure that people's basic needs and those of environmental preservation are met*” [XXVII, (iii)].¹⁷ This constitutional requirement made it incumbent upon the Government to formulate an Energy Policy 2002 that would not only sustain the economic growth, but also ensure widespread access to affordable modern energy services for improving the living standards of all the people in Uganda. As a means of improving the 2002 Energy Policy and in response to the needs of the energy sector, the 2007 Renewable Energy Policy and the 2008 Oil & Gas Policy were formulated.

2002 Energy Policy

The policy goal is to meet the energy needs of Uganda's population for social and economic development in an environmentally sustainable manner. This policy is intended to operationalize the constitutional objective and national principle [XXVII, (iii)]. The energy policy recognizes the presence of abundant energy resources in the country. It also recognizes the planning and development culture of modern energy services or infrastructure that tends to focus on urban and semi-urban areas, and calls for a paradigm shift to achieve equitable distribution of modern energy services across the whole country. The policy recognizes the need to mitigate the physical, social and environmental impacts created by energy development, especially hydropower. Whether or not this is being achieved is subject for debate.

2007 Renewable Energy Policy

The policy vision is to make modern renewable energy a substantial part of the national energy consumption. Its overall goal is to increase use of modern renewable energy from the current 4% to 61% of the total energy consumption by the year 2017. This is an ambitious target whose realization is subject to debate, bearing in mind the amount of work that is required and the timeframe set. It is almost impossible to realize this target. This policy was developed to reinforce the commitment enshrined in the 2002 Energy Policy. It aims at developing solar energy, bio-fuels, and biomass technologies-including biogas. This policy is aimed at providing alternative sources of renewable and sustainable energy as a means of curbing the current deforestation and forest degradation and associated greenhouse gas (GHG) emissions that are occurring in the country, contributing to mitigation of the effects/impacts of climate change attributed to GHG emissions, and increasing access to energy to rural households that may never be served by the conventional¹⁸ sources of energy because of the difficult terrain in which they live or due to the economic infeasibility of taking traditional power grids to sparsely populated rural areas.

2008 Oil & Gas Policy

The policy goal is to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society. Following the discovery of commercially

¹⁷ National objectives and Directive Principles of the State Policy: The 1995 Constitution of the Republic of Uganda.

¹⁸ Hydro- and thermal-power.

viable oil and gas resources at the Mputa, Waraga, Nzizi and Kingfisher exploration sites, it was considered necessary to put in place a national oil and gas policy to address the entire spectrum of exploration, development, production, value addition, marketing, utilization, social and environmental management in a more comprehensive manner than provided in the 2002 Energy Policy.

Whether or not the existing Energy Policy, Renewable Energy Policy, and Oil and Gas Policy are realizing the constitutional aspirations and objectives is still unclear.

Other national policies that have a bearing on the energy sector include:

- Health Policy (2000/2001);
- Gender Policy;
- Access to Information Act (2005);
- Uganda Wildlife Policy (1999);
- National Population Policy for Sustainable Development (1995);
- Social Security Policies, including the Pension Act (1994) (Cap 286) targeting workers in public sector i.e. the retired civil servants; the Uganda Peoples Defense Forces Act (2005) which targets UPDF soldiers; the National Social Security Fund Act (1985) (Cap.222); the National Strategic Program Plan for Orphans and Other Vulnerable Children: 2005-2010 including: the National Child Labour policy and the National Policy on Disability in Uganda; the Refugee Act (2006); the Immigrants Act (1999) that focuses on refugees and immigrants;
- National Environment Policy (1995) and its supportive policies such as National Tree Planting and Forest Policy and Act (2003); Water Policy (1995); National Wetlands Policy (1995);
- Agriculture Policy and its Food and Nutritional Policy (2003).

These policies and laws are intended to enhance freedom of access to information held by public institutions; promote health and safety of workers and persons directly and/or indirectly affected by the development; ensure adequate and appropriate compensation and resettlement of project-affected people; avoid pollution of water, soils and air; ensure that development leads to economic growth and poverty reduction; promote respect of cultural/ religious property and heritage; ensure equity in the sharing and utilisation of natural resources and revenues; provide social services and amenities and enhance Corporate Social Responsibility (CSR); among others.

Whether or not these policies are equivalent to IFI safeguards and are complied with to the full measure and requirement of the country and company is a matter for debate. What is clear is that these policies and safeguards have been variably applied at different levels of society and engagement and that there is still a lot of improvement required for them to be more effective.

It is not uncommon to find private companies with a list of safeguards that they claim to take into consideration in all their development agenda. However, whether or not the safeguards are complied with at all times by these companies remains to be verified.

International agreements

Uganda is signatory to many international protocols, conventions and treaties, which it is required to integrate into its national policies, legal and institutional provisions. Some of these include Agenda 21; the Maputo Declaration; the Millennium Development Goals and multilateral environmental agreements, including the United Nations Framework Convention on Climate Change (UNFCCC); Kyoto Protocol which focuses on reducing greenhouse gas emissions; Hyogo Framework for Action on disaster reduction; Convention of Biological Diversity (CBD); Montreal Protocol on substances

that deplete the ozone layer; Convention to Combat Desertification (CCD) and actions on development; the Inter-governmental Authority on Development (IGAD) on drought and desertification; the African Charter on Rights and Welfare of the Children; African Charter on Human and people's rights 1991; the 2004 African Union Regional Strategy for Disaster Risk Reduction; the Universal Declaration of Human Rights; Convention for Elimination of all Forms of Discrimination against Women; the Commonwealth Plan of Action on Gender and Development: Advancing the Commonwealth Agenda into the New Millennium (2005- 2010); the United Nations Declaration on Violence against Women (DEVAW, 1993); to mention but a few.

These, together with the national policies and laws, are expected to provide a legal benchmark for national safeguard principles and practice. Whether the national laws are in line with international agreements is a matter for evaluation and debate.

3.3 Institutions in Uganda's energy sector

The policies and laws/acts establish government institutions to ensure that the provisions in the policies and laws are implemented in accordance to the aspirations of the country. Therefore, institutions have a regulatory responsibility to ensure that social, economic and environmental safeguards of all developments in the respective sectors are enforced and complied with in accordance with the policy and laws. The principle purpose for compliance to policies and legal provisions is to achieve poverty reduction and environmentally sustainable development as enshrined in the Uganda's Vision for 2025 through the Poverty Eradication Action Plan (PEAP, 2005).

The institutions involved in the energy sector include MEMD¹⁹, REA²⁰, PEPD²¹, ERA²², NEMA²³, UWA²⁴, NFA²⁵, MWE²⁶, DWD²⁷, DWRD²⁸, etc.

¹⁹ MEMD is the central implementing agency of government on matters concerning energy and mineral development in the country. It also provides regulatory functions over developments in the energy and minerals sector.

²⁰ Rural Electrification Authority is a government agency responsible for promoting electrification of the rural areas through renewable energy sources. It is an agency within the MEMD and provides supportive functions to MEMD's mandate.

²¹ Petroleum Exploration and Production Department is a department in MEMD responsible for the promotion of exploration, development and value addition of the petroleum resources discovered in the country. It also provides a supportive role to the MEMD.

²² Electricity Regulatory Authority as the name suggests is the government body responsible for regulating the electricity sub-sector of the MEMD. It provides a supportive role to MEMD.

²³ National Environment Management Authority is the government body responsible for overseeing the management of the environment and its natural resources in a sustainable manner and without abuse or causing significant negative harm. It oversees other ministries application of safeguards in developments/ investments in the respective sectors of the economy. It is embedded in the Ministry of Water and Environment and provides supportive functions to this ministry.

²⁴ Uganda Wildlife Authority is a government body that oversees the management of wildlife in the country both in protected and unprotected areas. It provides a supportive role to NEMA and oversees other ministries application of safeguards in respect to wildlife and protected areas such as national parks and game reserves.

²⁵ National Forest Authority is a government body in the MWE that offers regulatory functions over forests protected by the central government under the Central Forests Management (CFM) arrangement. It is responsible for overseeing the application of safeguard policies in respect to Central Forest Reserves. It has no oversight function over privately managed forests or those under the Local Government Management arrangement. Forests under the Local Government arrangement are managed under the Forest Sector Support Services Department (FSSD) under MWE that provides guidance on the application of safeguards on privately owned forests.

²⁶ Ministry of Water and Environment is the overall government body responsible for the management and development of water, its associated natural resources and infrastructure in an environmental sustainable manner without abusing or causing harm to the environment and elements therein.

²⁷ Directorate of Water Development is department in the MWE that is responsible for providing support and guidance to water infrastructural development and service provision to the citizens of Uganda.

²⁸ Directorate of Water Resources Department is a department in MWE responsible for regulating the use of water by the different ministries and departments of government in the investments that each sector develops.

The private sector companies involved in the energy sector include UEGCL, UETCL, UEDCL²⁹, UMEME³⁰, plus the international companies.

Literature indicates that Uganda has updated its national policies and institutional frameworks to align its safeguards with other development initiatives (DFID 2008; NAPA Uganda, 2007; Twinomugisha 2005; PEAP, 2005). However, consultations have revealed that while there was some degree of update, the policies remain riddled with gaps and cannot easily be translated into implementable actions. These gaps probably contribute to the poverty increase that the country experiences as quoted in the UNDP Human Development Report (2008).

