Jack Mosbacher

Fighting the Resource Curse: Uganda's Pivotal Moment

On the eve of Uganda's 44th anniversary of independence in 2006, President Yoweri Museveni announced the discovery of oil in the Lake Albert rift on the western border between Uganda and the Democratic Republic of the Congo (DRC). Touting an initial find of 300 million barrels of oil, Museveni called for a national day of prayer, thanking God "for having created for us a rift valley" and for giving Uganda's leaders "the wisdom…to discover this oil."[1]

In the seven years since Museveni's landmark announcement, circumstances have changed dramatically. Estimates of Uganda's oil reserves have gone up twelvefold to 3.5 billion barrels, and the sector could reach a production rate of nearly 200,000 barrels annually at full capacity. In a country where 1 in 10 children die before reaching the age of five and where 64.7 percent of citizens live on less than $2 a day, oil could transform Uganda.[2]

Most observers, however, fear that Uganda's discovery is more bad news than good. In countries that lack the rule of law required to control both public and private sector actors, oil has historically been more likely to correlate with periods of endemic corruption, instability, and economic underperformance rather than positive and inclusive development. When an influx of natural resource wealth is introduced into a state with weak controls on elite behavior and dominated by graft and patronage, this phenomenon known as the "resource curse" often occurs.

Due to its long history of corruption and patronage-based governance, Uganda appears to be a perfect candidate for the resource curse. To make matters worse, Ugandan policymakers have already begun to create a regulatory framework for the oil sector that, in its current form, will invite further corruption, worsen governance, and all but guarantee long-term underdevelopment.

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The Washington Quarterly • 36:4 pp. 43–54
http://dx.doi.org/10.1080/0163660X.2013.861710

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Similarly expansive discoveries made by oil companies in neighboring Kenya and Tanzania in recent years suggest that East Africa might become one the world's next energy hot spots—a proposition that could plausibly elevate the region into a major new role in the world's economic system. Thus, Uganda's struggle to avoid the resource curse doesn't just affect its 34 million citizens but, for better or worse, the development path of the entire East African region.

Uganda is at a critical juncture in its development story. So far, the actions of its policymakers have given observers little reason to be optimistic. If President Museveni and other elites are allowed to exploit a porous regulatory framework to capture oil wealth for personal use and further entrench the corrupt status quo at the expense of democracy and sustainable development, there is no overstating the tragic opportunity costs that Ugandans will incur.

This paper will first examine the experiences of Uganda's three most similar oil-rich neighbors—Chad, the Republic of the Congo, and Sudan—and the lessons to be learned from Africa's most successful resource-rich state, Botswana. Then, it will examine the current status of Uganda's regulatory framework for oil before offering two possible paths for strengthening it. The first step is to strengthen Uganda's current legal framework using commonsense best-practice methods to deter, as much as possible, corrupt behavior by a host of different actors; the second involves a radical and innovative scheme called "oil-to-cash" that would divert oil dollars directly to the bank accounts of ordinary Ugandans—revolutionizing the way in which Uganda's government and its people interact.

The introduction of oil into Uganda will mark a turning point in the nation's development trajectory. Oil will either spur positive development or sink Uganda deeper into a downward spiral of corruption and waste. Uganda's story will set the tone for Africa's next wave of oil producers. Through bold, path-breaking, and innovative governance, this legacy can be unimaginably positive.

The Sad Story of Oil-Rich Africa

Uganda's struggle will affect the development path of the entire East African region.

No African country of Uganda's level of political and economic development has ever seen the introduction of a meaningful oil and gas sector translate into sustained development. Indeed, the examples of Uganda's closest oil-exporting relatives provide a grim perspective on the foreboding challenge ahead. Oil has been an unquestioned curse to the development stories of Uganda's three closest predecessors: Chad, Sudan, and the Republic of the Congo. In all three, the introduction of oil revenues has been strongly correlated with worsened political and economic outcomes. According to Freedom House, all three countries have seen their levels of civil and political freedom decay after discovering oil.[3] In addition, each

country failed to translate an oil boom into sustainable development: as Figure 1 demonstrates, all three experienced an eerily similar surge in initial economic growth, only to see stagnation to below pre-oil levels within five years.[4]

> Oil has been an unquestioned curse to Chad, Sudan, and the Republic of the Congo.

