



Comments on Uganda Petroleum (Exploration, Development and Production) Bill, 2012 (Bill No. 1)

March 2012

I. INTRODUCTION

In September 2011, a group of Members of Parliament, civil society members, development partners and journalists participated in a workshop organized by the Africa Institute for Energy Governance ("AFIEGO"), the Revenue Watch Institute ("RWI") and Publish What You Pay – Uganda ("PWYP-U"). Participants reviewed a 2010 draft of the Petroleum (Exploration, Development, and Production) Bill (the "2010 Bill"), and offered 15 concerns and recommendations.

RWI and Skadden, Arps, Slate Meagher & Flom (UK) LLP ("Skadden"), a global law firm providing *pro bono* services through the auspices of the International Senior Lawyers Project ("ISLP"), have reviewed an updated draft of Bill No. 1 of 2012 (the "2012 Bill"). The 2012 Bill takes several positive steps that address some of the concerns raised by participants, including clarification of the role of the new Ugandan Petroleum Authority and some improved language on public reporting and transparency. But several of the issues identified in response to the 2010 Bill remain sources of concern, and as Ugandan parliamentarians and citizens consider the 2012 Bill, we recommend that they pay close attention to these issues, which include the following:

- A "heavy" administrative structure that could promote checks and balances but risks spreading resources thin among national administrative units;
- Insufficient reporting and accountability of the Petroleum Authority;
- A National Oil Company without a well-enumerated mandate, and without clear reporting lines to Parliament, the rest of Government, or the population;
- Several provisions for confidentiality of information that are defined too broadly and risk impairing transparency;
- Broadly defined exceptions to the general rule of award of licenses by competitive bidding;
- Concerns about the timing of requirements relating to social and environmental impact assessments and decommissioning funds;

- The absence of a provision for the development of standard form petroleum contracts;
- No resettlement provisions and insufficient protection of social welfare;
- An overly narrow definition of pollution damage;
- No reference to Uganda joining EITI or following EITI principles;
- Unclear stabilization provisions; and
- Fiscal terms that allow for significant variation from one contract to another.

II. ANALYSIS OF ISSUES ADDRESSED IN PARTICIPANT COMMENTS

This analysis is structured to follow the 15 recommendations made by the workshop participants on the 2010 Bill and set forth a few additional points raised by the 2012 Bill. In each case we reproduce the participant comment on the 2010 Bill, followed by remarks on how the issue is addressed in the 2012 Bill and suggestions of improvements for the next draft of the petroleum law (the "Bill").

1. Participant Comment on 2010 Bill: The MPs noted that there is unclear division of duties and jurisdiction between the line Minister, the Uganda Petroleum Authority and the Commissioners, which would possibly lead to duplication and bureaucratic delays. They also noted that the Uganda Petroleum Authority appears to have little decision-making authority. The MPs, thus, recommended that each institution's roles and functions should be clearly specified in the new law/s to avoid any duplication and, especially, interferences from the executive.

Petroleum Authority and Minister

The 2012 Bill no longer refers to any Petroleum Directorate or Commissioners and sets out the roles of the bodies responsible for petroleum administration more clearly. Most notably, the 2012 Bill spells out the role of the Petroleum Authority (the "Authority") in more detail than was provided in the 2010 Bill, indicating more clearly that the Authority will have the mandate to regulate the sector. The Authority is envisioned as an independent regulator, with powers to enforce compliance and supervise the activities of petroleum contractors. For many key functions related to decisions to grant, renew, or terminate licenses, the Authority plays an advisory role to the Ministry. Appendix 1 provides more detail on the roles established for the Ministry and the Authority.

The 2012 Bill includes several useful safeguards vis-à-vis governance of the Authority. According to Clause 19(a), for example, a Board member cannot be a shareholder of any petroleum entity. The Authority is to be independent from the Ministry, and any Ministerial direction "to the Authority with respect to the policy to be observed and implemented" must be made in writing and published in the Gazette (Clause 14). The Authority's Board members must have demonstrated competence in relevant technical areas including petroleum geosciences, engineering, health/safety, environmental matters, business management, finance/economics or law (Clause 18). The Authority's Board must submit an

annual report, including audited accounts, to the Minister, who in turn shall submit it to Parliament (Clause 42).

The Bill could take additional steps to further promote the accountability of the Authority.

- Beyond submitting the annual report, the Authority's Board and its key staff could be required to appear before Parliament in response to a demand (if this is not already provided for as a general tenet of Ugandan law).
- Clauses 34 and 36(3) on the Authority's funding and expenditure rules should be strengthened to require compliance with laundering protection and budgetary processes respectively, with information on the use of those funds being made public.
- The annual report required by Clause 42 should be made public.

Institutional Structure: Key Recommendations

- MPs and civil society should carefully weigh pros and cons of an institutional structure dividing management and oversight among three separate bodies;
- Stronger requirements for reporting by Authority: appearances before Parliament, publication of annual report, improvements in rules on Authority funding and expenditure;
- More clarity in lines of authority and accountability.

In addition, the drafting of Clause 33(1), which prohibits any member of the Board and/or staff of the Authority from disclosing "any information, which he or she may have obtained in the course of his or her employment" is too broad, and risks having a chilling effect on transparency in the oil industry. It should be narrowly tailored to prevent only the disclosure of confidential technical data; the disclosure of which would damage the legitimate commercial interests of companies operating in Uganda. This confidentiality provision should also be made consistent with Clause 150, in particular by allowing for disclosure "as expressly permitted or required for or in connection with any disclosure obligations of the Board or Authority under this Act".

Finally, the functional relationship between the Minister and the Authority is somewhat unclear and could lead to blurred lines of authority and accountability. Some provisions seem to suggest that the Minister is effectively acting as the head of the Authority. For example, the Authority is required to implement directions given by the Minister as to matters of policy (Clause 14); the Minister appoints (in consultation with the Cabinet), and may remove for cause, the Board members of the Authority (Clauses 18 and 21); and the Minister appoints (and presumably may remove, although it is unclear, the Executive Director of the Authority). Yet, under Clause 15, the Authority is expressed to be independent subject to its obligation to comply with the Minister's directions. Other than in respect of the Minister's directions, it is not clear to whom the Authority is accountable. It would seem that there is some dual governance structure with the Authority and the Minister sharing the top seat depending on issues. This may lead to situations where the Minister and the Authority may try to deflect the responsibility for their actions onto the other. This may or may not be a material issue to Ugandan parliamentarians and citizens, but we would suggest that lines of authority and accountability be clarified to ensure against bureaucratic infighting and unclear implementation of policy.

National Oil Company

Perhaps the biggest weakness in the proposed institutional framework is a poor definition of the role of the National Oil Company (the "Company"). Clause 44 establishes that the Company is to "handle the state's commercial interests" and "manage the business aspects of state participation," but the 2012 Bill provides no definition of these and other ambiguous terms, and provides no information on the specific tasks the Company will be charged with performing. No detail is provided on the manner of selecting

the Board of the Company or the fiscal relationship between the Company and the State. Besides Clause 45(3), requires the Board of the Company to inform the Minister of matters submitted to the annual general meeting, and Clause 47, which enables the Minister to issue instructions to the Company, there are no other provisions regarding the reporting relationships between the Company and the rest of the Government. It is possible that some of these details are provided in the Companies Act, which RWI encourages Parliament to review. It may also be the case that the Government envisions a separate act or regulations spelling out more detailed provisions, but certain core features should be established here in the framing legislation.

