FISCAL REGIME: EVALUATING THE ADEQUACY OF LEGAL FRAMEWORKS FOR SUSTAINABLE DEVELOPMENT OF UGANDA'S PETROLEUM SECTOR

JOANITTA NAMAYEGA BOGERE

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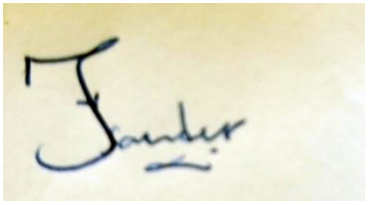
JULY 2025

DECLARATION

I, Joanitta Namayega Bogere do hereby declare that this research is my original work, is not plagiarized and has never been submitted to any other institution of higher learning for fulfillment of any academic award.

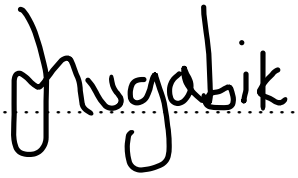


Joanitta Namayega Bogere

July 2025

APPROVAL

This is to certify that this research titled: **'Fiscal Regime: Evaluating the Adequacy of Legal Frameworks for Sustainable Development of Uganda's Petroleum Sector'** was done under my supervision and is now ready for submission.

Signature  ……..

Mr. Ivan Mugabi
Academic Supervisor
05th /July /2025

DEDICATION

For Elohim, FMB and ENB…

I could never have done this without you.

Thank you!

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ACRONYMS AND KEY TERMS

	TERM	DEFINITION
1.	Authority/ PAU	The Petroleum Authority of Uganda[1]
2.	BOE	Barrel of Oil Equivalent[2]
3.	Contract Area	An area described in the Model PSA, a part or whole of which subsequently becomes the subject of a Petroleum Exploration License and/or a Petroleum Production License or Licenses[3]
4.	CNOOC	China National Offshore Oil Corporation Uganda Limited, the Operator of Kingfisher
5.	EACOP	An infrastructure Project whose objective is the construction and operation of the East African Crude Oil Pipeline. The pipeline is to be the longest electrically heated crude oil pipeline in the world running '1,443km from Kabaale, Hoima district in landlocked Uganda to the Chongoleani Peninsula near Tanga Port in Tanzania.'[4] Thie Project is held by a consortium between Total, CNOOC, UNOC and the Tanzania Petroleum Development Corporation (TPDC) in shares of 62%, 8%, 15% and 15% respectively.[5]
6.	Development	'The planning, placement, construction and installation of facilities needed for production of petroleum'[6]
7.	Economic Instruments	'Fiscal and other economic incentives and disincentives to incorporate environmental costs and benefits into the

[1] section 2 (1) Upstream Act
[2] Open Oil, 'Oil Contracts: How to read and understand them,' Open Oil book sprint team, 2012, p.4
[3] Ibid
[4] EACOP – East African Oil Pipeline – Unlocking East Africa's Potential
[5] Ibid
[6] section 2(1) Upstream Act

		budgets of households and enterprises[7]
8.	Environment	'The physical factors of the surroundings of human beings, including: land, water, air, atmosphere, climate, sound, odor and taste; the biological factors of animals and plants; and the social factors of aesthetics, health, safety and wellbeing of people, including human interaction with both the natural and the built environment'[8]
9.	Exploration	The undertaking of activities, whether on land or water, for the purpose of discovering petroleum and includes geological, geophysical and geo chemical surveys, and drilling of wells for the purpose of making a discovery and its appraisal[9]
10	Fiscal	Relating to accounts or the management of revenue[10]
11	Fiscal regime	'The set of tools that determine how the revenues from oil and mining projects are shared between the government and companies'[11]
12	GDP	Gross Domestic Product
13	SDG[12] 9	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation[13]
14	SDG 10	Reduce inequality within and among countries[14]

[7] J Pearsall, P Hanks, C Soanes & A Stevenson, 'Oxford Dictionary of English,' Oxford University Press eBooks, 2020
[8] section 2 NEA
[9] section 2 (1) Upstream Act
[10] B. A Garner, 'Black's Law Dictionary,' 10th Edition, 2014
[11] Natural Resource Governance Institute, 'Fiscal Regime Design,' NRGI Reader, 2015, p.1
[12] The term 'SDG' is widely regarded as the acronym for each of the UN's 17 'Sustainable Development Goals.' Usually, it is followed by a number that indicates a particular Goal's position on the list of 17, under the 2030 agenda for Sustainable Development.
[13] World Commission on Environment and Development, 'Our common future: report of the World Commission on Environment and Development,' Oxford University Press, 1987
[14] Ibid

15	GOU	Government of Uganda
16	Host Country	A country in which Petroleum resources are situate
17	HSE	Health, Safety and Environment
18	ITA	Income Tax Act Cap 340 of 2000 (as amended)
19	IOC/ International Oil Company	A private sector oil company with operations in many countries.[15] In this study, this term is sometimes used interchangeably with 'oil company.'
20	JV/ Joint Venture	A vehicle by which two or more companies agree to share profit, loss and control of a Project[16]
21	KFDA	Kingfisher Development Area, a Contract Area located in Uganda's Kikuube district
22	Kingfisher	A Petroleum Project operated by CNOOC on behalf of a consortium between CNOOC, Total and UNOC.[17] The Consortium holds the License over the KFDA
23	License	A license issued by the Minister for example under section 2(1) of the Upstream Act
24	Licensee	A person to whom a License is granted for example the Consortium between Total, CNOOC and UNOC[18]
25	MEMD	Ministry of Energy and Mineral Development of the Republic of Uganda
26	Minister	The Minister in charge of MEMD
27	NEA	The National Environment Act Cap 5 of 2019
28	NEMA	The National Environment Management Authority

[15] Open Oil, supra, p.210
[16] Ibid
[17] In the case of Kingfisher, CNOOC, Total and UNOC hold stakes of 28.33%, 56.67% and 15% respectively
[18] International Energy Agency, 'Energy Policy Review Report for Uganda,' Paris, 2023

29	NOGP	The National Oil and Gas Policy for Uganda 2008
30	Operator of a Project	This is the company responsible for day-to-day operations of the Project. The term is to be juxtaposed with 'non-operators' which are the companies with a financial stake but which are not directly involved in operations for that specific Project. In Tilenga's case, Total is the Operator while the other Consortium parties namely UNOC and CNOOC are non-operators
31	Petroleum	Crude oil, natural gas and any derivatives produced through refining.[19]
32	Project	A long-term Petroleum venture which is the subject of a Petroleum Production or Petroleum Exploration License
33	Project Finance	The financing of the development or exploitation of a right, natural resource or other asset where the bulk of the financing is to be provided by way of debt and is to be repaid principally out of the assets being financed and their revenues[20]
34	Production	All activities relating to recovering oil and gas from a reservoir and preparing it for evacuation from the field area[21]
35	PSA	Model Production Sharing Agreement for [Petroleum Exploration, Development and Production] Or [Petroleum Development and Production] in The Republic of Uganda

[19] Open Oil, supra, p.214
[20] Denton Wilde Sapte, 'A Guide to Project Finance,' August 2018, p.1
[21] section 2 (1) Upstream Act

		by and between the Government of the Republic of Uganda and Company X[22]
36	PFMA	Public Finance Management Act Cap 3 of 2015
37	Regulations	The Petroleum (Exploration, Development and Production) Regulations, 2016
38	SD/ Sustainable Development	The 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'[23]
39	SDGs, Sustainable Development Goals or SDG Agenda	A Vision 2030 agenda encompassing 17 comprehensive global objectives that the UN is looking to, to address global sociopolitical economic challenges[24]
40	SPV/ Special Purpose Vehicle	A company established to carry on only one particular activity [25]
41	Tier 1 Contractors	Contractors that supply goods or services directly to Licensees. Their contractors are referred to as Tier 2 Contractors, the Contractors of those being Tier 3 Contractors and so on.
42	TDA	Tilenga Development Area, a Contract Area situated in Uganda's districts of Nwoya and Buliisa[26]
43	Tilenga	A Petroleum Project operated by Total on behalf of a consortium between Total, CNOOC and UNOC. [27] The Consortium holds a License over the TDA[28]

[22] The GOU has made its Model PSA publicly available and it can be accessed at https://www.unoc.co.ug. It is the template which said government adapts for specific Licensees and Projects. At the moment, the actual tailored agreements for Tilenga, Kingfisher and even EACOP are not publicly available.
[23] World Commission on Environment and Development, supra, p.2
[24] United Nations, 'Transforming our World, The 2030 Agenda for Sustainable Development,' 2015
[25] Graham D. Vinter & Gareth Price 'Project Finance: A Legal Guide,' Sweet & Maxwell 2006, p. xxix
[26] Ibid
[27] In the case of Tilenga, Total, CNOOC and UNOC hold stakes of 56.67%, 28.33% and 15% respectively
[28] The Independent, 'Total signs USD 2 Billion deal for Tilenga project,' June 2021

44	Total	Total E & P Uganda Limited, the Operator of Tilenga
45	UN	United Nations
46	UNOC/ Uganda National Oil Company	An incorporated state entity set up by section 42 (1) of the Upstream Act 'to manage Uganda's commercial aspects of petroleum activities and the participating interests of the State in the petroleum agreements.'
47	URA	Uganda Revenue Authority
48	Upstream Act	The Petroleum (Exploration, Development and Production) Act Cap 3 of 2013

FIGURES

ABSTRACT

This study assesses the capacity of Uganda's Fiscal Regime to foster the Sustainable Development of the country's Petroleum sector. First, it evaluates the instruments that the country has elected to utilise in the collection of Petroleum revenues and then discusses how these instruments have been designed to support the government's environmental sustainability agenda. The study focuses on form and function, much more than a particular discussion of the letter of the laws in question. Highlights of the approaches taken by select petroleum producing nations are adopted by way of comparative analysis of the developments that are present in the global community, the sociopolitical and economic factors at play in selecting approaches and how Uganda has structured its own for Sustainable Development in the sector.