3.4 Governance of the oil & gas sector

Other than the Petroleum Exploration and Production Act 1985 that covered investment promotion and monitoring of exploration activities in the sector, Ugandan law is inadequate to meet the demands of the industry with respect to development, production, processing, value addition, management, utilization and as a social and environmental safeguard. This called for a revision of the law to take it beyond the oil discovery stage (i.e. attracting investment, exploration, building capacity, and monitoring) to sustainable production, processing, and utilization. Therefore, the need to put in place a legal and institutional mechanism to effectively and efficiently govern the industry became critical. It is on this basis that the country is currently attempting to fast-track the process of putting in place a legal and institutional framework for the oil and gas sub-sector that will attract investment, guide capacity building and offer a framework for monitoring and evaluating the industry. The oil and gas resources³¹, value addition³² and revenue management³³ laws are currently under draft.

The new institutions proposed at government level for the oil and gas sub-sector include the Petroleum Authority, National Oil Company (NOC) and Directorate of Petroleum.

Recent petroleum development in Uganda

In 2006, Uganda discovered commercially viable oil and gas deposits at the Mputa, Waraga, Nzizi and Kingfisher exploration sites in the Albertine Graben. Since then, up to 64 exploration wells have been drilled by a number of international oil companies, including Heritage Oil & Gas, Tullow Oil Uganda Operations PTY, Neptune, and Dominion. Of the wells drilled, about 58 wells have encountered oil and gas resources and 18 have commercially viable reserves. This discovery exhibits 90.2% success rate, which is the first of its kind in the world and has attracted great national and international interest³⁴.

²⁹ Uganda Electricity Generation Company Limited (UEGCL), Uganda Electricity Transmission Company Limited (UETCL) and Uganda Electricity Distribution Company Limited (UEDCL). As their names suggest they are private companies responsible for generation, transmission and distribution of electricity, respectively.

³⁰ UMEME - the concessioner. All depend on having the same tariff for revenues. This causes the tariff to be high and not affordable to the majority of Ugandans.

³¹ Petroleum (exploration, development & value addition) management bill/law also known as the Petroleum Resources Management bill is now ready for parliamentary debate and approval/enactment. This was disclosed for public scrutiny. As civil society organizations working on oil & gas issues, we were able to critique it and submit our comments to the government.

³² This was taken out of the original draft resources management bill upon recommendation of CSCO to split the draft bill into distinct, clear and detailed bits of the law.

³³ The Revenue Management Bill is still under draft at the Ministry of Finance, Planning and Economic Development (MFPED) and has not yet been disclosed for public scrutiny.

³⁴ The world average oil discovery success rate is 1 successful well in 10 wells drilled i.e. a 10% success rate.

At the international level, the country is witnessing larger players entering the industry to partner with or replace the pioneering companies³⁵ in production of oil and gas, for example, the Chinese National Offshore Oil Corporation (CNOOC), Total-France, and ENI-Italy.

At the national level, there is hope among the Ugandan population that the discovery of oil and gas will result in economic transformation, growth, development, and prosperity. It is also hoped that the country's image as the pearl of Africa will continue to shine and that oil revenues will spur the country's effort to meet its development targets and the UN Millennium Development Goals by 2015. However, there is also fear, anxiety, and concern that the emerging oil and gas industry presents significant challenges that the country's governance systems are not in position to effectively handle, leading instead to social, economic and environmental deterioration, insecurity, and abject poverty for many.

As a means of avoiding social, economic and environmental distortions and consoling the citizens, the government is fast-tracking the re-alignment of its national policies, laws, and institutional frameworks to be able to meet the demands of the emerging oil and gas industry. This is because the originally framework in place is weak and insufficient to meet the needs of the industry. Three petroleum bills (i.e. Value Addition, Resource & Revenue Management) have been proposed and are under draft. The Resource Management bill/law is designed to address exploration, development and production of petroleum; the Value Addition bill/law is designed to deal with processing, transportation and marketing of petroleum³⁶; while the revenue management bill is intended to manage the revenues that will accrue from the industry.

It is important to note that the laws that existed before commercially viable oil reserves were discovered are inadequate to meet the demands of the emerging oil and gas industry. Therefore, there will be need to update and streamline the old laws in order to meet the needs of industry.

4.0 Uganda's Experience with Safeguards in the Energy Sector

Uganda's experience working with IFI safeguards first began with the Bujagali project. During the Owen Falls (Kiira) Power project extension in 1990, World Bank safeguards were not yet operational³⁷. The safeguards were therefore a new approach for Uganda in accessing project finance from the World Bank. Since then, there has been a lot of "learning-on-the-job" for both Government of Uganda and the World Bank in applying social and environmental safeguards. The same applies to other IFIs.

The Bujagali is a run-of-the-river hydropower project that was to be constructed at Dumbbell Island 4.5km downstream the existing Owen falls and Kiira power projects. It is a 250MW design capacity project. The impact of this project is inundation of the Bujagali falls and the surrounding land, creating a man-made lake downstream of the Owen falls and Kiira power projects. The project also displaced communities that lived on the shore of River Nile upstream the dumbbell Island site. Based on the hydrological regime in the Lake Victoria's and River Nile catchment, the available water is not sufficient to operate the Bujagali project up to designed capacity.

Owen Falls Extension (Kiira) power project is an extension of Owen Falls (Nalubaale) hydropower project that was constructed downstream 1.6km diversion channel from the upstream of the Owen

³⁵ Companies involved in the exploration phase.

³⁶ This is a shift from the originally proposed Petroleum draft bill that combined exploration, development, production, value addition and marketing.

³⁷ The World Bank Safeguards and Inspection Panel were established in 1993 with a view of responding to complaints of violations of operational policies by IBRD/IDA supported projects.

falls. It is a 200MW designed capacity dam. The diversion channel is blamed for undermining the performance of Owen Falls and Kiira power stations.

The national laws, regulations and institutional provisions that should have offered safeguards to the Bujagali and Kiira power projects included national environment management laws and regulations (1995); National Tree Planting and Forestry Act (2003); social and humanitarian laws and regulations; Uganda Wildlife Act 2003; and others cited above. The institutions that were responsible for overseeing the enforcement of the laws and regulations included National Environment Management Authority (NEMA), National Forest Authority; Uganda Wildlife Authority, among others. However, the country laws and regulations did not offer the same or higher level of protection as the IFI safeguards for the Bujagali and Kiira power projects.

4.1 Experiences of civil society organizations with safeguards

On several occasions, Ugandan civil society organizations have used IFIs' accountability mechanisms to raise complaints about the inadequate use of safeguards in hydropower projects, because national laws and regulations were inadequate to achieve the desired objectives. The national environment management laws and regulations vest NEMA with the authority to conduct an Environmental Impact Assessment (EIA) and a public hearing on projects that are likely to have significant negative impacts on society and environment. However, this requirement is controlled by the Executive Director of NEMA, who has the discretion to classify a project as one that has significant negative impacts and call for an EIA and public hearing to be done. This undermines citizen's participation in decision making. This is further compounded by the requirement in the laws for a project proponent (investor) to conduct an EIA. This implies that the investor will directly pay EIA consultants, which offers an opportunity for the investor to influence or manipulate the EIA results to his/ her favour, thus negating the purpose of the EIA process. Citizens are accorded only 21 days to comment and respond to EIAs, but often times, the actual release of EIAs into public domain happens in less than the stipulated 21 days and close to the official deadlines. This makes it difficult for citizens to effectively comment and respond to EIAs, a reason why civil society organizations opted for safeguards, instead of relying on national laws. This was because the World Bank and African Development Bank were supporting the Bujagali and Kiira power projects.

Petition to the World Bank

In July 2001, the Ugandan civil society organizations and individuals (Requestors) submitted a petition to the World Bank Inspection Panel for an investigation of the Bank's compliance to its safeguard policies and procedures in financing the Owen Falls rehabilitation, Kira (Owen Falls Extension) and the Bujagali Hydropower Projects. The request for inspection was accepted and registered in the Bank's systems later that year.

The Requesters claimed that the World Bank's failure to apply its safeguards in the design, appraisal, and implementation of three power projects materially affected or would affect their rights and interests, which would jeopardize their future social, cultural, and environmental security.

Bank management disagreed with the Requestors, noting that while they had financed projects in Uganda over a past period of 20 years, during that time there were no safeguard policies yet in force. Management argued that by the time the Bank helped to design, appraise, and execute rehabilitation of Owen Falls and construction of Kiira (Owen Falls Extension) hydropower dams, the current Bank safeguard policies were not yet operational. Management also asserted that they had complied with earlier existing policy frameworks, such as OMS 2.36 which did not require an EIA of

the type expected under the 1989 OD 4.00 policy framework. In regard to the Bujagali Project, management claimed to have complied with all Bank safeguard policies.