If effectively managed, the National Oil Company could well serve as an engine for developing Ugandan know-how and capturing significant long-term financial benefits. There are a number of examples of successful national oil companies around the world that could serve as models. However, successful institution building will require transparency and accountability at the outset. Clause 46 requires the Company to submit an annual report to the Annual General Meeting. This report should also be tabled in Parliament and published.

Overarching Administrative Structure

MPs and civil society should also think carefully about the strategy of creating a relatively “heavy” institutional structure including a Ministry, an independent Authority charged with oversight, and a National Oil Company. The potential benefit of such a structure is that it can create specialization of roles and institutionalize checks and balances. But it threatens to stretch national resources and capacity thin and will place a premium on regular coordination to avoid excessive or confusing bureaucracy.

2. Participant Comment on 2010 Bill: The License award process in the Petroleum Bill does not mention competition and appears to encourage direct negotiation with the line Minister. The MPs decried this and committed to ensuring that open bidding is adopted in the new law/s as a best practice for any award of a license.

The 2012 Bill provides for award of exploration and production licenses via competitive bidding. Clause 53 indicates that the Minister shall announce areas open for bidding for a petroleum exploration license, that the process shall be open and competitive, and that the announcement should be published.¹ This represents a significant step, though the language could be strengthened by specifically requiring that the contents of winning and losing bids should be published (unless this is already required by regulations or by the Public Procurement and Disposal of Public Assets Act, 2003 referred to in the 2012 Bill).

The drafters could also improve the language on pre-qualification, to help Uganda avoid the situation that has befallen countries like Nigeria, wherein a company with little financial or technical wherewithal is awarded an oil contract. While Clause 73 makes clear that production licenses shall be awarded on the basis of certain qualifications (among others, “the technical competence and capacity, experience and financial strength of the applicant”), no such requirement is included for exploration licenses. Clause 57

¹ A similar process is provided for in Clause 70 in respect of production licenses where an exploration license holder for a block does not apply for a production license for that block (although there is no mention of the bidding being competitive in that case).

requires certain information (including as to financial and technical competence of the applicant licensee) to be provided with any exploration license application, but does not make it clear that no exploration license will be granted unless the applicant satisfies those qualification conditions. The Bill (or implementing regulations) might go further and require the Minister to make findings in each of these respects (financial and technical competence but also the required experience of similar operations and satisfactory ethical conduct and history of compliance) as a condition of awarding an exploration license.

The 2012 Bill also leaves in place a major loophole in Clause 54, which provides that in “exceptional circumstances” the Minister, in consultation with the Authority, may receive direct applications for an exploration license. “Exceptional circumstances” are defined to include considerations related to the “promotion of national interest.” If not tailored narrowly, this risks becoming a catch-all term that could be used to perpetuate a situation in which award by competitive bidding is rare. Thus, we recommend that the term be specifically and narrowly defined in the legislation. Regulations implementing the Act may spell out further precision.

Award of Licenses: Key Recommendations

- Firmer requirement for technical and financial competence as pre-condition for award;
- Narrowing of language of Clause 54 on circumstances justifying award without tender;
- Requirement of publication of rationale for decisions to award without tender;
- Provisions for full availability or publication of applications;
- Public disclosure of identity of licensee;
- Provision for the use of standard licenses and agreements.

In the event that the Minister does determine that the public interest requires award of a license without open and competitive bidding, the Minister should be required to make public the rationale for such a decision. Clause 57.(7)(b) should also be clarified so that it is clear that the only situations where “there would be no bidding” would be where direct applications have been made in accordance with Clause 54.

Even where there is award via direct application, the 2012 Bill provides some

protection against applications being made arbitrarily or in total obscurity. Clause 55 requires the Minister to publish notice of the application in the Gazette and a national newspaper, with such notification including a description of the proposed undertaking and an invitation for affected parties to lodge an objection with the Minister.

The application may also, “within the limits of commercial confidentiality,” be inspected at the Ministry offices. However, commercial confidentiality is a vague expression that is not defined and which, if not construed narrowly, could render the right to inspect effectively meaningless. The 2012 Bill should therefore make the direct applications available in full for inspection or, even better, publish them, with no redaction save for information that is genuinely commercially sensitive.

Clause 59 requires that the grant of petroleum exploration licenses be decided by the Minister only “in consultation with the Authority and with the approval of the Cabinet,” which also provides protection against arbitrary decision making or award to non-credible companies. However, in order to strengthen those protections further, public disclosure of the identity of the recipient of the license, including its direct and indirect owners/shareholders and any person who directly or indirectly will share in the profits/losses related to the license would be helpful.

The 2012 Bill is silent on the preparation of standard forms of licenses and petroleum agreements, which leaves open the possibility that, even in an open tender, agreements will be fully negotiated between

the parties on a case-by-case basis. This type of negotiation of the contractual terms can damage the state's comparative bargaining powers, create issues of unpredictability for applicants and reduce the government's ability to effectively monitor and enforce diverse agreements. Therefore, in the best interest of all parties and in the interest of promoting a transparent and open process giving confidence in the country's abilities, the Government should propose and submit to public consultation a standard form for each type of petroleum agreement (production sharing at a minimum but perhaps others such as concession or services agreements), along with guidelines setting out the criteria for the selection of the suitable form. Once all comments from the public and interested parties have been collected and analyzed, the State would then publish in an official gazette a proposed form of agreement (and guidelines).

The forms need not be included in the Bill itself, as this would be too rigid. We are merely suggesting that the Bill should describe the process for creating the standard forms and the key issues (along with key parameters) to be addressed in the standard forms (*e.g.*, provisions for the determination of cost oil and split of profit oil in a production sharing agreement, and procedures for arbitration for resolution of disputes, etc.).

3. Participant Comment on 2010 Bill: The MPs found that the relationship of PSAs to the new law is not clear and that existence of stabilization clauses under the PSAs will interfere with the State's ability to make and implement laws and regulations and they agreed that clear provision must be made for the status of existing PSAs and their relationship with any new petroleum law that will be enacted.

This issue relates both to (i) the continued enforceability of existing petroleum agreements after enactment of the Bill and (ii) the nature of acceptable stabilization clauses in future petroleum agreements.

Existing petroleum agreements

This issue is addressed by Clause 188 of the 2012 Bill, which states that existing licenses and permits will remain in effect (Clause 188(1)) and that the "terms and conditions including the rights and obligations under a license or petroleum agreement...shall not be less favourable than those that applied immediately before the commencement of this Act." The intent of this clause appears to be to "grandfather" all pre-existing petroleum agreements, or at least to give statutory comfort to contractual parties that they will be no worse off as a result of this legislation than they were prior to enactment. The vague standard in the legislation – "not less favourable than" – could give rise to disputes and litigation, as the Government's view could be quite different from those of the oil companies.² In addition, Clause 188 does not require that such "pre-existing" petroleum licenses or agreements be identified by regulation or in a list made publicly available. Clause 188 also does not limit the scope of the issues on which equal levels of favorability must be preserved. In some cases, governments limit this sort of provision to financial issues, in order to preserve the economic benefits to the licensee of the petroleum agreement.