None of these nations were able to establish control over the behavior of the executive branch and deter the corrupt behavior of well-connected elites. In each country, oil revenues were diverted to the military, used to consolidate and strengthen the elite grip on political and economic power, and underwrote the lavish lifestyles of the best connected and most powerful. For instance, during a 2006 UN General Assembly meeting in London, the government of the Congo was forced to foot a £130,000 hotel bill racked up by President Denis Sassou-Nguesso and his entourage—a bill that was £24,000 larger than the entire £106,000 aid package given to the Congo by Britain that year.[5] In Chad, President Idriss Deby was discovered to have siphoned $4.5 million of the country's first oil revenues for personal and military use—and was later ruled to have done so legally under the country's porous legal framework.[6]

In the absence of the rule of law, multiple layers of checks on power, and other innovative institutions of accountability, an autocratic ruler and his thugs can easily exploit and privately seize the oil sector and use their newfound wealth to squash competition and strengthen their already considerable power. In addition, the near-total shift of capital investments to oil causes the new sector to dwarf the main drivers of healthy economic growth, crowding out agriculture and manufacturing. Thus, oil revenues have ended up perverting any hopes of healthy economic growth while

Figure 1. Annual GDP Growth Rate

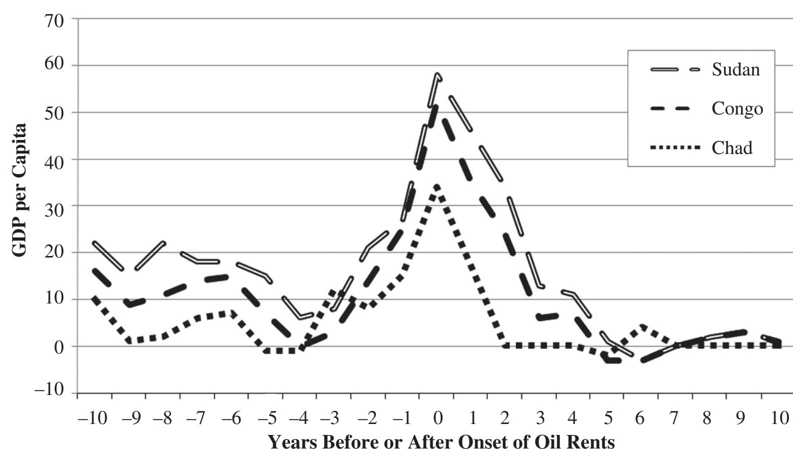
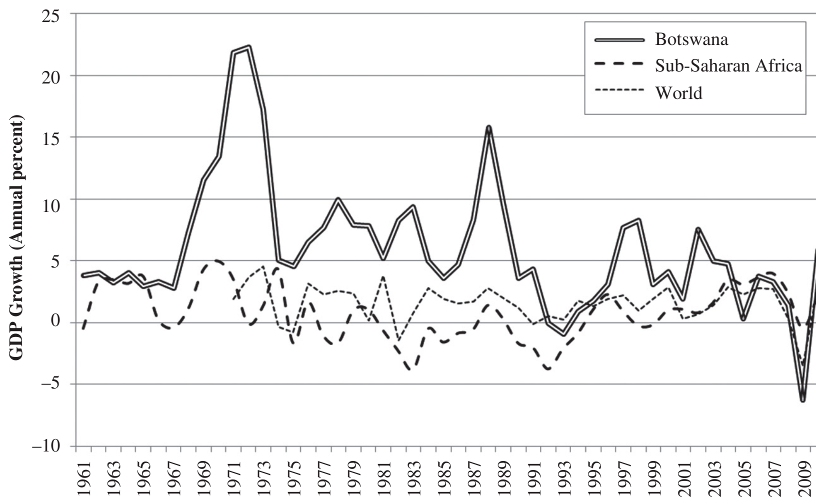


Figure 2. Annual GDP Growth 1961–2010



corrupting governance and severing any remaining ties of accountability between ordinary citizens and their government.