CHAPTER ONE

1.1 General Introduction

Like all finite resources, the race to petroleum depletion is one that is fraught with obligations on the part of government to put in place laws, measures and systems that harness petroleum for generational equity or what Hunter refers to as 'enduring social and economic benefits for the State and its community.'[29] It is an obligation that corroborates Thomas Malthusian's theory[30] over two hundred years after the latter's postulation.[31]

In developmental terms, it basically reduces the discovery of commercially viable Petroleum deposits in any nation to an invitation for said nation to transform not only its economy but also the lives of its people and their habitat. This study is an effort to interrogate the extent to which Uganda has risen to this call, particularly in regard to the capacity of its legal frameworks to collect as much Petroleum revenue as possible while harnessing collection and other instruments for environmental protection gains in the sector.

The tone of its fourth chapter is in many ways targeted to an audience of ordinary Ugandans with no legal background, the expectation being that such citizen will, upon reading that segment, understand what Fiscal tools are and how his or her country is using them to collect Petroleum revenues and protect the environment.

The study is structured around two key legislative issues: Uganda's Fiscal Regime (section 4.1); and Environmental Protection (section 4.2) specifically, the relationship between the Fiscal Regime and environmental protection. The study reviews both law and policy in these areas with a focus on form and function, more than a particular discussion of the letter of the laws in question. Highlights of the approaches taken by select petroleum producing nations are adopted

[29] Tina Hunter, 'Sustainable Socioeconomic Extraction of Australian Offshore Petroleum Resources through Legal Regulation: Is It Possible?' Journal of Energy & Natural Resources Law 209, 2011

[30] According to Thomas Robert Malthus, population grows exponentially while resources grow at a slower, more arithmetic rate. Following that dynamic, population soon outflanks available resources, leaving the former incapable of meeting its growing needs.

[31] J Coomer 'Quest for a sustainable society,' Oxford: Pergamon, 1979

by way of comparative analysis of the developments that are present in the global community, the socio political and economic factors at play in selecting approaches and how Uganda has structured its laws for sustainable development in the sector.

1.2. Background to the Study

The global call for Sustainable Development is arguably the most definitive issue of our time. It is a concept which the Brundtland Commission report of 1987 defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[32]

Since that acclaimed articulation,[33] the concept has taken center stage as evidenced by its adoption by the Rio Declaration in 1992[34] and the UN General Assembly's SDG Agenda.[35] Under said Agenda, there are 17 comprehensive global objectives that the UN is looking to, to address global sociopolitical economic challenges.[36] All this goes to prove that Sustainable Development is at the epicenter of all global, regional and national debates whether they be environmental, social, political or economic.

Uganda's nascent Petroleum industry which is expected to produce first oil[37] in 2026[38] or 2027[39] holds significant potential for both economic transformation and social-economic challenges.[40] Like all players in the global Petroleum market, the country has and will continue to be evaluated on how well it navigates this dilemma in accordance with the dictates of Sustainable development.

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[32] World Commission on Environment and Development, supra p.14
[33] Ibid, p.2
[34] United Nations, 'Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development,' A/CONF.151/26 Vol. I, 1992
[35] United Nations, 'Transforming our World, The 2030 Agenda for Sustainable Development,' A/RES/70/1, 2015
[36] Ibid
[37] Uganda's initial expectation of first oil was 2025 as reported by AFP, 'Uganda launches first oil drilling programme,' Daily Monitor, 2023
[38] NTV, 'Government confirms 62% completion of oil pipeline, first oil expected in 2026,' 2025
[39] Uganda Broadcasting Corporation, 'Uganda Changes commercial oil production timeline from 2025 - attributes it to a mix of challenges,' 2025
[40] Ministry of Energy and Mineral Development, 'National Oil and Gas Policy for Uganda,' 2018

Central to this debate is the analysis of the legal frameworks around the Fiscal Regime Uganda has elected to utilise, particularly in terms of their capacity to secure a present and 'future of prosperity and peace for people and planet.[41]' This analysis is informed by the fact that Fiscal Regimes determine the pace and scale at which Petroleum revenues will be collected and managed. That said, the study will hone in on both the frameworks around Fiscal Regimes and the legislations that support that framework. It is by those laws that the GOU hopes to develop its Petroleum resources from Tilenga, Kingfisher, EACOP and future projects, in a manner that benefits both current and future generations of Ugandans.[42] A host of non-sector specific legislation and policies will also come into play in supporting government achieve this possible, but arguably ambitious goal.

1.3. Statement of the Problem

When a country discovers a resource on its soil, the initial drive by regulators is to legislate against misappropriation of the resource and its revenues as well as degradation of the environment, typically through what is referred to as 'command and control' regulation.[43] Becker defined it as a top – down mechanism of regulation in which governments prescribe standards, rules and prohibitions within which actors must conduct themselves within a particular industry.[44] Certainly, the mechanism's objective is consistent with the global Sustainable Development agenda and its indicators.[45]

That being said, a more efficient and complementary alternative, which kills two birds with one stone, is now available to regulators. The 'command and control' prohibitions, although foundational are in fact insufficient, both in terms of harnessing petroleum for generational equity but also ensuring environmental compliance in and outside Contract Areas,[46] both of which are cornerstones of the SDG agenda.[47] Studies have shown that governments that employ market-based approaches register more gains in respect to environmental compliance and social

[41] United Nations 2015, supra, p.2
[42] Ministry of Energy and Mineral Development, supra, p. 4
[43] R Baldwin et al, 'Understanding regulation: theory, strategy, and practice,' 1999
[44] G. S. Becker, 'Crime and Punishment: An Economic Approach,' Journal of Political Science, 1968
[45] After all, the United Nations General Assembly's 2030 Agenda for Sustainable Development Goals seeks, inter alia, to drive national progress toward securing a present and 'future of prosperity and peace for people and planet.'
[46] R Baldwin et al, supra, p.17
[47] SDG 9 for example calls for nations to reduce inequality within and among themselves

– economic equity within their communities.[48] The present study makes an attempt to evaluate whether and if so how the government of Uganda has risen to this call.

In particular, the study interrogates the Economic instruments that the state has put in place to reinforce ordinary 'command and control' measures of Petroleum revenue management and environmental protection. It analyses how well the GOUs approach has complied with both International best practices and the overall objective of Economic Instruments, to drive sector players towards voluntary compliance.[49]

1.4. Purpose and objectives

The purpose of this study is to evaluate the extent to which Uganda's Fiscal Regime has been structured for both generational equity and environmental protection.

These are its objectives:

To examine existing instruments that Uganda has elected to utilise in the collection of Petroleum revenues, both in terms of form and function.

To discuss how effectively these instruments have been designed to support the government's environmental sustainability agenda.

That an ordinary Ugandan with no legal background, will understand what Fiscal tools are and

how his or her country is using them to manage Petroleum resources and protect the Environment.

To offer recommendations for policy and legal reforms that ensure that Uganda's Fiscal Regime contributes to an effective Petroleum revenue management system for the sector.

[48] Bahati KW & Beyeza, B Getting a Good Deal? An analysis of Uganda's Fiscal Oil Regime (2018) CRPD Working Paper No. 64, p.17

[49] J Pearsall et al, supra

1.5. Research Questions

How has Uganda structured its Fiscal Regime, to collect Petroleum revenues for generational equity?

To what extent have these measures been harnessed to achieve legislative gains for environmental protection?

1.6. Scope of the study

This study assesses the capacity of Uganda's Fiscal Regime to foster sustainable development in the country's Petroleum sector. In that regard, it focuses on form and function, much more than a particular discussion of the letter of the laws in question.

1.7. Justification of the study

Whereas Sustainable Development has long been accepted as both a touchstone and a primary driver of true progress, it is one that remains largely open to interpretation by anyone and everyone. In the context of this particular study, the absence of definitive criteria for measuring Sustainable Development targets and indicators is especially critical for Fiscal Regimes considering both their contribution towards building generational equity; and how that informs the reduction of inequalities.[50] The absence creates a collective responsibility of academia and researchers to continue to review, analyse and investigate both law and policy in order to keep their governments, stakeholders and Industry players accountable.