² As a matter of drafting, it is not expressly stated that the terms and conditions must be no less favorable to the position of the oil companies, as opposed to the position of the Government, but we assume that is the statutory intent.

As a general matter, we cannot determine without additional information what effect, if any, this grandfathering clause will have on the public interest. To some extent, that will depend on how many petroleum agreements have been signed and whether those pre-existing agreements already cover much or even most of the key potential hydrocarbon development prospects.

Additionally, we do not have comprehensive information on the terms of current agreements, so as to enable us to determine whether those terms are balanced and consistent with the 2012 Bill. The interaction between this section and stabilization clauses in petroleum agreements or licenses obviously depends to a large extent on how those clauses are drafted. Given that Uganda's PSAs are generally not publicly available, it is impossible for us to say systematically what these clauses look like. But the stabilization clause in the (unsigned) version of the Heritage PSC leaked by Platform is actually less restrictive than the language of the Act. It states (Article 33.2):

If, following the Effective Date, there is any change, or series of changes, in the laws or regulations of Uganda which materially reduces the economic benefits derived or to be derived by Licensee hereunder, Licensees may notify the Government accordingly and thereafter the Parties shall meet to negotiate in good faith and agree upon, the necessary modifications to this Agreement to restore Licensee to substantially the same overall economic position as prevailed prior to such change(s). In the event that the Parties are unable to agree that Licensee's economic benefits have been materially affected, and/or are unable to agree on modifications required to restore Licensee to the same economic position as prevailed prior to such change, within ninety (90) days of the receipt of the notice referred to hereinabove, then either Party may refer the matter for determination pursuant to paragraph 26.1.

This contract article (a) limits the stabilization to changes that materially reduce the company's economic benefits; and (b) provides that in the event of such changes the Government and the parties will negotiate modifications, not that the contract conditions automatically remain in force.

Other existing petroleum agreements main contain more restrictive provisions, like full freezing stabilization clauses, and, as a result of the grandfathering provisions of Clause 188, licensees under those petroleum agreements would be effectively immunized from new more restrictive provisions of the Bill while arguably being entitled to seek the protection of more advantageous provisions (if any) that may be contained in the Bill. This would be of particular concern should such stabilization clauses apply to social and environmental legislation as well, as this situation would create a disincentive for the State to pass new laws for improved social and environmental standards, thus hindering the improvement of human rights. This is a serious concern that has been raised by human rights advocates throughout the developing world.

As a practical matter, regardless of the drafting of these provisions in the 2012 Bill, Uganda would face major constraints if it wanted to significantly change the terms of existing agreements. Were Uganda to unilaterally seek immediate application of the provisions of the new law, it would expose itself to the risk of international arbitration. Several governments have sought to harmonize existing agreements with new legislation or sought to address perceived imbalances by calling for contract review and

Stabilization Clauses: Key Recommendations

- Exclude from the scope of future stabilization clauses laws & regulations relating to the protection of the environment, social/community impacts, security, human rights, labor and employments rights and practices and transparency;
- Empower the Minister to make it a condition of any renewal or amendment of a petroleum license that the terms of such holder's pre-existing petroleum agreements be first harmonized with the new law;
- Moratorium on signature of new agreements until enactment of the Bill.

renegotiation, but any decision to pursue such a path must carefully balance the benefits of such an approach with the equally important interest in attracting foreign investment and creating a positive environment for foreign investment.³

Despite these limitations, Uganda should avoid making the restrictions on application of the new law more stringent than those established in the contracts, and if the Heritage clause is representative of other stabilization clauses in Ugandan contracts, the draft should be altered to limit the restriction on full application to terms that materially impact the economic benefits of contract-holders. If certain existing petroleum agreements are deemed onerous for Uganda, then the Bill should probably provide that any license holder that seeks the benefit of a provision of the Bill (once become law) to improve the economic balance of its pre-existing petroleum agreement must first accept to renegotiate its petroleum agreement to bring it into compliance with the new law and regulations. The Bill could also expressly empower the Minister to make it a condition of any renewal, amendment or waiver of or under a petroleum license that the terms of the agreements be first harmonized with the new law.

We note that the press has reported that certain PSAs are currently being entered into in Uganda, i.e. before the Bill is enacted. In that situation, there is a risk that the majority of the blocks originally intended to be put to tender will no longer be available by the time the Bill is enacted and becomes law. This would effectively defeat the purpose of this Bill to a significant extent. Therefore, we would suggest that the Government consider imposing a moratorium on the award of new petroleum agreements pending enactment of the Bill.

Acceptable stabilization clauses in future petroleum agreements

The 2012 Bill is silent on this issue but the form and nature of investment protections in general, and stabilization clauses in particular, as a key part of the investment protection package, ought to be considered carefully. This can be done as part of the legislative process or subsequently in regulations or in the development of standard form petroleum agreements. We note a trend in international practice to consider expressly excluding from the scope of the benefits of stabilization future legislation or regulations relating to protection of the environment, social/community impacts, security, human rights, labor and employment rights and practices and transparency, among others. Several countries have also legislated limitations on allowable duration for stabilization clauses. In addition, we note that there has been a concern, much discussed in international legal circles, that stabilization clauses, even so-called "economic equilibrium clauses" such as the Heritage PSC create a disincentive for host governments to enact this type of legislation or to implement this type of legislation in key areas of the economy. These are issues that ought to be carefully thought through by policy-makers.

4. Participant Comment on 2010 Bill: The MPs noted with concern that in the Bill, the Parliament has no role beyond approving the budget of the NOC and UPA. The Members recommended that it be provided in the new law that the NOC and UPA report to Parliament on a regular basis.

³ This is especially the case in light of any multi-national or bi-lateral conventions and treaties to which Uganda is a party that protect foreign investment. Examples include the Common Market for Southern and Eastern Africa ("COMESA"), the East African Community ("EAC") Common Market and any Bilateral Investment Treaties ("BIT's") binding on Uganda. Also relevant would be investment protection legislation in Uganda, if any. Uganda ought also to be mindful of its obligations under customary international law to accord "fair and reasonable" treatment of foreign investors.

Clause 42 of the 2012 Bill requires the Authority to submit an annual report to Parliament, though as noted above this could be strengthened by formally requiring the Authority's Board and executives to appear in person in response to Parliament.

There is still no requirement for the National Oil Company to report to Parliament. RWI and Skadden agree with the MPs' assessment that this threatens to impede accountability.

5. Participant Comment on 2010 Bill: It was realized that in the Bill's clauses on Field Development Plans, there is no requirement for environmental and social impact assessments ("EIA" and "SIA"). This, the MPs criticized and committed to ensuring that the new law has provision that an award of petroleum production license should be conditioned on an EIA and SIA.