Botswana: The Exception to the Rule

Botswana is the outlier to the disappointing narratives of resource-rich African nations.

Botswana is the outlier in a collection of otherwise disappointing narratives of resource-rich African nations. Botswana managed to create accountable oversight institutions and translate an overwhelming economic dependence on precious diamonds into one of the world's highest annual GDP growth rates since 1960 (Figure 2).[7] Botswana's experience provides several lessons for Uganda's efforts to translate oil into development: principally, Botswana was able to leverage valuable natural resource wealth into sustainable development because her legislators successfully created a series of overlapping and empowered institutions of accountability, both inside the oil sector and within the wider government.

Conceptually, social scientists generally think of accountability as existing on two planes. One is vertical, the pressures exerted on government by citizens. The other is horizontal, the checking and balancing of different government powers and institutions by each other.[8] The resource curse creates a set of deviated incentives that threaten both horizontal and vertical institutions of accountability. Taxation—the forfeiture of wealth from citizens to the government in exchange for protection and services—is the main driver of vertical accountability. When oil replaces taxation of the wealth generated by the economy as the main source of government revenue, the most vital connection

between citizens and their government—the expectation that government should be accountable to its citizens—is severed. Meanwhile, the prospect of capturing personal wealth from oil creates powerful incentives for public officials to exploit any existing holes in a nation's regulatory framework.

In contrast to the failures of other resource-rich African states, Botswana's success was rooted in her ability to achieve horizontal accountability that could withstand the corrupting power of mishandled diamond revenues. Many point to the influence of Seretse Khama, an influential statesman who helped lead Botswana to independence in the 1960's and later became its Prime Minister and first president. While Khama's contribution cannot be denied, his greatest achievement was in creating an institutional environment that, rather than counting on good leadership, created a series of checks and accountability institutions that limited the power of leaders and elites themselves. In this way, Khama's leadership was so effective because he helped create a system that was *less* dependent on good leadership.

Botswana's diamond sector has continued to contribute to positive development outcomes well after Khama's death in 1980. A general atmosphere of accountability has driven its political culture, born of Khama's leadership but lasting long after his passing. As a result, Botswana's public officials have been incentivized to create an institutional environment that continues to meet the challenge of containing corruption in a resource sector. In the early 1990s, for example, Botswana experienced a wave of high-profile bribery and corruption scandals in the diamond sector involving top officials in the majority Botswana Democratic Party. In response, the National Assembly created a Directorate on Corruption and Economic Crimes (DCEC) and empowered it to independently investigate and prevent economic and political malpractice. Since that time, the DCEC has played a vital investigative role in protecting the diamond sector from corruption. Botswana was rated the least-corrupt African country in Transparency International's most recent "Corruption Perceptions Index,"[9] and ranks fourth out of 46 countries in sub-Saharan Africa in the World Bank–International Finance Corporation's most recent "Doing Business" report.[10]

Just as notable as the DCEC's success at checking the powers of other government agencies are the ways in which the powers of the DCEC itself are in turn checked: the DCEC plays no part in the prosecution of cases for which it collects evidence, leaving that power solely to the judicial branch. This demonstrates Botswana's deep appreciation of the importance of separated and balanced government power.[11]

Though the two countries differ in myriad ways, the lessons yielded for Uganda's future with oil by Botswana's long run of success with diamonds are clear. Botswana was able to leverage its diamond revenues into sustainable development because it developed and continued to strengthen a set of independent and empowered institutions to stave off the potentially corrupting influence of valuable natural resource wealth and thus promote inclusive economic and political development. If Uganda hopes to avoid the resource curse, her policymakers will need to do the same.

