CRITIQUING THE POLLUTER PAYS PRINCIPLE AS A TAX INSTRUMENT IN THE OIL AND GAS SECTOR IN UGANDA

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OCTOBER 2020

DECLARATION

I, Akena Kenneth Fred, hereby declare that this dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfillment of any academic award.

Signed……..

Date…….

APPROVAL

This is to certify that, this dissertation entitled "**CRITIQUING THE POLLUTER PAYS PRINCIPLE AS A TAX INSTRUMENT IN THE OIL AND GAS SECTOR IN UGANDA**" has been done under my supervision and now it is ready for submission.

Signature……

ASSOC. PROF. GODARD BUSINGYE, LL. D

(Academic Supervisor).

Date……

DEDICATION

I dedicate this work to my family, who were a major source of inspiration to my education.

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LIST OF ACRONYMS

APP – Ability to Pay.

CDM – Clean Development Mechanism.

EIA – Environmental Impact Assessment.

IOC – International Oil Companies.

PPP – Polluter Pays Principle.

PEPD – Petroleum Exploration and Production Department.

NEA – National Environmental Authority.

NEMA – National Environmental Management Authority.

CSO – Civil Society Organization.

NOGP – National Oil and Gas Policy.

NGO – Non-Governmental Organization.

OECD – Organization for Economic Co-operation and Development.

PAU – Petroleum Authority of Uganda.

UNDP – United Nations Development Program.

UNFCCC – United Nation Framework Convention on Climate Change.

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ABSTRACT

The purpose of this study was to critique the application of polluter pay principle as a tax mechanism in the oil and gas sector in Uganda. The researcher used a qualitative methodology and interviewed key respondents coupled with document reviews. The study reviewed national legislative framework and policies in relations to the application of the Polluter Pays Principle as a tax mechanism in the oil and gas sector in Uganda and the various international and regional regulatory frameworks to which Uganda is bound that are meant to implement and enforce the PPP on polluters that major involve the international oil Companies. The study explores the strengths and weaknesses of the legal framework in the application of the Polluter pays principle as a tax mechanism in the oil and gas sector of Uganda.

The study established that the Polluter pays Principle approach adopted under the various legal frameworks studied are based on the command and control model which is precautionary and preventive other than the market-based approach which aims at the change of behavior of the international oil companies. The study concludes that to a greater extent Polluter pays principle has not been efficiently applied and implemented in respect of the IOC activities in the oil and gas sector of Uganda. The research recommends strengthening the legal and institutional framework to ensure that all the other instruments for implementation of polluter pay principle are put in place to avoid over pollution of the environment within the area where exploration takes place, the study further recommends financial assistance to fund the various sectors involved in the oil and gas activities to proper inspect the activities of the International Oil Companies.

CHAPTER ONE

GENERAL BACKGROUND TO THE STUDY

1.0. Introduction

In today's global economy, oil and gas minerals play a significant role in society as an essential energy source. Besides, oil and gas products are essential raw materials for several consumer goods.[1] In this case, oil and gas have merged as significant areas of interest since they represent much more than just one of the primary energy sources used by humanity.

For more than a century, burning fossil fuels such as oil and gas has generated most of the energy required to propel our cars, power our businesses, and keep the lights on in our homes. Fossil fuel like oil, coal and gas provide about 80% of our needs every day.[2] The continuous use of fossil fuel as a source of energy has exacted an enormous toll on humanity and the environment. This impact is seen in the form of air and water pollution to global warming. The negative impact associated with the use of fossil fuel for energy has gone beyond the impacts created from other petroleum-based products such as plastics and chemicals.

The Global world has been battling serious issues of how to deal with negative impacts of extraction of fossil fuel. The continuous use of Fossil Fuel has several impacts that have shocked the world. When fossil fuels are burned, they release carbon dioxide and other greenhouse gases, which in turn trap heat in our atmosphere, making them the primary contributors to global warming and climate change. It is on this basis that we have the Parish agreement of 2015. The Paris Agreement, which was agreed in December 2015, sets the framework for immediate actions and long-term strategies to prevent dangerous climatechange. This includes opportunities to address a significant obstacle to the Low Carbon Transition through subsidies and public finance for fossil fuels.[3]

It is observed that taking steps to end public subsidies for high carbon energy is critical for meeting one of the key goals of the agreement: 'making financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development'.[4]

[1] R. Oran Young, Indtitutional Dynamics: "Emerging Patterns in International Environmental Governance" Cambridge: The MIT Press, 2010.
[2] M. Maeve (2016): Briefing Pathways in Paris Agreement for ending fossil fuel subsidies.
[3] Ibid.
[4] Ibid.

Under the Paris Agreement, several governments have committed to limiting global temperature rise to well below 2°C and pursuing efforts to limit this increase to 1.5°C.[5] To meet this pledge, the vast majority of fossil fuels will need to remain in the ground, with all countries requiring a shift to fully clean energy systems. There is a growing consensus that onecrucial step governments must take to incentivize this energy transition and keep fossil fuels inthe ground is to remove financial support and subsidies for fossil fuels. Several countries havemoved to comply with the international principles by making financial flows work for the climate.[6] This is the pursuit of Article 2.1 (c) of the Parish Agreement 2015.

Namanya in his article "FEATURE: Uganda's climate law makes headway" asserts that national climate change laws are important in translating governments' international obligations into enforceable actions at the national level.[7] He goes further to state that this is especially important given that adaptation and mitigation targets communicated by Parties to the United Nations Framework Convention on Climate Change and the Paris Agreement on Climate Change, through Nationally Determined Contributions are voluntary in nature and can only be meaningful if they are supported by national laws. He also notes that is important for countries to consider formulating specific enabling laws to support the implementation of the Paris Agreement.

According to Namanya, Uganda still does not have a legal framework on climate change, which is an obstacle in translating the identified policy priorities into implementable actions. To this effect, Uganda is developing a national climate law to enhance Uganda's ability to adapt to the adverse impacts of climate change, build climate resilience and pursue low greenhouse gas emissions development. The law will enable Uganda to pursue its voluntary mitigation targets under the Paris Agreement of reducing greenhouse gas emissions in the energy supply, forestry and wetland sectors by 22% in 2030 compared to what would have happened if no action to avoid emissions had been taken.[8]

Despite the lack of a legal framework on climate change, Uganda has a proposal on the national Climate change law which has provisions such as:

[5] Article 2(1) (a).
[6] N. Bernard (2020) FEATURE: Uganda Climate Makes Headway, Climate and Development Knowledge Network https://cdkn.org/2020/05/feature-ugandas-climate-law-makes-headway/?loclang=en_gb accessed 13 October, 2020.
[7] Ibid.
[8] Bid.

(i) The application and enforcement of the United Nations Framework Convention on Climate Change and the Paris Agreement in Uganda's national legal system. Although Uganda has ratified these international agreements, they are not automatically enforceable at the national level and a specific law is required for them to be applicable in Uganda.[9]

(ii) Uganda's participation in compliance emissions trading mechanisms; voluntary emissions trading mechanisms; non-market approaches; and cooperative approaches aimed at contributing to mitigation and supporting sustainable development as elaborated in Article 6 of the Paris Agreement, 2015, with rules on the finer details of Uganda's participation in climate change market mechanisms to be made later by the Minister.[10]

(iii) Strengthening government institutional frameworks for adaptation and mitigation actions.[11]

(iv) Government planning frameworks that include the Framework Strategy on Climate Change; the National Climate Change Action Plan; and the District Climate Change Action Plan.[12]

(v) A mechanism of reporting action to address climate change by various players including the lower local governments, the district local governments, and ministries, departments, and agencies with the various reports consolidated into an annual report on climate change.[13]

(vi) Undertaking public consultations and considering the views and opinions of persons consulted.

(vii) The measuring, reporting, and verification of information related to mitigation, adaptation, and climate finance.[14]

[9] Uganda Climate Change Policy 2015.
[10] Uganda Climate Change Policy, 2015.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.

(viii) The mobilization of national and international climate finance by the Minister of finance. The proposed law specifically provides for amendment of the public finance law to require all government ministries and agencies to specifically budget for climate change activities. These budgets will be vetted by the National Planning Authority before approval by the Ministry of Finance.[15]

Although Uganda as a developing country is trying to build on its national legislation to combat climate change, the extraction of fossil fuel such as oil and gas has had a bearing on the environment in terms of pollution of air, water, and the surrounding environment where the said activities are taking place and despite the little progress that has been made in curbing the risk associated with oil and gas production, the exploration of fossil fuel for energy use remains a prime concern for the governments of developing economies as a source of direct foreign income, tax revenue, and employment, and offers the window for the transfer of information and expertise from developed to developing countries.

In Uganda particularly, the oil and gas industry could have a dramatic impact both positive and negative on the country's socio-economic development as well the environment in which the fossil fuel is being extracted.[16]

The Albertine Rift area in Uganda is currently recognized in the global sphere as a biodiversity hotspot that contains over 39% of mammal species, 19% of amphibians, and over 55% of the Birds Species in Africa.[17] It is also composed of a large number of endemics protected areas ranging from community wildlife reserves to fully protected national game parks, it also has a vast forest reserve within its area. In an event of leakage arising from the extraction of fossil fuel, the spread of Lead is likely to cause disaster to the environment. This is because Lead as a known chemical is estimated to have a concentration level of approximately 19% higher than the normal concentration; further, that Lead is one of the leading causes of toxicity in waterfowl, and is also a well-known main cause of die-offs of wild bird populations.[18]

There will also be a diverse effect on the aquatic life as a result of waste disposal to the water sources in the Albertine Rift. There will also be a likely effect of unnecessary encroachment

[15] Ibid.

[16] M. Ross, "Oil, Isam and women, American Political Science Review, Vol 102 No. 1, 2008.

[17] M. Kyomugasho, Oil industry in Uganda: "The socio-economic effects on the people of Kabaale Village, Hoima, and Bunyoro region in Uganda", 2015.

[18] Ibid.

on the forest reserve within the region. Further, the drilling activities being carried out in these region has an impact of creating a vibration that affects the breeding of wildlife and cause migration. Disruption to wildlife conservation regimes will affect wildlife user rights and benefit-sharing schemes owing to decreased revenues earned from tourism.[19]

The impact of these chemicals in seismic activity on the environment in both the water and to the wildlife is devastating and could mean the end of the last nature. This will affect our tourism sector as animals will migrate and some are already on the move. Further, if controls are not managed effectively, ecological impacts may also arise from other direct anthropogenic influences such as fires, increased hunting, fishing, and possibly poaching. However, there is a lot to be done to protect the environment nevertheless the oil operations will leave a footprint in the environmental sector of Uganda. [20]

The atmospheric impact, this is basically through the emissions to the environment, the drilling exercise, the extraction together with the transportation.[21] The chemicals that are emitted to the atmosphere are factual and affect the people and animals in the ecosystem. The principal emission gases include carbon dioxide, carbon monoxide, methane, volatile organic carbons, and nitrogen oxides. Emissions of sulfur dioxide and hydrogen sulfide can occur and depend on the sulfur content of the hydrocarbon and diesel fuel, particularly when used as a power source. In some cases, the sulfur content may cause odour near the facility. This will cause a major health hazard to the environment and humanity settled around the exploration sites where the exploration of oil and gas is being carried out.[22]

In countries where oil and gas are being produced, there has been renewed and increasing interest in its impact on the natural environment. The changes in the environment due to oil and gas exploration and exploitation activities have not only degraded the environment but also contributed to the infringement of human rights.

In light of the foregoing, the legal, institutional, and policy framework should be put in place to regulate the exploitation and usage of fossil fuel to protect the environment and also regulate the behavior of the International Oil companies involved in the exploitation of this natural

[19] M. Sembuya Douglas (2015), The Legal and Environmental Dimension of Oil and Gas Exploration in Uganda.
[20] Ibid.
[21] K. Ericson "A Crude Awakening: The Relationship between Petroleum Exploration and Environmental Conservation in Western Uganda" (2014). *Independent Study Project (ISP) Collection*. 1924. https://digitalcollections.sit.edu/isp_collection/1924.
[22] Ibid

resources. This can avoid creating a burden for the future generation in the process of utilization of non-renewable fossils and thereby meeting the Sustainable Development goals and limiting the effect of greenhouse gases as envisioned in the Paris Agreement of 2015.

1.1. Background of the Study

In many countries, natural resources and extractive minerals are lucrative state assets that fail to contribute to economic prosperity. In resource-rich Africa, regulatory mismanagement, corruption, and theft of natural resource and extractive commodities have contributed to illicit financial flows, poverty, instability and in some cases financed civil wars linked to conflicts over control of state assets.[23]

Uganda's oil exploration activities are concentrated in the Albertine Graben region in western Uganda covering a stretch of over 23,000 km. Uganda has recently in 2006 officially announced the discovery of oil, however, this is not a new discovery. Oil was first discovered in the colonial times by EJ Wayland in the 1920s and documented 52 oil and gas seeps in the Albertine Graben, preliminary explorations commenced in 1920-1945.[24] Some shallow wells were drilled by an Anglo European company from South Africa in the areas of Kibiro and Kibuku based on oil leakages, first attempts at drilling were in the late 1930s at Buitaba Waki B1 well."[25] However, there was an interruption of the Petroleum exploration process in between the period of 1945 to 1980 which is referred to as the period of Limited Activity because of the Second world -war, in which change in policies of colonial masters where East Africa was zoned for Agriculture coupled with post-independence political uncertainties and instability in the Country which caused a delay in the exploration of oil. During the Second World War due to until the period 1983 when geologists resumed exploration activities in the Albertine Graben, revealing consistent oil presence.[26]

The aeromagnetic surveys taken during 1983 and 1992 produced a ray of hope. They were able to identify five sedimentary basins in the country. These were; The Albertine Graben, Lake Kyoga basin, Hoima basin, Lake Wamala basin, and the Moroto Kadam basin. The resumption of exploration led to the official creation of the Petroleum Unit in 1985, in the Geological

[23] V. Cari (2019): 'Making Extractives Work for The People' (*Africa Can End Poverty*, 2019) <http://blogs.worldbank.org/africacan/making-extractives-work-for-the-people> accessed: 7 January 2020.
[24] M. Sembuya Douglas (2015), The Legal and Environmental Dimension of Oil and Gas Exploration in Uganda.
[25] Ibid.
[26] J. Louise (2007) Effects of oil and gas exploration in the Albertine Rift Region on Biodiversity.

Survey and Mines Department in the ministry of Energy and mineral development, with a role to spearhead exploration promotion, and the enactment of the Petroleum (Exploration and Production) Act of 1985 and to make provision for the exploration and production of Petroleum and related matters.[27] The Petroleum Exploration and Production Department, which commenced aeromagnetic surveys. In 1993, the Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations were enacted to regulate Petroleum activities in the country.

The Albertine Graben in which oil has been discovered in Uganda is located in the western part of the country, mainly in Masindi, Kibale, and Hoima district around Lake Albert which forms the northernmost part of the western arm of the East African Rift Valley. It is situated at the Uganda and Congo border further stretching to the border with Sudan. According to the Petroleum geologists, the Albertine Graben is greatly enriched with oil.[28] They assert that the Maputa and Waraga oil fields have approximately 100 to 400 million barrels of oil, whereas the Giraffe 1 is expected to total at least 400 million barrels of oil.[29]

Paul Atherton, Chief Financial Officer of Heritage Oil, stated that the wider field his company was developing, dubbed Buffalo Giraffe, had several "billions of barrels of oil in place", although it was unclear how much of this would be recoverable.[30] Additional exploration findings have estimated that there exist approximately 500 million barrels of oil at the Kingfisher well in Hoima. The oil is now estimated at 6.5 billion barrels following the evaluation of more oil wells that encountered oil during the exploration phase.

There has been a considerable refurbishment of the oil sector by the government of Uganda from the early 2000s. For instance, the Hardman Petroleum Pty (now Tullow) signed an MOU with Government for an Early Production Scheme (EPS) for oil production, Seniorping plant; and Thermal Power generation ~ 50-85MW in 2006.[31] These companies are now at different stages of exploration and have discovered vast quantities of oil in the Albertine Rift, along the western border of Uganda and the Democratic Republic of Congo (DRC).

[27] Ibid.
[28] M. Sembuya Op Cit at 24.
[29] Ibid.
[30] Ibid.
[31] Ibid.

At the same time, the Albertine Rift region is well known as one of the most vibrant biodiversity hotspots, for example, the higher levels of human management resulted in increased disease and virus infection risk, which was associated with decreased habitat species diversity.[32] This region hosts several protected areas including the Queen Elizabeth National Park, Rwenzori Mountains National Park (both are World Heritage Sites), Kibaale, Semliki, and Murchison Falls National Parks, plus Toro-Semliki and Kabwoya wildlife reserves. At the national level, the Albertine Rift houses seven of the ten national parks and over 20 forest reserves. With this richness, the area provides a range of ecosystem services that include, among other things, tourism and aesthetic values and water through the system of lakes, rivers, and wetlands to Uganda and the Nile riparian states north of Uganda. Indeed, the livelihoods of the people in the area are primarily derived from the natural forests, fisheries, fertile soils, minerals, and wetlands.

The oil industry comprises two parts, the upstream, which is the exploration and production component of the industry, and downstream, which deals with refining and processing as well as the distribution and marketing of oil resources.[33] Thus companies operating in the industry may be categorized as fully integrated, both having upstream and downstream interest or may concentrate on a particular sector such as exploration, production, or just refining and transportation.

The level of exploitation and exploration being carried out in these regions has consequences that necessitate the involvement of the government in addressing the situation. Exploration of the oil and gas resources has led to both environmental and human pollutions in the areas where the said activities are being carried out.

Exploration and production of oil and gas cannot be considered without assessing the environmental impact that can result from such activities. This is aimed at promoting the principle of sustainable development emphasized in the Rio conference 1992 (Earth summit) that adopted the Stockholm declaration of 1972.[34] The UNDP emphasizes the concept of sustainable development, this is the use of a resource in a way that will not only benefit the present generation but also the future generation. The Petroleum (Exploration, Development, and Production) Act of 2013, Section 1 (a) states the purposes of the act and the first one is to

[32] Ibid.

[33]UNEP (1997) Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches. UNEP/IE PAC Technical Report 37, pg.4.

[34] Rio Declaration 1992.

operationalize the National oil and gas policy by establishing an effective legal framework and institutional structures to ensure that the exploration, development, and production of Petroleum resources of Uganda is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations.[35]

There have been international responses to the problem of Pollution arising out of the exploitation of fossil fuel such as oil and gas in the form of polluter pays principles, such approach as that of OECD guiding principle defines polluter pays principle as an instrument for "…. Allocating cost of pollution prevention and control measures.[36] The OECD definition presents four key issues in relation to the application of the Polluter Pays Principle this issues are:

a) The issue of identifying the polluter. This is Crucial to the allocation of cost and making the polluter takes responsibility for his or her pollution;

b) It is necessary to ascertain the extent of damages done to the environment and establish extent of the polluter's liability so that precise monetary value can be attached to the degradation;

c) The pollution caused must be identifiable.[37] This is necessary to prove that the polluter is responsible for the resulting pollution; and

d) There must be damage that must be compensated.[38] The damage caused must be real and identifiable as compensable under a compensatory regime provided by the relevant laws.

These issues when properly articulated would help ensure that the polluter is made liable for the cost of his polluting activities.

According to Elvis-Imo, the polluter pays principle envisages that the parties who generate pollution, and not the victims, the society, or the government, should bear the cost of

[35]M. Kyomugasho, Oil industry in Uganda: "The socio-economic effects on the people of Kabaale Village, Hoima, and Bunyoro region in Uganda", 2015.

[36] OECD, 1989 Recommendation of the Council concerning the application of the Polluter pays principle to accidental pollution.

[37] Okenabirhie, 'Polluter Pays Principle in the Nigerian Oil and Gas Industry: Rhetorics or Reality? Environmental and Social Issues in Energy Industry (CAR CEPMLP Annual Review) (2008/2009) http://www.dundee.ac.uk/cepmlp/gateway/index.php?news=30840 Accessed on October 12, 2020.