1.8. Significance

This research hopes to make a modest contribution towards developments in the sector by, among others, offering recommendations for allowing the GOU to deliver on its commitment to 'ensure that all the revenue components due to it are paid, regardless of whether they are tax or non-tax based.'[51]

[50] This SDG 10 in action
[51] Ministry of Energy and Mineral Development, supra, p.1

1.9. Theoretical Framework

This study is premised on one theory and a framework:

Sustainability Framework

This framework posits that long-term well-being is a construct of three interconnected dimensions: social, economic and environmental.[52] In simple terms, the three are so indelibly bound that one cannot impact the environment for example without triggering the other two dimensions. Figure 1 below illustrates this framework:[53]

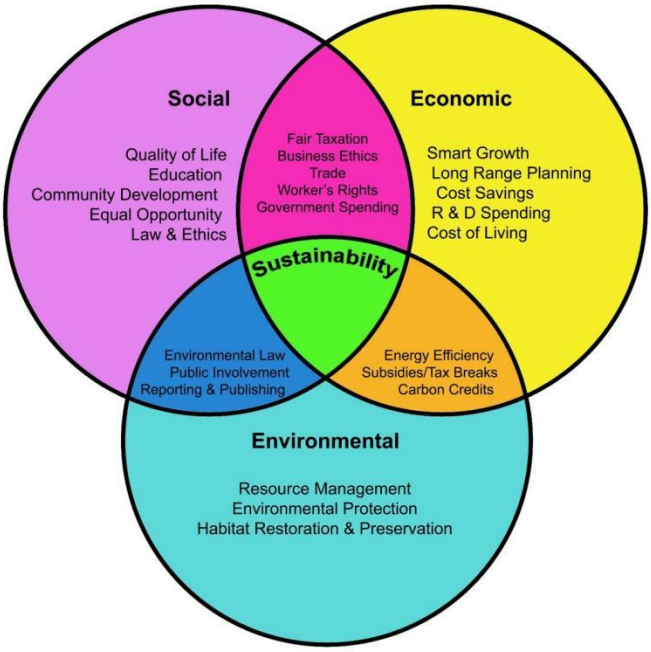

Figure 1

In the energy industry, this dynamic is even more pronounced.[54] This is not only because energy is central to basic human livelihood but also because its access impacts global economic growth, development and geo politics.[55] It is not uncommon for energy projects to be as valuable as the Gross Domestic Product of entire nations[56] and neither is it uncommon for political, socio

[52] G.S Becker, supra, p.15
[53] Ibid
[54] F. Semra et al., 'Energy ethics: a decision-making perspective,' Sakarya Üniversitesi İşletme Enstitüsü Dergisi, Cilt 3,' 2021
[55] KW Bahati & B Beyeza, 'Getting a Good Deal? An analysis of Uganda's Fiscal Oil Regime,' 2018 CRPD Working Paper No. 64.
[56] Consider for instance, that Malawi's GDP is US$ 13, 164.67M and that Uganda's Tilenga in Buliisa is worth US$ 10,000M

economic or other changes in oil producing nations to affect continents and even the world.[57] The sheer scale of influence at play has necessitated that society hold businesses dealing in the sector, to a high standard of care – requiring that they do business in a manner that protects the Environment and the societies in which they operate. After all, to whom much is given, much is expected!

The Deterrence Theory

Coined primarily from Becker, the deterrence theory postulates that the threat or imposition of formal punishment that is swift, severe and certain will inevitably dissuade would be offenders from committing crimes or other infractions.[58] The paradigm is illustrated by Figure 2 below:[59]

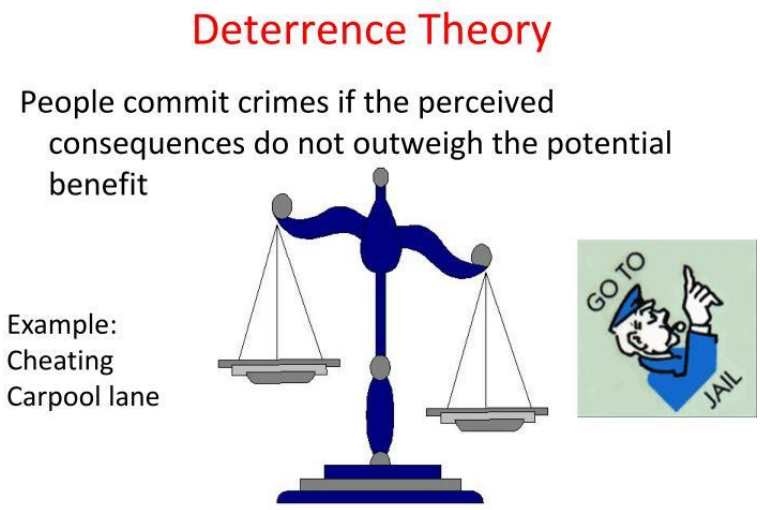

Figure 2

In the Energy Industry, the penalties are substantially higher than other sectors simply because the stakes are also higher. The scale of investment required to undertake exploration and production of Petroleum, not to mention Development, is in many ways unprecedented. Petroleum industry statistics have seen Project Financing deals in the Americas, EMEA,[60] and

[57] C Pascual, 'The New Geopolitics of Energy,' Columbia University Journal, 2015
[58] G.S Becker, supra, p.15
[59] R Baldwin et al, supra, p.17
[60] Europe, the Middle East and Africa

the Asia Pacific reach US$ 11,439.30 million, US$ 8,327.90 million and US$ 6,604.40 respectively, for a single period of review.[61]

For this reason, there is a heavy reliance on deterrence mechanisms in this industry, even in Uganda's Kingfisher and Tilenga which are yet to start production or EACOP which is presently at about 62 % completion.[62] For example, BTS Clearing and Forwarding Limited reports that it ferried the US$ 8 million COSL[63] drilling rig for the KFDA under a US$ 100,000 penalty clause – for every day of default.[64] The approaches taken by players and governments in this industry are indicative of the high reliance on command-and-control measures to secure compliance both in terms of revenue collection and under other criterion of performance.

[61] Stefano Gatti, 'Project Finance in Theory and Practice: Designing, Structuring and Financing Private and Public Projects,' Elsevier, 2013, p.37
[62] NTV, 'Government confirms 62% completion of oil pipeline, first oil expected in 2026,' 2025
[63] China Oilfield Services Limited is one of the Tier 1 Contractors on Kingfisher
[64] CNOOC Uganda, 'Statement on Kingfisher Oilfield Drilling RIG shipment,' Press release, July 2022

CHAPTER TWO

LITERATURE REVIEW

2.1. Introduction

The purpose of this review is to offer insights into the manner in which existing literature has settled issues around Uganda's Fiscal Regime and how Uganda has structured its systems, policies and tools for Sustainable Development of the sector. The study will review about 9 publications on the subject, and analyse what findings they make in this regard. It will provide an overview of the themes and trends identified as well as a discussion of those findings and their limitations.

2.2. Overview of existing literature

Existing literature on this subject has made the case for sustainability as a sound and necessary decision support tool for businesses in the energy industry.[65] It has posited that standards, values and principles 'such as autonomy, justice, not harming others, responsibility to contribute to the welfare of others, honoring commitments' should influence the decisions made by Energy businesses.[66] Among the arenas believed to benefit from this approach are: environmental protection; climate change and carbon foot print; social responsibility and license; transparency and accountability; transitions and renewable energy investment; regulatory compliance; stakeholder involvement and participation; as well as employee safety and treatment.

In all arenas, it is agreed that Petroleum Projects are decidedly capital intensive and as a result, highly risky[67]. Case in point is Tullow Oil's infamous capital gains dispute with the Government of Uganda.[68] The dispute arose from a $407 million assessment that URA made in the matter of Tullow's 2012 farm down of its Contract Areas to CNOOC and Total.[69] After a rather protracted

[65] BK Sovacool et al., 'Energy Decisions Reframed as Justice and Ethical Concerns,' 1 Nature Energy, 2016
[66] F. Semra et al., supra, p.17
[67] Stefano Gatti, supra, p.13
[68] Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Republic of Uganda, ICSID Case No. ARB/13/25
[69] 2012 saw Tullow acquire the assets of Heritage in blocks 1, 2 and 3A in the Lake Albert Rift Basin and farm down two thirds of said interests to Total and CNOOC. The residual interest was also subsequently sold to Total.

battle[70] over the quantum assessed,[71] the parties agreed to discount both the initial ruling[72] and the matters then before court/tribunal, in favor of an out of court settlement. By virtue of the same, Tullow conceded a $250 million payment obligation in full and final settlement of its capital gains dues to the state.[73]

Not only is this case substantial in as far as risk and capital for the Petroleum industry is concerned, it is also widely considered a landmark case in matters concerning: cross border transaction taxation; tax and jurisdiction;[74] as well as the interpretation of Production Sharing Agreements in general.[75] These matters are particularly highlighted in the initial farm down segment between Heritage and Tullow;[76] the former having objected to paying capital gains tax to Uganda on the basis that the Production Sharing Agreement with Tullow was executed outside Uganda and therefore not subject to Ugandan taxation.[77] Naturally, Uganda took the view that the farm down was subject to local taxation simply because the assets that were the basis for the transaction were located in Uganda.[78]