Uganda's Culture of Corruption Under Museveni

As Uganda prepares to welcome oil into its economy, the country's efforts to create an effective regulatory framework for managing the new sector are complicated by a deeply-rooted culture of corruption sustaining the regime of long-time President Yoweri

Uganda's political culture poses the greatest barrier to creating an accountable oil sector.

Museveni (1986–present). This culture has driven Uganda's development woes and poses the greatest barrier to creating an accountable oil sector.

After two decades of post-colonial turmoil, Yoweri Museveni took office in 1986 with a pro-democracy agenda and was hailed by the international community as a democratic trailblazer. He immediately implemented a series of stabilizing and pro-growth reforms to turn around Uganda's long-suffering economy. However, in the two-and-a-half decades he has been in power, Museveni has consolidated his regime upon a vast network of corruption and patronage, bloated the size and scope of the executive branch well beyond constitutional limits, and undermined democratic efforts by other Ugandan citizens and policymakers. In the process, most of Museveni's initial democratic concessions have been undone. Even the presidential term limits in the once-promising 1995 constitution were removed in 2005.

A series of recent studies by international watchdog groups have more clearly exposed the rampant corruption that typifies Ugandan daily life. In Transparency International's 2012 East African Bribery Index, Uganda was named the most corrupt country in the region. In the survey, nearly 50 percent of Ugandan citizens reported that bribes were either expected or demanded in normal interactions between private citizens and government service delivery institutions. Furthermore, 92 percent of respondents who had experienced corruption first-hand chose not to report the bribe to authorities, most often due to fear of intimidation or because they simply knew that no curative action would be taken. Perhaps most tellingly, 85 percent of Ugandans surveyed regarded Uganda as either corrupt or extremely corrupt, while 72 percent assumed that levels of corruption would remain the same or increase within the next year.[12]

The latest round of comprehensive surveys conducted by Afrobarometer in Uganda expose the extent of corruption in even greater detail. Within the past year, 16 percent of respondents reported paying a bribe to get access to water or sanitation services, 30 percent to get treatments at a local clinic or hospital, and 18 percent to get a place for their child in primary school. The report also validates the negative perceptions of normal Ugandans about their government and public officials: 86 percent of Ugandans think that President Museveni is corrupt, with similarly skeptical views of Members of Parliament (90 percent), local government officials and police (89 percent), and judges and magistrates (86 percent).[13]

All evidence from the study of resource-rich African states shows that the resource curse strikes most lethally at political systems unable to contain corruption and abuse of power even in the absence of valuable natural resources. Unfortunately, all evidence points to Uganda as such a state. The regulation of resource markets must be viewed in a relative light: the more corruption and malpractice that is embedded in a society's political fabric, the more vigorous the regulatory framework will be required to stop corruption from infecting a new resource sector. Because Uganda is so corrupt, its new oil sector demands Africa's most comprehensive regulatory framework to successfully curb abuse and translate revenues into long-term positive outcomes. So far, the efforts of

Ugandan policymakers to create such a framework have fallen far short of this requirement. If policymakers fail to immediately address the obvious holes in this framework, Uganda is destined to be cursed by oil.

An Invitation to Corruption: Uganda's Current Regulatory Framework

In line with their constitutionally mandated duty to "protect important natural resources… on behalf of the Ugandan people," Uganda's legislators have slowly developed a regulatory framework for managing Uganda's oil sector.[14] After over four years of delay, two bills were finally brought before Parliament in 2012 and passed in April and July of 2013, respectively: the Petroleum (Exploration, Development, and Production) Act and the Petroleum (Refining, Gas Processing, Transportation and Storage) Act. A third, the Public Finance Bill 2012, is currently undergoing amendment and should arrive for debate before Parliament by the end of 2013. Together, these Acts create a three-pronged system for regulating Uganda's new oil sector. A Minister of Energy and Mineral Development, a Petroleum Authority, and a National Oil Company will oversee the entire Ugandan oil sector, from exploration and production through eventual sale on the international market.