[38] Ibid.

abatement.[39] He asserts that this practice allows the party responsible for polluting the environment to take responsibility for his actions. And further that it also allows the polluter to be '...charged with the cost of whatever pollution prevention and control measures are determined by the public authorities, whether preventive measures, restoration, or a combination of both.[40]

Elvis-Imo also states that polluter pays principle means that the polluter should bear the expenses of carrying out measures decided by public authorities to ensure that the environment is in an acceptable state. Further that, the cost of these measures should be reflected in the cost of goods and services that cause pollution in production and/or consumption. To Elvis-Imo, such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment. He argues that the rationales for the polluter pays principle can be gleaned from issues such as efficiency, equity, judicial/legal and pedagogical reasoning.[41]

The purpose of the policy was to internalize the economic cost of pollution control, cleaning and protection measures and to ensure that government did not distort international trade and investment by subsidizing those environmental costs.[42] The rationale is that when a charge is levied, it induces polluters to treat their effluents, and they will do this as long as the treatments costs remain lower than the amount of the charge they would otherwise be compelled to pay in the absence of pollution abatement

In Africa, most of the countries have begun to put in place legal requirements and incorporation of the Polluter Pays Principle. Most of these regulatory framework employs the regulatory instruments that constitute the command and control strategy which entails the use of express legislative provisions such as the National Environment Act, 2019 laws of Uganda, Water Act, the Petroleum (Exploration, Development and Production) Act and other guidelines regulations to control human behavior. The other approach is the Economic Instrument. These are Market based mechanisms that are designed to influence people's behavior. The Economic instruments are more of policy instruments other than the command and control mechanism that aim at

[39] Gino E.I. Analysis of the Polluter pays Principle in Nigeria (2017)1 (1) Ajayi Crowther University Journal page 5.
[40] Ibid.
[41] Ibid.
[42] Ibid.

inducing a change in the behavior of economic agents by internalizing environmental or deflection cost through a change in the incentive structures that these agents face.[43]

The difference between the Economic instruments and the command and control strategy is that, Economic instruments have the potential to make pollution control economically advantageous to commercial organizations as well as governments and to lower pollution abatement costs. The application of economic instruments are through a range of policy tools from pollution taxes and marketable permits to deposit-refund systems performance bonds. It also includes incentives such as subsidizes; rewards for desired behavior; and in a similar vein disincentive such as taxes or charges for undesired behavior.[44]

Compliance with the letter and the spirit of the regulatory approach and the Economic instruments in the implementation of the PPP in controlling pollution resulting from the extraction of fossil fuels for energy use greatly depends on the administrative capacity of the countries to actively enforce the legislation. In Uganda, the National oil and Gas Policy 2008, the Environment Management Act 2019, the Water Act Cap 152, the Petroleum (Exploration, Production, and Development) Act 2013, and other guiding policies were enacted to ensure that pollution that arising as a result of the exploitation of fossil fuel is kept to the bare minimum.

1.2. Statement of the Problem

The government of Uganda has developed series of legal frameworks to address the oil and gas activities and the general issues relating to pollution of the environment as a result of exploitation and exploration of the oil and gas resources, starting with the 1995 constitution which created a right to clean and healthy environment. The constitution is supplemented by various statutes such as the National Environment Act 2019, The Petroleum (Exploration, Development, and Production) Act 2013 that all aim at regulating pollution resulting from oil and gas exploration through the various mechanism therein. Uganda has also signed international legal agreements such as the Rio Declaration of 1972 and the Parish Agreement of 2015 which all aim at pollution reduction, a clean and healthy environment. These legal frameworks incorporate the polluter pays principle, through the precautionary and preventive approach to control the activities of the international oil companies. Despite all these legal

[43] Gino E.I. Analysis of the Polluter pays Principle in Nigeria (2017)1 (1) Ajayi Crowther University Journal page 6-7.
[44] Ibid.

frameworks in place, Uganda is yet to fully incorporate and implement and impose the PPP on the international oil companies. This means that the legal framework crafted to ensure that there is compliance by the international oil companies involved in the oil and gas exploration and development is wanting due to non-compliance which may result in environmental pollution that may limit the achievement of the sustainable development goals.

The inability to effectively apply the PPP approach fully could be attributed to weak enforcement, the inadequacy of the law, lack of proper institutional framework. Also, Uganda seems to lack the political will and commitment as the government seems to favour development and revenue from the oil and gas exploration and development process than regulating the resultant effect of the exploration on the environment such as oil spills, blowouts, Gas flaring, and other related incidences.

This is an indication that though, there is a presence of sound legal and policy framework, it is in fact on paper rather than being practically implemented thus the enforcement and implementation of the polluter pay principle as a tax mechanism remains a fallacy or a mere puff in the face of the growing oil and gas exploration activities in the Albertine Graben. More so, the issue at stake at the moment is to balance the exploration and production process viz` a` viz the environmental concerns associated with the oil and gas activities.

The purpose of this paper is to examine and critique the effectiveness of the legal and policy framework available in the enforcement of the polluter pays principle as a tax mechanism in the oil and gas exploration in Uganda.

1.3. Objectives of the Study

1.3.1. Main Objective

The main objective of the study is to critique the applicability of the polluter pays principle as a tax instrument in the Oil and Gas Sector of Uganda.

1.3.2. Specific Objectives

i. To assess the adequacy of the legal framework for the implementation of the polluter pays principle in the oil and gas industry in Uganda.

ii. To examine the extent to which the Polluter Pays Principle has been implemented in the oil and gas sector in Uganda.

iii. To conclude and make recommendations.

1.4. Research Question

i. How applicable is the polluter pays principle as a tax instrument in the Oil and Gas Sector of Uganda?

ii. What is the legal mechanism in place to implement the PPP in the oil and gas industry in Uganda?

iii. How relevant is the existing legal framework in the implementation of the PPP as a tax mechanism in the oil and gas industry in Uganda?

iv. How effective are Uganda's legal framework and implementation of PPP as a tax instrument in the oil and gas sector in Uganda?

v. What are the conclusions and recommendations for the effective implementation of the polluter pay principle in Uganda?

1.5. Significance of the Study

Uganda recently embarked on a commercial oil and gas exploration and production process. The switch to commercial oil and production process has drawbacks, this ranges from corruption, mismanagement of information, ignorance of the legal regime, and pollution caused as a result of the exploration of the natural resources. This pollution is mainly caused by the multinationals oil companies involved in the extraction of natural resources and it affects human life, wildlife and ecosystem, aquatic impacts, and many others. The rapid level and pace at which the exploration and development of the oil and gas resources are being conducted necessitate an urgent plan and urgency of addressing the pollution challenges associated with these activities. The study will help in addressing the issues of how Pollution can be minimized through taxation of the polluter by way of using the different tax mechanisms under our laws and regulations.

The study, therefore, points out the effects of oil and gas exploration and development on the surrounding areas which include pollution and other related effects. The study also points out further whether the legal framework put in place can effectively implement PPP as a tool for abatement of pollution if properly applied as a tax on the pollutants. It further gives suggestions to how the various legal framework on PPP can be implemented in Developing Countries.

The study will, therefore, benefit institutions responsible for ensuring that International Oil Companies control their pollution emission while conducting the exploration and development of the oil and gas sector and also points that environmental taxes can be used as a tool for control of pollution in the oil and gas sector

1.6. Scope of the Study

1.6.1. Content Scope

The study aims at critiquing the applicability of the polluter pays principle as a tax instrument in the Oil and Gas Sector of Uganda. The study looked at the adequacy of the legal framework for the implementation of the polluter pays principle, the implementation of the Polluter Pays Principle and the application of the Polluter Pays Principle in the Oil and Gas industry in Uganda.

1.6.2. Geographical Scope

The study focused on the areas and components in Uganda generally and it focused mainly on all areas where oil was drilled around the Albertine Graben. It was also the area where major exploration of the oil is being carried out. It also focused on the legal, policy, and institutional frameworks governing the oil and gas sector in Uganda.

1.6.3. Time Scope

The study covered the period 2012 to 2019 and it mainly used interviews and desk research for analysis; this was premised on the fact that it was the period when exploration in the oil projects by oil companies the different International Oil Companies started on full scale and was continuing.

1.7. Arrangement of Chapters

This study is arranged under six (6) chapters. Chapter one contains an introductory part of the study. It explains the background of the study topic, problem statement, purpose of the study, general and specific study objectives, research question which has to be answered to give meaning to the research, the scope of the study, justification, and significance of the study.

Chapter Two focused on a literature review of the various scholarly views about the topic under research. It focused on Polluter pay principles and its genesis. This background helped to enlightened the reader as the paper goes on to discuss the various mechanisms of achieving

pollution control through the tax mechanism. In discussing the mechanisms, the section looked at the two fundamental mechanisms which are Fiscal Framework and the regulatory framework each is presented to give the reader a more comprehensive knowledge of the choices available in achieving control of pollution in the oil & gas sector. The section continued the study by discussing in-depth the Polluter pay principles and its operations, implementations, and implementers of its principles in Uganda.

Chapter Three addressed the methodological consideration employed in the data collection and the analysis by discussing the research design, the study population, sample and sampling techniques, source of data collection, instrument and procedure for data collection, ethical consideration, data analysis plan, and limitations. Chapter Four covered the review of the international legal framework and best practices addressing the issue in the study. Chapter Five discussed the national legal framework in Uganda relating to the implementation of the polluter pays principle as a tax mechanism in the oil and gas sector, and Chapter Six presents a summary of the findings, conclusion, and recommendation.

CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction

This section focuses on the work of the various scholars related to the research objectives. There is a wealth of literature on environmental tax, however, there is not a lot when it comes to the area of oil and gas exploration and production, especially in the local context. The literature below is important in meeting the research objectives especially in regards to the polluter pays principle approach as a tax mechanism. Although there are many pieces of literature written in the field of oil and gas law and economics, it should be observed that most of these writings are both domestic and international. The information in the literature however accurate cannot fit in the context of Uganda without modification. This, therefore, creates the need to review this literature, identify the gaps, and advise on the relevance of the literature.

2.1. Environmental Best Practices

The emerging economies of the world especially the "third world countries are perceived to be holding a third of the world's oil reserves and it also accounts for the majority of the world's crude oil production. According to Alexandra, the exploitation of oil remains a priority for the government of emerging economies because of the benefits associated with it such as the revenues that come from the subsurface resource exploitation which is viewed as a source of foreign income for the emerging economies. He asserts further that oil industries are also viewed as a source of taxation, revenue, and employment and that it also offers the opportunity for the transfer of technology from developed to developing countries.[45]

He further asserts that Oil and gas exploitation, exploration, and production has the potential to cause severe environmental degradation, not only to the physical environment, but also to the health, culture, and economic and social structure of local and indigenous communities.[46] To Alexander, the concept of environmental laws in emerging economies are often ineffective. He attributes this to the ineffectiveness of the law and the inadequate enforcement mechanism in place to ensure compliance with the enabling laws. This has led to calls by academics,

[45] tp://www.ugandaoiland gas.com/linked/international_environmental_standards_in_the_oil_industry.pdf (accessed 19th November, 2019).

[46] http://www.ugandaoilandgas.com/linked/international_environmental_standards_in_the_oil_industry.pdf (accessed 19th November, 2019).

practicing lawyers, and human rights and environmental activists for transnational oil companies to voluntarily improve their performance in countries with inadequate environmental laws.

Furthermore, he asserts there has been recognition by the oil companies for the need to adopt best practices among the International oil companies operating in the emerging economies that do not possess sound environmental laws. He further gave an example of how the American Petroleum Institute is responsible for "obeying all laws and best practice" as part of the pledge to a program of continuous health, safety, and environmental improvements,[47] while the 1997 *Environmental Policy* of the Australian Petroleum Production and Exploration Association (APPEA) states that APPEA encourages and supports member companies to "comply, at a minimum, with applicable laws, regulations, standards, and guidelines for the protection of the environment and in their absence adopt the best practicable means to prevent or minimize adverse environmental impacts".[48]

He questions, what is "best practice" in the international oil industry? What standards should be employed? No treaties have been negotiated with the specific aim of regulating the onshore activities of the oil and gas exploration and production industry operating within the borders of individual states. This stems historically from the view that the regulation of onshore resource exploitation falls within the domestic jurisdiction of states. In this context, the standards, guidelines, and best operating practices developed by oil industry association bodies,and non-governmental and intergovernmental organizations (NGOs and IGOs) constitute the major efforts to achieve uniform standards and operating practices across the globe.

He examines five environmental principles or practices that are emerging in the environmental codes of conduct, statements of environmental principles, and environmental guidelines that have been developed by oil industry organizations, NGOs, and IGOs, which can be identified as existing or emerging "best practice". This article identifies the types of standards that help to protect the environment and describes the organizations that are the most influential in developing these standards and guidelines in the oil industry. The article further describes five major practices for the protection of the environment that is emerging in the international oil

[47] American Petroleum Institute (API), API Environmental Stewardship Pledge for CAREFUL Operations, www.api.org, accessed 27 February 2020.

[48] Australian Petroleum Production and Exploration Association Limited (APPEA), Environmental Policy, June 1997, www.appea.com.au/environment/ Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean (ARPEL), Code of Environmental Conduct, May 1997, www.arpel.org/code_e_c.htm.

industry and that will, when adequately implemented, reduce the negative impacts of oil and gas exploration and production on the physical and cultural environment.[49]

These practices are Environmental and Social Impact Assessment (EIA and SIA); Environmental Management Systems (EMS); Environmental Performance Evaluation (EPE); environmental monitoring and auditing; and environmental reporting. It discusses the legal implications arising from the use of these standards and guidelines, and makes suggestions for future developments. These environmental principles and best practices will be widely examined further in chapters of this research study as well as health and safety principles which are not discussed in this article due to its being limited to environmental standards in the Oil and Gas Industry.[50]

Under the OECD principle 1972, it is argued that to allocate the resources better, the private cost of goods and services should reflect the relative scarcity of environmental resources used in production. This is premised on the fact that the higher cost of the polluting activity that results from the extractive activities involving the oil and gas sector makes the activity less attractive to consumers and businesses. PPP is, therefore, a means to moving forward to this end. Further, as opposed to regulations or subsidies, tax leaves consumers and businesses full flexibility to decide how to change their behavior and reduce harmful activity. This allows market forces to determine the best possible way that is cost-effective to balance environmental pollution.[51] The implementation of environmental tax provides a greater range of abatement options than the use of regulatory instruments, which target only some solutions. In the face of tough enforcement of regulations and policies, the positive results can be felt; however, this achievement may be bought at the expense of undesirably high costs.[52]

Steaming from the views expressed by Alexander, it's worth noting that best practices in the exploitation of the scarce natural resources are essential policies that should be incorporated in all national laws of the countries that are involved in the oil and gas exploration and development, however, his views are not without shortfalls. The countries that are in the development state of the oil and gas exploration like Uganda, may not have the same circumstances as other nations who have already experienced the non-application of the best

[49] http://www.ugandaoiland gas.com/linked/international_environmental_standards_in_the_oil_industry.pdf (accessed 19th November, 2019).
[50] Ibid.
[51]Environmental Taxation; A Guide for Policy Makers; http://www.oecd.org/env/tools-evaluation/48164926.pdf.
[52] Ibid.

practice principle. The one size fits all argument will not, therefore, be applicable especially amongst countries who are still at the development stage of the extractive industry.

Furthermore, the implementation of the five principles involving Social Impact Assessment (EIA and SIA); Environmental Management Systems (EMS); Environmental Performance Evaluation (EPE); is important in ensuring that the extractive industry does not put the environment to waste, however, the implementation of this approaches may not seem as easy as it is stated by the author. In a country like Uganda, challenges are many ranging from lack of qualified Human Resource, the over-reliance on the International Oil companies performing the exploitation or exploration for data, and the underfunding of the agencies such as NEMA. This curtails the efficiencies of the application and implementation of the environmental principles.

2.2. Environmental Taxation

According to F. Pitrone in her writing "Environmental Taxation: The Legal Perspective", Environmental taxation is one of the many avenues through which a country can control behaviour of the multinational companies involved in the extraction of natural resources. On the other hand, the implementation of these taxes and the management of environmental pollution are increasing the pressure on governments to find ways to limit negative environmental impact while minimizing harm to economic growth. Further that Governments have many tools at their disposal, including regulations, information programmes, innovation policies, environmental taxes, and environmental subsidies. Environmental taxes are a vital part of this toolkit.[53] She examines the advantages of environmental taxes and notes the many significant advantages, such as environmental effectiveness, economic efficiency, the ability to increase public revenue, and transparency. She further notes that Environmental taxes have been successfully used to address a wide range of issues, including waste disposal, water pollution, and air emissions. Furthermore, she states that the design of environmental taxes and political economy considerations in their implementation are principal determinants of their economic effects. Governments have a range of environmental policy tools at their disposal: regulatory (or "command-and-control") instruments, market-based instruments (such as taxes (imposed on energy, pollution, resources, and transport) and tradable permits), negotiated agreements, subsidies, environmental management systems, and information campaigns.

[53]F. Pitrone. Environmental taxation: a legal perspective. Diss. LUISS Guido Carli, 2014, Page 101.

The literature also shows that apart from the application of environmental tax, it grouped the taxes into three categories. The first category being the Pigovian (pigo) which model is named after an English economist, Arthur Piguo (1877-1959).[54] Piguo suggests the use of taxes to correct market distortions caused by externality, as these taxes would discourage activities that generate externalities. Such taxes are known as the Pigovan tax. A pigovan tax would maximize the net benefits of production and industrialization to society as a whole. The implementation of this approach can be in the form of tradable permits or carbon credits tax and the quantity of tax payable rises with the amount of pollution which should be equal to the full value of the external damages.[55] Other authors note that, due to the difficulties in assessing the monetary value of pollution damages and the costs of controlling such pollution, it is virtually impossible to measure the optimal level of pollution.

As noted in the earlier literature, developing nations are at the mercy of the multinational companies who are exploiting the available natural resources especially when it comes to data and information collection. The international Oil companies are at liberty to provide the information which they presume is desirable and does not affect their operations and this greatly affects the efficiency of the host country to regulate and estimate the rate of pollution and what cost should be attached to the damage caused by the polluter

The second category concerns environmental taxes on products, where a tax base is a physical unit of a resource, or of a product the use of which produces pollution (such as fertilizers, pesticides, solvents, batteries, one-way packaging, plastic bags, paper, refrigerators, gasoline, diesel, and so on). This kind of tax is born because of the difficulties in implementing emission taxes, and it is easier to impose a tax on the product itself, even if in this case taxes are levied on a base that is more indirectly linked to the caused pollution.[56]

She asserts further that, this mode of tax instrument has two methods of application. It can either be applied through taxes or subsidies or tradable permits. Although this type of tax is aimed at reducing pollution, it has some drawbacks that are associated with its implementation. This mode of tax may act as a deterrent to investment. This is because it will, in the long run,

[54] F. Pitrone. Environmental taxation: a legal perspective. Diss. LUISS Guido Carli, 2014, Page 101.
[55] Ibid.
[56] Ibid.

lead to the decline in tax revenue as investors believe it is an unpopular tax among most governments.[57]

The third category is the mutualization tax this refers to a type of tax that is levied on an activity for the specific reason of raising funds to pay the cost of rectifying the effect or damages caused by such an activity. The purpose of the tax is not to provide incentives to pollution abatement but are specifically designed to raise finances to pay pollution abatement. The implementation of this abatement may be done by the government, or the funds can be recycled to the private sector.[58]

Much as this category of tax tends to remedy damages done as a result of environmental pollution, it has its challenges associated with it. One such challenge is that in the absence of an incentive, the tax category does not lead to improved behaviour of the polluter or in the alternative, if the abatement incentive is intended, the government may confuse the incentive and revenue-raising components and so fail to achieve its goals.[59]

Secondly, financing such subsidies from the proceeds of environmental taxes levied on the sector may distort desirable signals about the appropriate level of activity in the sector. This may be because the returns of revenue from the mutualization tax may appear sound and yet the level of pollution is higher than expected.[60]

2.3. Polluter Pays Principle and its application in Environmental Law.

Brian J Preston while presenting a paper entitled; "sustainable development law in the Courts: asserts that the polluter pays principle demanded that the polluter has to bear the cost of complying with environmental standards, which are predetermined by public authorities. On this subject, he argued that if the polluters have to pay for the price of any pollution they cause, market forces will then encourage them to change their activities. In his view, a polluter pay principle is a tool that advocates for the internalization of the external costs by which the polluter (factory) joins both the external and private costs to achieve an accurate and realistic price for his products or services, and this results to the proper allocation of costs.