There is no doubt that one of the core principles of international taxation is that jurisdiction informs taxation[79] and specifically for non-residents, that they are taxed by the host country only on the portion of their assets that are domiciled in that jurisdiction. Locally, the principle is encapsulated in section 17 (2) (b) of the ITA which provides that 'the gross income of a non-resident person includes only income derived from sources in Uganda.' Although providence appears to have ultimately smiled on Uganda's interpretation,[80] existing literature has criticized GOU's failure to specify in the Production Sharing Agreement with Heritage, that a capital gains

[70] R Musoke, 'Tullow's 16-year acrimonious relationship with Uganda ends,' The Independent, November 2020
[71] Tullow appealed URA's decision to the Tax Appeals Tribunal, and upon that tribunal's dismissal of its appeal, to the High Court. It also commenced international arbitration in London.
[72] The Independent, 'Uganda Wins $407m Tullow Case,' 22 July, 2020
[73] Tullow Oil Plc, 'Tullow Settles Capital Gains Tax Dispute in Uganda,' LSE: TLW, 22 June, 2015
[74] Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Republic of Uganda, ICSID Case No. ARB/13/25
[75] The Independent, 'Uganda Wins $407m Tullow Case,' 22 July, 2020
[76] Izama A and Mulangwa H, 'Understanding the Tax Dispute: Heritage, Tullow and the Government of Uganda,' No. 16 of 2011, Advocates Coalition for Development and Environment Info sheet, 2011
[77] Ibid
[78] Ibid
[79] DJ Bakibinga, 'Revenue Law in Uganda,' 2003, p.12
[80] Tullow Oil Plc, 'Tullow Settles Capital Gains Tax Dispute in Uganda,' LSE: TLW, 22 June, 2015

tax would be payable in these circumstances.[81] This underscores the previous idea flouted by various researchers,[82] namely that contractual clarity is paramount for Petroleum Projects.[83]

It is also agreed across the varied arenas that in addition to contractual interventions, regulatory interventions[84] must be tailored to address the unique capital and risk equation that projects in this sector present. Unsurprisingly, the dynamic is so invasive that if the project goes bust, it can take those behind it, with it.[85] To illustrate, ZPEB Uganda Co. Limited, which is one of Total's drilling contractors under Tilenga, have admitted to having performed this contract under a stringent penalty clause of US$ 150,000 per day of default.[86] While they have been successful thus far in not triggering said penalty upon themselves, they readily admit that the penal threat and the associated risk of going bust therefrom, was one of the drivers of their performance. Perhaps this is a commendation of the foundational authority of command-and-control measures[87].

This study freely admits that the need for alternative modes of enforcement does not in any way negate the fact that penalties and other such controls do have value in the Petroleum industry. It is only that that value is not commensurate to the risk that such projects pose.[88]

The nature of Petroleum, the volatility of its market[89] and its potentially grave hazard to HSE make Petroleum Projects excessively risky. This is evidenced by the Deep water Horizon Oil Spill that occurred in the Gulf of Mexico in 2010, which saw BP PLC pay close to US$ 70 million in fines, charges, penalties, clean-up costs and other settlements around the world.[90] Scholars have been harsh in their uncompromising stance against IOCs such as these whose

[81] As the Independent reports, 'Heritage was to pay back Tullow Oil but it later contested the repayment saying Tullow's payment of the tax to URA was commercially motivated rather than as the result of a valid legal obligation.
[82] Izama A and Mulangwa H, supra, p. 4
[83] Ibid P. 20
[84] Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Republic of Uganda, ICSID Case No. ARB/13/25
[85] Stefano Gatti, supra, p.13
[86] The Independent, 'Total signs USD 2 Billion deal for Tilenga project,' The Independent, June 2021
[87] G.S Becker, supra, p.15
[88] J Craft, 'A review of the Empirical Ethical Decision-Making Literature: 2004–2011,' Journal of Business Ethics, 117(2), 221–259, 2012
[89] Upon Russia's invasion of Ukraine on 24 February 2022, prices of both oil and gas immediately increased by 15%. That war has continued to affect petroleum prices to date. Also note that COVID 19 brought oil prices to their knees in 2020, owing to the decline in travel and economic activity around the world.
[90] Z. J. Plater, 'Learning from Disaster: Lessons for the Future from the Gulf of Mexico,' Boston College Environmental Affairs Law Review 38(2), 2010

operations have occasioned loss to life (whether aquatic, terrestrial or human), the general consensus being that there is no amount that can ably assuage the guilt or the irresponsibility of not doing enough to safeguard all three tenets of sustainability.[91]

Over the years, Sustainable Development studies around Uganda's Petroleum Industry have largely taken the path of the substance of legal and policy developments in the industry. Existing studies have also done a commendable job of reviewing particular approaches on the basis of the gaps evident in specific portions of petroleum laws, regulations or policies. Unlike the present study which reviews the relationship between revenues and environmental protection from a 'purpose' point of view, existing literature has reviewed revenue separately and from equally vital but different perspectives. For some, it has been through the lens of governance and human rights (Avocats Sans Frontières;[92] Oloka-Onyango);[93] and for others the lens of investment (Kambedha)[94].

Irrespective of the lens chosen, many scholars adopt the Brundtland Commission report's 1987 definition of Sustainable Development as the 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' and have taken on the task of assessing Uganda's progress toward this goal (Sebbit;[95] Namata;[96] Bugembe).[97] In evaluating GOU's approaches, many scholars have opined that the latter's refusal to open bidding or grant complete access to Petroleum contracts is in effect a call for graft in the management of Uganda's Petroleum revenues.[98] These scholars argue that 'a tightening up of the bidding process, greater levels of oversight of the licensing and allocation process, and a much stronger role for Parliament, are necessary to stave off' the threat of the oil curse.

[91] Ibid, p.15
[92] Avocats Sans Frontières, 'Business, Human Rights and Uganda's Oil and Gas industry: A Briefing of Existing Gaps in the Legal and Policy Framework,' Kampala, 2015
[93] J Oloka-Onyango, supra, p.14
[94] L Kambedha 'The Influence of Uganda's Fiscal Policy in Promoting sustainable Financing in the Oil and Gas Sector in Uganda 2022
[95] A Sebbit, 'The impact of energy on sustainable economic development in Uganda,' 2006
[96] E Namata, 'Analysis of The Role of Renewable Energy Towards Successful Implementation of Sustainable Development Pillars: A Case Study of Uganda,' 2022
[97] B.K Bugembe, 'The Feasibility of Attaining Sustainable Development of Uganda's Oil and Gas Industry: An Analysis of The Framework on Environmental Sustainability,' 2022
[98] Avocats Sans Frontières, supra, p.1

For her part, Kambedha posits that institutional failures in government such as corruption are the key barriers standing in the way of Uganda's prospects of reaping 'the benefit in oil and gas blessing to the nation.'[99] She recommends that GOU focuses on fighting the scourge in its implementation of 'the provision of the legal regime and fiscal policy.' She also emphasizes that Uganda's fiscal regime should be balanced, safeguarding both the host government's interests but also 'providing incentives to the oil majors who have invested in the sector' as a move toward retaining them or attracting new ones into the Petroleum industry. Her perspective is one of the tenets of responsible fiscal regime structuring[100] and it is one which this study has adopted and expounded upon.

2.3. Fiscal Regime and Policy

Existing literature is agreed that in Uganda, there subsist two overarching principles in the management of Petroleum revenues: the first is that ownership of resources vests in GOU to hold in trust for Ugandans; and the second, that GOU is enjoined to utilise said resources for the benefit of all citizens (Oloka-Onyango, J;[101] Avocats Sans Frontières).[102] The concept of a trust[103] means that the Constitution has simultaneously:[104]

i. vested the legal title to natural resources in Government (the **Trustee**); and
ii. required Government to keep and use the said resources for the benefit of the people of Uganda, who are the ultimate beneficial owners of those resources (the **Beneficiaries**).

Taking this concept even further, Oloka-Onyango, J. posits that the mandate granted to Parliament under Art 244(2) to make laws that regulate, inter alia, the Fiscal Regime for the sector, must be exercised in accordance with the overriding principles above.[105] He emphasizes the importance of a strong revenue management system and its contribution to the success or failure of sustainable development of Petroleum resources. To this end, he lauds the PFMA's establishment of 'a Petroleum Fund into which all the revenues which accrue to Government

[99] L Kambedha, supra, p.12
[100] Natural Resource Governance Institute, 'Fiscal Regime Design,' NRGI Reader, 2015, p.1
[101] J Oloka-Onyango, supra, p.14
[102] Avocats Sans Frontières, supra, p.1
[103] A trust is a legal relationship created by a settlor when assets are placed under the control of a trustee for the benefit of a beneficiary
[104] Article 237 (1), (2) (b) of Uganda's Constitution
[105] J Oloka-Onyango, supra, p.14

from the resource shall be paid'[106] as well as the curtailment of withdrawals from the Fund by Section 58 thereof.