The first two petroleum acts delineate the powers of the Minister of Energy and Mineral Development; create a Petroleum Authority of Uganda and a National Oil Company to manage all aspects of oil exploration, development, and production; and establish a framework to regulate the awarding of exploration and production contracts. Together, the Acts create a sprawling set of responsibilities for the Minister, who will (among other duties) negotiate agreements with foreign and domestic oil companies; grant and revoke exploration and production licenses; initiate, develop, and implement oil policies; and, ironically, promote transparency in the oil sector.

Next, the Acts create a Petroleum Authority to advise the Minister on all aspects of the oil sector and implement the Minister's policies. A seven-person Board of Directors, all of whom are appointed by the President, will govern the Authority. An Executive Director, who can hold office for up to ten years, will oversee the Authority's day-to-day operations.

Finally, the Acts create a National Oil Company to handle the government's commercial interests in the oil sector, managed by a Board of Directors also appointed by the President. The Minister will have the power to "issue instructions in respect to the National Oil Company's execution of its management task under this Act." The Minister is then given all power to grant oil exploration, development, and production licenses under any "conditions determined by the Minister."[15]

In addition, the Public Finance Bill currently under debate would update Uganda's public finance system, in part to deal with the introduction of oil to Uganda's economy. The bill would establish a Petroleum Fund to handle the collection and investment of all oil revenues collected by the government of Uganda. The Minister would manage the Fund, overseeing "the transfer into and the disbursements from the Petroleum Fund." The existing Uganda Revenue Authority, established in 1991, would be charged with collecting all oil revenues, and only Parliament could make withdrawals from the Fund in its annual Budget Appropriation Act with a warrant from the Auditor General. The draft bill prohibits the government from borrowing money from the Petroleum Fund, and the Fund's assets cannot be earmarked or committed elsewhere without a similar warrant. The bill also establishes a Petroleum Investment Reserve, which will receive an

undisclosed amount of earnings annually "to support future generations."[16] The Minister is charged with reporting the assets and activities of the Fund to Parliament, overseeing its investments, and directing the Bank of Uganda to implement all ensuing policies. The Fund will be audited by the Auditor General.

Unfortunately, the framework this legislation creates is full of glaring holes that invite long-term corruption and abuse. Most obviously, the framework gives the Minister and the President sweeping dominion over the most important parts of the sector. The Minister retains exclusive power to issue and revoke exploration and production licenses, and the President can remove a Board member from the Petroleum Authority at any time for a variety of reasons, including the undefined charges of "incompetence" or "misbehavior."[17]

The Minister also has the sole authority to determine whether or not to declare an area open for petroleum activities and to review and grant all exploration and production licenses (requiring only the approval of the President and an after-the-fact report to Parliament). Furthermore, the Minister is given the ability to receive direct applications for an oil exploration contract "in exceptional circumstances," including when the Minister decides that a secret deal would enhance "the participating interest of the State in the promotion of national interest."[18] The Minister must simply consult with the Authority and gain the approval of the President's Cabinet to award a license with any oil exploration or production company. Finally, any party wishing to file a grievance regarding an oil exploration or production contract can only lodge a complaint with—who else?—the Minister, who may review and either uphold or dismiss the objection at his/her discretion. The total lack of substantive checks on the powers of the President and the Minister is a prescription for corruption and a surefire pathway to the resource curse.

Imperative Policy Changes: Three Possible Paths

Uganda's new oil sector will force her policymakers down one of three paths. The first is to continue down the current road, likely dooming Uganda to a place among Africa's resource-cursed states. Alternatively, Ugandan legislators could work immediately to shore up the many existing holes in the current regulatory framework and create a far more substantive series of checks on corrupt behavior in the oil sector. Finally, Ugandan legislators could take an innovative approach that would induce accountability by using the coming oil boom to revolutionize the way in which the Ugandan people interact with their government. These two alternatives are not mutually exclusive. Rather, they can (and indeed should) be pursued in parallel.