[57] F. Pitrone. Environmental Taxation: A Legal Perspective. Diss. LUISS Guido Carli, 2014, Page 101.
[58] Ibid.
[59] Ibid.
[60] Ibid.

To support the application of the polluter pays principles, scholars such Ezzeanokwasa in his article Polluter pays principle and the regulation of environmental pollution in Nigeria: major changes, noted that the polluter pays principles does not imply that the polluter has to pay for the cost of abating every bit of pollution connected to their product. He stressed the point further by stating that though this is required, it is not feasible for many reasons. The first obstacle noted in the literature is that pollution cannot be completely abated and that pollutionis so part of human life and society that it cannot be eliminated.[61] He equated pollution to crimewhich no society aims at eradicating but at reducing it. He further recognizes that what is normally talked of is keeping pollution at an acceptable level and not eliminating it. Secondly,any attempt at eliminating pollution bears negative drawbacks for national economic productivity. To do this would imply more costs that could push up the production cost to a high level such that trade and investment, both local and international, would be adversely affected.[62]

He further stated that the polluter pays principle should look at best practices to make the polluter mindful of the actions that will arise as a result of the exploration of the oil and gas resources. Polluter pays principle is not therefore solely about environmental protection but is both for making sure that interests of trade and international investment are not jeopardized. Interests of trade and international investment will be jeopardized if the cost of eradicating pollution is such that foreign investors are scared away, and local producers would be unable to export.[63]

The author also expresses the gaps envisaged while applying the polluter pays principle, he identified five challenges that include; firstly, the difficulty in identifying the polluter, he stresses that if a polluter cannot be identified, then there is no way he can pay for the pollution not caused by him. He mentioned that in the Petroleum sector this can be envisaged in the circumstance of oil spills arising from vandalization of oil pipelines, sabotage of oil installations, and illegal oil bunkering.[64] Secondly, the pervasive ignorance of environmental

[61] O.Jude Ezzeanokwasa "Polluter-pays Principle and the Regulation of Environmental Pollution in Nigeria: Major Changes" in the Journal of Law, Policy and Globalization Vol. 70, 2018 pages 45-53.
[62] Ibid.
[63] O.Jude Ezzeanokwasa "Polluter-pays Principle and the Regulation of Environmental Pollution in Nigeria: Major Changes" in the Journal of Law, Policy and Globalization Vol. 70, 2018 pages 45-53.
[64] M.Muhammad "Implementation of the Polluter Pays Principle: Economic Approaches to Pollution" [2014] SSRN Electronic Journal.

degradation and pollution in other parts of the country act as a stumbling block to the implementation of the polluter pays principle.

For other authors such as Muhammed, the perceived myth that the environment is capable of withstanding any action or treatment makes the polluter not to be aware that he is polluting the environment and the victim is in no better position as he does not know that he is a victim of pollution. Thus in this kind of environment, the polluter pays principle cannot be applied.[65] Thirdly, the author also identified the problem of the absence of professional human resource personnel to adequately enforce the polluter pays principle. He emphasizes that technical knowledge of what environmental pollutants are in every sector of the economy is of primary importance. Otherwise, there is no way public administrators in the agencies saddled with the duty of many enforcing the PPP would be able to, for instance, know the measures to prescribe for pollution control and prevention.[66]

Many disadvantages trail the Polluter Pays Principle. One of the obvious disadvantages is that of the situation where there is no causal link between the polluter and the pollution. This means that the polluter goes without being punished. Another circumstance is where the polluter caused the pollution, but a *Novus Interveniens Supervenes* to break the causal link.[67]

Criticism has been directed to the situation where there is joint and severable pollution. If for instance, if many people cause pollution, then the reason for adopting the polluter pays principle may be defeated. Another disadvantage to this principle is that in a situation where harm cannot be quantified based on monetary considerations for happens.[68] Further, it is also essential to acknowledge the fact that the polluter pays principle is only corrective and not preventive. Further, the damage would have occurred before there can be reparation, and most times, these reparations cannot put the environment in the same way it was before the pollution.

Pitrone notes that the pressure on the use of best industry practices, guidelines, use of currently effective and efficient technology, proper field development plans, and programs are all aimed at trying to control the activities in the extractive industry. He further asserts that the global perspective towards the extractive industry is that the industry has several negative externalities

[65] Ibid.

[66] O. Jude Ezzeanokwasa; Polluter-pays Principle and the Regulation of Environmental Pollution in Nigeria: Major Changes. Journal of Law, Policy and Globalization Vol. 70, 2018 pages 45-53.

[67] F. Pitrone, 2014 op cit 66.

[68] Ibid.

that countries have tried to address through taxation.[69] That through taxation, the state can monitor, regulate, and influence sector development. Hence taxation, as applied to the environmental issues, can be used to regulate and control the impact of the extractive industry on the environment.

2.4. Environmental Law Compliance

Emmanuel Kaweesi, in his article "Environmental Law Compliance and its Implications for Oil and Gas Exploration in Uganda" connotes that Environmental law compliance is a phenomenon that connotes the undertaking of all development activities in a way that conforms to environmental laws, standards, and other regulatory requirements.[70] Environmental law compliance covers several dimensions such as compliance with environmental quality standards, Strategic Environmental Assessment (SEA), Environmental Impact Assessment (EIA); respect of environmental rights especially the right to a clean and healthy environment, transparency and accountability, public participation and many others.[71] Environmental compliance is ensured through the processes of environmental enforcement. Enforcement refers to a set of actions or tools that are used by the Government, either directly or indirectly through its lead agencies, to promote environmental law compliance. In brief, the tools of environmental enforcement include environmental monitoring, environmental inspection, environmental audits, refundable performance deposit bonds, environmental restoration orders, deterrence fines, and many others. Hence effective enforcement of environmental laws is vital in ensuring environmental law compliance.[72]

Emmanuel Kaweesi first concentrates on the history and current status of oil exploration and production in Uganda, and then discusses the main processes of oil exploration and production which have significant implications for environmental law compliance. It precedes on a theory that if no preventive or at least mitigation measures are taken, the activities can lead to disastrous environmental consequences. The paper further discusses the national, regional, and international standards regulating the oil and gas industry in Uganda. But the only way to forecast those consequences is by ensuring a sound environmental law compliance regime for

[69] Ibid.
[70] K. Emmanuel, "Environmental Law Compliance and its Implications for Oil and Gas Exploration in Uganda" at Page 13.
[71] Ibid.
[72] E. Kaweesi, "Environmental Law Compliance and its implications for Oil and Gas Exploration and Production in Uganda" 2014 at 18.

the oil industry. Hence the paper delves into the legal and policy environmental law compliance requirements for Uganda and the extent of compliance by the current operators. Because environmental law compliance is very broad, the paper concentrates on those issues which in the view of the author are core.[73]

He contends that accordingly, an inquiry is made into the extent of compliance with Environmental Impact Assessment (EIA); Strategic Environmental Assessment (SEA); Environmental Quality Standards; Environmental Monitoring; Environmental Audits and Reviews; Pollution control; and Transparency and Accountability. The paper concludes that there is no environmental law compliance in Uganda's oil and gas industry despite the several national, regional and international regulatory standards and proposes many recommendations: Operators should make sound waste management plans; come up with produced water management strategies; bio-diversity offsets can go a long way in preventing loss of fauna; employ environmentally sound technology; install air quality monitoring systems; identify potential hazards and develop hazard-specific control or mitigation mechanisms; government should take up its role; strengthen the role of Civil Society Organizations; PSAs be made public; strengthen the legal and institutional framework; streamline national spending options and expand stakeholder participation by encouraging public participation, the role of the opposition and international observers.[74]

Emmanuel Kaweesi is however similar to Alexandra S. Wawryk in such a way that he discusses in detail environmental law compliance whereby he brings out that there is a need to strengthen enforcement of Environmental Law standards in Uganda. The distinguishing factor is that this research involves critiquing the application of PPP as a tax mechanism in the extractive industry. It aims at looking at the effects of exploitation and exploration of the oil and gas resources and its results on the environment and how the laid down legal framework enforces the PPP on the international oil companies involved in the oil and gas industry in Uganda.[75]

2.5. Economic Instruments in the Implementation of Polluter Pays Principle

In an article by The International Monetary Fund: "Energy Subsidy Reform: Lessons and Implications." 28 January 2013, this study used a broader concept of subsidies to include

[73] Ibid (n82).
[74] Ibid.
[75] E. Kaweesi, "Environmental Law Compliance and its implications for Oil and Gas Exploration and Production in Uganda" 2014 at 18.

failures to impose taxes on pollution externality and failures to impose taxes on energy that are comparable to taxes in other goods. In that exercise, the study assumed a price of $25/ton of CO2. Therefore, it argues that removal of subsidies can alone reduce 13% of global CO2 emissions by 2050, and calls for imposing a carbon tax and putting a price on negative externalities of using fossil fuels

Boer argues that "If companies had to pay for the full costs of their activities, they would have lost 41 cents out of every $1 earned in 2010".[76] Young very cogently rationalizes the application of the PPP for a "progressive development" of the post-2012 climate regime. He asserts that while industries pay for managing solid wastes, emissions do not require full-cost accounting and this presents a serious anomaly. Further that the earthly garbage dump is not free, but the atmospheric dump is treated free and this is because it's global commons. He concludes by stating that because of the concept of global commons, free-riding remains the norm because of the power of major emitters.[77]

Maldives on behalf of the LDCs. "International air passenger adaptation Levy." 2008 states that having the PPP codified internationally would mean that polluters causing climate change will initiate a reduction of GHGs, will have to pay those currently living who suffer the impacts, and who are forced to undertake expensive adaptation measures. The whole idea behind adaptation finance is that if the poor can adapt to already unfolding climate change, they would be better able to adapt in the decades ahead. Obviously, in negotiations, some countries and groups like Alliance of Small Island States (AOSIS), LDCs, Bangladesh, Pakistan, Switzerland, and Ghana have argued for the application of the PPP in emission management and making it a guiding principle of the post-2012 climate regime.[78] This is the reason now the instrument of border tax adjustment on imports between those imposing a price on pollution and externality non-internalizing regime is a hotly-debated topic among the World Trade Organization (WTO) Parties. Lord Stern argues:

According to Chemnick,

> countries that are on track to price their industrial carbon emissions, like China and those in Europe, should make it clear that they will eventually slap a border tariff on

[76] J. Lovell. Quoting Former Executive Secretary of the UNFCCC, Yvo de Boer "Experts assert using GDP as sole economic yardstick destroys natural resources." Climate Wire, 2012.
[77] R. Oran 2010, Op cit at 1.
[78] AOSIS. "AOSIS Input into the Assembly Paper on Financing." 2008.

> imports from countries that lack such a price, like the United States, this is not just protectionism. It's an argument about the proper pricing of inputs. And if countries subsidize their exports by not pricing carbon, that's a perfectly logical and sound reason for making border adjustments.[79]

Simon and many others suggest that payment for emissions should be made at least since the time harm is known. This means the responsible companies should pay for the pollution caused by their emissions at least since the permission of the said pollution. Simon proposes as complementary to the PPP the "ability to pay principle" (APP), which can take care of emissions of past generations and legitimate emissions of the disadvantaged countries and groups of people. He calls the latter poverty-sensitive PPP. A strict application of PPP also will affect major developing countries, such as China and India, since PPP is not based on capability, but payment for using the ecosystem services of the atmosphere. While PPP is primarily a market principle, APP is a principle of justice. The equity part of PPP relates to the equitable distribution of the cost of mitigation.[80]

Bategeka's research paper shows that when states gain a large proportion of their revenues from external sources(such as oil exports or foreign aid), there is a reduced necessity of the rulers to levy domestic taxes as such taxes can be got from the oil companies during exploration and exploitation.[81]

Uganda's cooperation with Norway's book, observe that there is a high overlap between ecologically sensitive and biodiversity-rich areas and the occurrence of exploitable hydrocarbons in the Albertine Graben. They point out that oil and gas exploration and production activities have the potential for a variety of negative impacts on the environment. This is because oil and gas production and exploration induce economic, socio-economic, and cultural systems. The book notes that oil and gas exploration results in increases of aqueous and gaseous waste streams which may affect plant and animal communities due to changes in their environment through variations in water, air, and soil/ sediment quality and disturbance by noise, extraneous light, and changes in vegetation cover.[82]

[79]J. Chemnick. "Americans want coasts, not feds, to bear the cost of sea level rise." Greenwire, 2013.

[80] C. Simon "Climate Change and the duties of the advantaged." Critical Review of International Social and Political Philosophy 13 (2010).

[81] B. Lawrence, Oil Discovery in Uganda, Managing Expectations, 2013.

[82] Ministry of Energy and Mineral Development February 2010, Strengthening the Management of Oil and Gas

The Ministry, therefore, notes that these negative impacts need to be mitigated and addressed to ensure eco-system integrity. According to the ministry, there is a need to develop new general management plans taking into account the oil exploration activities. The general management plans specify different objectives of managing the protected areas and spell out actions on how to achieve the given objectives. The book notes that the environment can benefit from Petroleum operations by ensuring that these operations contribute to the conservation effort of the government and its agencies through paying for the damage caused thereby stemming or even reversing biodiversity loss.

Researchers have also discussed the oil developments and its associated benefit to society. They note that oil developments can bring great benefits but also noted the great risk associatedwith it. Frank and Banfield noted that the area currently being exploited by the international oil companies in Uganda is the most bio-diverse region in Uganda and that most of the exploration is taking place in the protected areas.[83] They noted that the Albert Nile that runs along the Albertine Rift must be protected against contamination because, in an event of contamination, it would invoke far-reaching political ramifications due to the impacts on the downstream nations where interstate relationships are already strained.[84]

The obligation to ensure that the protected areas are managed in such a way as it will be beneficial to meet the development and environmental needs of the present and future generation of Uganda is well enshrined under Article 237(2) (b) of the Constitution of the Republic of Uganda. The same constitution under Article 39 instructively provides that every Ugandan has a right to a clean and healthy environment, these same rights are reiterated under section 3 the National Environment Act 2019. The enforcement of the environmental provisions under the NEA is vested in the National Environment Management Authority. Frank and Banfield note that NEMA's ambitious mandate and the critical role in ensuring the oversite of the environmental aspect of the oil and gas sector position it as an essential factor in ensuring minimal damages to Uganda's environment by the industry.[85] The authors noted that, in as much as there are provisions relevant to the protection of the environment, the implementing authorities suffer from underfunding, overstretched and ill-trained human

Sector in Uganda, a Development Programme in Co-operation with Norway, this book looks at the management of the environment in regard to the discovery of oil in Uganda.

[83] Frank T and Banfield J, "Oil and Gas Law in Uganda: A Legislator's Guide (2011) International Alert Pages 37-40.

[84] Ibid.

[85] Ibid.

resources that make it difficult to monitor and enforce environment and social impact regulations contained in the enabling laws.[86]

The authors further noted that although the laws articulate the responsibilities of the licensee to observe environmental impact in their quest to exploit the environment, there is an urgent need to strengthened the laws to demand compliance from the international oil companies. The observation made by the author points to a situation of having regulations in place but lacking the will to implement the said legislation. As new entrants in the oil and gas industry, Uganda will have to ensure that the management of the oil resources does not turn out to be a curse to the country.[87] There is a need for the government to be transparent in their dealings with the international oil companies so that the contents of the agreements entered into are made available to the public for scrutiny. This will help build confidence and enhance accountability.

The National Environment Act[88] mandates NEMA among other roles to ensure that the true and total costs of environmental pollution are borne by the polluter. This is in line with the internationally recognized principles under the Rio Declaration 1992 principle 16 which reiterates the meaning of the Polluter pays principle given by OECD. Although the Rio Principles are not mandatory for national governments to follow, they, however, serve as directive principles for national governments.

Elvis Notes that, although the Rio declaration does not constitute binding provisions, it is based on recognized principles that are crucial to the protection of the integrity of the global environmental and developmental system.[89] He asserts further that the principle means that "…the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level of pollution". The import of this provision is that it places on the polluter, the responsibility for the cost of reduction of the pollution caused by his action. This provision is also re-echoed in Paragraph 4 of the Organisation for Economic Co-operation and Development (OECD) Guiding Principles and it indicates that the polluter should ensure that pollution is reduced to an optimum level and not necessarily eradicated.[90]

[86] Ibid.
[87] Frank T and Banfield J Op cit at 81.
[88] Act of 2019 Laws of Uganda.
[89] Gino E.I Op cit at 39.
[90] Ibid.

Case law and other international instruments also give recognition to the Polluter pays principle and this is evident in the case of ***Commune de Mesquer v Total France SA and another,***[91] where the issue before the court for consideration was whether, '…for the purposes of applying Article 15 (c) of Council Directive (EEC) 75/442 which stated that in accordance with the polluter pays principle, the cost of the waste disposal was to be borne by the previous holders or the producer of the product from which the waste came, even though the substance spilled at sea was transported by a third party, in this case a carrier by sea.' The court held that "in accordance with the polluter pays principle, however, such a producer could not be liable to bear that cost unless he had contributed by his conduct to the risk that the pollution caused by the shipwreck would occur". Scholars such as Elvis noted that, judgment of court lent credence to the existence of the polluter pays principle as a principle of law and that it has a role to play in allocating liability. Further, the judgement also brought to the limelight the recognition of the Polluter pays Principle at both International level especially at the EU level. The court here also advanced the polluter pays principle in the sense that, it affirmed that the polluter must be seen to have contributed to the damage done to the environment in order to make them liable to the victim of pollution.

Also, in ***Raffinerie Mediterranee (ERG) SPA and Others v Ministero dello Sviluppo Econonic,***[92] the court held inter alia that, in accordance with the polluter pays principle, the local authority in question must have tangible evidence that can justify the presumption that the pollutants found in the contaminated area are closely linked with what the operators use in their activities. This case establishes the cogent point that, as regards the polluters pays principle, the polluter must be linked to the damage he is alleged to have caused.

The above judgments received criticism from scholars such as Ayobami Olaniyan. He asserts that this reasoning cannot be supported because the polluter pays principle does not only cover the cost of damage and rehabilitation of a polluted environment, it also includes the cost of pollution prevention and control measures as well as liability for environmental harm to victims; cleanup costs of damage to the environment as well as pollution at the source and product impacts, extended producer responsibility etcetera.[93]

[91] [2009] All ER (EC) 525.

[92] [2010] All ER (D) 133.

[93] Ayobami Olaniyan, Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle; Journal of Law, Policy and Globalization www.iiste.org ISSN 2224-3240 (Paper) ISSN. 2224-3259 (Online) Vol.40, 2015 78.

Similarly, a country like Nigeria has legislations that embody the PPP, such legislations include the Environment Impact Assessment (EIA) Act. This legislation sets out regulations and standards that prohibit pollution and every form of environmental hazards. Besides, the parties responsible for the pollution have the responsibility of managing the process of remediation of any acts of contamination of the environment as well as compensate those who suffer the consequences of such pollution.

PPP has been applied in Nigeria in cases where the victims believed that the polluter was at fault. In the case of ***Jonah Gbemre v. Shell Petroleum Development Company Limited and Another,***[94] the Applicant herein filed a representative claimed on behalf of the Iwherekan community seeking for among others: A declaration that the actions of the 1st Respondents and 2nd Respondents in continuing to flare gas in the course of their oil exploration and production activities in Gbemre's Community is a violation of their fundamental rights (including the right to healthy environment) and dignity of the human person which is guaranteed by Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria,1999 and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. The court held that the actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicants' community was a gross violation of their fundamental right to life and dignity of the human person as enshrined in the Constitution.