On October 26, 2001, the World Bank's Board authorized the Inspection Panel to conduct an investigation of the three power projects. In November 2001, the Panel conducted an Investigation Mission. The Inspection Panel concurred with the petitioners on a number of issues related to the Bank's use of safeguards:

- Strategic environmental assessment (SEA): Contrary to what Bank Management claimed, the Panel found that the Bank violated some of the terms and conditions on which the Board approved the credit. For example, the Staff Appraisal Report (SAR) of the Bank recommended that an SEA be undertaken, but this was never done and management admits to this. The panel, therefore, concluded that "management's failure to ensure that an SEA was carried out led directly to many of the concerns related to the Bujagali project". The panel further concluded that management was not in compliance with the Operational Directive (OD 13.5) on project supervision.
- Cumulative analysis: The Inspection Panel observed that while each hydropower project on the River Nile would require a separate project-specific environmental assessment, a series of hydro-projects would give rise to cumulative effects that should formally be evaluated. They stated that although Bank safeguard policies and directives do not explicitly require cumulative effects analyses, Bank Management did actually conduct separate cumulative effects analyses for the Owen Falls and Owen Falls Extension (Kira) power stations in 2000 and 2001, respectively, as part of the preparation for Bujagali project, which was in compliance with the existing environmental policies. However, the studies did not form part of the environmental assessments for the Owen Falls and Kira stations. The panel concluded that "cumulative effects analysis is the weakest component of the Bujagali Hydropower Facility EIA".
- Hydrology of the Lake Victoria and River Nile: The Inspection Panel stated that "there is common agreement that direct rainfall (input) and evaporation (output) from the Lake Victoria surface are the main factors influencing the Lake's Water levels. They further agreed that recharge from tributary streams, rivers, wetlands and catchment is a relatively smaller input to the lake's water balance and discharge down the Nile, a relatively minor output."

The Panel concurred that "the agreement between Uganda and Egypt requires that water flows down the Nile in the same way they did before the excavation of the Rippon Falls gorge to increase outflow from the Lake and the construction of Owen-Falls dam. This flow regime is what is called the 'Agreed Curve'. The 'agreed curve' was intended not to affect the Lake level. Therefore, any incremental change in the flow regime, as is proposed by the Bujagali project documents i.e. "incremental constant release regime" would undermine the lake's level and consequently affect the hydropower productivity of the Nile".

Recent (2011) media reports quoted the former Minister of Energy and Mineral Development, Honourable Engineer Hillary Onek saying that Bujagali would never be able to generate the proposed 250MW of electricity, because the water in the Lake and catchment is insufficient for such generation capacity. According to the Minister the maximum amount of power that Bujagali project could ever be able to generate lies between 170 and 220MW, but only for a short period of time and then Lake water volumes would dictate the generation capacity (The New Vision, Thursday November 3, 2011 & The Daily Monitor, Thursday November 2011)³⁸.

³⁸ <http://www.monitor.co.ug/News/National/-/688334/1266052/-/bhe277z/-/index.html>.

- Economic evaluations of Bujagali Hydropower Project: The Inspection Panel concluded that Bank management failed to include the costs of resettlement and environmental mitigation measures into calculations of the Project's economic return, as required by Bank policy. Similarly, the Bank did not consider the economic costs of the loss of white-water rafting businesses and other sources of local income.
- Kalagala Falls as an environmental off-set for Bujagali Falls: Kalagala Falls downstream the Bujagali Falls was identified by the World Bank and Government of Uganda Environmental Experts to offset the environmental damage and loss of Bujagali Falls as a result of inundation once the Bujagali Hydropower project was completed and operational. However, at the time of identifying Kalagala Falls as an offset for Bujagali Falls, there was no legal documentary evidence that Kalagala Falls was indeed an offset for the loss of Bujagali Falls. The Inspection Panel, therefore, concluded that the absence of a clear and binding legal obligation on the part of government to preserve Kalagala Falls in perpetuity as an environmental offset nullified the claim that Kalagala Falls was indeed set aside as offset for Bujagali Falls.

The legal discrepancy over Kalagala Falls was later (i.e. before the 2007 IP/ IRM investigation) rectified in the Indemnity Agreement between government of Uganda and the World Bank, which clearly and legally spelled out that Kalagala Falls had been set aside as an environmental offset for Bujagali Falls. Although this was done, the Operational Policy (OP 4.04) on Natural Habitats requires that an off-set be ecologically similar to the area it is intended to off-set. The requesters contended that the proposed Kalagala off-set does not qualify as an off-set for Bujagali in the context of OP 4.04. This was concurred to by the Inspection Panel during the 2007 investigation, because there was no separate EIA conducted to ascertain that Kalagala site was ecologically similar to the Bujagali site and that the latter was an adequate off-set for the loss of the former.

- Tariff and affordability: The tariff is a basis to recover investment and operational costs in electricity systems. This is usually determined on the basis of forecasts of electricity demand and its affordability to the potential customers. The demand forecast for Bujagali was set in 2001 in the range of US\$9.5c to US\$10.5c³⁹ and it was concluded that the electricity generated would only be affordable, if its tariff did not exceed this range. The Inspection Panel concluded that even if these demand forecasts and affordability assumptions were to be relied upon, there would still be a potentially serious affordability problem of the electricity generated from Bujagali. This would require rescheduling the resultant debt burden and subsidising the tariff to make the electricity affordable. This is already happening in the country. Government is heavily subsidising the electricity in the country⁴⁰, which has become difficult to sustain characterised by the frequent power-cuts and load shedding.

For example, the current tariff is in the range of Ug.shs 370 to 440, which is far beyond the above recommended limit of Ug.shs 270.75 to 299.25 and is evidently not affordable to the majority of Ugandans. This was recognized by both Bank Management and the Inspection Panel that concluded that an excessive inflation and devaluation of the shilling against the dollar (like what is happening currently) would make it difficult for the electricity regulators to maintain tariffs at affordable levels.

- Alternative energy options: The Inspection Panel found evidence that alternative energy options (i.e. in terms of site, project configuration, and choice of technologies) to Bujagali were not thoroughly evaluated, as required by Bank policy.

³⁹ This is equivalent to Uganda shillings 270.75 to 299.25.

⁴⁰ New Vision Newspaper: UMEME contract was badly negotiated. Monday December 5, 2011.

- Social compliance: In respect to the Bujagali project's compliance to the World Bank's Operational Directive (OD 4.30), the Panel concluded that the socio-economic survey requirement was met in the formal sense that surveys are mentioned and carried out, but failed in providing real evidence of their use in planning. In addition, the community development action plan was weak and sketchy. The plan focused almost entirely on short-term exercises, laid out targets poorly, and made no significant and systematic effort to achieving long-term poverty alleviation. A similar conclusion was arrived at during the 2007 investigation in relation to the new Operational Policy on Involuntary Resettlement (OP/BP 4.12), which replaced OD 4.30.
- Projects on international water ways: While there was evidence that Uganda consulted with the Governments of Sudan and Egypt about the construction of the Bujagali hydropower power on the River Nile, there was no evidence that Kenya and Tanzania, which share Lake Victoria from which water to power the Bujagali would originate, had no objection to the construction of Bujagali.

The Inspection Panel, however, disagreed with the petitioners on several issues. As the Panel's jurisdiction is limited to evaluating compliance with existing World Bank policies, its findings were based on:

- Disagreement on facts: Management was found to have complied with the Bank's requirements on dam safety. The Panel also found that management had complied with the Bank's requirements to conduct environmental studies. With regard to cultural impacts, the Inspection Panel was of the view that the project sponsor AESNP had completed significant work to address cultural property issues. However, it was not without controversy. They hoped that more cultural and religious leaders would be consulted and involved in the assessment of cultural property going forward. In essence, the AESNP was in partial fulfilment of the policy requirement for cultural property management.
- Policies not yet in place at the time of project proposal: The Panel concluded that the Bank did not violate its policy on economic evaluations of investment operations, because this policy was not applicable at the time Owen Falls and Kira was proposed (June-July 1990), but became effective in September 1994. Bank Management was found to have complied with Bank Management's Operating Manual Statement (OMS) requirements to conduct project appraisal (OMS 2.20) and economic analysis of the project (OMS 2.21). However, it failed to comply with requirements to ensure that the project results in poverty reduction (OD 10.00).
- Requirements that were not considered formal policies: The Panel found that the Bank had no specific requirements on cumulative impact assessment, so it could not make a finding of non-compliance. However, management was found not to have complied with OP 4.01 requirement for a Sectoral Environmental Assessment that calls for cumulative impacts assessment.