The proviso in question 'permits withdrawals from the fund only under authority granted by an appropriation Act and a warrant of the Auditor General.' This is juxtaposed against section 59(3) of the PFMA which he criticizes for its failure to clearly distinguish between what constitutes development expenditure (for which Petroleum revenue is to be used) as against recurrent expenditure (for which use is prohibited).[107]

Oloka – Onyango also contests section 61 of the PFMA which requires that the GOU's Minister of Finance presents to Parliament in each financial year, 'the estimated inflows and outflows of the Petroleum Fund.'[108] His view is that doing so without 'the payment type, origin and source' of such payment being attached, is an invitation to misappropriation of funds. The stance he has taken in this regard is premised on the argument that GOU's obligation to utilise resources for the benefit of Ugandans implies a duty of transparency and accountability on its part to provide Ugandans with access to information concerning, inter alia, Petroleum revenues (Oloka – Onyango;[109] and *Kambedha).*[110]

It is a strong point that they make since even the GOU has admitted quite frankly that 'transparency and accountability' is one of six pillars upon which its NOGP is structured.[111] That said, it would be interesting to explore parameters, specifically the extent to which GOU owes a duty of transparency and accountability over Petroleum Projects, to the ordinary Ugandan. For example, when the Minister of Finance stands before Parliament to present the annual Petroleum Fund report stipulated under section 61 PFMA,[112] should it be said of government that it has honored its obligation for that year? Does that sufficiently constitute 'disclosure of payments and

[106] Section 56(1) and (2) PFMA
[107] J Oloka-Onyango, supra, p.14
[108] Ibid
[109] Ibid
[110] L Kambedha, supra, p.12
[111] Ministry of Energy and Mineral Development, supra, p.2
[112] Ibid, p. 22

revenues from oil and gas' as envisaged by the NOGP?[113] If not, what can be augmented? Perhaps such a discussion could also benefit from considering three factors;

First, while issuing annual Petroleum Fund reports[114] to Parliament meets the 'periodic accountability quota' that trustees are required to provide to their beneficiaries,[115] Uganda's political and regulatory climate[116] may not lend itself to credence or confidence within the sector. To illustrate this point, Kambedha references the low World Bank rating that Uganda holds for attracting investment into the sector.[117] In view of these realities, going above and beyond its reporting commitments may prove instrumental in quelling citizen anxiety but also building a brand as an attractive investment destination.[118]

Secondly, to what extent does the inbuilt mechanism of a 'duty of care' support the transparency and accountability agenda for Uganda's Petroleum sector? GOU holds Petroleum resources in trust for its citizens and like all trusts, has an obligation to exercise due diligence in managing the assets for the beneficiary (in this case the ordinary Ugandan) under the auspices of a duty of care.[119] Should GOU fail in this regard, we as the beneficiaries would become entitled to claim restitution[120] through public interest litigation.[121] It is a form of activism by which persons bring legal action 'to protect or enforce rights enjoyed by members of the public or large parts of it'[122] such as the right of Uganda's citizens to benefit from the nation's Petroleum resources and their attendant revenues.

Accordingly, any person who believes that GOU is abusing or misusing its role as Trustee may bring an action challenging the violation of the Beneficiaries' rights in that manner. In so doing, the person bringing the suit may even challenge the subsidiary legislation[123] by which the

[113] Ibid, p. 2
[114] Ibid, p.22
[115] G. Vinter & G. Price, supra, p. xxix
[116] Ibid, p.38
[117] L Kambedha, supra, p. 14
[118] Milbank, Tweed, Hadley & McCloy LLP, 'Identifying and Managing Project Finance Risks, Practical Law UK
[119] G D. Vinter & G Price, supra, p. 2
[120] Ibid
[121] Article 50(2) of the Constitution is the enabling provision for Public Interest Litigation in Uganda. It stipulates that "any person or organization may bring an action against the violation of another person's or group's human rights."
[122] Rev Mtikila v A.G of Tanzania HCCS No.51 of 1993 (TZ)
[123] Article 245 of the Constitution requires Parliament to prepare legislation that sets out measures: to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development; and to promote environmental awareness.

Trustee purports to have taken the impugned action. Article 137 (3) of the Constitution provides that:

> *"A person who alleges that –*
>
> *a) An Act of Parliament or any other law or anything in or done under the authority of any law; or*
>
> *b) Any act or omission by any person or authority,*
>
> *is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.*

In so stipulating, the Constitution, the PFMA and common law have taken strides to protect the assets under the Trust and to extend to the Beneficiaries tools for ensuring that GOU utilises them for the benefit of ordinary Ugandans. Perhaps, again, we ought to examine the efficacy of these tools, how well they are working and whether they are actually delivering on their mandate as envisaged by their respective authors.

2.4 Environmental Protection

At the helm of concepts revered as foundational in this space, existing literature is agreed that there exists a Trust in favor of Ugandans over the asset that is Uganda's natural environment (Coomer;[124] Sebbit;[125] Kambedha;[126] and Bugembe).[127] Under this Constitutional concept, the public has a right to the natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes. These assets are held by GOU in trust for the people, and the former is obligated to protect and preserve them for the common good.[128] In exercising this mandate, the Constitution enjoins Parliament to prescribe by law, measures intended - (a) to protect and preserve the environment from abuse, pollution and

[124] J Coomer, supra, p.2
[125] A Sebbit, supra, p.22
[126] L Kambedha, supra, p.12
[127] B.K Bugembe, supra, p.14
[128] Article 237 (1), (2) (b) of the Constitution

degradation; (b) to manage the environment for sustainable development; and (c) to promote environmental awareness.

There is also the concept that a weak Fiscal regime is inimical to both investment and environmental protection within the Petroleum sector (Sebbit;[129] Kambedha).[130] For one thing, a favorable fiscal policy is one that secures 'an adequate return for the state whilst also permitting the IOCs to get a return commensurate to their investment.[131] For another, one cannot attempt to offer a commensurate return without attending to environment and other concerns that make up the social structure of doing business here. Such an endeavor requires that GOU take into account the specific socioeconomic and political factors at play in the local market and how they play out in the global investment market.[132] Indeed, the country has made efforts in structuring its Fiscal offering to compensate for the disadvantages that investing in this country would present.

For instance, the political climate in Uganda, the violation of the rule of law and the systemic corruption are all part of the indisputable risk mix that operating in this country poses.[133] The GOU is cognizant of these realities and has structured its Energy – Fiscal dynamic to address any would be fall out from an investment perspective.[134] To illustrate, the stabilization clauses[135] that Kambedha discusses are born of this effort.[136] So is the revenue management system that 'promotes the safeguarding of these resources and managing them in a manner that will create lasting benefits to society.'[137] This is done inter alia through prohibiting the use of these resources for consumer expenditure and limiting its use to infrastructure projects that will in turn 'reduce the cost of doing business in Uganda.' The relevant provisions of the PFMA are addressed in the work of Oloka-Onyango.[138] Overall, the NOGP reiterates GOU's commitment

[129] A Sebbit, supra, p.22
[130] L Kambedha, supra, p.12
[131] Ibid
[132] G D. Vinter & G Price, supra, p. 2
[133] Milbank, Tweed, Hadley & McCloy LLP, supra, p.2
[134] Ministry of Energy and Mineral Development, supra, p.2
[135] Stabilization clauses seek to 'stabilise' an agreed position by binding a government (whether by a positive or negative undertaking) from departing from the agreed position to the detriment of the IOC or compensating the latter if they do so. They majorly target regulatory positions like the grant of licenses and are common in 'international investment agreements,' as per Milbank, weed, Hadley & McCloy LLP
[136] L Kambedha, supra, p.12
[137] Ministry of Energy and Mineral Development, supra, p. 2
[138] J Oloka-Onyango, supra, p.14

to ‘ensure that the country is conducive to attracting and sustaining the required levels of investment’ through both Fiscal and other tools.

As Sebbit contends, Uganda’s key ambition in this regard is to ‘secure development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’[139] He makes the case that economic developments contribute toward this sustainable development dynamic through inter alia, income generation and what he refers to as ‘local environmental benefits.’ In lay man’s terms, economic gains are supposed to translate into both income and environmental protection, if they are to be adjudged fair, useful and sustainable.

Perhaps we ought then to discuss the inroads that such developments can actually take in terms of revenue generation and environmental protection:

> *How has Uganda structured its Fiscal Regime, to sustainably harness petroleum revenues for generational equity?*
> *To what extent have these measures translated into sustainable legislative gains for environmental protection?*

2.5 Cross cutting theory

This literature review has been conducted with the over aching aim of, inter alia, identifying the theoretical trend that underpins existing literature on the Fiscal Policy for the Petroleum industry and its adequacy for Sustainable development. It has identified one key theory, namely the stakeholder theory, that runs through the scholarly works that were reviewed. This section is to be distinguished from section 1.9. The former covers the cross-cutting theory in existing literature while the latter deals exclusively with the theoretical framework upon which the present study has been conducted.

At the root of the literature review is the inescapable fact that the question of sustainable development is ultimately one of ethics.[140] Paliwal defines it as the principle which distinguishes

[139] A Sebbit, supra, p.22
[140] F. Semra et al., supra, p.17

between what is 'right or wrong, true or false, fair or unfair, proper or improper - what is right is ethical and what is wrong is unethical.'[141] It is a concept that is responsible for the majority of theories behind sustainable development including the stakeholder theory.