In another case of ***Shell Petroleum Development Company Nigeria Ltd v. Chief G.B.A. Tiebo & Others,***[95] the plaintiffs (Chief G.B.A. Tiebo and others) claimed that the defendant, an oil exploration company (Shell Petroleum Development Company Nigeria Ltd), on 16th January 1987, negligently caused a major crude oil spillage of over six hundred barrels from its flow station and on its pipeline or other installations at or near the plaintiffs' village called Peremabiri. The plaintiffs commenced their suit on 6th June 1988 at the Yenagoa High Court of Rivers State claiming against the defendant the sum of Sixty-four million, one hundred and forty-six thousand naira (N64, 146, 000. 00) being special and general damages for the negligence of the defendant (Shell Petroleum Development Company Nigeria Ltd) and for allowing crude oil, which the defendant was mining, to spill into the lands, swamps, creeks, ponds, lakes, and shrines of the plaintiffs. The plaintiffs sued for themselves and as the

[94] FHC/B/CS/53/05 (November 14, 2005) Federal High Court of Nigeria available at http://www.ecolex.org/ecolex/ledge/view/RecordDetails;DIDPFDSIjsessionid=0 373E91B7EBE.
[95] [1996]NWLR (Pt. 445) 657.

representatives of the Peremabiri Community in Yenagoa Local Government Area. At the trial court, the judge gave judgment in the plaintiff's favour awarding six million naira (N6, 000,000:00) as general damages for environmental pollution of the land, river, ponds, and lakes of the plaintiff and one million naira (N1, 000, 000. 00) as costs. The defendant's appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, the award of general damages and costs awarded by the trial court was affirmed. The Supreme Court noted that there was evidence before the trial Judge that there was extensive damage done to the crops, farms, farmlands, ponds, creeks of the plaintiffs and that there was also evidence of widespread environmental pollution.

The polluters in the two cases above were made to compensate their victims for the damages resulting from their polluting activities.

2.6. Conclusion

In the literature review, different authors have put across what they think is the best fit to explain and understand the aspects of the application of the Polluter Pays Principle as a tax mechanism in the oil and gas sector which is the major concern of the study in question. The literature reviewed showed that this is an area that needs a critical and major redress based on the fact that exploration activities expose the environment to profound dangers such as pollution and its related repercussions. As Uganda is preparing to reap big from the oil and gas industry, understanding of the application of PPP in the oil and gas sector as a tax mechanism is of paramount importance.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0. Introduction

This Chapter deals with the research methodology adopted in the study. To have a better insight into the way the study was undertaken and why a given approach was chosen. The chapter starts by highlighting why a qualitative approach was preferred as a research method. It also discusses the methodological procedures that were used in data collection and analysis. And these are; research design; area of the study; the population of the study; sampling procedure and sample size; instrumentation; data collection, data analysis, and the methods of analyzing data collected. It further explains the research process and the research tools and procedures employed in the research.[96]

3.1. Research Design

This is the plan of carrying out the research exercise. It provides the glue that holds the research project together. Thus the design used for this study is based on a qualitative design that includes semi-structured interview questions, structured questionnaires targeting specific groups of people especially those with vital information that is important to the area of study.[97] The aim is to find out how people perceive their lives and studies the why and how of things and not just what, where, and when? A common belief in qualitative research is that human experiences, feelings, opinions, and their very existence are too complex to be presented and represented in numerical terms as portrayed in quantitative research.[98]

Data analysis through published documents and literature that is relevant to the topic in question will also be used. The researcher used this design because it allows the researcher to compare many different variables at the same time. Qualitative research is more desirable because it allows the researcher to interact freely with the respondents in the study.[99]

[96] J. Mouton & H.C. Marais, H.C, 'Basic Concepts in the Methodology of the Social Sciences. (HSRC, 1998). Cape Town. See also J. Mouton, 'How to succeed in your Masters and Doctoral studies. Pretoria, (Van Schaik Publishers, 2006).

[97] John; Research Methodology. A Project guide for University Student 1st Edition 2012.

[98] Ibid.

[99] J.W. Cresswell 'Research Design'; Third Edition, California (Sage Publishers, 2009).

This is because the researcher intends to solicit information that is verbatim, descriptive, story, and narrative in nature. Qualitative research is a broad methodological approach that encompasses many research methods.[100]

In the current study, close interaction between the researcher and respondents allowed the researcher to get firsthand experience of the respondents and the situation studied. Furthermore, the respondents were also able to provide the researcher with their interpretations of the problem and thus facilitate learning. Data collection methods in qualitative research are normally related to, semi and unstructured interviews, focus groups, the qualitative examination of texts, and various language-based techniques like conversation and discourse analysis.[101]

3.1.1. Area of Study

The study involves a review of literature involving various study publications on the Polluter pays Principles in the developing countries. To achieve this, the researcher visited several libraries that included, UCU library, National Environmental Management Authority (NEMA) library. The researcher also surfed the internet for materials related to the topic of study. This provided access to the most recent publications on the topic which were not readily available in the libraries.

3.1.2. Target Population

Population refers to objects, subject phenomenon, cases, and activities, which the researcher would like to study to identify data.[102] This study focused on the polluter pays principle implementers in the oil and gas sector in Uganda. Mainly unstructured interviews were conducted with various stakeholders. Interviewing was used because of its capacity to generate data relevant to the research questions. The total population involved in this study comprised of 40 officials. These were selected from the relevant government departments or organizations like NEMA, URA, Ministry of Energy and Mineral Development, Officials from International Oil Companies, civil society, and scholars with the requisite knowledge in the oil and gas

[100]D. Norman and L. Yvonna, The Sage Handbook of Qualitative Research (2nd edn, Sage 2005).
[101] Brannen 1992:59.
[102] P.A. Brynard & S. X. Hanekom 'Introduction to research in management related fields. Pretoria. (Van Schaik, 2006).

sector. This is important because the informants were better placed to provide the basic information relevant to the subject under study.

3.2. Sample and Sampling Techniques

This was based on the specifications that support the area of study, and this was supported by the target pollution identified earlier on. The researcher selected no more than four respondents from each institution. In this study, the researcher used purposive sampling technique. The purposive sampling technique was selected as it allows the researcher to select respondents based upon available knowledge about the case studies, the researcher ensured that the selected respondents had knowledge and experience in the field of oil and gas extractive industry.

3.2.1. Sources of Data

There are two major types of data sources for this research; primary and secondary data.

3.2.2. Primary Data

This is first-hand information that is obtained from its source for the first time.[103] Primary data is collected or observed directly from first hand by the researcher using tools such as experiments, survey questionnaires, interviews, and observation.

In this study, the interviews were unstructured conducted with the aid of an interview guide of open-ended questions related to the objectives and research questions of the study. These interviews elicited opinions related information as what the reality on the ground is, that is to say when it comes to the roles and shortcomings of the legal framework for the application of Polluter Pay Principles as a tax mechanism

3.2.3. Secondary Data

This is information about the problem that already exists. Sources include newspaper articles, book reviews, journal articles, school or government databases, and many others. It's easy to use since its less costly and less time consuming and can easily be obtained.[104] In this study, secondary data was collected through a review of various publications and reports that relate to the subject of the study in question both in the local and international publication's sources.

[103] P.A. Brynard & S. X. Hanekom 'Introduction to research in management related fields. Pretoria. (Van Schaik, 2006).
[104] B. Alan, Social Research Methods 4th Edition, Oxford University Press 2012.

The research used primary and secondary data including easier-to-access peer-reviewed journal articles, textbooks, Ministry of Energy and Mineral resources database/website, company websites, and published audit reports.

The researcher made use of Internet research tools and methods, as well as local Ugandan news sources, to further extend their research on Uganda's environmental issues. The Internet research tools helped provide necessary background information on active International Oil Companies (IOC) in Uganda, Uganda's environmental history, and information on the physical dynamics of the Albertine Graben. Uganda's leading printed news sources, The Daily Monitor and The New Vision provided the researcher with up to date political, social, and environmental events happening within the realm of oil exploration.

3.3. Data Collection Methods

In this study, qualitative research methods were used. Qualitative research methods are used to describe a set of non-statistical inquiry techniques and processes used to gather data about social phenomena.[105] Qualitative methods are used in investigating more complex and sensitive impacts which are not so easy to quantify or where quantification would be extremely time-consuming and costly. Qualitative research methods also deal with observations, impressions, and interpretations of researchers. Furthermore, qualitative researchers believe that knowledge is constructed symbolically based on conventions broadly held within the community.[106] Qualitative research may involve field studies, interviews, and direct observations.

Since the study is explanatory and seeks to gain a complete picture of reality as to the effectiveness of the PPP as a tax mechanism in abating pollution in the oil and gas sector in developing countries generally and Uganda in particular, qualitative research methods were the most appropriate.

3.4. Interview Method

In this study, the researcher used interviews with some key informant stakeholders in the oil and gas extractive industry in Uganda for their opinions on the research questions. The unstructured interview was carried out with concerned officials in relevant institutions in the

[105] D.E McNabb '*Research methods for political science'* New York. (M.E Sharpe, 2004).
[106] E.J Mason and W.J. Bramble 'Research in education and the behavioural sciences: Concepts and methods'. Madison, WI: (Brown & Benchmark, 1997).

framework of purposive sampling because of its capacity to generate data relevant to the research question.

The researcher conducted different interviews throughout the allotted research time. These interviews provided valuable information from primary sources about the current state of environmental conservation and preservation, pollution control in Uganda, the social impacts of oil and natural gas developments, and plans for the industry.

3.4.1. Focus Group Discussion

As a qualitative technique, focus group interviews just like participant observations allows the researcher to observe a process that is often of profound importance to qualitative investigations-namely interactions. Focus group interviews also allowed the researcher to access the substantive content of verbally expressed views, opinions, experiences, and attitudes.

In this research, multiple viewpoints were considered to provide an all-inclusive approach. To achieve this, the researcher identified three focus groups of interviewees, each from a differing authoritative position or area of expertise concerning Uganda's oil and gas sector. The researcher used basic tools to conduct interviews, a pen, and a notebook and made use of Microsoft Office components in the transcription and analysis processes.

Group A consisted of oil stakeholders who are currently employed by the government of Uganda and this was in the Ministry of Energy and Mineral Development. The three interviewees in this focus group provided the researcher with beneficial information on the governance of Uganda's oil sector and expressed authoritative opinions on the issues at hand. These issues were often vague and unclear, yet offered the researcher valuable insight on opinions on conservation from an executive-level perspective.

Group B involved five members of non-governmental organizations and national agencies. Many of these organizations, such as NEMA focus primarily on the grassroots level of oil

and natural gas ordinance. These groups tackle issues that cross both environmental and social margins, such as the promotion of environmental education, evaluation of human and environmental rights violations, capacity building, and the advancement of conservation efforts in Uganda. These participants, with the majority hailing from the Hoima district, provided the researcher with eyewitness accounts of environmental degradation, changes in the social

atmosphere, and changes in animal and human migratory procedures, among others. The participants, especially from NEMA, also expressed difficulty in accessing the level of pollution being mated on the environment by the IOC, and this is basically because of limited resources in terms of finance and expertise. Instead, reliance has to be made from information made available by the IOC.

Group C was comprised of five individuals from varying backgrounds that are all crucial in the development of the oil industry. These included community members from the Hoima region, representatives of international oil companies (IOC), and representatives from URA. The random assortment of participants in Focus Group C was crucial to the researcher, who learned that there is no one set of opinions or values on whether or not Uganda can pursue Petroleum development in an environmentally sustainable and socially friendly manner. Interaction with this group also made the researcher learn how difficult it is to extract information relating to oil and gas operations of IOC especially in regards to taxes. The collection of data from varying stances proved to the researcher how little this topic is discussed in Uganda, and how vulnerable and sensitive environmental sustainability movements are in the country. The researcher was also able to establish how difficult it is to extract information relating to the tax details of the IOCs. This focus group also made clear that all viewpoints are valid, and offer valuable information towards research endeavors.

3.5. Document Review

Following the identification of a research topic, the selection of relevant literature related to the topic is collected. The literature review accomplishes several purposes. It shares with the reader the results of other studies that are closely related to the one being undertaken. It relates a study to the larger, ongoing dialogue in the literature, filling in gaps and extending prior studies.[107]

Furthermore, document review provides a framework for establishing the importance of the study as well as a benchmark for comparing the results with other findings.[108] Documentary Review presented in this research is in the form of scholarly literature; journal articles, books, published and unpublished theses and dissertations. Official government or semi-government

[107] C. Marshall and G.B Rossman 'Designing Qualitative Research (4 th ed.). (Thousand Oaks, *2006*).
[108] J.W. Creswell and V.L. Plano Clark 'Designing and Conducting Mixed Methods Research. (Thousand Oaks, CA: Sage, 2006).

publications, earlier research done by other researchers, personal records, and mass media reports published in credible newspapers and magazines.

Library and desk research methods were employed to review national policy, international and regional legal framework that provides for the application of PPP in the oil and gas exploration and production industry in Uganda. In the review, the strength and weaknesses of the legal framework were analyzed. Also, important textbooks and articles were reviewed to obtain and contextualize scholarly opinions for the guidance of this paper.

The availability, format, and quality of secondary sources of data may cause problems and the extent of these problems varies from source to source.[109] The following issues should be considered in employing secondary sources of information: the unreliability of information from source to source. Personal bias from personal diaries, newspapers, and magazines as these writers are likely to exhibit less rigorousness and objectivity than one would expect in research and finally the availability and format of data.[110]

Different scholars fronted varying opinions on the Application of the PPP as a tax mechanism, from the literature, it can be deduced that the legal framework for oil and gas industry in Uganda supports a direct command application of the PPP whereby preventive and precautionary provisions are inserted into legislation to sway the IOC into monitoring its pollution effects on the environment. The famous market-based approach favored by many developed countries is yet to be placed into context in our laws and this could be attributed to the infancy of the oil and gas exploration and development sector in Uganda.

3.6. Ethical Considerations

It is important to address the ethical issues regarding the anonymity of participants' identity and confidentiality of the information given by them.[111] However, anonymity is achieved in a research project when neither the researchers nor the readers of the findings can identify a given response with a given respondent[112]

The goal of ethics in this research is to ensure that no one is harmed or suffers adverse consequences from the research activities. The researchers aim will be to protect the rights of

[109] Ibid
[110] Ibid
[111] L. Cohen, L. Mainion and K. Morrison, K, '*Research Methods in Education' (*Oxon, Routledge, 2007).
[112] R. Babbie, Earl 'The Practice of Social Research (Cengage Learning, 2009).

the respondents by Ensuring that none of the respondents is named during the research or subsequent thesis, ensuring that the respondents are selected to participate without bias thus giving the respondents confidence.

Respondents were assured of the confidentiality of the information or data provided for this study because the Researcher could identify a given person's responses but promises not to do so publicly.[113] Names of the organizations were retained to ensure authenticity in the report of this study- this assurance was provided to all participants and the heads of the organizations, in particular, ahead of time.

The study considered the Respondents as worthy partners. The rights of respondents to privacy and confidentiality both on ethical grounds and in terms of the protection of their personal and sensitive data was respected throughout the study. Fictitious names were used to refer to respondents to maintain their confidentiality and privacy.

Besides, the researcher neither nor appeared to use all or part of the information collected in the study for his advantage or the advantage of a third party. In this study, respondents were not coerced or obliged to disclose or provide data under any circumstances, time, or extent except on their own will after making reasonable judgments to do. Respondents were fully informed about the study intentions, procedures, and risks (if any) involved in the research before they take part.

3.6.1. Study Limitations

Some bottlenecks hamper a researcher in the conduct of research.

This particular study was affected by the limited published literature in the field of oil and gas exploration and production in the Ugandan perspective, especially on the subject of the application of the polluter pays principle as a way of abating tax. Also because of how the oil and gas exploration has been politicized, some information could not be easily accessed because of either fear of reprimand or lack of transparency especially to do with documents relating to oil and gas exploration and production. The technical nature of the processes and activities, even some of the relevant present literature was difficult to synthesize and contextualize on behalf of the researcher whose skills were still developing.

[113] Babbie, 2009 at 67.

Another key limitation is the unwillingness of some respondents to take part in the survey process thereby narrowing the sample target. This process had to be overcome by supplementing the primary data with desk research and document review for fitting in the missing data.

Further, the time specified for the completion and submission of the project is considered inadequate by the researcher. The researcher mitigated this through the use of a work plan which stipulates milestones and roles.

3.6.2. Conclusion

The methodology chosen in question was considered fit for the study in question. The methodology helped to gather the information necessary to build the study in question. The use of relative and important methodology was used as an important aspect to establish and evaluate the study in question to come up with plausible results in question. The methodology used demonstrated the understanding and knowledge of the day-to-day aspects of the study in question.

CHAPTER FOUR

INTERNATIONAL LEGAL FRAMEWORK ON POLLUTER PAYS PRINCIPLE AS AN INSTRUMENT OF TAX

4.0. Introduction

This Chapter deals with the international legal framework of polluter pay principles as an instrument of tax. This is through the analysis of some of the international legal frameworks that have been developed and are being practiced in some countries and of which these same principles and policies have become a basis and are being adopted by various countries in a common good to regulate the activities of the International Oil Companies through taxation in the field of oil and gas. The discussion illustrates that the PPP as a tax mechanism has majorly been emphasized in areas where there are activities involving the extractive industry such as the oil and gas industry.

The chapter also focused on OECD major action plans as one of the international policy actions that have been at the forefront through the Rio De Janeiro Convention of 1992 to curtail the activities of international oil companies and to ensure that the pollution cost is bond by the polluter itself, further, this chapter focused on the international instruments and its application concerning Polluter pays Principle and also highlights its application to Uganda.

4.1. Sources of International Law

The Statute of the International Court of justice provides for the sources of international law. The statute under article 38(1) defines sources of international law to include:[114] international conventions whether general or particular, establishing rules expressly recognized by the member states. These include treaties, conventions, pacts, protocols and covenants, and international custom accepted as law (international customary law). These are norms and rules that countries follow as a matter of custom and they are so prevalent that they bind all states in the world. An unwritten international norm becomes part of customary law if it is consistently followed over a long period by a significant number of states which accepts it as a legal obligation. For example, if a particular commitment to act is repeatedly expressed at important

[114] Statute of the International Court of Justice.

international conferences, and if all the participating states act following it, then the commitment may become an obligation under international customary law.

Examples include OECD principles on Environmental protection, Stockholm Declaration, 1972; Rio Declaration, 1992 and judicial decisions. Other examples also include the opinions of international courts and tribunals like the International Court of Justice, the Law of the Sea Court, and other regional treaty tribunals and teachings and writings of the most highly qualified publicists of international law. The latter includes learned writings of scientific and professional associations and eminent lawyers.

The next sections provide an analysis of the international legal framework concerning PPP and its application in the Uganda oil and gas sector. To further ease the discussion, the section will be divided into international hard law principles and international soft law principles, a further discussion of the regional legal framework will also be addressed under this section.

4.2. Application of International Legal frameworks concerning the PPP in Uganda

Environmental destruction has recently aroused considerable international concern. It has been the subject of numerous popular major international conservation programmes. There are many reasons for this growing concern over the future of the world's environment. Uganda has an international responsibility to protect and conserve its environment under international environmental law instruments. Most of the international legal instruments concerned with environmental protection have the requirement for governments of the various state parties to include environment protection to ensure sustainable development and also to adopt best practices while exploiting natural resources.

The Constitution provides that the president or any other person authorized by the president may make treaties, conventions, agreements or other arrangements between Uganda and any international organizations in respect of any matter, and that parliament shall make laws to govern ratification of any treaty, conventions, agreements or other arrangements.[115]

The National Environment Act operationalizes the above constitutional provisions by enacting that where Uganda is a party to any convention or treaty concerning the environment after the convention or treaty has been ratified under article 123 of the Constitution, the minister may, by statutory order, with the approval of parliament by resolution: set out provisions of the

[115] Constitution of the Republic of Uganda, 1995, Article 123.

convention or treaty; give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of law in Uganda; amend any enactment other than the constitution to give effect to the convention; make such other provisions as may be necessary for giving effect to the convention or treaty in Uganda, or for enabling Uganda to perform its obligations or exercise its rights under the convention or treaty.[116]

This section applies to any convention or treaty, whether adopted before or after the coming into force of the Act and whether Uganda became a party to it before or after the coming into force of the Act.[117] All treaties in Uganda are ratified according to the procedure laid down by the Ratification of Treaties Act.[118] The Act provides for the following modes of ratification: ratification by the cabinet; and ratification by parliament by resolution where the treaty has the effect of amending the Constitution, or where the treaty relates to an armistice, neutrality or peace.[119] In case the treaty requires amendment, the Attorney General has to certify in writing that the implementation of the treaty in Uganda would require amendment. The Attorney General's certificate is presented to cabinet and subsequently, a motion is tabled in parliament. The presentation of the motion in parliament is to ensure that parliament passes a resolution for the ratification of the treaty. Where a cabinet ratifies a treaty, it must lay it before parliamentas soon as possible. Instruments of ratification of a treaty concluded by cabinet or parliament are signed, sealed, and deposited by the minister responsible for foreign affairs to the ministryin charge of all treaties and conventions. It follows from the foregoing that all international and regional environmental law instruments which have been ratified and domesticated are binding on her and should be complied with in all current and future oil and gas operations.