In our (the requestors') opinion, the World Bank Group coerced the Government of Uganda into reforming its power sector. This resulted in an escalation of the tariff to a point that it was no longer affordable to the majority of Ugandans. The reform of Uganda's power sector resulted in an unbundling of the Uganda Electricity Board (UEB) into four independent private sector companies⁴¹, all dependent on a single tariff for their existence. This was made worse by the call to increase the tariff as a basis for making the Bujagali Hydropower project seem viable. The Bank claimed that

⁴¹ Uganda Electricity Generation Company Limited (UEGCL), Uganda Electricity Transmission Company Limited (UETCL), Uganda Electricity Distribution Company Limited (UEDCL), and UMEME.

these reforms and tariff increases would make the power sector financially sustainable, able to finance its investment needs and service debt obligations, and ensure returns to shareholders and other independent power producers. The World Bank Inspection Panel described these conditions in its investigation report:⁴²

- “In February 1999 the Bank Group brought together key decision-makers within the Government, its advisers and AES to discuss the need for progress on implementing a comprehensive sector reform program as a basis to support the Bujagali Project”;
- “The Government's request to hasten the implementation of Bujagali independent of sector reform should not be accommodated in light of the potentially large negative financial impact that the Project would impose on an unreformed power sector”;
- “Privatization of the power sector, and more specifically privatization of distribution facilities, is a fundamental necessity for the commercial viability of the proposed Project”;
- “The Project will support the power sector reform plan through the provision of a secure supply of least-cost bulk power ...”;
- “The proposed Project is a large and lumpy investment in a small power system ...”

Whether or not the World Bank intentionally or inadvertently led Uganda into a situation where the majority of the population could not afford electricity, what is clear is that it pressured the Uganda government into a power sector reform that resulted in escalation of power tariffs. Indeed, what the reforms managed to achieve is to guarantee returns to shareholders and other independent power producers at the detriment of the electricity consumers and taxpayers, but failed to deliver least-cost bulk power to Ugandans.

Second petition to the World Bank and the African Development Bank

In 2006, civil society organizations and individuals became aware of the African Development Bank's (AfDB's) intention to finance the Bujagali Hydropower Transmission Lines (T-lines). They also became aware of the existence of an Independent Review Mechanism (IRM), the Roster of Experts and Compliance Review and Mediation Unit (CRMU) within the African Development Bank.

In February-March 2007, Ugandan civil society organizations decided to submit another petition over Bujagali to the Inspection Panel of the World Bank and the AfDB – CRMU. This was the second time the requesters were petitioning the Inspection Panel, while it was the first time they were petitioning the AfDB-CRMU over Bujagali.

This petition raised similar concerns as those earlier lodged in 2001, including inadequate preparation of Environmental Action Plans and assessment of water resources management. These additional concerns triggered the following World Bank operational Policy and procedures, namely: Environmental Action Plans (OP 4.02) and Water Resources Management (OP 4.07). All of the African Development Bank Policies and Procedures were triggered by the Bujagali project, therefore calling for an investigation. A joint, coordinated CRMU and Inspection Panel field mission was commissioned to investigate the Bujagali project.

After the Inspection Panel's joint investigation with the AfDB CRMU, the September 2008 Inspection Panel investigation report on Bujagali Hydropower project found similar concerns as earlier reported during the first investigation with minor improvements in compliance to Bank policies and procedures.

⁴² Inspection Panel Investigation Report (2002) on the Owen Falls; Bujagali and Owen Falls Extension hydropower projects p36.

On June 20, 2008, the CRMU produced its own investigation report, which was sent to the AfDB's Board and management on the same day it was sent to the requesters for comments. The report revealed that there were areas of both compliance and non-compliance with bank safeguards. The panel stated that it "was concerned about how bank management and staff had handled certain issues, but because of gaps and lack of clarity in the Banks' policies and procedures, it was unable to make clear determination of compliance or non-compliance".

The CRMU Panel recognized that:

- There was limited consideration of the economic impact of hydrological risk associated with this project in the bank's own appraisal documents;
- The project documents gave conflicting information on the hydrological regime that would be followed under the Bujagali project;
- Different costs were used in the Bank's appraisal documents and the PPA Study. The CRMU found it unsatisfactory that the project documents presented to the Board of Directors some months after the completion of the PPA Study neither commented on the differential in capital costs between the PPA Study and the project appraisal documents, nor provided any explanations on how the differences could have affected the result of the financial and economic analysis;
- There were risks associated with the tariff structure and the ability of the tariff-collector (JMEME) to realize 100% collection bearing in mind their limitations and constraints in dealing with the technical and commercial losses in the electricity system;
- The BHP-IP did not contain a detailed analysis of project alternatives. The PPA Study (<http://tinyurl.com/5bwqwz>) did not raise or discuss other renewable energy sources such as municipal solid waste, solar or wind. The fact that by 2006 oil had been discovered in Uganda and that it did not form part of the alternative sources of power mentioned in the PPA study undermined the options assessments;
- The cumulative effects of the cascade of dams of which Bujagali project would be part had not been adequately addressed in the project's Strategic Environmental Assessment;
- The Bujagali projects cannot solve the energy needs of the majority of Ugandans, especially those living in rural areas.

On July 9, 2008, the African Development Bank Group Board of Directors discussed the findings of the CRMU Panel report and expressed their support for the IRM and the Panel, their strong interest in ensuring that the bank has effective policies and procedures for dealing with social and environmental impacts of bank-funded project and the importance of establishing an appropriate balance between the concerns of all stakeholders and the imperatives of development and poverty reduction in Africa. They consequently, decided:

- First, to accept and adopt the Compliance Review Report, including its findings and recommendations;
- Second, to instruct the African Development Bank's Management to prepare two action plans. The first one responds to the Panel's recommendations on the Bank's policies and procedures. The second one deals with the Report's actionable project-specific findings on non-compliance and areas of concern.
- Finally, to approve the Panel's recommendation that the Independent Review Mechanism monitor the implementation of the project-specific action plan.⁴³

⁴³ For more information, please visit <http://www.afdb.org/irm>.

Although the AfDB management disagreed with most of the requestors' claims, they recognized that this was evidence that something went wrong in the bank's procedures and that there are policy and procedural gaps within the Bank that were overlooked or not considered that needed to be improved.

While the requesters welcomed and were happy with the CRMU's Panel Investigation report of the Bujagali and Interconnection projects, a number of issues remained unresolved related to:

- Whether there would be concrete steps taken to address the policy violations and the resultant impacts of the violations on the project and the people of Uganda. In addition, there is no evidence of guidelines to address such violations or of consequences to staff or departments found to have been responsible for the violations. Going forward, we expected to see appropriate consequences for violating bank policies meted to bank management and staff or guidelines and procedures for addressing such violations put in place;
- Strengths and weaknesses of the recommendations of the Panel. While the Panel's findings confirmed the concerns we had expressed for many years over the Bujagali project, the recommendations were far too weak and unspecific to have resulted in any significant changes to the project that would reduce the dam project's impacts. Such weak recommendations were construed to jeopardize civil society's confidence in the Independent Review Mechanism and future engagements with it.

The second Inspection Panel investigation

As earlier mentioned, this was conducted as a joint investigation between the World Bank Inspection Panel and the IRM/CRMU of the African Development Bank during November-December 2007. Like in the first investigation, the Panel agreed and disagreed with the requestor on a number of issues that were raised in the petition. The Panel found areas of compliance, including the project being appropriately classified as category "A"⁴⁴ and that the Kalagala Falls had been established as an offset for the natural habitats that would be inundated by the project. The Panel found the Bank to have complied with the procedure set forth in the Bank Policy OP 4.37 on safety of dams. However, there were several areas of non-compliance with Bank policies that included:

- a) Environmental issues: Failure to appoint an independent panel of environmental experts as required under Bank Policy for this type of complex project, and failure to support needed capacity building for the implementation of social and environmental aspects of the project.

The social and environmental assessment (SEA) did not adequately make reference to Strategic/ Sectoral Social Environmental Assessment (SSEA) of the separate Nile Basin Initiative study that analyzed issues such as climate change and cumulative effects. As a result important information required under the Bank Policy was not disclosed in a timely manner as an integral part of the Bujagali project's documents. In addition, neither the SSEA nor the SEA addressed the cumulative effects of existing and planned projects in a meaningful way. And while the Kalagal Falls were established as an offset, in light of the institutional weaknesses, there was no evidence that this offset would be maintained in accordance with the appropriate conservation and mitigation measures in conformity with sound social and environmental standards. In addition, the fact that the environmental management plan was not part of the SEA was a deficiency and this was not in compliance with the requirements of the bank's Operational Policy (OP 4.01) on environmental assessment.

⁴⁴ Category "A" projects are those construed to have significant social, economic and environmental effects.

- b) Cumulative impacts: As with the SEA, Bank Management cited the SSEA as a source of data and analysis for cumulative impacts for the SEA of the Bujagali project. Management argued that the SSEA compared various proposed power development portfolio options in the Nile Equatorial Lakes' Region. The Panel observed that while Management cited the SSEA as evidence for cumulative impacts having been conducted, it did not provide a systematic examination of the potential consequences of the Nalubaale and Kiira facilities, the Bujagali and the planned Karuma projects on the Victoria Nile. In addition, there was no examination of the impact of additional transmission lines between the hydropower stations and Kampala.

The Panel further observed that while section 14 of the SSEA is titled "Assessment of Cumulative Impact", the analyses were not sufficiently backed by evidence and included opinions rather than careful fact-based examinations of the additive effects of the impact from present and foreseeable projects. Also, the SEA seemed to address cumulative effects in more detail, but it made statements that were not substantiated by data or factual analysis. The Panel, therefore, concluded that neither the SSEA nor the SEA addressed the cumulative effects of the existing and planned projects in a meaningful way, which was not in compliance with OP 4.01.