Standards for Environmental and Social Impact Assessments

Before opening a new area for petroleum activities, the Minister should undertake robust environmental and social impact assessments. As currently drafted, Clause 48(3) of the 2012 Bill requires an assessment of impacts on the environment, risks of pollution, and social effects, but this Clause should be revised to provide more details as to what is required and the standards the Minister should follow to determine whether the opening of an area for petroleum activity will be prohibited because the area is situated in an environmentally sensitive zone or would have severe social impacts.

Once an area has been opened to petroleum activities, any prospective licensee must perform project-specific EIAs and SIAs prior to commencing operations. In submitting the field development plan, Clause 71(3)(h), (i) & (l) of the 2012 Bill requires an applicant for a production license to detail "the necessary measures to be taken for the protection of the environment,"

"the applicant's proposals for the employment and training of citizens of Uganda," and "effects on land use." This ensures that the company will devote some consideration to environmental and social considerations. But there is still no requirement to complete a formal EIA and/or SIA before the production license is awarded - an EIA is required only upon award of the license (Clause 76(1)(f)), there is no EIA at the exploration license phase and there is no requirement at all for a formal SIA. In addition, the submission of poor-quality or incomplete proposals on environmental protection is not listed in Clause 79 as grounds for rejecting an application for the production license.

Environmental and social impact assessments should be required for all exploration and production licenses. Specifically, for exploration licenses, Clause 57 of the 2012 Bill should be changed to require an application to include an assessment of potential environmental and social impacts and an analysis of how to mitigate such impacts. Likewise, Clause 60 should provide that an exploration license will include requirements to mitigate environmental and social impacts. For production licenses, an environmental and social impact assessment should be required as part of the field development plant (to be added to Clause 71(3)) and as conditions to the grant (to be added to Clause 74). Furthermore, an update of these assessments should be required for any renewal and material amendment of such

Environmental and Social Impact Assessments: Key Recommendations

- More detail on requirements of EIAs/SIAs and include consideration of EIAs/SIAs in licensing decisions;
- Standards for prohibiting petroleum activity in environmentally sensitive areas;
- Require EIA/SIA *before* production license is awarded and updates (if any new facts and circumstances arise);
- Require steps for mitigating impact as part of license.

licenses based upon new facts and circumstances (if any). Finally, public consultation should be required as a component of the development of these assessments, and the assessments and any updates should be made public together with any related reports.

The assessment should be appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The assessments should consider direct and indirect impacts of the licensed activities and the cumulative impacts of both the licensed activities and all other related and unrelated activities affecting the resources and communities. Consistent with the latest standards recently published by the International Finance Corporation, the assessment should include the organizational structure and procedure that are proposed to be put in place to implement and monitor the management plans, an emergency preparedness and response system and an undertaking to develop and implement a stakeholder engagement plan to address disclosure of information, consultation and participation, grievance mechanisms and on-going reporting to affected communities. Importantly, the Bill should require that the impact assessment also include a detailed decommissioning plan.

The impact assessment must also include an analysis of how the identified impacts can be mitigated, and Clause 76 (Content of petroleum production license) should specify that the license must incorporate all practical mitigation strategies as conditions to the license.

Greater Priority on Environmental Issues

The Bill should make clear that compliance with all environmental requirements is mandatory. Thus, for example, Clause 66 (Exploration for petroleum) and Clause 79 (Duties of petroleum product licensee) should be revised to include a requirement that the licensee comply with all applicable environmental requirements and conduct its operations so as to minimize the environmental and social impacts. Likewise, Clause 4(2) provides that the management of waste arising out of petroleum activities shall be carried out by persons other than the licensee. However, the licensee will necessarily have to manage

Other Environmental and Social Issues: Key Recommendations
<ul style="list-style-type: none">• Expansion of definition of “pollution”;• Make clear that liabilities arising from any petroleum obligation survive the surrender or cancellation of a license;• Authority should be permitted, in Clause 104, to conduct inspections without advance notice to the licensee;• Licensee should be required to submit information to the Authority regarding any spills or releases of hazardous material;• Enhance scope for citizens in affected communities to voice concern about proposed licenses.

and handle these wastes at the very least during the interim from waste generation to the transfer of the wastes to the person responsible for its disposal. The law should be very clear that the licensee must comply with all environmental requirements applicable to the wastes generated by any petroleum activities.

Environmental protection and social impacts should play a more prominent role in the licensing process and in the functions of the Minister and Authority, generally. In particular, the criteria for granting petroleum production licenses should include consideration of environmental and social impacts such that if the unmitigated impacts are too severe, the license will be

denied. Additionally, Clause 12(2) should add that, in addition to the obligations noted in sections (a) – (e), the Authority shall also promote and ensure that petroleum activities are conducted in a safe manner that is protective of human health, the environment and natural resources.

Clause 85: Delineation of "Pollution" and Social Welfare

Clause 85(2) requires licensees to "take all reasonable steps necessary to ensure the safety, health, environment and welfare of personnel engaged in petroleum activities in the license area," and lists very important examples of such steps. However, this Clause should be improved in two ways.

- First, its fairly specific enumeration of the types of pollution to be prevented could possibly lead to confusion as to the scope of the clause. Consideration should be given to including a general prohibition against the pollution or contamination of the environment in connection with any petroleum activities. In this regard, it should be noted that the pollution provisions of Clause 85(2) often are limited to waste, petroleum, gas or water, but there will be other substances involved in petroleum activities that could also cause environmental damage if released into the environment. Further, Clause 85(2)(f) only lists select types of water to be protected from pollution, importantly omitting groundwater. The scope of this Clause should be broadened to encompass pollution from a greater variety of sources and protection of the environment and natural resources, in general.
- Second, the great majority of the examples in Clause 85(2) relates to the prevention of pollution, rather than to the welfare of employees or local populations. The "social" aspects of impact assessments should therefore be considerably fleshed out. The assessment should be required to include a genuine study of the impact on local population, cultural heritage, property, trade, agriculture and potential conflicts and even an assessment of risks of human rights breaches, health and safety and local development undertakings. Also, the Bill should set basic rules regarding child labor and require licensees to agree not to hire any person below the age of 18 years either generally or, at a minimum, not in dangerous jobs.

Liability for Environmental Damage

Clause 127 provides for licensees' liability, without fault, for any pollution damage, but its scope is much too restrictive and should be revised in several respects.

- The definition of "pollution damage" set out in Clause 126(1) relates solely to the effluence or discharge of petroleum. This definition is much narrower than the scope of the steps that licensees are required to take to protect the environment. This definition should be revised to mean damages or loss caused by any form of pollution.
- The definition of "pollution" is limited to environmental problems caused by "wastes", thus ignoring substances that are not "wastes" that can cause environmental damage. The word "wastes" should therefore be replaced by more general terms such as "chemical, substance, mixture or product."
- The definition of "pollution" should also be broadened to include conditions that are or may be hazardous to "natural resources," in addition to "public health, safety or welfare, . . . animals, birds," etc... Similarly, the Minister's regulations related to pollution (Clause 180(2)(j)) should not be limited to petroleum pollution, but instead should be broadened to include any pollution incident to petroleum activities or any other activities of the licensee at a facility.
- Clause 127(1) should expressly state that liability shall be joint and several where there are multiple parties involved in petroleum activities.