The above compliance requirements set good international and regional binding and soft standards not only for the environment generally but also for the oil and gas industry in particular. It is therefore important that the international and regional binding treaties are complied with by Uganda as far as is practicable. One of the major challenges of enforcing international law is its soft character. The law does not prescribe punitive reinforcements against violators. Even where such sanctions are prescribed, there may be no clear and/ or affordable system of pursuing remedies. Besides, international and regional tribunals require that before one can approach them he/she should have exhausted all available local remedies

[116] National Environment Act, 2019 Section 106(1).
[117] Subsection (2).
[118] Cap 204 Laws of Uganda 2000.
[119] See Section 2.

yet in some cases these are inaccessible due to structural bottlenecks. The presence of these structural bottlenecks can be overcome by domesticating those standards into local oil and gas legislation which should highlight environmental standards, punishments for noncompliance, and the procedures for pursuing remedies.

The application of PPP is currently done mainly within and across the OECD countries through many different versions of PPP, but not beyond. Although the OECD Recommendation was not a binding document, PPP has increasingly been adopted in international treaties and laws, including codification in the European Union and this has been achieved through the application of both the hard and soft law principles. Below is a list of few declarations and regimes that have internalized PPP in many different formulations:

4.3. International Hard Law Principles

Uganda has ratified several binding international hard laws, conventions, and treaties which have significant implications for oil and gas exploration and production in Uganda. This is more so because they have a force of law and Uganda is obliged to abide by the environmental standards in regards to regulation of pollution activities enshrined thereunder. They include the following:

4.3.1. Basel Convention on Control of Trans-Boundary Movement of Hazardous Wastes and their Disposal (1989)

This convention was signed into law by Uganda on the 11th day of March, 1999. The overall objective of the Basel Convention is to protect human health and the environment against the adverse effects which may result from the generation, trans-boundary movement and mismanagement of hazardous and other wastes. Other goals include reducing trans-boundary movements of wastes to a minimum consistent with their environmentally sound and efficient management and controlling any permitted trans-boundary movement under the terms of the Convention. It also aims at minimizing the number of hazardous wastes generated and ensuring their environmentally sound management and assisting developing countries in the environmentally sound management of the hazardous and other wastes they generate.

In summary, the Basel Convention aims to help reduce the transboundary movements and amounts of hazardous waste to a minimum and to manage and dispose of these wastes in an environmentally sound manner. The observation of this convention is so critical because oil and gas activities in Uganda have contact with Lake Albert through which river Nile (Albert-

Nile) flows to other countries of Africa such as Southern Sudan, Sudan, and Egypt, meaning that if waste is not controlled trans-boundary pollution may occur yet this may be so costly not only to the peace but also the economy of Uganda. The wordings of the convention has also been effectively documented in our Petroleum (waste management) regulation 2019. This regulation has provisions for levying of charges by regional bodies as a means to achieve an efficient cost allocation as a result of the movement of waste across the boundaries of a particular state. The challenge with the provisions under the petroleum (waste management) regulation would be the identification of the polluter, the extend of the pollution caused and who should be compensated for the pollution especially if the pollution affected a water body.

4.3.2. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997)

This Protocol was ratified by Uganda on 25th March 2002. The protocol sets binding numerical targets for the limitation and reduction of greenhouse gas emissions especially carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride for the industrialized and transitional countries during the period 2008-2012.[120] No numerical targets for the reduction of emissions were set for the developing countries, but they are required to report on their emissions. At the international level, the Kyoto Protocol is another tentative example of the 'polluter pays' principle: parties that have obligations to reduce their greenhouse gas emissions must theoretically bear the costs of reducing (prevention and control) such polluting emissions. However, we know that an excessive amount of carbon dioxide has been produced by burning fossil fuels for many decades, and the polluters have not paid anything, hence, the ecological debt (or carbon debt, or climate debt) owed by the industrial countries. The rest of the world is (as Ecuador's former Foreign Minister Fander Falcon' put it in Copenhagen in December 2009), as 'passive smokers', suffering the consequences without any compensation. Similarly, there is not the slightest intention internationally of forcing to pay for other very large externalities, such as biodiversity extinction.

The Kyoto protocol defines three international policy instruments (Kyoto mechanisms) which provide opportunities for annex 1 parties to fulfill their commitments cost-effectively. These are the Clean Development Mechanism (CDM); International Emission Trading (IET);[121] and

[120] Article 3 Read together with Annex A to the Protocol.

[121] IET allows annex 1 parties to exchange part of their assigned national emission allowances. IET implies that Countries with high Marginal Abatement Costs (MACs) must acquire emission reductions from countries with low marginal abatement costs.

Joint Implementation (JI).[122] From these three mechanisms, it is CDM that applies to developing countries like Uganda because JI and IET are meant for industrialized countries.

The CDM, as defined by Article 12 of the Kyoto Protocol, allows for countries with legally binding GHG emission reduction commitments to receive credit towards their obligations by investing in projects that enhance carbon sequestration or reduce emissions for instance in the forestry or energy sectors of developing countries. More specifically, Article 12 (2) of the Kyoto Protocol defines the purpose of the CDM as to assist the developing countries in achieving sustainable development and in contributing to the ultimate objective of the UNFCCC, and to assist the industrialized countries in achieving compliance with their quantified emission limitation and reduction commitments. The economic rationale is that clean investment might be less costly in developing countries than domestic action in industrialized countries.[123]

The CDM is also factored in Uganda under the 1995 constitution as amended, it has its basis under Articles 245 and also article 237 (2) (b) which gives the mandate to hold natural resources in trust for the citizens in the hands of the state. The trust obligation imposed on the state eases the implementation of the CDM in two ways. First, CDM projects can be more easily implemented by the Government than would have been the case if the natural resources were subject to private ownership, which would involve a lengthy process of land acquisition for the implementation of the projects. Second, the trust obligation bars the Government from leasing out or otherwise alienating the natural resources referred to. This ensures the subsistence of CDM projects in natural resources.

Further, CDM also is applied under the NEA which is the principal legislation governing environment in Uganda and whose purpose is to provide for sustainable management of the environment and establishes NEMA as a coordinating, monitoring, and supervisory body.

To this end, the Kyoto Protocol is not without its shortcomings, scholars argue that when it comes to trading pollution under the Kyoto Protocol, there is a challenge of failures in accounting, dubious science. This is because it is really hard to prove with scientific certainty

[122] Article 6 of the Kyoto Protocol provides for JI. JI allows industrialized countries to meet part of their Required cuts in greenhouse-gas emissions by paying for projects that reduce emissions in other industrialized countries. The sponsoring governments receive credits that may be applied to their emissions targets; the recipient nations gain foreign investment and advanced technology (but not credit toward meeting their own emission caps; they have to do so themselves).

[123] Ibid.

that a country has invested in CDM projects which can sequestrate a specific amount of Carbon dioxide produced by that country. Thus with this uncertainty, regulatory agencies run the risk of issuing too many emission credits, diluting the effectiveness of regulation. In this case, instead of a net reduction in carbon dioxide emissions, beneficiaries of emissions trading simply pollute more. Instead, making reductions at the source of pollution and energy policies that seek to mitigate the emission levels may be better.

Further, the Kyoto Protocol does not deter non-compliance.[124] In the event of non-compliance with the Kyoto Protocol, the violator will be deducted 1.3 times the amount of the violation from its emission allowance for the next commitment period. The violator may also be barred from using the flexibility mechanism. When assessed more rigorously, the current Kyoto sanction mechanisms appear rather weak and ineffective: Application of the penalty needs the consent of the violator to be in place. Furthermore, the sanction mechanism applying to future control periods provides free-rider incentives, as the violator may insist on generous emission allocations. Finally, the exclusion from the emissions trading regime is not very efficient, as emissions trading typically implies a win-win-situation; hence, the punishers will be also hurt. In essence, the current Kyoto sanctions hardly seem renegotiation-proof.[125] No individual Government has an incentive to police the agreement. The Kyoto Protocol can only work if it includes an elaborate and expensive international mechanism for monitoring and enforcement.[126]

Therefore, the operators in the Albertine rift should follow the CDM to make plans to minimize greenhouse and ozone-depleting emissions in the process of production due to start by 2020. Key emissions that should be minimized include *inter alia* carbon dioxide; carbon monoxide; nitrogen oxide and methane.

4.3.3. Convention on Biological Diversity 1992

At the United Nations Conference on Environment and Development in 1992, Uganda joined one hundred fifty other nations in signing the Convention on Biological Diversity thus, recognizing the need to halt the loss of plants and animals that contribute to human survival as

[124] S. Barrett (1998), Political Economy of the Kyoto Protocol, Oxford Review of Economic Policy, 14 (4), 20-39, p.38.
[125] S. Barrett (1998), Political Economy of the Kyoto Protocol, Oxford Review of Economic Policy, 14 (4), 20-39, p.38.
[126] Ibid.

part of a worldwide effort.[127] The convention was inspired by the world community's growing community to sustainable development. It represents a dramatic step forward in the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits from the use of genetic resources.[128]

Under the Convention, each contracting party must develop national strategies, plans, and programmes for the conservation and sustainable use of biological diversity.[129] This has been implemented by enacting provisions in the National Environment Act, the Wildlife Act, and the National Forestry and Tree Planting Act, which contain provisions concerning biological diversity.

The convention reminds decision making bodies that natural resources are not infinite and sets out a philosophy of sustainable use. While past conservation efforts were aimed at protecting specific species and habitats, the convention recognizes that ecosystems, species, and genes must be used for the benefit of humans. While there exist provisions under the National Environment Act and other related laws, the implementation of the Act is not without gaps and challenges. Such challenges include; inefficiency of monitoring agents such as NEMA and NFA who are clothed with the mandate to ensure that the legislations are implemented to the letter. The monitoring agents in Uganda also faces recurring problems of inefficiency, lack of adequate funding, technology and human resource.

4.4. International Soft Law Principles

As discussed earlier, the body of the international legal framework governing the environment is composed of legally binding (hard law) principles as well as non-binding but persuasive (soft law) principles. Soft law refers to those non-binding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct.[130] The decisions to obey such soft laws are to a large extent in the hands of the respective state parties. In a legal system in which enforcement relies on self-help by the law's subjects, those subjects' perceptions as to what an obligation requires

[127] Vito De Lucia and Reibstein R (2008), Polluter pays Principle, in Encyclopedia of earth.
[128] Convention on Biological Diversity 1993; Test and Annexes, p.1.
[129] Convention on Biological Diversity 1993, Article 6.
[130] A. Guzman, Internal Soft Law at P.6

effectively define the obligation. But legal texts are often imprecise and ambiguous, and thus reasonable minds may differ over what a legal obligation requires.[131]

In practice, the development of "soft" law norms concerning the protection of the human environment began immediately after the Stockholm Conference, one of the consequences of which was the creation of a special subsidiary organ of the UN General Assembly devoted to the promotion of both universal and regional environmental law. This body, the United Nations Environment Program ("UNEP") (with Headquarters in Kenya), has played a leading role in the promotion of regional conventions aimed at, for example, protecting the environmental health and safety against pollution, prevention of desertification and sound exploitation of natural resources.

While it was not supposed to develop in such a manner, UNEP has also evolved into a standing structure for negotiating draft resolutions sent, after their elaboration, to the General

Assembly, where their contents have been either passed as is or expressly referred to in resolutions. For purposes of this paper, the following are considered:

4.4.1. The United Nations Conference on Environment and Development (Rio De Janeiro, 3rd -14th June 1992).

The Rio declaration on environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations Conference on Environment and Development, informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide future sustainable development around the world.[132] The declaration provides that human beings are at the center of concern for sustainable development and they are entitled to a healthy and productive life in harmony with nature.[133]

The declaration goes ahead to provide that to achieve sustainable development, environmental protection shall constitute an integral process and cannot be considered in isolation from it.[134] This means that oil mining is encouraged since it fosters development. However, this development should be mindful of the need to protect and conserve the environment through reduced pollution.

[131] Ibid.
[132] Rio Declaration.
[133] Principle 1.
[134] Rio Declaration 1992 Principle 4.

The 1992 Rio Declaration Principle 16 urges national authorities "to promote internalization of environmental costs…taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment".[135] The Rio Declaration refers to "the cost of pollution", which is a wide-ranging concept and incorporates the use of economic instruments. It probably constitutes the main reference for the definition of the term "PPP in a broad sense", although no effort has yet been made to clarify this principle globally.

Under Principle 16, the internalization of the environmental cost can be achieved through market-based approaches that provide for economic instruments, such as taxes and charges, emissions trading, as in cap and trade, deposit-refund schemes, liability, and insurance.[136] Conceptually, a carbon tax should be set at a level that internalizes the true costs of environmental damage, so that prices reflect the real environmental costs of pollution.[137]

By forcing the polluters to bear the costs of their activities is also said to enhance economic efficiency. The appropriate application of PPP by the member states is a clear way to protect the environment without sacrificing the efficiency of a free-market economic system. Secondly, forcing polluters to bear the costs of their activities is good economics too; it also advances the principle of fairness and justice.

The inclusion of civil liabilities on the polluter under the convention is a clear preventive principle in the application of the PPP, however, its enforcement may present certain challenges when it comes to the identification of the polluter and the quantum to be paid by the polluter especially in a situation where there are several polluters.

Although the PPP is an acceptable principle of environmental law in Uganda, it is pertinent to note that the Rio declaration which in principle 16 embodies the PPP, does not impose any obligation on states to enforce those principles, being as it was a mere declaration and therefore not more than mere guiding principles for national governments. Another challenge with the implementation of the PPP under the Rio declaration in Uganda is that the onus of proof in pollution cases is often on the victims and the adequacy of the compensation to be levied under the laws of Uganda is inadequate. For instance, the Petroleum (Exploration, Development and Production) Act under section 3(7) places the fine at not exceeding one hundred thousand

[135] Rio Declaration.
[136] Ibid.
[137] F. Pitrone op cit at 57.

currency points or imprisonment not exceeding ten years or both for management of the production, transportation, storage, treatment or disposal of waste arising out of petroleum activities without a licence or fails to comply with the terms and conditions prescribed in the licence. This discretion is subject to abuse by the polluter. Further, it shows weakness in the implementation of the law since the offender/polluter can choose to commit the offence and pay the fine later

4.4.2. The Rio Declaration (2012)

This Declaration originates from an Annex to the note verbal dated 27 June 2012 from the Permanent Mission of Chile to the United Nations, addressed to the Secretary-General of the United Nations Conference on Sustainable Development.[138] It is a Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development, championed by the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, and Uruguay. The Declaration focuses on principle 10 of the Rio Declaration, 1992, which has significant implications for oil and gas exploration and production in Uganda. It re-echoes Principle 10 of the Rio Declaration: environmental issues are best handled with the participation of all concerned citizens. To this end, each individual should have appropriate access to information, the opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings.

The Declaration affirms that to comply with this Principle, States should facilitate and promote education, awareness-raising, and public participation by making information widely available and providing effective access to the proceedings outlined above. It also recognizes and affirms that the rights of access to information, participation, and justice regarding environmental issues are essential for promoting sustainable development, democracy, and a healthy environment.[139] These rights provide many benefits, such as helping to make better decisions and implement them more effectively; involving the public in environmental issues; furthering accountability and transparency in governance; and helping to change production and consumption patterns. Environmental challenges faced on a national, regional and global level require far more concerted, proactive and effective action from the government, civil society, international community and organizations with the willingness to explore in detail various

[138] United Nations A/CONF. 216/13.
[139] United Nation A/CONF.216/13.

ways to enhance the exercise of principle 10 rights with the active involvement of the key stakeholders and society as a whole.[140]

The United Nations Conference on Sustainable Development calls for firm political will to enable us to face existing and emerging challenges, it is declared that commitments must be made to ensure the full exercise of rights of access to information, participation and justice regarding environmental issues as enshrined under Principle 10 of the Rio Declaration of 1992.[141] Principle 10 of the Declaration and other principles discussed above are considered as key pillars of sound environmental management and practice that is also recognized in the NOGP, it therefore enjoins all citizens in oil affected areas to participate in the making of decisions whose implementation will have an impact on their environment. The citizens should be given access to relevant oil-related information especially on the establishment of significant petroleum facilities such as refineries, storage tanks, and pipelines, and their views should be taken into account.

4.4.3. The Stockholm Declaration, 1972

The Stockholm Declaration stresses that states have a sovereign right to exploit their resources according to their environmental policies. It brings out the obligation to prevent activities within the jurisdiction from causing environmental harm beyond the border as a requirement under international environmental law. The declaration is not a legally binding instrument under the law, but it has been restated in many conventions that relate to environmental protection during oil exploration and exploitation.[142]

Further, Principle 24 states that International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.[143]

The polluter pays principle does not only apply if there is “real” pollution in terms of harm or damage to private property and/or the environment. Most legal orders go beyond this

[140] Ibid.
[141] United Nation A/CONF.216/13.
[142] 1972 Stockholm Declaration.
[143] Ibid.

interpretation in the light of the precautionary *principle*, environmental legislation may also provide for measures which are taken to minimize risks even in cases where there is a lack of scientific knowledge and scientific cause-effect relationships cannot fully be established.

The precautionary principle under the Stockholm declaration can be achieved by way of employing the command and control instrument of implementation, the member states under the Declaration are enjoined to develop legislation that govern how their environment and natural resources are exploited. This principle also applies to oil and gas exploration activities since it adversely affects the environment and such activities such as gas flaring, mineral waste disposal, oil spills, and pipe burst have far-reaching implications on the environment and therefore calls for measures to control them and in Uganda, it is well captured under the NEA 2019, the Petroleum (Exploration, Development, and production) Act 2013 and also the National Oil and Gas Policy, 2008.

4.4.4. The Johannesburg Declaration (2002)

This Declaration was adopted at the World Summit on Sustainable Development in Johannesburg, South Africa (2nd to 4th September 2002).[144] The summit was intended to reaffirm the world's commitment to sustainable development.[145] The importance of this declaration to oil activities in Uganda is that it lays down principles of sustainable development which should inform the management of Uganda's oil and gas resources and proceeds therefrom. This is one of the key pillars encapsulated in the National Oil and Gas Policy, 2008.

Accordingly, the declaration recognizes that the future belongs to the children of the world and thus there is a need to ensure that through our actions they will inherit a world free of the indignity and indecency occasioned by poverty, environmental degradation, and patterns of unsustainable development. There is an urgent need to create a new and brighter world of hope. There is also a need to assume a collective responsibility to advance and strengthen the interdependence and mutually reinforcing pillars of sustainable development, economic development, social development, and environmental protection at the local, national, regional, and global levels. The delegates reiterate that thirty years ago, in Stockholm, they had agreed on the urgent need to respond to the problem of environmental deterioration; that ten years ago, at the United Nations Conference on Environment and Development, held in Rio de Janeiro

[144] United Nations A/CONF.199/20
[145] Preamble

they had agreed that the protection of the environment and social and economic development are fundamental to sustainable development, based on the Rio Principles. To achieve such development, they adopted the global programme entitled Agenda 21 and the Rio Declaration on Environment and Development, to which we reaffirm commitment. The Rio Conference was a significant milestone that set a new agenda for sustainable development.[153] It recognizes that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development are overarching objectives of, and essential requirements for sustainable development.[154]

There is a need to check all development activities which an impact on the environment because according to the delegates, the global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable. That air, water, and marine pollution continue to rob millions of a decent life.[155]

The Johannesburg Summit provide a renewed interest in the world's efforts towards protecting the indivisibility of human dignity through decisions on targets, timetables, and partnerships, to speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity. At the same time, the members of the summit committed to working together to help one another gain access to financial resources, benefit from the opening of markets, ensure the capacity-building, use modern technology to bring about development and make sure that there is technology transfer, human resource development, education, and training to banish underdevelopment forever.