- c) Hydrological issues: While the Panel observed that substantial analysis of the hydrologic data sets was done during the design of the project, and was found to constitute reliable for decision making in compliance with OP 4.01, it also found that there were important areas of non-compliance with OP 4.01 and OP 10.04 on economic evaluation of investment operations. In particular, there was a discrepancy between the Project Appraisal Document (PAD) and the Economic Study as to which water release regime would be applied once Bujagali became operational.

This brings into question the data basis for the project's economic analysis and is likely to have resulted in more positive conclusions in the economic study than would have otherwise been warranted. Also, the SEA assumed that the project's influence ended downstream of Kiira – Nalubaale dams and therefore did not assess the project's potential impacts on the changing levels of Lake Victoria, as it should have. In addition, the PAD asserted categorically, without any reference to risk and uncertainty, that there would be no adverse effects on water release due to climate change during the project life even though this risk factor was identified in the SSEA.

- d) Economic issues: The terms of reference (ToR) for the economic study called for a comprehensive update of the first round of the Bujagali project, but the Panel found that the ToR encouraged a focus on relatively large grid-connected plants and did not draw attention to the evaluation of smaller-scale or off-grid alternatives. The Panel concluded that the information in the economic study and the PAD on these options did not demonstrate full compliance with OP 10.04's requirement to evaluate alternatives.

As part of its assessment of least-cost options, the PAD asserts that tariff rates may drop by up to 10%. The Panel found that this should have been qualified to take into account the increases in engineering, procurement and construction (EPC) costs and transmission costs after the economic study was prepared. They concluded that the issue of electricity tariffs and affordability is of high importance to the people and communities.

The quantitative assessments of costs and benefits in the Economic Study suggested that the Bujagali Project would have largely positive direct impacts on Uganda's economy and thus appears to have complied with the requirement to show that the Project is likely to contribute

to “broad based growth”. However, the Panel noted that the tariff figures provided in the economic study were likely to be based on an underestimation of cost of electricity with the project. While it would benefit the better-off urban households in the early years of the project, it would be too costly for the many poorer households. In addition, the economic study and PAD failed to provide estimates of the economic impact of the project on low income households. This was not in compliance with the bank policies on poverty reduction (OP 1.00) and economic evaluation of investments (OP 10.04).

- e) Cultural and spiritual issues: It was in the Panel’s view that management did not ensure that cultural and spiritual matters of high significance at Bujagali Falls were adequately considered in Project preparation, and when comparing the Bujagali and Karuma alternatives. Alternative project configurations were unduly narrowed on the basis of a-priori judgments rather than exploring all technically feasible options, including those that would not involve flooding the Bujagali Falls and thus have lower social and environmental costs, and laying them out in a systematic way along with their economic, social and environmental benefits and costs, so that judgments on optimal alternatives could be made with a full understanding of the trade-offs involved.
- f) Involuntary resettlement: The Panel observed that the BEL project involved rather unusual circumstances of an ongoing, incomplete resettlement program stemming from the AESNP plan for a dam at Bujagali Falls. Bank Management opted to conduct an Assessment of Past Resettlement Activities and Action Plan (APRAP), instead of a new Resettlement Action Plan (RAP) as required by the bank’s policy on involuntary resettlement (OP 4.12) with the justification that affected people had already been relocated and others had already received compensation under the prior project. The Panel concluded that the way the APRAP was substituted for a full RAP had far ranging consequences because of failure to comply with Bank Policy. The APRAP failed to census all displaced persons; the consultations were truncated; did not address the effects on people of the original displacement and the ensuing delay; and failed to update the previous RAP to ensure compliance with Bank Policies. The Panel concluded that the project did not comply with the mandate of the bank policy in respect of improving or at least restoring in real terms the livelihoods and standards of living of the people displaced by the project.
- g) Other areas that had issues of concern were the transmission lines; environmental impacts on fisheries and aquatic systems; the Kalagala Offset; Climate change risks; demand forecasts and electricity tariffs; analysis of options; and systemic issues affecting policy compliance.

Lessons from engaging the IFIs’ accountability mechanisms

There are several challenges that affect compliance with the safeguard policies. These challenges are faced by both the banks and the borrowers. The banks’ challenges, on one hand include the limited enforcement authority of the Inspection Panel and similar mechanisms. The Panel investigates and at times, monitors compliance and implementation of Bank policies and procedures. However, it cannot compel the bank to abide by their decisions. The banks also do not have sufficient monitoring and evaluation processes for implementing the safeguards, especially the implementation of the involuntary resettlement policy. The application of safeguard policies seems to be concentrated at the project inception and appraisal stages before financial closure (approval of the loans/grants) as compared to after financial closure and during project execution. This has a tendency of delaying project approval and has minimal influence during project implementation. In addition, the accountability mechanisms lay much emphasis on compliance with bank policies and little or no emphasis on issues beyond compliance such as sector planning and broad strategic environmental

assessment. On the other hand, borrowers may construe the process of applying safeguards to be time consuming, costly and laborious.

Lessons from engagement with project-affected people

The government officials from the MEMD and Bujagali project promoters conducted structured, disjointed and selective dialogues with project-affected people. This resulted in an apparent isolation and alienation of project-affected people considered by the Ministry and company as being “adamant and against the Bujagali project” and compromising, bribing or hoodwinking those considered “compliant” or “supporters of the project” into accepting the interests of the investor and government. This caused rifts and divides between the Bujagali project-affected people, i.e. those who supported and those who did not support the project.

Some of the project-affected people who were construed to oppose the Bujagali project received threats from both anonymous and known individuals from the government and the company that they would lose their right to compensation and resettlement and would be dealt with summarily. Although the threats did not subside even after the Inspection Panel investigations had been conducted in 2001, they occurred to a lesser extent and magnitude – suggesting that the intervention of the Inspection helped diminish the threats to some extent. This was attested to by the project-affected people that we consulted for this paper.

Every time that we civil society organization representatives went to visit and consult with the project-affected people, officials from MEMD and AESNP/BEL⁴⁵ would come to investigate the purpose of our visits. This usually happened even when we had not formerly informed them of our visits to the resettlement area. This was evidence that somebody or people within the resettlement alerted the government and company officials about our presence in the community.

The engagement of the Inspection Panel and the IRM with project-affected people, civil society organizations and individuals improved to some extent the compensation and resettlement arrangements of the project-affected people in terms of housing, resettlement packages and welfare, even though it was not in tandem with expected IFI safeguard policy requirements.

Consultations with project-affected people for the purpose of this paper revealed that project-affected people:

- Are aware of the Inspection Panel (IP) and Independent Review Mechanisms (IRM) at the World Bank and African Development Bank, respectively;
- Acknowledged that the intervention of the Inspection Panel and IRM improved the way the Government of Uganda, AESNP and BEL related with them. They also acknowledged that the investigations conducted by the IP and IRM led to improvement in the compensation and resettlement packages that project-affected people received;
- Were concerned that many promises made earlier by the government and Bujagali project sponsors remained unfulfilled to date.
- Are viewed as “well-to-do” by people in the neighbouring villages/ communities. This could explain why Naminya resettlement village in Buwikwe district is referred to as “Muyenya” akin to a middle class suburb in Kampala city;

⁴⁵ Applied Energy Services Nile Power and Bujagali Energy Limited are the companies that were involved in the Bujagali project. AESNP was the first company that attempted to undertake the Bujagali project, but later withdrew from the project in 2000, because of problems at the US Securities Exchange (USE). BEL took over after AESNP and is the current promoter of the Bujagali project.

- Acknowledged that despite the many unfulfilled promises over the last ten years, their lives were better-off than they were before. However, they contend that this was largely because of their personal effort to make their resettlement a better place to live in and not as a result of government and company intervention;
- Acknowledged that while some social services⁴⁶ are being made available to them and they are undertaking training in artisan and other income generating skills, the quality and adequacy of service delivery is still limited.

Consultations with “the requesters” for the purpose of this paper revealed that requesters:

- Acknowledge that the intervention of the IP and IRM had some improvements in the way government and the Bujagali company officials related with the project-affected people;
- Acknowledge that since the IP and IRM investigations in 2001 and 2007 improvements in the compensation and resettlement packages were registered. However, there are still unfulfilled promises for the project-affected people on the part of government and the project sponsor;
- Continue to contend that the Bujagali project is not in position to generate the designed capacity of 250MW. This was further asserted by the former Minister of Energy and Mineral Development (MEMD), Honourable Engineer Hillary Onok who in October 2011 stated that “Bujagali can sustainably produce only 170MW of power.” This is in agreement with the IRM/CRMU investigation report that in 2007 reported that Bujagali would sustainably generate 162.3MW under the existing hydrological regime;
- Continue to contend that power from the Bujagali project is the most expensive in the region and will not provide affordable power. At a cost per MW that exceeds US\$7.44million, Bujagali is the most expensive power project in the world. It will, therefore, not deliver the desired affordable and adequate electricity to the majority poor people of Uganda;
- There is need to develop an energy mix for Uganda that includes biogas energy systems that are most likely to better serve households that may never be served by the traditional hydro – and thermal – power based centralised or decentralised transmission grids, especially in hard to reach areas;
- IFI safeguards were not applied to the Oil & Gas developments in the country. There is need for the government to scale up its country safeguards to measure-up or be better than IFI safeguards.