Stakeholder theorists have long argued that businesses must pay attention to 'external' factors such as the environment and the community, in order to be truly successful.[142] The idea is that a business does not exist solely to make profit but also to benefit the community, environment and society in which it operates. This multi-disciplinary approach to a business and the estimation of its success, is arguably one of the bedrocks of ethics and sustainability in business decision making.[143]

All of the studies reviewed are agreed that businesses ought not to be run in a moral vacuum, but rather in a manner that takes Ethical values of fairness, justice, morality and honestly into account.[144] Particularly, Sovacool et al[145] decry the consideration of economics to the exclusion of other disciplines even as Semra criticizes the practice of businesses making energy decisions solely based on economic output and growth models.[146] Incidentally, they also make the argument that ethical decision making may ultimately contribute to growth because it can foster long term stakeholder support (Oloka;[147] Tapas;[148] Plater).[149]

From a government perspective, tax and non-tax revenue components are imposed on the Licensee simply because that party owes an obligation to Uganda's society to build and protect both the environment in which it operates and the societies that live there.[150] This, at its most elemental form, is the sustainability theory at work. In practical terms, it means that Total, CNOOC and most recently, UNOC owe it to the people of Uganda to pay the corporations' taxes,

[141] M Paliwal, 'Business ethics,' New Age International, 2006
[142] B.K Bugembe, supra, p.14
[143] A Sebbit, supra, p.22
[144] J Oloka-Onyango, supra, p.14
[145] Sovacool BK et al., 'Energy Decisions Reframed as Justice and Ethical Concerns,' 2016, p. 20
[146] F Semra et al., supra, p.17
[147] J Oloka-Onyango, supra, p.14
[148] P Tapas, 'Business Ethics in decision making,' Periapex Indian Journal of Research, 2012
[149] Z. J. Plater, supra, p. 15
[150] L Kambedha, supra, p.12

pay their non tax revenue obligations and protect the environment in the TDA, KFDA and Kasuruban respectively (Tapas;[151] Nantume).[152]

This is central to a concept that is often referred to as the social license to operate, that is to say, 'the level of ongoing acceptance and approval that a community gives to an industry or project.'[153] The latter, in turn, protects the Project and its operations from insurrection, civil disturbances, interference and a general lack of communal support.[154]

2.6 Conclusion

This study is preceded by commendable works that have formed the basis of this literature review. Authors like Bugembe have taken on the framework On Environmental Sustainability[155] while those like Oloka-Onyango[156] have offered insights into the institutional barriers that inhibit sustainability for the sector.[157] Overall, there has been a comprehensive evaluation on the extent to which GOU has adopted systems, practices and developments that form part of good governance and management for the sector. In particular, Sebbit posited that tax obligations are part of the sustainability matrix for corporations doing business in the Petroleum space and that it is the duty of GOU to develop linkages between Petroleum revenues and 'local environmental benefits.'[158] Drawing from these achievements, the present study attempts to make a moderate contribution to the existing literature by exploring two fronts:

> *How has Uganda structured its Fiscal Regime, to sustainably harness petroleum revenues for generational equity?*
>
> *To what extent have these measures translated into sustainable legislative gains for environmental protection?*

In the course of this analysis, the study will review each tool under the Fiscal Regime on the basis of whether it is suitable for Uganda and its circumstances, and also on its potential for sustainably harnessing environmental protection gains.

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[151] P Tapas, supra, p.14
[152] G Nantume, 'What Uganda has gone through since 1962,' Monitor, 2024
[153] Bahati and Beyeza, supra, p.17
[154] Z. J. Plater, supra, p. 15
[155] B.K Bugembe, supra, p.14
[156] J Oloka-Onyango, supra, p.14
[157] Ibid
[158] A Sebbit, supra, p.22

CHAPTER THREE

METHODOLOGY

3.0. Research Design

The present study was conducted from a purely qualitative perspective, particularly by analysing, reviewing and synthesising existing studies and reviews. It involved 'collecting and analyzing non-numerical data (e.g., text, video, or audio) to understand concepts, opinions, and experiences' of related research studies;[159] other Petroleum rich countries and the GOU. Laws, regulations, policy documents and other such material both local and international were analysed to develop insights into the content, context, gains, complexities, challenges surrounding Fiscal Petroleum laws and the call for sustainable development in the sector.

This qualitative analysis will provide a comprehensive and nuanced understanding of the international and national standards as well as the stakeholder perspectives and industry practices that have shaped Uganda's journey in harnessing its Petroleum Fiscal regime for both generational equity and environmental protection gains.

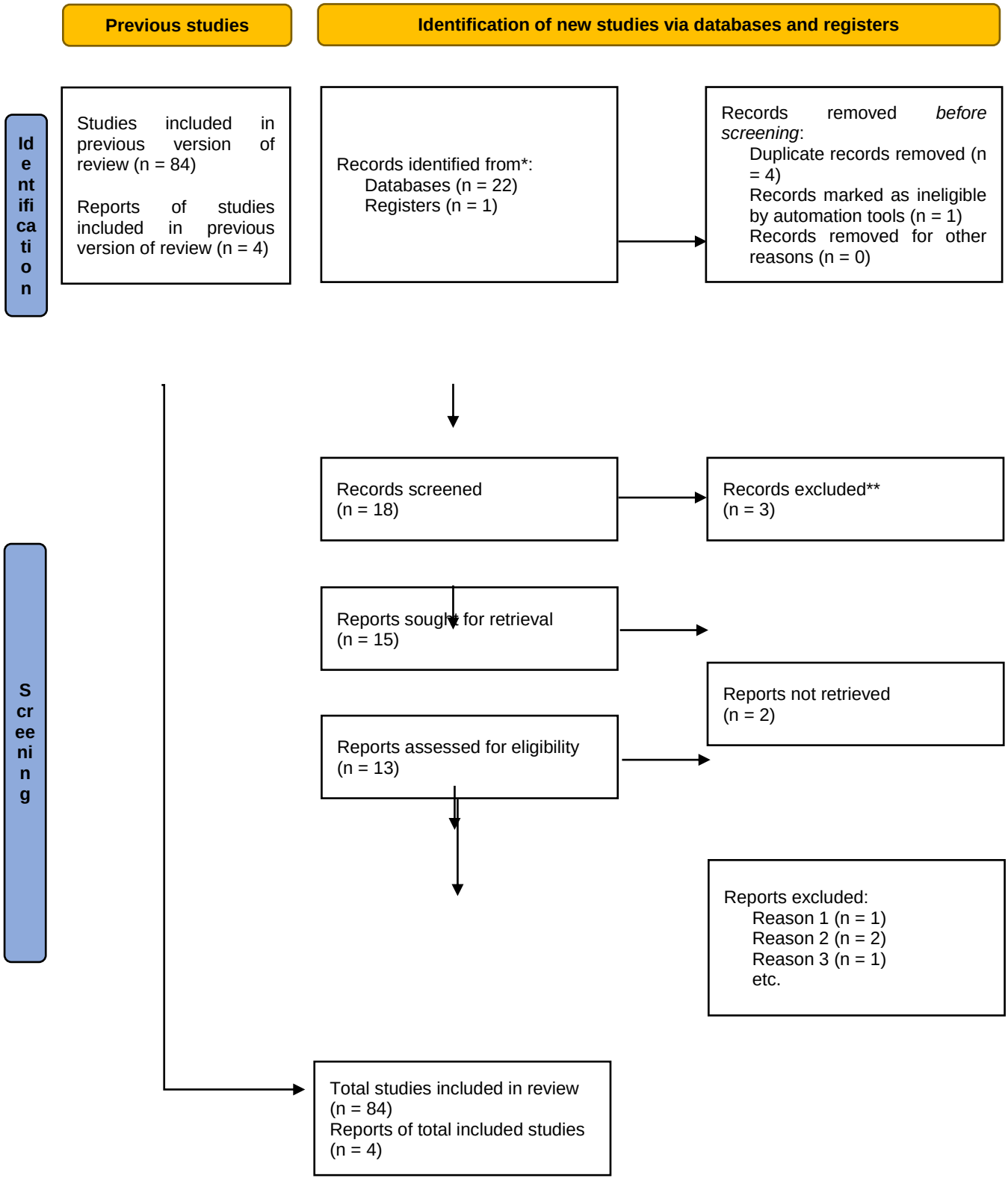
3.1. Data Collection

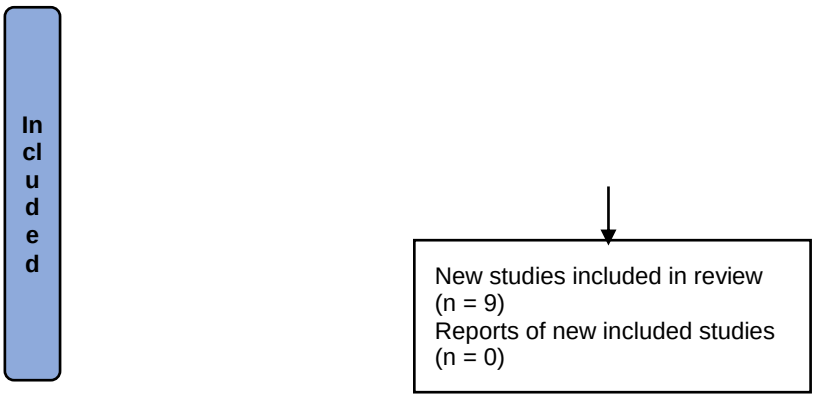
Relevant journals and articles were selected primarily through key word searches of the term "Sustainable Development" with the subcategories of 'fiscal regime,' 'Petroleum Industry,' 'law and policy' and 'environmental sustainability.' Data base engines used included JSTOR, OGEL, Google scholar, Google, Scribbr and the IPSK data journal. This exercise retrieved 33 articles as well as an empirical study, Craft,[160] which reviewed 84 articles and relied on the research of three major researchers including Butterfield and O'Fallon.[161] Retrieved articles were manually evaluated on the basis of their abstract and key words.