- The force majeure provision in Clause 127(2) is too broad. A licensee should be liable for pollution arising from “inevitable event[s] of nature and from the “exercise of public authority.”

In addition, it is unclear why Clause 129(2) exempts certain categories of persons from liability for pollution damage.

The Bill should also make clear that all liabilities arising from any petroleum obligation survive the surrender or cancellation of a license. Currently, Clauses 86(7) and 87(8) provide that surrendering/having a license cancelled does not affect any liability incurred prior to the surrender/cancellation. To avoid any confusion, this provision should be worded to provide that surrender/cancellation of a permit does not alter any liabilities that arise from the petroleum activities conducted by the licensee.

Other Social and Environmental Concerns

- There is a need for stronger provisions for communities likely to be impacted by proposed activities to voice their concerns. Although the 2012 Bill provides that an objection can be made to proposed exploration activities, there is no similar procedure for objecting to proposed production activities or drilling permits. The Minister should be required to respond to any significant comments made during such a process prior to granting the license. The Bill should more carefully delineate the time periods for public review and objections to proposed licenses and grant the Minister sufficient time to rule on objections. In that respect, we query whether the 14-day time period set out in Clause 56(2) is sufficient for the Minister to rule on an objection to an exploration license.
 - The Minister should be required to issue a written decision with respect to any objections to licenses in order to establish a record for High Court review.
 - The Authority should be permitted, in Clause 104, to conduct inspections without advance notice to the licensee. Additionally, Clause 104 should clarify that these inspections may include a review of the licensees’ compliance with applicable requirements and may include sampling of materials or natural resources in addition to petroleum sampling, which is already permitted under this Clause.
 - The licensee should also be required, in Clause 105, to submit information to the Authority regarding any spills or releases of hazardous materials or any violations of applicable requirements.
 - Finally, the licensee should also be required to keep records (under Clause 146) of any spills or releases of hazardous substances or any other pollution.
6. Participant Comment on 2010 Bill: The MPs found that in the Bill, the Parliament plays no role in license awards and decided that when the Bill is finally tabled they would provide that Parliament has the right to ratify agreements.

This remains the case in the 2012 Bill; there is no provision for parliamentary ratification of license awards or petroleum agreements. Parliamentary ratification provides enhanced public scrutiny and

transparency of the award process, as well as greater certainty of title for the license holder. In analyzing the impact of ratification, those benefits must be weighed against the risks of slowing down and politicizing the award process.

7. Participant Comment on 2010 Bill: The Petroleum Bill does not provide for disclosure of production and revenue data, a state of affairs that hampers public oversight and accountability. The MPs recommended for inclusion, clear provisions for full disclosure of information and elimination of 'claw back' clauses.

The 2012 Bill does not include any requirement for public disclosure of production or revenue data. The annual report provided by the Authority to Parliament could include some such information, but the 2012 Bill does not mandate its publication, and provides no detail on what will be included outside an audit of the accounts of the Authority (which would not necessarily cover most of government revenue, which will be collected by other bodies).

We agree with the MPs' assessment of the need for emerging norms of revenue and production transparency, and that specific provisions should be included in the Bill to require full and regular reporting to the public on production levels and payments received by the state. Required reporting on costs incurred in production would also provide valuable data, especially important in the case of production sharing agreements, where the calculation of cost oil and profit oil should be transparent. In order to enshrine a commitment to transparency, Uganda should also consider signing up for the Extractive Industries Transparency Initiative.

Revenue and Production Transparency: Key Recommendations

- Require publication of detailed information on revenue, broken down by company, revenue stream and project;
- Require publication of production and cost data;
- Consider committing to EITI principles;
- Narrow the provisions on confidentiality, to limit non-disclosure to information whose publication would expose legitimate commercial secrets, and subject the determination consistently to analysis under the Freedom of Information Act.

In addition, the provisions on confidentiality, particularly Clauses 149 and 150, are drafted extremely broadly, and risk being used to prevent disclosure even of information that would not be considered confidential under ordinary business practices.

- Clause 149(1) provides for non-disclosure of “all data submitted to the Minister by a licensee” (and “data” is not defined), unless both Government and licensee agree and except as provided under the Bill and the Access to Information Act 2005.
- Clause 150(1) provides that “[i]nformation furnished, or information in a report submitted under this Act by a licensee shall not be disclosed to any person who is not a Minister or an officer in the public service except with the consent of the licensee” and except for or in connection with the Bill.
- Clause 150(3) provides that “[a] person who ceases to be public servant shall not disclose any information which he or she may have obtained in the course of his or her employment for a period of ten years.”

As a result, except where the Bill expressly provides for information to be published or otherwise made available to the public, the above-mentioned clauses would restrict disclosure to the public. In addition, there is a slight disconnect in that Clause 149 provides a carve-out for provisions of the Access to Information Act 2005, but Clause 150 does not.

As it is currently drafted, Clause 150 significantly expands the scope for non-disclosure. It could be interpreted to justify the non-disclosure of information of no commercial significance (but great public importance) simply because such information is submitted to the Minister or included in a report. There are certainly circumstances in which a Government has an obligation to prevent the sharing of confidential data whose disclosure would cause material harm to the legitimate commercial interests of investors (usually price). However, these circumstances should be narrowed and expressly set out in the law. Uganda's Access to Information Act (especially Section 27) provides some useful rules on this, and any non-disclosure decision should be subject to weighing the risks of disclosure against the priority of access to information. Currently, Clause 149 contains a carve-out reflecting this consideration, but it should be added to Clause 150 as well.

8. Participant Comment on 2010 Bill: The Bill provides that information regarding licenses "shall be kept confidential" which is more restrictive than the Access to Information Act, 2005. Once again, the MPs agreed that the new law must define clearly what information will be confidential and why and for how long and provision must be made to make information available when it is in public interest.

Transparency of Licenses and Agreements: Key Recommendation

- Mandate publication of all petroleum licenses and accompanying agreements, in National Gazette and/or on-line.

Clause 148 of the 2012 Bill represents a significant step forward. It establishes that the Minister may make licenses, and/or summaries of licenses, public. This represents an improvement on the overly restrictive language of the 2010 Bill (Clause 158).

But this language does not go far enough to ensure that Ugandan citizens will have access to these critical public documents. The law in a range of African countries – including Liberia, Sierra Leone, Guinea, and Niger – now mandates publication of all natural resource contracts. The 2012 Bill leaves such disclosure up to the Minister's discretion ("may") and leaves it subject to "confidentiality of the data and commercial interests," terms that, as discussed above, are poorly defined. In practice, such a rule might result in the non-disclosure of an agreement simply because the licensee and the Ministry include a confidentiality clause. The draft also limits the reach of any licenses that are disclosed, rendering them available only upon payment of a fee. In other countries licenses have systematically been made available, on line or in the national gazette, for free.