4.2 Experiences of government officials in Uganda

Consultations with officials from the Energy Department of the Ministry of Energy and Mineral Development (MEMD) revealed that they:

- Are aware of the World Bank and African Development Bank safeguard policies and procedure and applied them in the development, appraisal and design of the Bujagali project and transmission line;
- Are aware of the IP and IRM processes in the World Bank and African Development Bank;
- Consider IFI policies useful tools in developing, appraising and designing energy projects;
- Acknowledge that there are gaps in Uganda’s safeguards that needed to be purged. It is important to scale up Ugandan policies, laws and institutional provisions to measure-up or even be better than the IFI safeguards,

⁴⁶ This includes, for example, piped water, roof-top rainwater harvesting tanks, ground flood water harvesting tanks & health services.

- However, they contended that government has fairly sufficient safeguard policies, laws and institutional frameworks that are capable of delivering the desired development and impact;
- They are not aware whether or not IFI safeguards were applied in the appraising oil & gas investment projects, but advised the consultant team to inquire from PEPD.

Discussions with officials in the Petroleum Exploration and Production Department (PEPD) of the MEMD ministry revealed that they:

- Are not informed about the existence of IFI safeguards. They have heard about the World Bank Inspection Panel, but not the IRM/CRMU process at the African Development Bank;
- Acknowledged that, apart from the existing country social, economic and environmental policies and laws, the PEPD had not applied IFI safeguard policies in appraising, designing and developing oil & gas investments.

Apart from a few exceptions, the majority of government officers were not aware of the Inspection Panel, Independent Review Mechanisms and safeguard policies at the World Bank and African Development Bank, respectively. From the discussions, it was clear that while some Ugandans have a clue about country-based safeguard policies, the majority of them are uninformed about the IP, IRM and safeguard policy processes at the IFI level. There is, therefore, need for wider public awareness raising about country—and IFI—based safeguard policies and procedures with a view of increasing their citizen participation in the reform and enforcement of policies when appraising, designing and executing investment projects.

5.0 Implications for the Oil and Gas Sector

Uganda's oil and gas sector has not received funding from the IFIs. Most of the financing in the sector has originated from the international oil companies that invested mainly in the exploration process. With the apparent entry of Chinese-based oil companies in Uganda's oil sector, the involvement of Chinese Export Import Bank (EXIM) in financing oil projects in Uganda cannot be ruled-out. Likewise, the involvement of national banks of emerging economies such as India, Russia, South Africa and Brazil in financing projects in the oil & gas sector of Uganda cannot be underestimated. Now that the industry is moving to the production phase with a host of activities to be done that require significant amount of financing, cheap (low interest) and "easy-to-access" sources of international financing could take centre stage in Uganda's oil & gas industry.

The fact that complying with IFI safeguards is often perceived by project developers to be a burden, makes accessing financing from the traditional IFIs (e.g. the World Bank & African Development Bank) unattractive. This could spur a political shift from the traditional IFIs to cheaper and easier-to-access sources that do not place stringent and laborious preconditions on financing. This has the effect of causing projects that have significant social, economic and environmental negative impacts to be developed. This shift is probably unstoppable; however, there is need for a mechanism that will ensure that projects that have significant negative impacts are avoided. This could be achieved through:

- National, regional or international securities exchanges where companies are registered;
- Improving and strengthening the national and regional regulatory and safeguards systems. For example, through the East Africa Community (EAC) arrangement, there could be regulatory and safeguard systems that companies operating in the region would be required to comply with;
- Scaling up country-based safeguard policies and mechanisms to a level equivalent or higher than the IFI safeguards that goes beyond ensuring compliance to safeguards in early stages

of project approval and financing to project execution and closure/ decommissioning. This could be supported by establishing a multi-stakeholder monitoring and evaluation framework for compliance.

The fact that International Oil Companies (IOCs) operating in Uganda's oil & gas sector are obtaining financing from sources that may not necessarily require application and compliance with international safeguards and the fact that Uganda's safeguards are inadequate and their application is weak, complicates the matter. Consequently, oil companies have opted to rely on safeguards of their choice. In this regard, therefore, Tullow Uganda Operations PTY Limited opted to apply the World Bank International Finance Corporation's (IFC's) environmental and social performance standards as a means of keeping within internationally accepted principles and practice. Internally, the company has health, safety and environmental (HSE) guidelines/ principles that they apply during project execution⁴⁷.

It is, therefore, important that the Government of Uganda fast-tracks and comprehensively develops a regulatory systems with clear and effective laws and institutions to govern the sector. Failure to do this could result in serious negative social, economic, environmental and political consequences, including the much hyped resource-curse.

5.1 Major concerns with Uganda's oil & gas development

In line with the National Oil and Gas Policy (NOGP), the facilitation of information to, consultation with, and participation by different stakeholders in all aspects of Uganda's planning and management of its oil and gas resources should be at the heart of government policy and practice.

The Policy's goal is to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society. Its objective VII aims at ensuring optimal national participation in the oil & gas activities in terms of government's involvement through shareholding in licenses and private sector provision of goods and services as a means of adding value to the resource. The policy recognises the public interest, concern and anxiety created by the discovery of oil resources in the country and the need for timely information dissemination to address the concern.

The policy is based on the principles of "transparency and accountability" and stipulates that "openness and access to information are fundamental rights in activities that may positively or negatively impact individuals, communities and states". It recognises the importance of information in enabling people/ stakeholders to understand how their interests are being affected and the different roles they play in achieving transparency and accountability in the oil and gas activities. It commits to promote high standards of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management and disclosure of revenues and expenditures accruing thereof, using simple and easily understood principles in line with accepted national and international financial reporting standards.

Unfortunately, the current governance trends in the oil and gas sector do not conform to the above policy aspirations. There are a number of warning signals in the sector that should seriously worry the citizens and its development partners and donors. Some examples include the following.

⁴⁷ Tullow has an adage that states that "If it does not feel safe, stop and evaluate before proceeding with work".

Lack of transparency and accountability

Ugandans today wonder why negotiations between the government and oil companies for the awarding of licenses on the first five exploration areas were done in secret, and why the Production Sharing Agreements (PSAs) have not yet been disclosed, nor discussed and ratified by parliament. On several occasions, government officials claim to have disclosed the PSAs with individual Members of Parliament (MPs) of the Natural Resources Committee (NRC) in July 2008. However, these have not been widely disseminated even in Parliament.⁴⁸

This practice is contrary to the NOGP's commitment of an open and transparent bidding process as basis for licensing. In light of this contradiction between policy and practice:

- Two journalists⁴⁹ in 2008 filed a legal suit against government at the Magistrate to compel the government to disclose details of the oil and gas contracts based on the 2005 Access to information Act. In 2011, the magistrate court ruled in favour of government that it had a right to withhold information that is construed to jeopardise national security, suggesting that disclosure of PSAs would amount to a breach of national security. The journalists contested this decision and petitioned the High Court;
- In 2010, civil society organizations⁵⁰ filed a request at the Constitutional Court for an interpretation of the 2005 Access to Information law in relation to the PSAs. This case is still pending at the Constitutional Court;
- In 2010, the Civil Society Coalition on Oil & Gas (CSCO), in collaboration with the NGO Platform UK, obtained copies of Uganda's PSAs with Tullow and Heritage Oil & Gas from the UK and analysed them. The analysis revealed several concerns with the fiscal regime proposed in the contracts, potential for environmental damage, undermining of sovereignty, secrecy, freezing of Uganda's laws by the stabilisation clauses enshrined in the contracts, an ineffective oversight and audit function, potential human rights violations, and potential sources of conflict. This led to a general conclusion that Uganda's oil agreements place profit before people and have a great potential of leading the country into the much feared resource curse. See www.carbonweb.org/uganda;
- In September - October 2011, three ministers were alleged to have received bribes from oil company officials. As a result, MPs petitioned the speaker of parliament to disclose all contracts in the oil & gas sector, halt all activities in the industry, and advise the accused ministers to step-aside as investigations into the allegations proceed. On October 10, 2011, the Speaker of Parliament Rt. Hon. Rebecca Kadaga displayed copies of the PSAs in Parliament, but stated that they were to be referenced from the Parliament's Library with controlled access based on written requests and approval. This was in violation of the NOGP spirit of openness and accountability;

Traditionally, oil companies seeking licenses from the government are expected to pay "signature bonuses". However, according to the Petroleum Exploration and Production Department (PEPD), no signature bonuses were paid in the first round of licenses awarded to oil companies, because the industry was not yet attractive and waiving of the signature bonus fees was aimed to promote

⁴⁸ 'Lack of transparency may threaten Uganda's future as an oil producer', *Sunday Monitor*, 14th September 2008.

⁴⁹ Messrs. Angelo Izama and Mwangushya.

⁵⁰ Human Right Network of Uganda (HURINET) and Green-watch.

investment in the industry. It is only for the most recent licenses awarded to Neptune (EA Rhino Camp)⁵¹ and Dominion (EA4B Southern Lakes)⁵² that signature bonuses were paid.