[159] P Bhandari, 'What is Qualitative Research?' Scribbr, 2022
[160] J Craft, supra, p.20
[161] K Butterfield and M O'Fallon, 'A Review of the Empirical Ethical Decision-Making Literature: 1996–2003,' 2005

Ultimately, 9 new studies were selected, in addition to Craft.[162] Those included in the study were retained on grounds of the following selection criteria: analysis of sustainability in business and its application to the Petroleum industry, where possible; analysis of the regulatory framework on fiscal regimes for the sector; analysis of the relationship between fiscal tools and the framework for environmental sustainability in the sector; as well as an analysis of the efforts being made to augment institutional and governance capacity for fiscal sustainability in the sector. These works are: Sebbit;[163] Plater;[164] Tapas;[165] Craft;[166] Natural Resource Governance Institute;[167] Sovacool et al;[168] Oloka;[169] Semra;[170] Kambedha;[171] Nantume[172] among others. The PRISMA diagram (Figure 3) below summarizes the process undertaken:

[162] J Craft, supra, p.20
[163] A Sebbit, supra, p.22
[164] Z. J. Plater, supra, p.15
[165] P Tapas, supra, p.14
[166] J Craft, supra, p.20
[167] Natural Resource Governance Institute, supra, p.1
[168] BK Sovacool et al., supra, p. 20
[169] J Oloka-Onyango, supra
[170] F. Semra et al., supra, p.17
[171] L Kambedha, supra, p.12
[172] G Nantume, supra, p.2


Previous studies
Identification of new studies via databases and registers
Identification
Studies included in previous version of review (n = 84)
Reports of studies included in previous version of review (n = 4)
Records identified from*:
Databases (n = 22)
Registers (n = 1)
Records removed *before screening*:
Duplicate records removed (n = 4)
Records marked as ineligible by automation tools (n = 1)
Records removed for other reasons (n = 0)
Screening
Records screened
(n = 18)
Records excluded**
(n = 3)
Reports sought for retrieval
(n = 15)
Reports not retrieved
(n = 2)
Reports assessed for eligibility
(n = 13)
Reports excluded:
Reason 1 (n = 1)
Reason 2 (n = 2)
Reason 3 (n = 1)
etc.
Total studies included in review
(n = 84)
Reports of total included studies
(n = 4)



In the synthesis matrices below, this study summarizes the lessons drawn from data collected:

	B.K Bugembe, 'The Feasibility of attaining Sustainable Development of Uganda's Oil and Gas Industry: An Analysis of the Framework on Environmental Sustainability (2022)'	L Kambedha 'The Influence of Uganda's Fiscal Policy in Promoting Sustainable Financing in The Oil and Gas Sector in Uganda (2022)'	Oloka-Onyango, J., 'Courting the oil curse or playing by the rules? An analysis of the legal and regulatory framework governing oil in Uganda, (2020)'
Purpose of study	■ To analyse the feasibility of attaining sustainable development of Uganda 's Oil and Gas industry	■ To investigate Uganda's existing fiscal system and its impact on influencing and promoting sustainable financing in the oil and gas sector	■ To critically analyse the laws and regulations adopted to manage ■ the oil sector, highlighting their strengths and weaknesses
Theories relied upon	Deterrence theory Citizen enforcement theory	Dunning theory	Stakeholder Theory

Intervention made	■ Assessing Uganda's progress towards environmental sustainability goals	■ Analysing Uganda's fiscal framework for investment in the Petroleum Industry	■ Proposals on how the people of Uganda can ensure that their government, abides by the rules in managing this finite resource for their benefit
Methodology used	Doctrinal legal research	Doctrinal research	Doctrinal research
Key findings	■ Insufficient prescriptions of fines for contravention of environmental regulations ■ There is no legal obligation to publicly disclose Environmental Impact Assessments (EIAs)	■ Uganda has a comprehensive flexible legal framework that has fair content including; Production sharing Agreements, royalties, tax holidays, stabilization clause and others.	▪ GOU has failed to comply with best practices as far as abuse and misappropriation of oil funds is concerned ▪ There are critical gaps in the areas of transparency (both of government and sector players) and access to information by Ugandans
Results/conclusions made	■ Instituting interventions that are not dissuasive enough is indirectly related to environmental degradation and	■ GOU should prioritise the fight against corruption in order to register successful implementation.	■ 'Tightening up the bidding process; greater levels of oversight of the licensing and allocation process; and a much stronger role for Parliament' will be key in registering progress and Uganda's salvation from the oil curse

	sector player non compliance ■ Harmonization of environmental fines with the fines for unauthorised conduct of petroleum activities would foster compliance		
Knowledge gaps	Only one aspect of sustainability was interrogated	The study reviewed revenue through the lens of investment alone	The study's approach to analysing revenue licensing was from a 'governance and human rights' perspective

Figure 3

3.2. Data Analysis

The study undertook a review of existing government reports and policy documents related to Uganda's Petroleum sector, its Fiscal Regime and the latter's capacity for driving sustainable development. It also analysed academic articles and industry publications on sustainable fiscal structuring and development. Information was sourced from the following: academic journals and books on oil and gas law; books on financing and sustainable development; published research studies on sustainable development and Uganda's Petroleum laws; government publications and policy documents; as well as reports from organizations such as the UN, World Bank, and Natural Resource Governance Institute.

The study also involved a detailed analysis of both sector and non-sector specific laws, policies and regulations that have a bearing on fiscal regime development and its contribution to the

wider sustainable development agenda for the country. In terms of comparative analysis, the study highlighted the experiences of other Petroleum producing countries, drawing lessons or affirmation for the efforts Uganda has taken in this regard.

In conducting the study, it was discovered that while the structuring of legislation may vary depending on the unique factors of an Industry and what government seeks to achieve, the choice of legislation is rooted in the universal factors that lie at the heart of business decision making:[173]

To start with, the cost of doing business in a specific Industry is always a factor, both in terms of attracting investment but also extending to existing partners a fair return on their investment.[174] It follows therefore that governments have the singular task of legislating in such a way that the specific dynamics at play in the industries for which they legislate, are not only considered but are used to their advantage as incentives or disincentives for wider sustainability goals.[175] As an example, Petroleum Projects are not known for their short gestation periods. They are usually medium to long term projects and it is not uncommon for them to drag on for decades. For instance, the United Kingdom's Mariner Project in the North Sea, whose fields were discovered in 1981, started production in 2019 and is expected to continue doing so until 2050.[176] Such durations mean that governments have to tailor solutions over the long term and capitalize on the gestation to secure sustainability gains for its citizens.

From a theoretical perspective, this paper admits that there are three bases for legislation: a) the regulator regulates; b) the recipient or actor makes a compliance decision and c) the regulator responds to the decision taken.[177] It is the actors or for present purposes, the Licensees that ultimately take the compliance decision. Drawing from that unassailable fact, the present study has not only taken into account the factors that influence said decision but also noted that these factors hinder the successful implementation of command-and-control tools of legislation.[178]

[173] R Baldwin et al, supra, p.17
[174] L Kambedha, supra, p.12
[175] Ibid
[176] Oil and Gas projects: Supporting the future of the UK energy industry (openaccessgovernment.org) (Accessed 30 October 2023)
[177] BK Sovacool, supra, p. 20
[178] J Craft, supra, p.20

The bulk of this endeavor has been achieved by Craft[179] in her empirical study in 'ethical decision-making within the business field published between 2004 and 2011.' Admittedly, she was not the first to undertake this assignment comprehensively. She anchored it on the research of three major papers by O'Fallon and Butterfield,[180] Loe et al.,[181] as well as Ford and Richardson[182] (1994). All three categorized their findings on concepts developed by Rest (1996), which we will discuss herein below.

In general, they all made a case for the relevance of sustainability in business decision making, acknowledged the place of individual business executives in the firm's overall decision-making cycle and identified the factors that influence individual decision making. To this extent, they built on Jones' and Tapas'[183] acknowledgement of the individual executive and went further by exposing the influences at play. In this regard, Ford and Richardson[184] was instrumental in as far as it posited the following pervasive factors (in order of relevance): gender, age, nationality and religion. They were followed by education and 'an individual's employment background (type and years of education, type and years of employment.' Although Loe et al[185] differed from Ford and Richardson[186] in its additional inclusion of 'moral intensity,' it maintained the same indicators namely, age, nationality, religion, education, employment and experience in that order.