> There are two possible, parallel paths for strengthening Uganda's regulatory framework.

The current regulatory framework is deeply flawed, but a series of amendments would make the framework more likely to achieve its stated goals. These reforms would have to start by limiting the current powers of the Minister of Energy and Mineral Development. The first step would be to abolish his/her discretionary ability to issue and revoke contracts for oil exploration, production, and export. This unchecked power should be replaced by a formalized process for

awarding contracts based on competitive auction overseen by an independent committee.

The scope and function of the Petroleum Authority should also be amended to more closely resemble Botswana's auditing and investigatory body, the DCEC (Directorate on Corruption and Economic Crimes). This would require disentangling the Petroleum Authority from the influence of both the Minister and the President by moving to Parliament the power to appoint and remove the Authority's Board of Directors. Confidentiality clauses in exploration and production contracts, which have already been a major obstacle to transparency in the sector, should also be prohibited. Further, a mere two pages of legislation summarizes the hugely important National Oil Company; before oil starts to flow, a separate law needs creating that specifically describes how to structure the Company and how to add or remove board members. Finally, Uganda would benefit if a set percentage of revenues were moved annually to a savings and investment fund for future development projects, for emergency stabilization purposes, and as a hedge against economic downturns in case of a future decline in oil prices.

While making important amendments to Uganda's current regulatory framework is necessary, the fact remains that no African country of Uganda's size—regardless of the perceived quality of its laws at the early stages of its oil sector—has ever seen oil contribute to positive long-term development outcomes. This would suggest that something more innovative than a seemingly sound legal framework is required for Uganda to sufficiently alter the incentives of public officials and avoid the resource curse.

Recently, scholars at the Center for Global Development (CGD) have produced pioneering research on a scheme called "Oil-to-Cash," which CGD's scholars hope would change the very fabric of resource-rich countries by allocating a significant portion of eventual oil revenues directly to citizens. If Ugandan legislators were to adopt a similar direct distribution scheme, they would not simply improve Uganda's chances of avoiding the resource curse; they would fundamentally alter the skewed institutional incentives at the core of Uganda's wider governance problems. Here's how oil-to-cash could work in Uganda: the country's legislators would set aside a predetermined portion of oil revenues and distribute it evenly amongst Uganda's 34 million citizens. These cash transfers would be counted as personal income and taxed by the government at the country's normal progressive rates.

The prospective benefits of oil-to-cash are myriad, both for oil governance and governance more generally. Good governance is dependent upon a healthy social contract between citizens and their government officials, which is the natural alignment of incentives created when the government must derive its funding by taxing its citizens. When people are taxed, they tend to demand better accountability from their government, and government officials are more likely to be deterred from corrupt or negligent behavior. However, when resource rents replace taxes as the main source of government revenue, the main catalyst of a healthy social contract is dissolved. Direct oil-to-cash transfers, therefore, deepen the ties between public officials and citizens in Uganda.

The positive consequences of a properly implemented oil-to-cash program would be significant. CGD Senior Fellow Alan Gelb has conservatively estimated that each Ugandan would see a $25 boost to his or her annual income.[19] This would make an

immediate impact on extreme poverty, since 38 percent of Ugandans live on less than $1.25 a day. Second, by forcing the government to gather information on all of Uganda's citizens—many of whom have no birth certificate or basic identification—oil-to-cash would necessitate a swift strengthening and modernization of the capacity of the Ugandan state to communicate with its citizenry. Finally, oil-to-cash would bind the interests and incentives of the Ugandan people to those of their public officials in a way that no mere punitive legislation or regulatory statute ever could—in one bold step, striking at the problem of distorted incentives that lies at the heart of the resource curse.