The adherence to principles of sustainable development mention in the foregoing declaration is an encouragement to the member States to ensure that the oil and gas resources are exploited having regard not only to the interests and aspirations of today's Uganda but even Uganda of tomorrow. This, therefore, calls for environmentally sound exploration and production and a clear national reinvestment strategy in resources that can survive the oil sector and support the economy long after oil production has ceased.

4.5. Regional Law Standards

4.5.1. The Treaty of the East African Community (1999)

The Partner States of the East African Community agreed to have a concerted effort in matters of development, law development and enforcement, and environmental protection and conservation.[146] The above objectives are encapsulated in the EAC Treaty one of whose main objectives is to promote sustainable utilization of the natural resources of the partner states. It calls upon states parties to ensure sustainable management of the environment for present and future generations and sustainable management of natural resources.[147] The objectives stated herein are embedded under section 5.1.3 of the NOGP of Uganda.

This Treaty establishes the East Africa Community. It has important provisions for environmental management especially article 151(1) which provides that partner states undertake to conclude such protocols as may be necessary for each area of cooperation which shall spell out the objectives, the scope of and institutional mechanisms for cooperation and integration. Article 111 and 112 of the EAC Treaty provide for conservation and management of environmental and natural resources. Uganda as a member of the EAC is therefore obliged to comply with the principles of sound environmental management as prescribed in the Treaty while undertaking all development activities, which include though not limited to oil exploration and production. For example, she should ensure that there are consultation and cooperation on the technologies to be adopted and prevent transboundary disposal of oil-related pollutants within the region.

The challenges associated with the implementation of the policies for sustainable development in Uganda, including the need to mitigate the potential for negative consequences arising from the sudden influx in the oil and gas sector is that of enforcement of legislation against the offending polluters or violators. These trickles down to the underfunding of the agencies involved and in the case of the East African treaty, it lacks a uniform enforcement mechanism and the level of growth of the extractive industry in East African Countries all defer in one way or the other.

4.5.2. The EAC Protocol on Wildlife Conservation and Law Enforcement (1999)

The protocol notes that member states have the sovereignty to manage their wildlife resources and the corresponding responsibility to sustainably use and conserve these resources.[148] Article

[146] E. Kaweesi "Uganda's Security amidst Oil Exploration, Development and Production" in Makerere Journal (2013) at 10.
[147] Article 151 of the Treaty.
[148] The Preamble.

2(i) stipulates that each party is required to ensure the conservation and sustainable use of wildlife resources in its jurisdiction. Each State is also required to ensure that activities in its jurisdiction or control do not cause damage to the wildlife resources of other states or in areas beyond the limits of national jurisdiction. The observation of this protocol is very instrumental in assessing environmental law compliance of the oil activities in the Albertine rift because this is the place which harbours Uganda's major wildlife National Parks and game reserves, some of which are shared among member states.[149]

4.5.3. The EAC Protocol on Environment and Natural Resources Management (2006)

This is a Protocol for the EAC treaty. It is a protocol that makes specific provisions for environmental and natural resources management in the East Africa Community (now East African Corporation). Article 2 provides for the application of the Protocol by partner states and cooperation in the management of the environment and natural resources within their jurisdiction, including transboundary ecosystems and natural resources. Article 39 provides that each partner state shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative and enforcement measures, to ensure compliance with this protocol. The Protocol under Article 19 requires the Partner States to promote the joint harnessing of hydropower and other potential renewable energy sources and petroleum, geology and hydrocarbon potential of the Community. This, therefore, means that the oil in Uganda should be exploited in the perspective of complying with the protocol since failure to take heed to the guidelines may cost not only Uganda but the entire East African community.

4.6. Conclusion

The above compliance requirements set good international and regional binding and soft standards for the oil and gas industry in particular. Therefore, Uganda should as far as practicable aim at complying therewith.

From the above discussion, it's imminent that PPP is entrenched in most of the international instruments discussed, the challenges though is in the implementation and the measures used

[149] These include Queen Elizabeth National Park, Semliki Valley National Park, Semliki Valley Wildlife Reserve, Rwenzori National Park, Mgahinga Gorilla National Park, and Murchison Falls National Park and others.

in the implementation, thus it may not be an easy task to identify a polluter, the quantum of what the polluter is to pay.

Further, the regulatory approach of applying command and control strategy through the use of express legislation is at the forefront of most of the international legal frameworks discussed as opposed to the Market-based approach of levying taxes and subsidies. This could be premised on the ground that the member states clothed with the responsibility of developing their legal system for example under the Rio Declaration, they may not find it easy to estimate the amount of pollution to tax the polluter.

One other challenge of enforcing international law is its soft character. The laws do not prescribe punitive reinforcements against violators. Even where such sanctions are prescribed, there may be no clear and/ or affordable system of pursuing remedies. Besides, international and regional tribunals require that before one can approach them he/she should have exhausted all available local remedies yet in some cases these are inaccessible due to structural bottlenecks. However, all this can be overcome by domesticating those standards into local oil and gas legislation which should highlight environmental health and safety standards, punishments for noncompliance, and the procedures for pursuing remedies.

CHAPTER FIVE

THE NATIONAL LEGAL FRAMEWORK ON THE POLLUTER PAYS PRINCIPLE AS A TAX INSTRUMENT

5.0. Introduction

This chapter explains how the aspects of polluter- pays -principles have been captured in the legal and regulatory framework of Uganda today. This will be achieved through the examination and analyses of various laws and best practices in place that are meant to control the extent of pollution by the International oil companies involved in the exploration and development of the oil and gas sector in Uganda. The legislation covered in this chapter includes the Constitution, major oil and gas law, and other relevant policies that address the issue of pollution from oil and gas activities.

Having explained the aspect of the international legal framework concerning PPP and how important the subject is, it is instructive to understand how best the legal regime in Uganda has been formulated to address that aspect of pollution through the application of the PPP, Uganda being a new player in the oil and gas exploration process and pollution resulting from such activity is a known threat throughout the world, the aspect of taxation of the polluter cannot be left unaddressed. This chapter also showed how Uganda as a country has tried to replicate the best international principles discussed concerning polluter pays principle as a tax mechanism through the available legal system as a way of dealing with the problem.

In general, the chapter tackled the national legal framework concerning the principle of polluter pays, which are discussed below;

5.1. The Constitution, 1995

The Constitution of Uganda, 1995 has several provisions spelling out how the environment can be utilized and managed. Under the constitution, the protection of natural resources and preservation of the environment are matters of national policy embodied under the National Objective and Directive Principles of state policy. This National Objectives and directives Principles of state policy are supposed to act as guidelines in the interpretation of the

constitution and other laws of Uganda and they also aid in the implementation of policy decisions.[150]

Under Objective XIII, it empowers the state to protect important natural resources including land, water wetland, minerals, oil, flora, and fauna.[151] Further, Objective XXVII (ii) obliges the state to utilize the natural resources in a way that it will meet the development needs of both the present and future generations of Uganda, it specifically tasks the state to take all possible measures to prevent or minimize damages and destruction to the land, air and water resources resulting from pollution or other causes.[152]

In the substantive provision, the constitution has specific provisions that go-ahead to provide for the promotion of sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and the future. Every Ugandan has a right to a clean and healthy environment,[153] this provision of the constitution is reiterated by Section 4 of the NEA and the citizens have to create and protect the clean and healthy environment.[154] The provision of Article 39 of the constitution is complemented by Article 50 which gives any person the right to take judicial action to redress the breaches of a fundamental right, irrespective of whether the breach affects him or another person.

The above provisions are important in broadening the locus standi of citizens to redress environment wrongs. Further, the Protection of the environment from the adverse effects of oil exploitation and exploration is the protection of a clean and healthy environment. Nevertheless, it is more appropriate that statutory bodies such as NEMA are entrusted to take lead in the control of the environment, in such a way that they set environmental standards for protections.

The constitution also provides that parliament has the legal mandate to provide measures intended to protect and preserve the environment from the abuse and degradation; to manage the environment from sustainable development; and to promote environmental awareness.[155] This has been implemented by enacting laws that address environmental management.

[150] Objective I of the National Objective and directive of State Policy.
[151] Objective XIII.
[152] National Objectives and Directives of State Policy.
[153] Article 39.
[154] Article 17 (1) (j).
[155] Article 245

The Constitution of Uganda through its Article 237(2) (b) vest the ownership of all national lakes, rivers, wetlands, forest reserves, game parks, natural parks, and wildlife sanctuaries in the hands of the government of Uganda in trust for the citizens of Uganda. This introduces the public trust doctrine in the management of oil and gas resources[156] and this was courtesy of the Constitutional (Amendment) Act of 2005.

This Amendment Act has significant implications for oil and gas management and control, and sharing of royalties from oil and gas. Part XIII and specifically section 43 amends article 244 of the Constitution by replacement. Accordingly, the entire property in and the control of all minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. This is however subject to article 26 of the Constitution which emphasizes the need to fairly and adequately compensate surface landowners before the Government can take over the petroleum-rich lands. Parliament is mandated to make laws regulating the exploitation of minerals and petroleum; the sharing of royalties arising from mineral and petroleum exploitation; the conditions for payment of indemnities arising out of the exploitation of minerals and petroleum and conditions regarding the restoration of derelict lands. Some of the laws hereinafter have therefore been enacted under this amendment.

5.1.1. The National Oil and Gas Policy, 2008

The goal of this policy is to use the country's oil and gas resources to contribute to the early achievement of poverty eradication and create lasting value to society.[157] The policy recognizes the need to protect the environment and health during oil exploration. Principle 5.1.5 specifically provides for the protection of the environment and the conservation of biodiversity. It provides that the environment, human development, and biodiversity should be neatly balanced for mutual benefit and survival and that the policy should contribute to and promote this balance to ensure sustainable development. It imposes a responsibility on oil companies to protect the environment in which they work or any areas in the country affected by their operations while the government is required to legislate regulate and monitor compliance.

The policy asserts the need to protect the environment as part of the management of the petroleum sector. Objective 5.3.9 seeks to ensure that oil and gas activities are undertaken in a

[156] Article 244.
[157] National Oil and Gas Policy of Uganda 2008.

manner that conserves the environment and biodiversity. To achieve this objective, the state is required to carry out due diligence on oil companies applying for licenses in the country concerning their technical and financial capabilities together with their environmental standards.[158]

It thus recognizes several potential causes of negative impacts on human health from oil and gas activities such as oil spills, which can contaminate water sources leading to sickness and disease; gas blowouts, which can result in fires that destroy property and may lead to loss of human lives; and gas flares and dust, which result in air contamination leading to sickness. The policy seeks to promote prevention and rapid emergency response mechanisms and efforts to construct roads in a manner that reduces or prevents dust pollution.[159]

The policy further recognizes that drilling in settled communities and water bodies used by the population can be hazardous. It requires that where deviation/directional drilling can minimize these hazards and achieve the desired results of the drilling objective efficiently, deviation drilling should be promoted.[160] This minimizes hazards such as water pollution that impacts the health of the workers and the people in the surrounding communities especially those around water bodies such as Lake Albert in the Albertine region of Uganda.

The policy also recognizes that health hazards do not occur in isolation of each other. While pollutants and toxins are directly inhaled by humans, causing disease, they also invade the food chain, entering fish, animals, and vegetables.[161] Thus, monitoring of the quality of water and food is needed to test for unacceptable levels of pollutants and toxins such as lead and mercury. It affirms the need to collaborate with other relevant policies, to support the review, updating, and implementing the waste disposal standards, together with the establishment and enforcement of the necessary monitoring, evaluation, and control mechanisms.

It endorses the principle of "polluter pay principle" in which it supports institutions for disaster preparedness and response mechanisms for any oil spills in the Albertine Grabens. It further authorizes the government to design a mechanism of levying penalties for environmental pollution and/or degradation. This policy recognizes several potential causes of negative impacts on human health from oil and gas activities. This policy shall promote the setting up

[158] Ibid.
[159] National Oil and Gas Policy of Uganda 2008.
[160] Ibid.
[161] Ibid.

of best international practices for prevention and rapid emergency response mechanisms designed to mitigate against air and water pollution.[162] This in itself is a command and control approach of the application of PPP, it emphasizes the command control structure where provisions are made in the law to be followed by the International oil companies involved in the oil and gas sector. Further, the levying of penalties is a good approach in controlling the excess of the polluting company (ies).

The National Oil and Gas Policy emphasizes the principles of best practices and international standards, however, it does not critically define what those standards are. In effect, the application of the wordings of the policies in respect of best practices is left to the international oil companies exploring the oil and gas sector in the Albertine Region. To this end, it will be very difficult for the authorities to implement what amounts to best practice and who should be punished for over pollution or what kind of mechanism should be put in place to ensure the polluter pays for failure to adhere to the best practice definition under the policy. Secondly, it also creates a problem in the calculation of the amount of penalty to be paid by a polluter as a result of their activities. The fact that the yardstick, to gauge best practices rest with the Polluter, acquires useful data to determine the level of pollution and what penalty to pay very difficult.

5.1.2. The National Water Policy, 1999

The overall objective of the policy is to manage and develop the water resources of Uganda in an integrated and sustainable manner. This is to be done in a manner that ensures and provides water of adequate quantity and quality for all social and economic needs of the present and future generations, with the full participation of all stakeholders. The water policy requires the application of Environmental Impact Assessment in all water-related projects and for the integration of the water and hydrological cycle concerns in all development programmes. Concerning oil exploration the policy provides for: upstream and downstream water use relationships; regulation of industrial discharges of effluents to water; use and sharing of water resources by various stakeholders; and international cooperation of trans-boundary water resources. This policy is crucial for oil exploration and production because it emphasizes water quality and quantity. In light of the policy, the operators should ensure that their activities do not lead to pollution of neighboring waters for example through the discharge of aqueous

[162] National Oil and gas Policy of Uganda 2008

wastes. According to a survey done in the Bunyoro area, the oil wells were found to have spilled into neighboring areas causing pollution of the land. This was contrary to The NationalWater Policy as pointed out. It also exhibited how the oil and gas industry is to some extent non-compliant to these set standards.

5.1.3. The Petroleum (Exploration, Production, and Development) Act, 2013

The Petroleum (Exploration, Production, and Development) Act 2013 repealed Act 150 which came into force in 1985. The Act provides that under article 244 of the Constitution, the entire property in, and the control of, petroleum, in its natural condition in or upon any land in Uganda is vested in the government on behalf of the people of the Republic of Uganda. This is also the primary law concern with the management and regulation of Oil and Gas activities in Uganda.

The major purpose of the Act is to operationalize the National Oil and Gas Policy and to achieve this many strategic approaches are identified: establishing an effective legal framework and institutional structures to ensure that the exploration, development, and production of petroleum resources is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations and creating a conducive environment for the efficient management of petroleum resources.[163] The Act lays down several provisions concerning the control of environmental pollution and the mechanism used to ensure compliance with regards to issues of pollution.

The Act provides for the issuance of exploration licenses as well as liability resulting from pollution activities.[164]

For the government to ensure environmental protection, the Act provides that a licensee is enjoined to carry out exploration and development operations in the area in a proper, safe and workmanlike manner and following the good oil practices and take all reasonable steps necessary to secure the safety, health, and welfare of persons engaged in those operations in or about operation area.[165]

[163] Section 1 of the Act.
[164] Section 52 and 129 of the Act
[165]Section 129

In particular, a licensee is duty-bound to control the flow and prevent the waste or escape of Petroleum gas (not being Petroleum), water or drilling fluids and also prevent damage to Petroleum bearing strata in in the area.[166]

As the other way of ensuring environmental protection against pollution, the Act requires that, licensee has to maintain in good condition and repair; all structures, equipment, and other property in the area of operation, remove from that area all structures, equipment, and other property that are not either used or to be used in connection with those operations, and take reasonable steps to warn people who may from time to time be in the vicinity of such structures, and the possible hazards resulting therefrom.[167]

Section 130 of the Act provides for liability to be imposed on a licensee without fault in case of any pollution damages caused. It is, therefore, an absolute liability that tends to regulate the activities of the IOC.

The Act enjoins players to carry on their operations in compliance with environmental principles. In this vein, a licensee or any other person who exercises or performs functions, duties or powers under the Act concerning petroleum activities shall comply with environmental principles and safeguards prescribed by the NEA and other applicable laws.[168] A licensee is obliged to ensure that the management of production, transportation, storage, treatment and disposal of waste arising out of petroleum activities is carried out following environmental principles prescribed under the NEA and other applicable laws.[169] To effectuate this, a licensee is required to contract a separate entity to manage the transportation, storage, treatment, or disposal of waste arising out of the petroleum activities. In as much as a separate entity will be incharge of waste management, the licensee shall remain responsible for all the activities of the entity so licensed. A person contracted by the licensee shall not undertake the above activities without obtaining a licence issued by the NEMA.[170]

The Act makes provision for punitive reinforcements where one violates the environmental principles therein contained. Accordingly, a person who carries on the production, transportation, storage, treatment or disposal of waste arising out petroleum activities without

[166] Section 171.
[167] Section 171.
[168] Section 3 of the Act, 2013.
[169] See Subsection (2).
[170] See Subsection (6).

a licence or fails to comply with the conditions prescribed in the licence commits an offence and is liable on conviction to a fine not exceeding one hundred thousand currency points (2 Billion Uganda Shillings) or imprisonment for a term not exceeding ten years or both.[171]

The Act also mandates NEMA to make regulations for the management of production, transportation, storage, treatment, and disposal of waste arising out of petroleum activities. These regulations shall prescribe, in case of contravention, penalties not exceeding a fine of five thousand currency points or imprisonment for a term not exceeding ten years or both, and may also prescribe that the court which convicts the person shall order the forfeiture of anything used in the commission of the offence.[172] This has been buttressed by the passing of petroleum (waste management) Regulation 2019. A person shall not be granted a petroleum production licence unless their development plan takes proper account of the best petroleum industry practices and safety factors. This is however largely vague because the Act does not satisfactorily define what amounts to "best petroleum industry practices". It also leads to the borrowing of the interpretation of best and acceptable principles from other jurisdictions. One danger with the reliance of the practices from other jurisdictions is on the level of exploration development of the oil and gas industry. Uganda is a new player in the oil and gas industry and thus to use a yardstick of an already developed country in the oil and gas industry for purposes of gauging the best practice is to stretch the limits of the application too far.

The petroleum production license granted under the Act must expressly require the licensee to undertake Environmental Impact Assessment before commencing production activities.[173] The Minister is also empowered to make regulations relating *inter alia* to the conservation and prevention of the waste of natural resources, whether petroleum or otherwise, and the carrying out of environmental impact assessments for that purpose. Regarding access to information by the public, the Act empowers the Minister, following the Access to Information Act, 2005, to make available to the public details of all agreements, licenses and any amendments to the licenses or agreements whether or not terminated or valid; details of exemptions from, or variations or suspensions of the conditions of a licence; approved field development plan; and all assignments and other approved arrangements in respect of a licence. The information referred to above shall be available to any person upon payment of the prescribed fee. This seems to be a good guarantee for transparency and accountability in the sector, however, the

[171] Subsection (7).
[172] Section 3(8) of the Petroleum Exploration, Development and Production, 2013.
[173] Section 76.

access to the information is restricted by the stringent confidentiality provisions under Section 152 and other express restrictions in S153 making it almost impracticable to access to a layperson.