9. Participant Comment on 2010 Bill: The UPA reporting and accountability clauses were found wanting as they provide that the UPA is accountable only to the line Minister and that the UPA Annual report is due 6 months after year end and is presented to Parliament 2 months later. The MPs recommended that the new law make a commitment towards the UPA publishing and reporting to Parliament and the public, perhaps at public hearings.

The 2012 Bill (Clause 42) requires the Authority to submit its report to the Minister within four months after financial year end, and obliges the Minister to submit it to Parliament two months later. As noted above, there are no requirements for publication of the report, or for public hearings.

10. Participant Comment on 2010 Bill: The Petroleum Bill makes no mention of capital gains tax liabilities arising from transfer of assets between oil companies and this was found to be already causing problems. The MPs that at the very least, the new law must include reference to the Income Tax Act in as far as payment of Capital Gains Tax goes.

The 2012 Bill still does not feature a reference to capital gains tax. RWI notes, however, that as a generally applicable law of Uganda, the Income Tax Act would apply against petroleum companies active in the country, even if it is not specifically referenced in the Petroleum Exploration and Production Act.

11. Participant Comment on 2010 Bill: In regard to gas flaring, the Bill was found to provide for gas flaring on ministerial permission and the MPs felt that there was potential for excessive gas flaring given the sole authority of the Minister to allow for flaring. They committed to defining more clearly the circumstances under which flaring would be allowed in the new law.

The definition of circumstances under which flaring will be allowed has not been substantively changed in the 2012 Bill. Any licensee who flares under emergency conditions must now submit a technical report to the Authority detailing the nature and circumstances that caused the emergency situation (Clause 98(5)(b)) and the 2012 Bill also adds a penalty provision for violators. However, the penalty only applies to licensees who flare under emergency circumstances and either do not ensure that the flaring is kept to its lowest possible level or do not submit the technical report to the Authority (Clause 98(6)). It does not apply to licensees who flare without justification or in non-emergency situations. It is likely that this language reflects a drafting error. Clause 98(6) should refer to a breach of subsections (1) and/or (5).

In addition, the Government should consider granting the Minister power, and directing the Minister, to further flesh out gas flaring provisions in regulations.

12. Participant Comment on 2010 Bill: The Bill does not provide for direction in circumstances of relocation of communities which raised the concern of risk that impacted communities may not be compensated as they deserve. The MPs proposed inclusion of guidelines for resettlement and compensation thereof.

The language on compensation in the 2012 Bill (Clause 136) is relatively unchanged from the 2010 Bill, with the only substantive addition being a four-year limitation on claims for compensation. There are still no guidelines for resettlement.

Clause 136(1) requires licensees to "on demand made by a land owner, pay the land owner fair and reasonable compensation for any disturbance of his or her rights and for any damages done to the surface of the land due to petroleum activities." This provision raises a number of issues.

- The principles or guidelines regarding the determination of such compensation seem to be tilted mostly in favor of the licensees against landowners. For example, in assessing compensation account must be taken of improvements made by the licensee to the land which have accrued or will accrue to the landowner, irrespective of whether those improvements are of any value to the landowner or whether those improvements will be still in good condition by the time the landowner can hope to enjoy the benefit of those improvements.
- The fact that compensation has to be requested by the land owner and therefore likely negotiated with the licensee enhances the risk that pressure may be exerted by companies or local authorities on vulnerable or distressed property owners not to request compensation or to agree minimal compensation in the interest of attracting investment. Compensation should be due by the licensees to landowners regardless of whether the landowners make a request, as is the case for expropriation in most jurisdictions, and should be in accordance with a written contract that would be made public, for transparency purposes.
- The requirement that the compensation be "reasonable" in addition to "fair" seems only to limit its magnitude. Most jurisdictions require that compensation for resettlement of population or expropriation "fair and just compensation," not "reasonable compensation."
- While the claim for compensation must be made within four years, there is no requirement on the licensee to pay promptly.
- Only monetary compensation seems to be contemplated. However, it is unclear whether monetary compensation is an adequate remedy for a displaced family in these circumstances. Several experts have questioned the efficacy of a strategy based purely on compensation, and have called for stronger requirements for helping resettled populations recommence productive activity.⁴

⁴ See, e.g., Michael Cernea, "For a New Economics of Resettlement: A Sociological Critique of the Compensation Principle," *International Science Journal*, 2003, n. 175, Unesco, Paris: Blackwell. Cernea argues that compensation, usually delivered in cash but sometimes in kind, is insufficient not least as it "transfers upon those displaced all the risks related to the market-use of cash for acquiring replacement assets". In addition, compensation "is vastly impaired by its extreme vulnerability to administrative distortion, twisting and subtraction" and ad hoc grants or allowances sometimes payable to displaced people are often subject to negotiations, thus disadvantaging the most vulnerable and weakest who have little bargaining capacity. Mr. Cernea also highlights the fact that "[m]any .. real costs to resettlers are not even considered for possible compensation since they cannot be monetised": (a) landlessness; (b) joblessness; (c) homelessness; (d) marginalisation; (e) increased morbidity and mortality; (f) educational losses; (g) food insecurity; (h) loss of common property; and (i) social disarticulation" (e.g. loss in culture, status and identity or loss of growth prospects). In light of those findings, Mr. Cernea makes the case for financing and investing in the redevelopment of forcibly resettled populations such that those populations can accelerate the pace of their development to make up for time lost in displacement.

The World Bank's *Operational Policy 4.12* (originally issued in 2001 and last updated in February 2011⁵) requires project managers to avoid involuntary resettlement to the extent feasible, or to minimize and mitigate its adverse social and economic impacts and to conceive and execute resettlement activities

Relocation and Compensation: Key Recommendations

- Base compensation on concepts of “fair” and “just and on the actual costs and benefits facing landowners;
- Provide for non-monetary compensation, particularly focused on resettlement and the need for sustainable development for resettled communities;
- Provide for prompt compensation.

"as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits". Where avoidance is not feasible, the key objective is to assist displaced persons in their efforts to improve or at least restore their incomes and standards of living after displacement." Similar standards have been adopted by the Asian Development Bank⁶ and Organisation for Economic Co-operation and Development ("OECD") countries' aid agencies.⁷

In the event that expropriation or other forcible removal of people from their land cannot be avoided, it should be carried out in a humane manner and subject to prompt, full, fair and just compensation, in accordance with a written contract that would be made public, taking into account not only the economic impact of removal and resettlement but also the cultural and social impact on people's lives. In that respect, we would recommend that the Bill follow the standard set by other countries (such as South Sudan) and the World Bank policy: the Bill should require resettlement as part of the compensation and such resettlement following expropriation should place the expropriated person in a situation similar to or better than the person's current situation.

13. Participant Comment on 2010 Bill: The Bill makes no reference to land rights of communities near the oil producing areas increasing fear of losing land if land titles are not clearly assigned. The MPs felt that provision must be made for Government to clarify land title rights for customary land owners.

The language on this issue set out in the 2012 Bill is not substantially changed from the 2010 Bill.