Critics of oil-to-cash will likely argue that the system is either practically infeasible or theoretically flawed. Indeed, a substantial administrative undertaking like a direct oil-to-cash transfer program may seem like an unrealistic proposition in a country like Uganda. However, cash transfer programs have worked in nations around the world, driving positive development outcomes as disparate as poverty reduction and enhanced citizen participation, from the United States to Chile and from Indonesia to South Africa.[20] In fact, in 2009, 60 developing countries were making some form of direct payment to over 170 million citizens.[21]

This evidence suggests that the barriers to implementation of oil-to-cash are no longer practical, but political. Governance problems in resource-rich countries are typified by leaders who use as much of the new resource dollars as possible to pay off supporters and consolidate their patronage networks. As CGD scholars Todd Moss and Stephanie Majerowicz have pointed out, however, there are several political scenarios in which oil-to-cash could be possible: for instance, in a new government's efforts to gain wide political support in a post-conflict period, or in a new oil country in the midst of a "constitutional moment" (as in several of the post-Arab Spring countries).[22]

There are two feasible scenarios in which oil-to-cash could work in Uganda. First, Museveni's political allies—including, perhaps most powerfully, the increasingly vocal group of dissenters in his own political party—could make a strong case that oil-to-cash would provide the only way to save Museveni's sagging legacy. President Museveni and his advisors must know that his popularity has suffered, particularly after he abolished term limits in 2005. In the 2012 Afrobarometer Survey, conducted less than a year after Museveni collected 68 percent of the presidential vote, his government's approval rating had fallen to just 26 percent.[23] If Museveni were to use his remaining years to implement an oil-to-cash program, it would rescue his legacy and strategically strengthen the position of his party, the National Resistance Movement, for decades to come.

Second, if Museveni does not embrace oil to cash, the proposal could provide a unifying theme for Uganda's disparate opposition parties. To date, these parties have been unable to develop a cohesive front or a reasonable alternative platform, contributing strongly to Museveni's ability to retain his near-total control of Ugandan politics. Oil-to-cash could thus become a unifying opposition platform that could finally pose a legitimate electoral threat to the longstanding hegemony of Museveni's National Resistance Movement.

An Uphill Battle to Accountable Governance

The struggle to create a regulatory framework capable of fighting corruption in Uganda's oil sector is quite literally a battle for Uganda's future. Furthermore, Uganda's future as

an oil exporter will have implications that reach far beyond its own borders. As East Africa becomes a major player in the world's oil market over the next decade, Uganda's example will set a standard for how the region's citizens can expect their oil sectors to be managed. Structuring a new regulatory framework presents an opportunity for Ugandan legislators to steward the country away from its corrupt past toward a new era of democratic governance and unencumbered economic growth. In the absence of earnest reform, however, the current regulatory framework promises to invite corruption and set a dismal precedent for Uganda's East African neighbors.

Uganda's current regulatory framework is unlikely to stop corruption and abuse. The country's political leaders face a choice: they either boldly alter the structure of the current framework to separate and check the powers of actors within the system, or Uganda's future as an oil exporter will likely look very similar to that of her resource-cursed African forbearers. Uganda's policymakers could also hopefully implement an oil-to-cash system that would change the game entirely, reforming the very fabric of interaction between Uganda's citizens and its government while alleviating extreme poverty.

Of course, oil-to-cash is not a stand-alone solution. A direct distribution scheme will only be effective in conjunction in a regulatory environment that uses every possible strategy and best practice procedure to combat the myriad and complex causes of the resource curse. This holistic approach, of which oil-to-cash could prove a vital piece, should start with a sound domestic legal framework and extend to participation in global corruption-fighting partnerships like Publish What You Pay, the Extractive Industries Transparency Initiative, and the International Budget Partnership. When every resource-rich African country has essentially proven that the status quo cannot be expected to work, a dense web of innovative and path-breaking solutions are needed to curb the governance deficit and promote sustainable development.

The choice is clear, and the moment is upon Uganda. If its people and public servants can seize the moment and ensure that the country's oil is used for the benefit of its people, there is no telling how high Uganda's development trajectory can soar.

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