A review of the draft PSAs for Tullow Oil Uganda Operations PTY and Heritage Oil & Gas reveal signature bonuses to be paid to the government⁵³, yet these companies received exploration licenses in the first round of licensing, which is contrary to what PEPD claims. PEPD further claims that signature bonuses that have so far been paid to the government have been disclosed to the public. However, between 2008 and October 2011, signature bonuses were not made public.

On 10th October 2011, the Minister of Finance, Planning and Economic Development (MFPED) presented to MPs in parliament a report containing bank accounts and sums of money claimed to be at the Central Bank where signature bonuses and capital gains tax from the transfer of interest from Heritage Oil & Gas to Tullow were deposited. There are unconfirmed reports that three quarters of the money deposited on these accounts at the Central Bank has already been withdrawn under unclear circumstances in the guise of financing the construction of Karuma Hydropower station in the west Nile region of Uganda.

In February 2012, the President order the Minister of Energy and Mineral Development to sign PSA with Tullow as a bid to facilitate the farm-down of interests previously held by Heritage Oil & Gas Limited to Chinese National Off-shore Oil Corporation (CNOOC) and Total of France. This was in total disregard of parliament's resolutions to halt and stay any activities in the oil sector until appropriate legislation to govern the sector is enacted. It was also intended, as the President boasted, to pre-empt attempts by some Members of Parliament blocking the signing of the PSAs with Tullow in the High Court before the petroleum bills are passed into law. This kind of intervention by the president and some members of parliament raise concerns of conflict of interest and political interference in the oil sector.

Since 2008, no civil society organization, MP or Government officials interviewed for the purpose of this paper knows where the signature bonuses and the capital gains tax were deposited. It is, therefore, important that full disclosure is made in terms of the amount of monies received (if any) and from whom; when it was received; on which account it was deposited; and its fate. The receipts and uses of the money also need to be independently audited⁵⁴. Otherwise, there is a significant risk of corruption and misuse of oil revenues.

Inadequate legal and institutional framework

Oil & Gas activities and developments are occurring in a backdrop of an inadequate legal and institutional framework. The proposed legal framework, especially the draft upstream⁵⁵ and downstream⁵⁶ petroleum 2012 bills l/proposed laws that were disclosed and in parliament for consideration are already riddled with gaps, inadequacies, ambiguities and implementation challenges that will have far reaching ramifications in respect to society, the economy, the environment and national and regional politics. There is no guarantee that the proposed Public

⁵¹ Awarded 27th September 2005.

⁵² Awarded 27th July 2007.

⁵³ Contracts Curse: Uganda's oil agreements place profit before people (2010). www.carbonweb.org/uganda.

⁵⁴ Sharing of oil and gas revenues in Uganda', *Uganda Wildlife Society*, Oil and Gas Series, No. 1, October 2008.

⁵⁵ . Also known as the Petroleum (exploration, development and production) bill 2012

⁵⁶ . Also known as the Petroleum (Refining, Gas Processing & Conversion, Transportation and Storage) bill 2012

Finance and Management bill/ proposed law⁵⁷ will actually be devoid of gaps, inadequacies, ambiguities and implementation challenges. The existing national policies, laws and institutions have not yet been scaled up to meet the demands of the oil & gas industry.

In an environment where the existing institutions are weak; are not fully exercising their mandates due to political interference; and there is duplication of roles and responsibilities within and across the different government ministries, departments and agencies, it becomes difficult to believe that such problems will not prevail in the proposed new petroleum institutions—namely the Petroleum Authority (PA), Petroleum Exploration and Production Department (PEPD) and the National Oil Company (NOCs). There is need to scale up and strengthen these institutions and improve coordination between the various institutions associated with the oil & gas industry.

Inadequate environmental impact assessments

As a requirement of the National Environment Management Act and regulations, oil companies conducted Environmental Impact Assessment (EIA) studies to inform decision-making basis of whether or not to award the oil and gas exploration and production licenses. While the EIAs reports produced were supposed to be shared publicly by NEMA, often this did not occur. NGOs had to lobby hard to obtain them, often accessing them too late to effectively analyze them and respond to the government's position.

The EIAs that NGOs accessed were riddled with gaps and inadequacies, which were communicated to government and oil companies. Whether or not the gaps and inadequacies in the EIAs have since been purged or addressed remains to be seen.

In addition, the government's conditions of approval for EIAs were supposed to be made public, but were usually not disclosed; and when they were, contained vague and standardized statements rather than detailed comments.

Lack of information available to local communities

The veil of secrecy and mystery surrounding oil companies is creating unwarranted fear and anxiety at the community level, which is a recipe for rumour and conflict. This is evident in community expectations to receive compensation for the land taken by the companies for exploratory and production purposes. Consultations with project-affected people to attain prior and informed consent are not frequently conducted. This has resulted in project-affected people receiving less than expected compensation and resettlement packages that do not attain the objective of improving or at least bettering people's livelihoods to above what they originally were before the project as required under the IFI policies.

People living in the exploration areas have reported that oil companies are conducting activities (e.g. seismic surveys, drilling of wells & well testing using flaring) without prior warning and notification to the communities. This is breeding discomfort and concern among the local residents and has the potential of causing conflict.

Land tenure in exploration areas where oil discoveries have been made is under customary ownership with no clear demarcations and titles. In the recent past, land for oil activities was

⁵⁷ . Government decided to scale-up the Public Finance Laws to meet the demands of the oil and other sectors, instead of having a separate law for Petroleum Revenue Management called the Public Finance and Management bill/law. However, at the time of writing this paper, this bill had not yet been tabled in parliament.

identified in consultation with ministry of lands, energy and local government officials, with little involvement, consultation or sensitization of the local residents. This has encouraged some community members to claim land communally owned as their individual private property. In addition, it has spurred speculative land purchasing and land-grabbing from the non-suspecting community members by politicians, the rich and affluent. This is breeding tension and conflict among relatives and non-relatives in the communities. The value of land in the oil producing regions has escalated over and above realistic market values elsewhere in the country. Pieces of land range in cost from Ugshs300,000 (US\$113) per acre to Ugshs500million (US\$18,8680) per acre.

The other heightened expectation and potential source of tension relates to employment opportunities (i.e. a reportedly opaque practice on the part of companies in hiring and firing temporary staff). Many communities perceive that jobs are being disproportionately offered to “foreigners”⁵⁸. Local businesses have also claimed that they are not being properly remunerated for their services.

Oil and gas development has also changed community dynamics in some cases. Some communities have been refused access to natural resources that they originally accessed. Competition among communities has arisen over the inevitably uneven spread of benefits accruing from the presence of the oil activities such as infrastructure and service provision. There is growing concern over the use of private security forces and state security agencies to stifle community freedoms and movement (Jamie, *et.al*; 2010)⁵⁹.

Compared with the other oil companies operating in the country, Tullow Oil has demonstrated the greatest seriousness towards managing its social and environmental footprint in the interests of peace and development. This is probably because it has long-term intentions of operating in Uganda; and due to its high standing in its country of origin, Ireland, for its ethical business practices. For example, Tullow has built schools, health centres, trained community members in alternative income generating skills and livelihoods, and demonstrated willingness to dialogue with stakeholders other than government officials; and conducted training workshops for civil society, local government leaders and cultural institutions on oil formation, extraction, processing and marketing issues. Heritage Oil & Gas Limited was perceived as an essentially closed-door company that was unwilling to engage with stakeholders other than government officials and their service providers. Neptune is perceived as a highly secretive company that has little or no commitment to engage with stakeholders other than government and their service providers⁶⁰. Similarly, Dominion Limited seems to operate on a less open policy with respect to communities and civil society organisations.

5.2 The need to manage the social, economic, politic, and environmental impacts of oil and gas in Uganda

The emerging oil & gas industry in the country presents potential social, economic and environmental challenges. The area where oil & gas has been discovered coincides with ecologically sensitive and biodiversity rich and protected areas, which include game reserves, national parks and forest reserves. Therefore, planning and development of the industry in such areas is complex and presents significant challenges.

⁵⁸ People from outside the country and those from other districts in the country.

⁵⁹ Jamie Van Alstine; Rani Parker; Bazira M. H; Manyindo, J. Nampewo, N. Barihaihi, M and Namade, G. (2010). Seeking benefits and avoiding conflicts: A community-company assessment of Uganda’s hydrocarbon industry. London School of Economics and Political Science; University of Leeds; and Business Community Synergies. P37.

⁶⁰ . After drilling three unsuccessful wells in the west Nile Region, Neptune is wound-up its activities in the country by end of March 2012 and is said to be shifting its exploration focus to Mozambique.

The industry has the potential of disrupting or undermining other sectors of the economy such as agriculture, forestry, fisheries, and manufacturing, by ushering in the resource curse syndrome. This calls for a balanced development of all sectors of the economy to ensure stability, growth and development. To realize this, the NOGP requires putting in place the right legal and institutional framework to address social, economic and environmental/biodiversity issues related to the industry. It also calls for building the necessary capacity and facilities to monitor the impact of the industry on society, economy, the environment and national politics⁶¹. On the Political front, the policy discourages the establishment of a “*State within a State*” where a handful of politicians including the President, businesspeople and their relatives control the oil sector.