Clause 132 establishes that a licensee cannot exercise any right under a license “upon any land dedicated or set apart for a public purpose or for a place of burial, or upon land over which.....a right to cultural site has been granted” without “the written consent of the relevant authority.” However, it does not provide any detail on how rights to cultural sites are granted (this may be covered elsewhere in Ugandan law), nor does it provide rules for determining who the relevant authority is. The Government should consider including in the Bill the power to declare exclusion zones to protect cultural heritage. Any required exceptions would be considered at the time of the field development plan and the environmental and social impact assessment and granted at the time of the award of the license. Situations where further exceptions may be required should be limited to emergency situations, and such exceptions should only be granted by the Minister, acting in consultation with the Authority and local authorities.

⁵<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

⁶ <http://www.adb.org/Documents/Evaluation/Learning-Curves/SES/LC-Involuntary-Resettlement-Safeguards.pdf>

⁷ <http://www.oecd.org/dataoecd/37/27/1887708.pdf>

Clause 132 further requires written consent of land owners for activities on land that is used for housing, agriculture, or pastoral activities, although the Minister can step in where “the consent of the land owner is unreasonably withheld.” There is no standard provided for the reasonableness determination. The concerns here are similar to those expressed under paragraph 12 above, i.e. issues of possible pressure exerted by companies or even local authorities on vulnerable or distressed land owners, issues of fair, just and prompt compensation, issues of resettlement or compensation in kind rather than or in addition to monetary compensation, etc.

Land Rights: Key Recommendation

- Consider including power to declare exclusion zones to protect cultural heritage.

14. Participant Comment on 2010 Bill: The MPs noted that the clauses on decommissioning provide that a fund for this is to be made 5 years before ending operations. It was felt that this raises the risk of an oil company leaving before actually making the fund available. It was recommended that companies should start making financial provisions for decommission from onset of operations and clarification should be made on which body/institution will manage the decommissioning funds.

The timing of decommissioning planning and activities remains a concern in the 2012 Bill.

First, it should be made clear that decommissioning activities include the reclamation and restoration of any disturbance to soil, groundwater or other environmental media at a project site to original conditions. It should also be made clear that the obligation to reclaim and restore a project site applies to any petroleum activities, including reconnaissance surveys, exploration, drilling or production. For example, Clause 51(1) which provides that shallow drilling will be permitted under reconnaissance permits should make clear that the permit holder must reclaim and restore any areas disturbed under the permit. Likewise, Clauses 66 and 91 should require the licensee to reclaim and restore any areas disturbed by its exploration or drilling activities.

Decommissioning: Key Recommendations

- Make clear that licensee must restore project site to original conditions after each phase;
- Require a decommissioning plan to be submitted as part of EIA/SIA, and to be updated as conditions change;
- Clarify power by Minister to request security to cover full costs of decommissioning until the decommissioning fund is fully funded;
- Clarify that force majeure does not release licensee from decommissioning obligations.

Second, for production licenses, a licensee is only required to submit a decommissioning plan before a license expires or is surrendered or the use of a facility “is terminated permanently” (Clause 109(1)). The default timing for the plan, unless the Authority consents otherwise, is that this plan is to be submitted no more than four years and no less than two years before “the time when the use of a facility is expected to be terminated permanently” (Clause 109(7)). A decommissioning plan should be submitted as part of the environmental and social impact assessment (see our comments in paragraph 5 above) and should be submitted to public consultation. The production license itself should specifically include the obligations to decommission, reclaim and restore the site (Clause 76). Further, the situations triggering an updated decommissioning plan in Clause 109(6) should be broadened to require an updated decommissioning plan whenever changes in site, operating, financial, or other conditions would be expected to significantly change the costs or the operation of the plan.

Additionally, Clause 86 should provide that a license cannot be surrendered and a certificate of surrender should not be issued until the decommissioning, reclamation and restoration obligations have been met to the satisfaction of the Minister. To the extent Clause 86(8) asserts that a Licensee may surrender a license after providing notice and waiting three months, without any approval by the Minister, this should be clarified to include the approval and certification requirements noted elsewhere in Clause 86. Similarly, Clause 91 should clarify that a well cannot be abandoned without prior approval of the Authority. Finally, Clause 115(2) should cross-reference the abandonment requirements in Clauses 86 and 91 to clarify that the licensee must go through a process and obtain approval before abandoning a facility.

As drafted, payments into the decommissioning fund must begin either when production has reached 50% of the aggregate recoverable reserves as determined in the development plan, or five years before the expiry of the license, or at surrender (Clause 110(3)).

These provisions leave in place a risk that a company could end operations earlier than expected, without an adequately planned or financed decommissioning fund. Note, however, that the 2012 Bill provides that the Minister shall require license applicants to submit a bond or other form of security for the performance of license conditions (Clauses 57 and 170). The Bill should be clarified so that the Minister is entitled to request security to cover also the full costs of decommissioning works, at least until the decommissioning fund is fully funded. The Minister would decide the appropriate form of security on a case by case basis, depending on the creditworthiness of the license holder and the potential decommissioning burden. By comparison, the UK Government requires parent company guarantees from license holders carrying out petroleum activities in the North Sea.

Finally, Clause 186 should be revised to make clear that the force majeure provision does not release any obligations to decommission, reclaim and restore any project sites.

15. Participant Comment on 2010 Bill: In regard to Local Content, the MPs found the Bill lacking in benchmarks and with no provisions on remedial actions/ penalties for failure to increase local content.

The clause on provision of goods and services by Ugandan entrepreneurs (Clause 122) remains fairly weak in the 2012 Bill. It provides that priority is to be given to Ugandan enterprises “unless the goods and services are offered on terms which are not equal to or better than imported goods and services with regard to quality and availability at the time and in quantities required.” It does not require international partners to engage in proactive activity to train or partner with local ventures to help them raise their capacity over time. In practice, it will be difficult for Ugandan ventures to compete with international ones for many goods and services in the absence of such a proactive approach to capacity development, and the law could help promote such a stronger approach. In addition, the comparison does not seem to take price into account.

Local Content: Key Recommendations

- Encourage companies to develop proactive approaches to training local professionals and contractors;
- Require publication of company reports on achievements utilizing Ugandan goods and services;
- Regulations to be issued as soon as possible.

The 2012 Bill requires that Ugandan contractors and sub-contractors “be approved in accordance with criteria prescribed by the Minister by regulations” (Clause 122(3)). Fast development of these criteria will be critical, as their absence may impede approval of contractors and thereby

the flourishing of local content.

The 2012 Bill includes a very positive provision requiring each licensee to report annually on its achievements in utilizing Ugandan goods and services (Clause 122(4)). This can help put pressure on companies to live up to their commitments and give the Authority a basis for action. Its effect would be further strengthened by requiring the report to be published.

As regards training and employment of Ugandans, the licensee must submit an annual plan for the recruitment and training of Ugandans, which must be approved by the Authority (Clause 123(1)). This is a positive step. The draft does not opt for numerical benchmarks for local employment however.