The provisions of the act mentioned above resonate with the direct control mechanism of the application of PPP which is based on the principle of an absolute obligation to comply with standards fixed by law at the national, regional, or local level. This means that all polluting activity must comply with regulations directly enforceable utilizing legal measures and not through the operation of economic instruments. The standards may concern rates of effluent emission, the average quality of the receptor body, or the characteristics of the finished product.[174]

This method is of definite advantage to the environment, since it determines the objectives and means without being dependent on the play of economic mechanisms. It gives precedence to the environmental objective over the economic efficiency criterion. Direct controls are certainly the surest means of preventing irreversible effects or unacceptable pollution (mercury, cadmium, and many others). [175]

This method though favorable is not without clawbacks, it is cumbersome to administer and the arrangements for checking, sanctions, and measuring are expensive. The cost associated with obtaining the information required to implement the controls can be particularly high; leading to reduced economic efficiency since no economic mechanism operates to enable the standards to be attained at least cost.

5.1.4. The National Environment Act, 2019

This is the principal law that governs environmental protection conservation and it was enacted to give effect to the constitutional provisions discussed above. It repealed the National Environment Act, Cap. 153. Under section 3(1) of the Act, provides for the right to a clean and healthy environment that is following the constitution and the principles of sustainable development.[176] The same provision under section 3(2) provides that every person has to create, maintain, and enhance the environment, including the duty to prevent pollution. [177]

[174] Ibid.
[175] Ibid.
[176] The National Environment Act 2019.
[177] Ibid.

The provision to this section under (4) grants any person a right to file a suit in a civil suit against any person or entity whose actions or omission is likely to cause a threat to the environment. The National Environment Management Authority in the performance of its environmental protection duties is guided by the principles of environmental management. These principles concerning oil and gas exploration and exploitation in Uganda include assuring people of the fundamental right to an environment adequate for their health and well-being.

The Act also provides for the establishment of adequate environment protection standards and to monitoring changes in environmental quality[178] as well as requiring prior environmental assessment of proposed projects which may significantly affect the environment or use of natural resources which is important during the oil exploitation and exploration. Therefore, since oil exploration has significant effects on the environment, before such activities of exploration and exploitation start taking place, an environmental impact assessment should be carried.

Section 16(a-f) makes it an offence for anyone who engages in an act of pollution, fails to prevent pollution, or causes the emissions to escape.[179]

Further section 171 (2) (d) gives the authority to levy certain fines, charges of specific importance are the levying of pollution emission charges on any potential polluter.[180] It also provides that for the polluter pays principle, the polluter bears all the true and total costs of the environmental pollution caused by him.[181] The Act further established the pollution permit whereby a person pays a prescribed fee for the pollution caused.

Further, the Act prohibits any person from causing pollution or initiating anything that may occasion a risk of pollution except following the Act or any applicable law, it also enjoins any person whose activities are likely to cause pollution to put in place measures to prevent pollution from taking place and this measure includes the use of best available techniques and best environmental practices.[182]

[178] Section 5 (2) (h).
[179] National environment Act 2019.
[180] Ibid.
[181] Section 5 (2) (l)
[182] Section 78.

The Act further provides that where any law permits venting or flaring of gases and other particulate matter into the atmosphere for normal operational purposes or emergencies, the person who vents or flares shall take measures to minimize the pollution caused by the flaring or venting, and that the venting or flaring must be in conformity with the air quality standards prescribed under the Act.[183]

In this vein, it prohibits any person from carrying out any activity which is likely to pollute the air, the water, or the land above standards or guidelines prescribed or issued under Act. Thus a person requires a pollution licence to carry out a polluting activity. A pollution licence cannot be issued unless the licensee is capable of compensating the victims of the pollution and cleaning the environment in accordance with the "polluter pays" principle.

The Act also calls for the authority to issue a licence for the control of pollution, following regulations made under the Act for activities likely to cause pollution. It further stipulates that where pollution has occurred contrary to the Act, regulations made under the Act, or any applicable law, the person responsible for the pollution shall take steps to clean up and restore the environment as near as possible to its original state; and pay compensation for the damage caused following this Act and any other applicable law.[184]

Section 80 creates liability without fault on the polluter, it also further creates third party liabilities in an event that a person does an act or omission that aggravates the damage or nuisance caused by earlier pollution. It further enjoins the technical committee not to issue a pollution control licence unless it is satisfied that the licensee is capable of compensating the victims of the pollution and of cleaning the environment following the "polluter pays principle' as provided for under this Act.[185]

Furthermore, there is a mandatory fulfillment of the principle by imposing liability for clean-up costs on the polluters which is a form of implementing the polluter pays principle.[186] The laws impose a responsibility on the oil companies to maintain in good condition all structures equipment and other property subject to their area of operation, also to remove all structures, equipment, and other property that are not either used or to be used in the area of operations. This, therefore, makes perfect sense as the strict liability inspires the oil companies to reduce

[183] Section 78.
[184] Ibid.
[185] NEA 2019.
[186] Petroleum (Exploration, Development and production) Act, 2013.

pollution which results in minimal clean-up costs incurred by the polluters. The only anomaly is how to determine what amounts to reasonable pollution and behavior that promotes the environment. Secondly, who determines the amount of pollution especially in the Albertine region that has a lot of biodiversity and the shock created by the vibrations during the exploitation and development process?

5.1.5. Uganda Revenue Authority Act, Cap. 196

The statutory institution in Uganda that enforces tax laws in Uganda is the Uganda Revenue Authority (URA) established by the Uganda Revenue Authority Act cap. 196 as the central body for assessing and collection of specified revenue and the administration and enforcement of laws relating to such revenues.

The mandate of the legal regime to deal with taxation issues is got from the Constitution of the Republic of Uganda and thus Article 152(1) vests the power to impose taxes in parliament and empowers the parliament to make laws to establish tax tribunals to settle tax disputes.[187]

Section 20 provides for a tax assessment.[188] The system of taxation in Uganda is based on a self-assessment regime. Under section 20, gives the taxpayers obligation to assess themselves as the starting point in paying income tax, and later file returns and pay tax on those returns. Thus, where a taxpayer has furnished a return of income, there is a presumption that the commissioner has assessed the chargeable tax liability of the taxpayer. This is in line with modern tax administrations seeking to optimize tax collections while minimizing administration costs and taxpayer compliance costs. This legal provision is not having the intended results since it operates best in jurisdictions with high compliance levels, and it can be undermined through under-reporting of income and over-reporting of expenses, falsification of records and through other means taxpayers use in self-assessment regime to file erroneous returns to pay less or no tax.

Following good international practice, Uganda enacted the tax procedures code Act 2014 which brings together, in one act, a set of harmonized rules for the administration of all taxes. This should generally provide for greater clarity in the law and reduce compliance and administrative costs.[189] Understanding of such policies is key for the fiscal regime in Uganda

[187] Constitution of Uganda 1995 as amended.
[188] Tax Procedure Code Act, 2014.
[189] SEATINI: (n199): p.13.

to understand what measures should be taken up in the Oil and Gas industry so that the industry does not instead become a curse than a blessing since having better revenue management schemes is key for the industry in question to operate.

The tax procedure code Act gives URA the right to access information from taxpayers, financial institutions inclusive as seen in Section 42(1) (a) which provides that the commissioner may, by notice in writing require any person whether liable to tax or not to furnish any information.[190]

Section 42(1) (b) requires the taxpayers to attend at the time and place designed in the notice to be examined by the commissioner concerning the affairs of that person or any other person, and for that purpose, the commissioner may require the person to produce any record including an electronic format, in the control of the person.[191]

It should be noted that some laws, for example, Section 41 of the Bank of Uganda Act stipulates that the bank shall not publish or disclose any information regarding the affairs of a financial institution or a customer of a financial institution unless the consent of the institution or the customer has been obtained.[192]

It shows that the legal framework relating to taxation is not aligned with other legal frameworks. Whereas the law tries to acquire information without regard to the rule of law relating to privilege or public interest concerning the production of or access to documents, it is not observed or affected since banks always require URA to procure court orders to access such information thereby hindering efforts to collect tax and revealing a weakness in the implementation of the law in as far as the fight against tax avoidance aspects is concerned.

URA must build necessary linkages with sources of information that are typically useful to the tax administration which include among others; industry or professional associations, licensing and regulatory bodies; land and property government agencies and departments, and many others, building these relations would aid this process. This also serves the process to understand that the oil and gas industry is highly volatile the fact that a lot of finances are at stake.

[190] Tax Procedure Code Act 2014.
[191] Tax Procedure Code Act 2014.
[192] Cap 51 laws of Uganda.

The high finances gained from the oil and gas industry is not without side effects, there are elements of pollution that the Oil and Gas companies have to contend with, this pollution such as carbon emission, gas flaring, oil spills arises from both the exploration and the production sector of oil and gas and the international oil companies should, therefore, be made to meet the cost of pollution arising as a result of their activities. This can be achieved through using a market-based approach such as employment of taxes otherwise known as cost internalization. According to a piguo, such tax should have to be internalized into the cost of production and this can be achieved through making the polluter bears the cost of pollution. This PPP form of taxes takes a form of tax collected by the government and levied per unit of pollution emitted into the air or water. This tax also imposes a charge on the emission of gases equivalent to the corresponding potential costs caused through future climate change, hence forcing emitters to internalize the costs of pollution. As a policy instrument for the control of pollution, a tax on emission will theoretically reduce pollution because firms and individuals will reduce emissions to avoid paying taxes.[193]

Suffice to note that, although there are provisions for taxation of income and imposition of other Taxes under the URA Act, the Act does not have a specific provision for dealing with taxation of oil and gas operations, it thus goes without saying that the administration of the Act may only be limited to gathering information as discussed above and therefore leaving the matters of internalization of cost solely at the discretion of the International Oil companies involved in the oil and gas operations.

5.1.6. The Petroleum (Waste Management) Regulation, 2019

These regulations apply to a person involved in the production, importation, exploration, transportation, storage, treatment or disposal of petroleum waste; it also covers persons involved in the construction and operation of petroleum waste facilities.[194]

Under regulation 2(2), it requires any person who is responsible for the activities mentioned in Regulation 2(1) to comply with other laws that govern the area of oil and gas such as the NEA, the Petroleum (Exploration, Development, and Production) Act, 2013, the Petroleum (refining, conversion, Transmission and, Midstream Storage) Act 2013; environmental best Standards and Best Petroleum industry practices and any other applicable law.

[193] F. Pitrone Op cit 57.
[194] Regulation 1.

Regulation 4 provides for compliance with environmental principles, it places an obligation on a licensee and the petroleum waste handler to comply with the principles set out in the NEA and also apply measures in the management of environmental waste. The measures under regulation in respect of pollution include; to prevent pollution, harm to biodiversity and contamination of the wider environment by petroleum waste; use the best available technology and environmental practices.[195]

Under Regulation 6, the licensee and the petroleum waste handler have a duty of care and shall take measures to ensure that petroleum waste is managed appropriately and securely in accordance with the NEA, they also have to ensure that any leakage or spillage is quickly and reliably detected and handled. It also makes it an obligation for the licensee or the waste handler to notify NEMA of any spillage that may cause environmental pollution and this has to be done within twenty-four (24) hours.[196]

Regulation 7 provides for the issuance of financial security by the petroleum waste handler in the format set out in Schedule 3 of the regulation, the purpose of the fund is to guarantee environmental remediation of a petroleum waste management facility; and in as far as exploration is concern, it is also aimed restoration where decommissioning and aftercare procedures of the petroleum waste management facility has not been carried out to the satisfaction of the NEMA.[197]

Regulation 7(4) makes it an offence for any person who contravenes these regulations, it places a punishment of a fine not exceeding five currency points or imprisonment not exceeding ten years or both.[198]

The companies operating in the Albertine Graben have the obligation and responsibility to treat their waste. An industry shall not discharge or dispose of its waste in any state into the environment unless it is treated in a treatment facility and in a manner approved by the lead agency in consultation with NEMA.

Further, fines and penalties are imposed on any person who accrues out the activities of waste handling without a licence. It also punishes any person who fails to comply with the direction given under these regulations. The regulation also makes it an offence and a person found liable

[195] Petroleum (Waste Management) Regulation 2019.
[196] Ibid.
[197] Ibid.
[198] Ibid.

shall pay a fine not exceeding Five Thousand currency points or imprisonment for ten years or both.[199]

Under Regulation, 55, coercive fines are mated on any person handling petroleum waste contrary to the provisions of this regulation and these fines are paid in accordance with the provisions of NEA.[200]

The relevance of these Regulations lies in the fact that the unregulated emission and disposal of wastes resulting from oil and gas exploration is one of the causes of environmental pollution which harms the surrounding environment, flora, and fauna. The provision of the regulations shows a direct application of command and control instrument of PPP, the imposition of penalties and surcharges under the regulation is a check on the activities of the polluter under the PPP and therefore acts as a way of regulating the activities of international oil companies.

The charges are an incentive because they prompt the polluter to choose the best solution and constantly to improve his waste treatment processes to reduce his costs. In particular, they induce agents who enjoy low waste-treatment costs to carry out more treatment than agents whose costs are high, thereby combining rationality, efficiency, and optimum cost allocation between polluters; available for restoring damaged and/or financing pollution control plant for joint use.[201]

These charges also oblige the polluter to include in his production costs the cost of the waste treatment he is induced to carry out and/or the cost of the damage caused by un-retained or residual pollution. This re-establishes correct pricing so that the gap is bridged between private cost and social cost.[202]

The application of these instruments to the system is not without drawbacks and these are mainly a result of administrative requirements such as the administrative cost of setting up arrangements for supervising and measuring but that is a universal problem since all instruments involve this cost.[203] Secondly, there is the main problem of how to determine the

[199] Regulation 53.
[200] Petroleum Waste Management) Regulations 2019.
[201] Ibid.
[202] Ibid.
[203] B. Wilfred 'The Polluter-Pays Principle Interpretation and Principles of Application' (Sproutingseriousness.files.wordpress.com) <https://sproutingseriousness.files.wordpress.com/2017/08/polluterpay-principle.pdf> accessed 3 March 2020.

level of the charges. This has to be done by trial and error, which can prove costly, both for the authorities and for the private sector, which is disturbed by successive adjustments.[204]

5.2. The Institutional Framework for Implementations of PPP in Uganda during the Oil and Gas Exploration and Production

The polluter pays principle has been implemented by various bodies in a bid to control pollution of the environment and ensure that the polluter bears the cost of the pollution. Thus this principle has been implemented by the following bodies in Uganda.

5.2.1. The Ministry of Energy and Mineral Development (MEMD)

The Ministry of Energy and Mineral Development (MEMD) is responsible for the Energy and Minerals sector in Uganda. This is the Ministry responsible for the management, regulation, and development of the Oil and Gas industry in Uganda. One of the main functions of the Ministry is to issue petroleum licenses to Oil and Gas companies to enable them to carry out Oil and Gas exploration and production in Uganda.[205]

These licenses are issued subject to fulfillment of the mandatory requirements as indicated in the Petroleum (Exploration, Development and Production) Act of 2013 for example the Oil and Gas Company applying for the license ought to have carried out a complete Environmental Impact Assessment (EIA).[206] This plan must be presented in accordance with other requirements in the Act to ensure that there is a plan to deal with the issues of environmental pollution and other related matters like waste disposal mechanism.

The Ministry through the National Oil and Gas Policy endorses the principle of "polluter pay in which it supports institutions for disaster preparedness and response mechanisms for any oil spills in the Albertine Grabens.[207] It further authorizes the government to design a mechanism of levying penalties for environmental pollution and/or degradation. This policy recognizes several potential causes of negative impacts on human health from oil and gas activities. This policy shall promote the setting up of best international practices for prevention and rapid emergency response mechanisms designed to mitigate against air and water pollution.

[204] Ibid.
[205] National Oil and Gas Policy 2008.
[206] Ibid.
[207] Ibid.

5.3. Authorities and Agencies

5.3.1. The National Environmental Management Authority (NEMA)

The National Environmental Management Authority is a tool for monitoring all activities that affect the environment in Uganda provided for in the National Environment Act (NEA).[208] This Act defines environmental monitoring to mean the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long term. The general objective of monitoring is to establish the status of the environment and to evaluate the impacts of various activities on the environment in general and natural resources in particular.[209]

This Authority has been the leading body of controlling pollution by the oil sector in Uganda through the principle of polluter pays. The authority set up environmental standards in the National Environment Act 2019, it also establishes the polluter liability,[210] who should apply for pollution license, and how the application can be made.[211] These guidelines are being followed by international oil companies. It further sets penalties to anyone who acts contrary to the established environmental standards.

5.3.2. Judiciary

The Judiciary is the body responsible for the administration of justice. It is indicated in the Constitution of the Republic of Uganda that judicial power is derived from the people and shall be exercised by the courts established under in the name of the people and conformity with the law and with the values, norms, and aspirations of the people.[212] The Judiciary is also responsible for bringing to justice those who are guilty of breaching the legal frameworks relating to regulating and abating pollution as discussed above. This is aimed at deterring people and oil and gas companies from violating these laws and regulations especially during the oil and gas exploration and production activities.

[208] National Environment Act, 2019.
[209] Ibid (n208).
[210] Ibid.
[211] Ibid.
[212] Article 126 (1) of the Constitution of Uganda 1995 as amended.

5.3.3. The Petroleum Authority of Uganda (PAU)

This is another implementer of the Polluter pays principle in Uganda. It is established under the Petroleum (Exploration, Development and Production Act, 2013.[213] The authority is put in place to regulate the different players in the sub-sector. One of the main functions is to monitor and regulate exploration, development and production; processing; transport and storage of petroleum; and gas processing in Uganda.[214] The authority is also enjoined to enforce compliance with health, safety, and environmental standards set out in the Act during the execution of petroleum activities. One way in which it regulates the polluter pays principle is by ensuring Health, Safety, and Environmental standards in oil and gas operations. It also ensures optimal levels of resource exploitation thus implementing the principle. It also has the mandate to provide information to the relevant authority for the collection of taxes and fees from petroleum activities.[215]

5.3.4. Uganda Revenue Authority (URA)

This Authority implements the principle through various ways some of which are; assisting in monitoring and assessing the impact of oil and gas revenues on the economy, participating in the formulation of tax measures to regulate the collection of the right revenues from oil and gas activities. While formulating the tax measures and revenue to be collected from the oil and gas companies, the authority puts regard to the environmental impacts of oil exploration and production, hence implementing the polluter pays principle.[216]

5.4. Conclusion

Uganda has developed many policy and legal frameworks to guide the oil and gas sector especially in regards to its resultant effects on the environment, but, none of them has been developed specifically to address the issue of the polluter pay principle as tax mechanism of the oil and gas companies with respect of taxing the polluting activities through market-based instruments. Uganda needs a tough legal system to address this gap and, it is thought that it would have been more efficient if there is a policy addressing taxation of environmental pollution as a result of oil and gas exploration across all sectors. This would be achieved by employing the various market mechanisms under the PPP with an absolute aim to abate

[213] Section 9 of the Act, 2013
[214] Section 10
[215] Ibid.
[216] Uganda Revenue Authority Act Cap, 196 Laws of Uganda.

pollution through the sale of pollution licences, tradeable permits, and subsidies and also increase income and revenue to the government of Uganda.

Uganda has also participated in international policy frameworks that have adopted the application of PPP as a tax mechanism particularly the application and adoption of the direct/ command mechanism, However, Uganda is a new player in the oil and gas sector and also given the fact that this is a new concept, the implementation is challenging. There is a need to domesticate the international best practices concerning taxation of Pollution using the PPP approach into the national legislation of Uganda.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.0. Introduction

Uganda is endowed with a wealth of natural resources that can be utilized to stair its economic development. The discovery of oil and gas deposits worth about 3.5 billion barrels and the subsequent start of the exploitation and exploration process in 2006 by the various licensed IOCs has created new hope for Uganda to achieve its vision 2040.

The oil industry in Uganda has reached the midstream stage which is a stage of development and production, storage, distribution, and marketing. It is now a stage of development of structures and facilities for commercial production. The oil and gas exploration and production process involve several activities which have implications for environmental law compliance. These activities include exploration surveying; exploration drilling; appraisal; development and production; transportation of oil and gas; storage and site decommissioning and rehabilitation. These activities can lead to degeneration of the environment through atmospheric/ air pollution; soil/ terrestrial pollution; degradation of the aquatic environment; human, socio-economic, and cultural impacts; ecological interferences and emergencies such as oil spills.