6.0 Conclusions

6.1 General Conclusions

The effectiveness and development impact of projects and programs supported by the Banks have substantially increased as a result of attention to the safeguard policies. The policies provide a mechanism for integrating environmental and social concerns into development decision making. They provide a platform for the participation of stakeholders in project design and have been an important instrument for building transparency. However, their effective implementation is affected by the Banks’ limited monitoring, evaluation and supervision of the safeguards after the project preparation and planning stages. This is in addition to the borrowers’ limited financial, technical and institutional constraints. There is also political interference in issues related to protection of the environment and establishment of development projects, which is worsened by the lack of civic awareness to question the impropriety of controversial projects. This is further complicated by the limited political will and an emphasis on large infrastructure hydro- and thermal-power projects with centralized grid systems at the expense of medium- to small-scale hydro, thermal, cogeneration, biogas and other renewable energy systems.

Bujagali hydropower project is an extremely expensive power project that will not deliver the expected design capacity (250MW) and supply affordable electricity to the majority of Ugandans. It is a project that is still riddled with controversy with respect to its social, economic and environmental impacts.

6.2 Safeguards

The application of safeguards to a development project:

- a) Offers project-affected people an opportunity to voice their concerns;
- b) Is one way of ensuring that economically relevant, socially and environmentally friendly projects are developed in a country or community;
- c) Is currently a challenge to the Ugandan Government Ministries, Departments and Agencies (MDAs) because of political interference, inherently weak institutions and a duplication of roles and responsibilities that makes proper coordination difficult;

There is growing interest among IFIs to move away from the traditional safeguards approach to rely more on country-based safeguard systems and shifting from project to programme financing, mainly because of the IFIs’ limited capacity to effectively monitor and evaluate all projects they finance worldwide and the quest to regain the market domain lost to emerging economies such as China,

⁶¹ National Oil and Gas Policy for Uganda, 2008, Ministry of Energy and Mineral Development, Kampala, Uganda.

India and Brazil. While this shift seems to be attractive, it is recipe for bad projects being developed—especially in countries with weak governance systems. The shift from project to programme financing makes it difficult to correctly assess the contribution of IFI funds in projects developed by the country, since the funds could easily be comingled with nationally generated revenues contributed to the project. This calls for countries to scale up and strengthen country systems to ensure that national policies, legal and environmental provisions are effective safeguards.

Safeguards at IFIs are concentrated in the first stages of projects, i.e. appraisal, design and approval and less during project execution. This tends to delay projects reaching financial closure with the IFI and makes it difficult to monitor compliance to safeguards during project implementation. There is a need for safeguards that cut across the whole spectrum of the life of the project. Even after a project has been wound-up, it is important that a mechanism is put in place to evaluate the impact of the project on society, the economy and environment of the country with remedial actions.

Awareness of safeguards, both international and national, is little known at the community and country level. There is, therefore, need to create wider stakeholder awareness of the safeguards.

6.3 Uganda's oil & gas sector

Oil & gas presents a challenge for the donors' development legacy. If managed well, the revenue from oil could lift Uganda from one of the world's poorest countries to middle income status. If managed poorly and the country is plunged into the resource curse scenario, the impact across all development indices will be negative and the country's ability to meet its own poverty reduction strategy and stability will be undermined.

The revenue windfall from the industry is likely to exceed the funds Uganda government has been receiving from development partners and donors as Overseas Development Assistance (ODA)⁶² and could influence/change the way politicians behave to the extent of considering ODA unnecessary and overlooking advice from development partners/donors. This could totally change the political spectrum in the country.

Since the emerging oil & gas industry in Uganda relies on company equity to finance exploration and exploitation activities and internal Health, Safety and Environmental (HSE) guidelines, apart from the national guidelines, they are not obliged to apply IFI safeguards. International Oil Companies (IOCs) are applying IFI safeguards only out of choice in order to be perceived as applying internationally accepted safeguards.

The current policy, legal and institutional framework in place is inadequate to meet the demand of the oil & gas industry in Uganda. This, therefore, calls for scaling up and strengthening of the existing policy and regulatory framework.

The secrecy and allegations of bribery and corruption that has shrouded top government officials and industry is undermining its development and reputation among citizens and the international community.

While there is a multiplicity of government ministries, departments and agencies that have distinctive and interlinking roles and responsibilities, the coordination among them and inter-linkage with those proposed for the oil & gas industry is not clear. For example, the Disaster Preparedness and Risks Management Department of the office of the Prime minister is the one that would be

⁶² .Current ODA for Uganda is pegged at US\$1.7billion. It is anticipated that the annual revenue from Uganda's oil sector could reach US\$2.5billion.

called upon, if there is an oil disaster. But how this department is involved in the oil & gas industry is not clear. There is also no clear contingency, mitigation and disaster response plan or clarification of which institutions will be involved in addressing the disasters that may arise in the industry.

6.4 Implications of IFIs' shift from project specific to programme/sector financing

Any shift from the project specific to programme/ sector financing by International Finance Institutions could have the following implications:

- a) Financing from IFIs will be received by the beneficiary country in bulk and not tailored to a specific project. This is made on the assumption that recipient countries will be in position to effectively and efficiently determine and design the specific projects in a given sector or programme. While this seems attractive and promotes country ownership of the development path chosen, it is recipe for mismanagement of the funds and corruption, especially in countries with weak governance systems.
- b) It will be difficult to monitor and evaluate the contribution/ impact of the funds since no prior project specific indicators will have been articulated. It is assumed that while developing the specific projects, beneficiary countries would generate the project specific indicators that will form basis for monitoring and evaluation. The challenge, however, is the attribution of the impact or contribution to the different sources of funds that include commingled IFI and nationally generated revenues.
- c) It will remove the burden on the IFIs of the laborious process of appraising specific projects against IFI operational policies and procedures and to monitor all the projects supported worldwide. Projects would be appraised and monitored based on country systems. This assumes that country systems would be equivalent to IFI safeguards and adequate in providing the necessary safeguards, which is usually not the case in many developing countries like Uganda. In countries where governance is a challenge and where there is an obvious and deliberate weakening of institutions by politicians, like Uganda, the country systems approach may not be adequate. It would call for scaling up country policy, legal and institutional systems to internationally accepted standards. It would also call for third-party project monitoring and evaluation. This could explain why the World Bank is spearheading a multi-stakeholder contracts monitoring initiative in many developing countries, including Uganda, which brings together civil society organisations, the private and public sector stakeholders to monitor the performance of projects and their associated contracts. Whereas the multi-stakeholder contracts monitoring initiative is a welcome idea, ensuring that public and private sector individuals/institutions willingly collaborate with the civil society organisations is a challenge. The public and private sector stakeholders argue that they find it difficult being part of a process that is intended to monitor them and that it could present avenue for conflict of interest.
- d) It presents risks that projects may be implemented at the country level without adequate safeguards being put in place. For example, project-affected people may not be adequately compensated or resettled; or cultural property and natural habitats could be destroyed under the pretext of promoting national development.

7.0 Recommendations

There is need for the country to develop an energy mix that, in addition to hydro- and thermal-power sources, includes solar, wind, cogeneration, decentralised mini-electricity grids and biogas

energy systems, especially for the hard to reach or rough terrain areas that may never be served by the traditional centralised electricity grid systems. The biogas systems seem to be most ideal for rural households and the hard to reach areas, because they rely on organic materials that can readily be obtained in the rural areas. Since performance of biogas systems depend on availability of water, their introduction will inevitably enhance household access to water through rainwater harvesting installations. Access to water could enhance growing of off-season food crops among the communities using irrigation.

Countries need to develop an effective safeguards mechanism, if the concerns of citizens on investment projects developed by a country are to be respected. The IFIs need to support developing countries in developing such mechanisms. This is particularly important in situations where IFI safeguards may not be applied/ respected on the argument that IFIs did not finance the investment projects in question. There is also need to create wider public awareness about the safeguards, as a means of enhancing their effectiveness. In addition, IFIs need to support the establishment of third-party multi-stakeholder (independent) monitoring arrangements to buttress the effectiveness of the projects/ programmes they finance.

As IFIs consider reforming safeguards, it is necessary that they conduct country level consultations to seek the views of stakeholders.

The secrecy, bribery and corruption allegations that is rife in the oil & gas industry call for transparency and accountability in the industry as a means of improving its reputation among citizens and the international community. It should be in government's interest that the reputation of the industry locally and internationally is good⁶³.

There is need to streamline coordination between the various government MDAs. There is also need for a clear and effective contingency, mitigation and disaster response plan that stipulates the minimum response time and actions to take towards a disaster event.

⁶³ Museveni cools bribery heat: The New Vision Newspaper Monday, December 5, 2011, <http://www.newvision.co.ug/news/314630-museveni-cools-bribery-heat.html>; Mbabazi to sue MPs over Oil documents: <http://www.newvision.co.ug/news/45690-mbabazi-to-sue-mps-over-oil-documents.html>, Museveni again meets NRM caucus over oil sector deals: <http://www.monitor.co.ug/News/National/-/688334/1284362/-/bg7annz/-/index.html>.

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