As with the hiring of local firms, there is a requirement in Clause 123(4) for a report to the Authority on the execution of local training and recruitment programs, which could be further strengthened by requiring it to be made public and regular (e.g. quarterly).

III. ADDITIONAL CONSIDERATIONS

Beyond the explicit concerns raised by workshop participants in regards to the 2010 Bill, there are several other issues that we recommend Ugandan civil society consider as they examine the 2012 Bill.

Fiscal Terms

The 2012 Bill does not provide for a standard set of fiscal provisions to apply to petroleum projects. Presumably petroleum licensees would be subject to the generally applicable income-tax regime, but in terms of royalties (Clause 151), fees (Clause 152), and state equity (Clause 121), the draft leaves things open for variation from one contract to the next. Establishing some minimums clearly in law would reduce the risk of Uganda losing out by subjecting state take exclusively to case-by-case negotiations with oil companies.

Safety and Emergency Preparedness

The 2012 Bill requires the licensee to maintain efficient emergency preparedness, but does not require the licensee to develop an emergency preparedness plan. As discussed in Section 5 above, an emergency preparedness plan should be included as a portion of the environmental impact assessment. Such plan should include safety precautions to be taken so as to minimize the likelihood of emergency situations.

The Minister's authority to issue directions for the implementation of certain emergency measures should not be limited to those listed in Clause 139(1), but should also include those listed in Clause 139(2) and those related to safety precautions discussed in Clauses 137 and 138.

Further, the Minister should have the authority to authorize cessation of operations pursuant to any emergency situation, not only deliberate attacks, as described in Clauses 140 and 142.

Finally, Clause 139 should require the licensee to take precautions to prevent unauthorized persons from having access to the petroleum facility and should require the licensee to maintain at the facility equipment capable of addressing certain emergency situations such as fires, oil spills, gas leaks, or other emergency situations.

Miscellaneous Matters

- The expression "best petroleum industry practices" is defined by reference to practices that are generally accepted and can be applied globally. It is unclear whether this is intended to refer to local practices or international ones. Local standards are likely to be insufficient given that the industry is only in the process of establishing new rules of good governance and good practice. Accordingly, the expression should be amended to refer to best internationally accepted practice.
- Protection from Liability: Clause 32 protects members of the Board and officers of the Authority from personal liability under the Act. The 2012 Bill includes persons acting on the directions of the Board or of an officer of the Authority in this protection. Clause 32 should clarify that this protection is not extended to licensees or those acting on the direction of licensees. Licensees should not receive such broad protections when carrying out the directions or obligations set forth in their licenses (for which the Authority has the ability to consult) or directions or obligations otherwise set forth by the Authority or the Board while fulfilling their functions under the Act.
- Clause 60(2) grants the Government, or a person identified in the license, an option to acquire an interest in any petroleum activities to which the license relates, but the provision is not sufficiently detailed. The possibility to select a third party to benefit from that option right is an opportunity for undue preference or preferential treatment to be granted to influential people or business partners.

The process for selecting such third party should be transparent and all details regarding the identity and the shareholders of such third party as well as all details regarding the selection process and criteria should be published. Any such third party beneficiaries should also be bound by all rules regarding conflicts of interest and good governance rules. These principles should be set out in regulations or preferably in the Bill itself.

- Relinquishment: There is some inconsistency between Clause 64 and Clause 65(3). Clause 64 limits the number of blocks for renewal to the sum of discovery area blocks and not more than 50% of licensed blocks (i.e. potentially more than 50%), while Clause 65(3) provides that renewal can be sought for 50% of the licensed blocks. The two provisions should be reconciled. In addition, Clause 64(1) is not really a standard of relinquishment since it is expressed to be "subject to any modification contained in the petroleum agreements". This is an additional reason why standard forms of petroleum agreements would be important. Alternatively, Clause 64(1) could be amended to provide minimum relinquishment standards for petroleum agreements.
- Production licenses: Read in isolation, Clause 69(3) seems to allow any person to apply for a production license for a block in apparent breach of the exclusive right of the exploration license holder for that block. However, if read in conjunction with sub-Clause (4), Clause 69(3) seems to suggest that a third party may apply for a production license when the exploration license holder has failed to do so. We would recommend making Clause 69(3) "subject to subsection (4)" and amending subsection (4) to provide that "an application under subsection (3) shall be made only after the Minister has made an announcement in accordance with section 70".
- Clause 84(6) (Change of control): the word "decisive" should be deleted as the concept of "control" is defined in subsection (5).
- Clause 87(5): the drafting is confusing, as it is not clear that the change of control that must occur within three months is not the change of control proposed by the license holder but rather "the alternative change of control of the body corporate as is specified in the Minister's notice".
- Clause 120: this provision is confusing at it is unclear which one of the regulation or the petroleum agreement will prevail in fixing the price for petroleum. The petroleum pricing for forced sale of petroleum should be stipulated in the petroleum agreement in accordance with the method prescribed in the regulation.

* * *

Appendix 1: Functions of the Ministry and the Authority

Topic	Ministry Mandate	Authority Mandate
Licensing	Grant & revoke license (Clause 9(a))	Advise Minister in petroleum agreement negotiation and granting/revocation of licenses (Clause 11(2)(e))
	Negotiate and endorse petroleum agreements (Clause 9(e))	Administer petroleum agreements and ensure (including through enforcement) that licensee upholds laws, regulations and contract terms (Clauses 11(2)(i), (j), (s) ⁸ & (o))
	Approve plan for field development (Clause 9(f))	Assess field development plans and make recommendations to Minister re: those plans (Clause 11(2)(d))
		Review and approve proposed exploration operations, appraisal programmes and production forecasts submitted by licensee (Clause 11(2)(b))
Policy development	Design and implement oil and gas policy (Clause 9(b))	
Law and regulation development & implementation	Propose draft legislation and regulation to Parliament (Clauses 9(c) and (d))	Monitor & regulate petroleum operations (Clause 11(2)(a))
Operational oversight		Review and approve licensee budgets (Clause 11(2)(c))
		Assess tail-end production, cessation of petroleum activities and decommissioning (Clause 11(2)(f))
		Ensure optimal recovery of petroleum resources (Clause 11(2)(k)), optimal utilization of facilities (Clause 11(2)(m)), promote cost effective operations (Clause 11(2)(l)) and competition among operators (Clause 11(2)(q) & (p))
		Participate in and approve determination of royalty and profit oil (and gas) due to the State (Clause 11(2)(g)) and ascertain cost oil (and gas) due to licensees (Clause 11(2)(h))
		Ensure protection of Health and Safety (Clause 11(2)(o))
	Approve data management	Collect, manage and make publicly available

⁸ Clause 11(2)(s) as amended seems duplicative of Clause 11(2)(i).

	systems (Clause 9(h))	all relevant data re: petroleum activities (Clause 11(2)(n))
Tax Collection & State participation		Provide information to relevant authority for collection of petroleum taxes and fees (Clause 11(2)(r))
Transparency	Promote and sustain transparency in the petroleum sector (Clause 9(g))	
	Any incidental or consequential functions (Clause 9(i))	Any incidental or consequential functions (Clause 11(2)(t))