The above activities have to be properly managed under a well-designed and suited legal framework that respects and fully implements environmental law compliance. Uganda has series of international and national legal frameworks and policies in place to address these environmental issues, however central to the implementation is the issue of how taxes can be used as a mechanism to control the rate of pollution by the IOCs. The Polluter pays principle is one such approach that the researcher considered as a way of regulating the activities of the

IOCs. PPP is applied through the use of instruments such as command and control, Market based instruments, and soft law instruments.

Polluter pays principle is considered vital because the proper application and implementation of PPP would greatly influence the behavior of IOCs in the course of their exploitation, exploration, and production. The existing oil activities are important to progress towards development in Uganda. Oil is a resource that can create lasting value for the Ugandan people. However, if the resource is not properly managed it can bring a curse rather than a blessing.

In considering this approach, the study set out to evaluate and critique the application of PPP as a tax instrument in the oil and gas sector in Uganda. This Chapter covers the summary of findings, conclusions, and recommendations on the application of PPP as a tax instrument in the oil and gas sector in Uganda.

6.1. Main Findings

Uganda has been endowed with an abundance of oil and gas mineral resources. The discovery of oil in the Albertine Graben region brings with it an array of hope for change in the economic status of Uganda. This justifies the fact that the oil will have to be exploited to enhance development. The Albertine Graben is an area that has a lot of bio-diversity that ranges from fauna, flora, natural game parks, game reserves, rivers, and even human settlements within the said region. The exploitation and exploration of the oil and gas mineral cannot be achieved without the resultant effects such as pollution, vibrations, oil spills, waste disposal, and many others.

Oil and gas exploration is done through stages and this involves the upstream, midstream, and downstream stages. Each of these stages affects the environment. During the research, it was noted that the oil and gas industry in Uganda is at the mid-stream stage. This is the stage that encompasses the process of development and production, storage and distribution, and marketing. The exploitation affects both the environment and the human life of the people in the area as well as destabilizing the habitat for the animal species within the region. Research indicates that the waste disposal mechanism affects the water consumed by the community around the region as well as the shared Lake Albert which drains into the major river Nile.

It is, therefore, important that certain mechanism is put in place to ensure that the international oil companies engaged in the exploitation and exploration process are made to bear the cost of their activities on the environment for Uganda to benefit and achieve the sustainable development goals. This is enhanced by the possession of strong national and international legal instruments to champion the cause. It would also require the participation of strong institutions to implement the legal frameworks in place.

The PPP represents one of the approaches for regulating the activities that pollute the environment by the international Oil companies. The principle as stated in the OECD principle discussed above demands that a Polluter must bear the Cost of Pollution from its activities.

This principle has moved along a common but differentiated approach depending on the level of development of each country applying it.

PPP is implemented by using three basic instruments, firstly is the command and control instrument, this includes environmental binding standards, emission limit values and best practices available, it's a preventive or precautionary approach, it is based on the principles of an absolute obligation to comply with standards fixed by law at the national, regional or local level. The second instrument is the market-based approaches where instruments such as tradeable permits, eco-taxes, subsidies, payments, pollution charges, and liability rules are employed by the authorities on the polluter. It is aimed at regulating the behavior of the polluter. The third instrument is the voluntary approaches provided by soft law. All these instruments for the implementation of PPP have their drawbacks as discussed above

Uganda as a country has put in place various legal frameworks that seek to implement the PPP. An examination of the various legislation points to the fact that there is a focus on implementing it through the command and control instrument with a slight mixed of Market-based approach. Many of the legislation discussed above are premised on the preventive and precautionary aspect of regulating the pollution by the International Oil Companies. The legal framework and policies do not adequately address the application of PPP as an instrument that can be employed as an environmental tax in addressing the excess of the oil and gas Exploitation and exploration process. It does not also directly address PPP as one of the ways of promoting good practices in the management of the environment in a sustained manner.

It is also noted that the performance of the actors as regards the elements of pollution control and the implementation of the PPP has not been satisfactorily done. Although there have been studies conducted such as EIA, EIS for the Albertine Graben, and the formulation of the Environmental Sensitive Atlas for the Albertine Graben, there is still a lot of efforts to be put in place to ensure that the IOC's activities conform with the required standards. The failure or lack of compliance by the IOC is attributed to the government's slowness to enact specific regulations on pollution/emission tax to be imposed on the activities of the IOC during the exploitation and exploration process.

From the research, it can be pointed out that, although PPP advances a good notion that the polluter should bear the cost of pollution and not the society residing in the affected environment where such activity is taking place, it can also be noted that, PPP lacks a principle

of common solidarity supporting its implementation, instead of through its implementation, the polluters excludes others from the duty to pay for the pollution caused.

In other words, the polluter pays principle seems more oriented towards the restoration and compensation of damage to nature caused by the polluter. This means that, if we use the polluter pays principle as a guiding principle, then the conventional regulatory framework that works along the command and control structure is not the best instrument to be introduced for environmental protection in the oil and gas exploitation and exploration sector. On the contrary, the best way to implement the PPP is to use and introduce market-based instruments such as charges or fees, subsidies, tradeable permits, emission taxes and, above all, user charges on the polluter.

6.2. Conclusion

The control of the environment has transformed over the past decades and has also introduced new mechanisms such as environmental taxes also known as pollution taxes. The environment taxes forms part of the polluter pays principle which is often used as a tool to ensure that the polluter bears the cost of polluting activities being carried in a particular country. These taxes are implemented through the use of instruments like emission trading, pollution permits, and other economic instruments. The purpose of these instruments is to allow stringent environmental protection methods to be introduced at a low economic cost than the use of less flexible forms of conventional regulations that dictates pollution abatement technologies.

It is also established that although PPP as presented in the form of environmental taxes and other Market Instruments exhibit some efficiency and advantages, there are still areas that may require the more conventional regulatory approach of command and control.

The Research as shown that the regulatory framework for the implementation of PPP in the oil and gas sphere is relatively well established. The problem faced by Uganda is not, therefore, the lack of the law but rather the implementation and enforcement of the obtaining laws. It also shows that the provision of the legislation is conventional in nature and therefore aims at preventing the aspects of pollution.

The legal framework regarding the application of the PPP as tax instrument has largely been applied through the command and control approach, whereby regulations are followed as set by the host country, thus the IOC in Uganda have to a large extent not adhered to some of the practices as envisage in the national and international frameworks in regards to Pollution. This

is attributed to the lack of specialized human resources that can measure and regulate pollution during the Exploitation and exploration process. Further, because of the lack of specialized human resources, reliance is made on the IOC to provide data about the extent of pollution and how they are managing the waste disposal arising from the extractive industrial activities.

The regulatory framework does not adequately point to how other Market-based instruments that form a component of the PPP should be applied and yet this is the best tool that modifies and acts as an incentive to change the behavior of the IOC in regards to their activities in the Albertine Graben.

A further conclusion can also be drawn from the fact that PPP is a form of environmental tax that is regulatory in nature. Particularly, PPP serves a regulatory function such as curbing or preventing undesirable behavior of IOCs involved in the oil and gas extractive industry. This position is not devoid of criticism as its clear that taxation is not always the most efficient tool to give effect to a specific regulatory goal. Nonetheless, in some cases, regulatory taxation is indeed the most effective way to be implemented.

The fines prescribed are not deterrent enough to scare away polluters. Hence pollution is already recognizable in the Albertine Graben in the form of noise, bad smell, unrehabilitated abandoned wells, and the like which have negatively impacted the environmental status of then region. No company has up to date published a clear waste management plan. While the government confirms its commitment to transparency and accountability under the National Oil and Gas Policy (NOGP), these standards are not implemented in practice. To date, PSAs have not been made fully public despite campaigns by CSOs. Regulating oil and gas industry is further hampered by the failure of the existing laws to establish liability for damages due to pollution during the upstream and midstream stages of oil and gas production.

6.3. Recommendations

Based on the challenges identified in the national legal framework in the implementation of the PPP as a tax mechanism in the oil and gas sector of Uganda, the following recommendations are made to address the challenges.

6.3.1. Strengthen the Legal and Institutional Framework

Parliament should address the issues to deal with the implementation of laws relating to the taxation of pollution. The current legal system is more conventional in nature through the

command and control instrument. This is a preventive and precautionary application of the legislation relating to the implementation of the PPP. For example, the NEA and PEDP Act all create offences and penalties to be paid by the polluter in an event of pollution, NEA puts the fines at Five Thousand Currency Points.

Further, a look at section 81 of NEA grants authority to a holder of a pollution Licence to pollute to the extent that he/she can compensate the victim of the pollution. This in itself amounts to granting a leeway to pollute because one can compensate the victim of pollution. It does not reflect the true extent of certain types of pollution associated with the exploitation and exploration of oil and gas. Vibrations have caused an adverse effect on the ecological set up of certain animal species around the Albertine Graben. This may not be easily compensable as stated under the act. Parliament should instead adopt and incorporate in its laws a mixture of command and control tools as stipulated in the legislative framework with the use of market-based instruments such as subsidies, emission tradable permits, and many others that are aimed at regulating the behavior of polluters. This also makes it an urgent requirement for the government of Uganda to take a more realistic and coherent approach in the taxation of the pollution resulting from oil and gas explorations in the country and to particularly pay attention to the relationship between the revenue generated by the country through the oil and gas exploration and the environment issues that crop up as a result of such activities.

Bearing this in mind, even if the PPP takes the form of a charge or a fee, the latter should be implemented as incentive charges or fees aimed at altering behaviour, not at raising revenues. The government should be encouraged to incorporate fees and charges as components of PPP and this should take into account the full internalization of the pollution cost. It can also be implemented in a way that covers all social values, also including environmental costs, and they can provide an incentive for polluters to change their behavior.

Currently, Uganda's leading environmental laws lay study foundations for environmental protection, yet on the ground implementation is dismal, and enforcement of conservation procedures are largely glanced over by powerful, wealthy stakeholders. The researcher calls upon NEMA, in collaboration with oil companies and waste management facilitators, to increase its level of enforcement concerning environmental laws and to make sure all laws and policies are adhered to. This should be done by heavily implementing environmental conservation methods into the training of all oil employees, and increasing NEMA and the

Petroleum Authority's presence in the region. Regional environmental officers should also work to increase the implementations of laws in the region.

It is also imperative that the legal framework should be in a position to provide public disclosure of contracts and other related assessments or documents like EIAs, EIS, and many others. The Ministry of Energy and Mineral resources should ensure that the public is made aware of the contents of such documents in respect of petroleum activities taking place at the Albertine Graben especially concerning its results on trade, investment, pollution, and other related environmental risks. In as much as section 47 (3) of the PEDP Act, 2013 provides for an assessment of exploration sites for issuance of a new licence, the law is silent on such similar assessment in other stages of exploitation and exploration for the interested stakeholders to express their views and concerns. Further, section 47(6) provides avenues for the affected community to voice their concerns on new areas of exploration, however, under the same section, their fate is left in the hands of the Minister who may disregard their comments on the same. There is a need to share all information at all levels to avoid mistrust and suspicion between the people affected by the oil and gas activity and the government. It also provides reassurance and creates a sense of accountability to the people.

Further, to effectively use PPP as a tax mechanism for protection of the environment against activities of the oil companies, there is a need for transparency to respect the principles of sustainable development and standard minimum goals that have to be achieved. Short of that, the country runs a risk of trying to settle on a proper price to the right to pollute. The solution to this problem, therefore, is the need to develop a common framework for defining environmental taxes and this can be achieved by analyzing the definition given by OECD of both environmental taxes and environmental related taxes. Parliament should also put in place a specialized form of legislation that takes care of the implementation of taxation of pollution originating from the Oil and gas exploitation and exploration process in Uganda.

6.3.2. Funding the Agencies

The instruments for implementation of the PPP under the legal frameworks all require a mechanism for administration and enforcement. These mechanisms cannot operate without cost implications. The relative cost of these arrangements should be taken into account when choosing between the instruments. For example, pollution tax may require counting tons of emissions from the IOC operators in the Albertine Graben, whereas a conventional approach

would only require authorities to confirm whether a licensee has complied with the conditions in the licence.

Uganda being a new player in the oil and gas exploitation and exploration process is faced with a lot of challenges ranging from financial constrained to lack of specialized human resources to tackle the issues of carbon emission and other related pollution elements arising from the oil and gas activities. Reliance is therefore on the IOC experts to give data relating to pollution extent. Thus to achieve meaningful implementation of PPP through the relevant instruments discussed, there is a need for adequate funding in the various sectors like NEMA, PAU, URA and many others involved in the oil and gas processes in Uganda so that they can properly implement the PPP without corruption and or bribery.

There is a need for the establishment of an insurance policy. To make sure an oil company pays for its pollution, money should be deposited as insurance against the worst-case environmental scenarios. Some environmental tragedies could cause the companies to go bankrupt meaning they cannot cover the full environmental cleanup costs.

There is a need for financial facilitation in the areas of enforcing the policy and legal framework, capacity building at the national and local levels, preparing and updating a national communication. To achieve this, pollution tax through the PPP market-based

instrument has to be given priority by government and donor funding in the area of environmental tax should be increased.

6.3.3. Civil Society Participation

Civil society organizations and the Government of Uganda have a shared interest in ensuring that oil exploitation activities are undertaken in a manner that is consistent with national policy, legislation, and promoting sustainable and equitable development in Uganda. It is also in the best interest of the civil society and the government of Uganda that natural resource exploitation is done bearing in mind the need to have a clean and healthy environment for the future generation. Hence there is a need to shift from the politicization of the oil and gas exploitation and exploration to strengthening CSOs and supporting their works. Where there a criticism by a CSO the government should feel advised rather than insulted, and the recommendations should be implemented.

Further, members of the civil society should be made aware of what to do in case of an oil spill (i.e. what methods to take, and what tools to use) and how the government and IOCs intend to compensate victims of pollution under PPP. Adequate oil spill contingency equipment should be made available at all drill sites by oil companies, and all workers should be educated as to how and when to use such equipment. The participation of civil society in designing an elaborate policy for taxation of pollution and quantum of compensation would greatly influence the actions of the IOCs during the extraction processes.

REFERENCES

BOOKS

Alan Bryman, Social Research Methods, 4th Edition, (Oxford University Press 2014).

Babbie, Earl R, 'The Practice of Social Research (Cengage Learning, 2009).

Barbara Luppia, Francesco Parisi, ShrutiRajagopalan: The Rise and fall of the Polluter-pays Principle in Developing Countries. International Review of Law and Economics 32 (2012) 135 – 144.

Beckerman w, 'THE POLLUTER-PAYS PRINCIPLE INTERPRETATION AND PRINCIPLES OF APPLICATION' (Sproutingseriousness.files.wordpress.com) <https://sproutingseriousness.files.wordpress.com/2017/08/polluter-pay principle.pdf> accessed 3 March 2020

Cohen, L., Mainion, L. & Morrison, K, 'Research Methods in Education' (Routledge, 2007)

Ian Brownlie: Principles of Public International Law (7th ed. Oxford University Press, 2008) p. 279.Also See, Convention on the Transboundary Effects of Industrial Accidents, 1992.

John Kuada; Research Methodology. A project guide for University students, Narayana Press (Denmark) 1st edition 2012.

Marie-Louise Larsson: The Law of Environmental Damage, Liability and Reparation (Kluwer Law International 1999).

Mouton, J & Marais, H.C, 'Basic concepts in the methodology of the social sciences. (HSRC, 1998). Cape Town.

Mouton, J, 'How to succeed in your Masters and Doctoral studies. Pretoria, (Van Schaik Publishers, 2006).

Mugenda, O.M. and Mugenda, A.G, 'Research Methods Quantitative and Qualitative Approaches; Nairobi. (Acts Press, 1999)

JOURNAL ARTICLES AND ARTICLES

Dottorato di Ricerca; Environmental Taxation: A Legal Perspective. https://eprints.luiss.it/1291/1/20140217-pitrone.pdf.

EdaGrüner, KerstiSalu, KaiaOras Environmental Taxes Economic Instruments for Environmental Protection. https://www.stat.ee/dokumendid/37734 accessed on 19/07/2019.

Elvis I. Gino, "An Analysis of the Polluter Pays Principle in Nigeria (2017) Ajayi Crowther University Journal.

Emil M. Sunley, Thomas Baunsgaard and Dominique Simard Revenue from the Oil and Gas Sector: Issues and Country Experience: Post-conference draft: June 8, 2002.

Emmanuel B. Amponsah; John A. Enahoro; Abdallah Ali-Nakyea; Issues of Taxation in the Oil and Gas Sector in Selected Countries: Lessons for Ghana International Business and Management Vol. 5, No. 2, 2012, pp. 167-174

Ericson, Kristina, "A Crude Awakening: The Relationship Between Petroleum Exploration and Environmental Conservation in Western Uganda" (2014). Independent Study Project (ISP) Collection. 1924. https://digitalcollections.sit.edu/isp_collection/1924

Kasimbazi E, Legal and Environmental Dimensions of Oil and Gas Exploration and Production in Uganda (2009).

Kasimbazi, Emmanuel B. "Environmental regulation of oil and gas exploration and production in Uganda." Journal of Energy & Natural Resources Law 30.2 (2012): 185-221.

Kaweesi. E, "Environmental Law Compliance and its implications for oil and gas Exploration and Production in Uganda" 2014.

Environmental Taxation; A Guide for Policy Makers; http://www.oecd.org/env/tools-evaluation/48164926.pdf.

Ilona Millar; The Environmental Law Framework for Sustainable Development: Principles of Sustainable Development in International, National and Local Laws.

Jude O. Ezzeanokwasa; Polluter-pays Principle and the Regulation of Environmental Pollution in Nigeria: major changes. Journal of Law, Policy and Globalization Vol. 70, 2018 pages 45-53.

Lawrence H. Goulder; nber working paper series environmental taxation and the "double dividend:" a reader's guide working paper no. 4896 National Bureau of Economic Research October 1994.

M. Maere (2016): Briefing Pathways in Parish agreement for ending Fossil Fuel Subsidies Munir M, 'Implementation of The Polluter Pays Principle: Economic Approaches to Pollution' [2014] SSRN Electronic Journal National Oil and Gas Policy for Uganda: Ministry of Energy and Mineral Development February, 2008.

Nash, Jonathan Remy. "Too much market? Conflict between tradable pollution allowances and the polluter pays principle." Harvard Environmental Law Review 24 (2000): 1–59.

OECD. The Polluter Pays Principle: Definition, Analysis, Implementation. Paris: OECD, 1975.

OECD. The Polluter-Pays Principle: OECD Analyses and Recommendations. Paris: OECD, 1992.

Ojijo Pascal; The Legal Regime for Protection of Environmental During Oil and Gas Exploration: Case Study of Uganda.

Our common feature, Chapter 2: Towards sustainable development; a report of the world commission on Environment and Development. http://un-documents.net/ocf-02.htm.

Pitrone F, 'ENVIRONMENTAL TAXATION: A LEGAL PERSPECTIVE' (PhD, Luiss Guido Carli University 2014)

Report of the World Commission on Environment and Development: Our Common Future: Chapter 2: http://www.un-documents.net/our-common-future.pdf.

Rosiek, Janusz (2016): Determinants of the EU sustainable development policy effectiveness: DEA approach, Economic and Environmental Studies (E&ES), ISSN 2081-8319, Opole University, Faculty of Economics, Opole, Vol. 16, Iss. 4, pp. 551-576

The Hon. Justice Brian J PRESTON Sustainable Development Law in the Courts: The Polluter Pays Principle. The 16th Commonwealth Law Conference, Hong Kong, 7 April 2009.http://www.lec.justice.nsw.gov.au/Documents/prestonaccessedon 20/07/2019.

The Impact of Environmental Tax Policy on Sustainable Development of the eu economies. Dea approach: JanuszRosiekhttp://www.asecu.gr/files/11th_conf_files/18.pdf.

The Oil and Gas Sector Revenue Sharing Tuesday, October 11, 2011. http://www.endofcrudeoil.com/2011/10/oil-and-gas-sector-revenue-sharing.html accessed on 26/12/2019.

Tumusiime F and Banfield J, 2011: Oil and Gas Laws in Uganda: A legislators Guide, Oil Discussion Paper No. 1 (International Alert 2011).

GOVERNMENT PUBLICATION

National Oil and Gas Policy, 2008.

The Water Policy 1999.