All this to say that sustainability and the decision of actors to comply with regulation does not exist in a vacuum.[187] What this means is that although ethical standards, values and principles of sustainability should influence the decisions made by Energy businesses, in practice, it often comes down to individual business executives' interests and predilections.[188] For this reason, structuring legislation in such a way that the interests of executives are aligned with the sustainability agenda of the state, is paramount.[189] It determines whether the state will

[179] J Craft, supra, p.20
[180] K Butterfield and M O'Fallon, supra, p.2
[181] TW Loe et al, 'A review of empirical studies assessing ethical decision making in business,' (2000) Journal of Business Ethics, p.5
[182] RC Ford and WD Richardson, 'Ethical Decision Making: A Review of the Empirical Literature,' (1994), Journal of Business Ethics, 13
[183] P Tapas, supra, p.14
[184] RC Ford and WD Richardson, supra, p.4
[185] TW Loe et al, supra, p.25
[186] RC Ford and WD Richardson, supra, p.3
[187] R Baldwin et al, supra, p.17
[188] J Craft, supra, p.20
[189] R Baldwin et al, supra, p.17

successfully implement its objective, which in this case, is harnessing both generational equity and environmental protection gains through the natural resource.

Expected Outcomes

- The Fiscal tools pertaining to collection of Petroleum revenues in Uganda, will have been explained
- The design of these Fiscal tools in order to encourage environmental protection, will also have been explained
- An ordinary Ugandan with no legal background, will understand what Fiscal tools are and how his or her country is using them to manage Petroleum revenues and protect the environment
- Practical recommendations for reform in this sector will have been provided
- This study will make a moderate contribution to the academic discourse in this sector

3.3. Timeline

	Research Activity	**Components**	**Period 2024**	**Duration**
1.	Data Collection: Fiscal Regime	Principles	1.10 – 7.10	7 days
		Tools	8.10 – 14.10	7 days
2.	Data Collection: Environmental Protection	Economic Instruments	15.10. – 21.10	7 days
		Economic Incentives and Disincentives	22.10 – 28.10	7 days
3.	Data Analysis and Drafting: Fiscal Regime	Principles	29.10 – 4. 11	7 days
		Tools	5.11 – 11.11	7 days
4.	Data Analysis and Drafting: Environmental Protection	Economic Instruments	12.11 – 18.11	7 days
		Economic Incentives and Disincentives	19.11 – 25. 11	7 days
5.	Review and Finalisation	Chapter 4	26.11 – 1.12	7 days
6.	Review and Finalisation	Chapters 1 – 3	2.12 – 9.12	7 days
7.	Submission	Entire study	10.12	1 day
	Aggregates		**1.10 – 10.12**	**71 days**

CHAPTER FOUR

FISCAL LEGAL FRAMEWORK FOR UGANDA'S PETROLEUM SECTOR

4.1 Petroleum Revenue

4.1.1 Overview

Every petroleum producing country in the world has had to grapple with 'the Fiscal regime question,' and how its citizens can best benefit from the natural resource it has discovered. The Fiscal regime 'is the set of tools that determine how the revenues from oil and mining projects are shared between the government and oil companies.'[190] Countries that have answered this question effectively boast substantial growth and development across sectors, industries and homes while those which have not, are riddled by poverty, acute corruption, strife and/or insurrection.[191]

It is therefore critical that every country design and implement a robust Fiscal regime, that is to say, one that not only has a sound basis but also effectively accounts for the unique nature and dynamics of: oil and gas resources; their exploration, production and development; as well as the nation and its government.[192] The latter must take into consideration the political, social and economic characteristics and capabilities of that nation.

4.1.2 Economic Rent

At the heart of most Petroleum Fiscal regime debates is the concept of 'Economic Rent.' Hayes defines it as 'an amount of money earned that exceeds that which is economically or socially necessary.[193] It is basically surplus profit - the difference between 'the revenues generated from resource extraction' on the one hand and the 'costs of extraction' coupled with the normal profit

[190] Natural Resource Governance Institute, supra, p.1
[191] S Peck & S Chayes, 'The Oil Curse: A Remedial Role for the Oil Industry,' 2015, p.2
[192] Natural Resource Governance Institute, supra, p.1
[193] A Hayes, 'Economic Rent: Definition, Types, How It Works, and Example,' Investopedia, 2023, p.2

recoverable from the Petroleum produced, on the other.[194] It is paid over and above what the recipient expects or 'what they would earn in a regular market scenario.'[195]

This study illustrates the concept with an over simplified example. Company X acquires a license from the republic of Uganda, to explore, develop and produce oil from field Y. The revenue collected from the field is USD 500 and the cost of doing so is USD 200. If the normal profit (by market standards) for an oil company operating field Y would be USD 50 but Uganda agrees that X takes USD 100, X has made a surplus profit (r*ead economic rent*) of USD 50. It will be taxed accordingly.

Figure 4 below illustrates how resources from Petroleum resources are actually shared (between government and IOCs) under the Economic Concept paradigm:

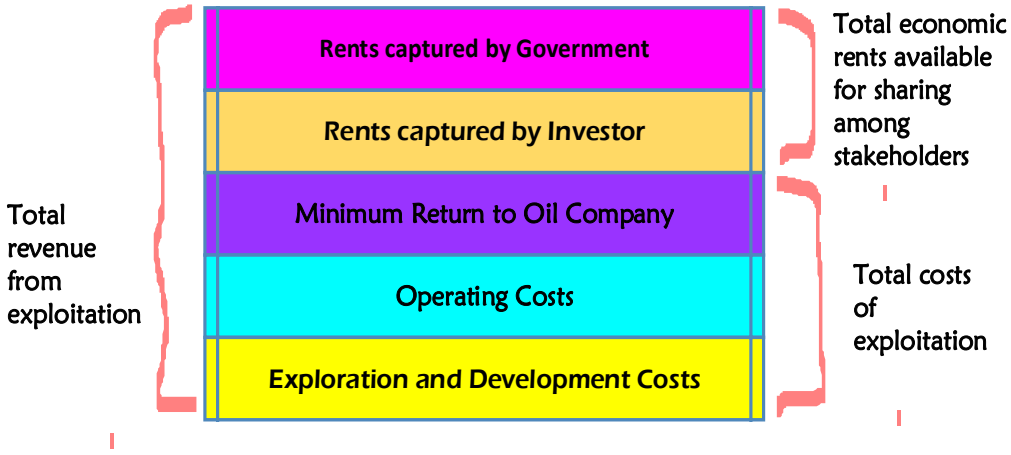


Figure 4

Economic Rent postulates a revenue collection system that is profit based and therefore progressive. This means that the higher the revenues collected, the higher the tax that will be charged, and vice versa.[196] Obviously, lower costs of extraction including labour, cost of capital,

[194] C Nakhle, 'Petroleum Taxation: Sharing the oil wealth. A study of Petroleum Taxation Yesterday, today and tomorrow,' Routledge studies in international business and the world economy, 2008, p.39
[195] N Gupta, 'Economic Rent - Definition, Formula and Examples,' wallstreetmojo.com,' 2020
[196] J Kagan, 'What Is a Progressive Tax? Advantages and Disadvantages,' Investopedia, 2023

risk taken and entrepreneurial reward, also increase the revenues collected and vice versa. If in our example above, company X approached financier J for funds to bank roll the project but the cost of obtaining financing at the time was high, and the overall cost of extraction was thereby pushed up to USD 250 against a USD 500 revenue pool and a USD 50 normal profit for X, Uganda and X now have only USD 200 to share (as opposed to USD 250 earlier on).

Economic Rent is widely regarded as the most suitable basis for an ideal Petroleum tax regime because: it is a 'bonus' - entirely separate from 'management skills or the wisdom of economic decisions,' both of which (at least in theory) only drive normal profit; it is progressive and therefore fair to IOCs when the cost of inputs increase and sufficiently generous to government when revenues do; its progressiveness attracts investment; the tax it levies does not destroy economic incentives since Economic Rent is not required by the IOC to continue or initiate operations; taxing surplus profits is viewed as fair to the community where the oil is situate; Petroleum is a finite resource and Economic Rent's levy on surplus profit is viewed as fair to future generations.[197]

In practice, Economic Rent is calculated by deducting the price agreed for a good or service from the price of that good or service in a free market. Gupta explains that the agreed price is the price that is decided upon between the parties to the transaction (such as a buyer and seller) while the free-market price is the seller's amount in the normal market.[198]

4.1.3. Fiscal Instruments

4.1.3.1. Principles

The overarching objective of designing any Fiscal Regime must be to balance the need to attract and retain investment with the need to collect as much revenue as possible. Certainly, Uganda's priority is its citizens (both present and future) and ensuring that they benefit adequately from the Petroleum on their soil. However, Uganda is a landlocked nation in East Africa that is classified as a 'least developed country' and is riddled by strife, poverty and corruption.[199] On the other hand, Petroleum is a highly specialised, obscenely expensive enterprise and Uganda does not

[197] C Nakhle, supra, p.42, 43
[198] N Gupta, supra, p.2
[199] United Nations Development Programme (UNDP), 'Uganda Poverty Status Report 2021,' 2021

have the capacity to develop its Petroleum on its own. For this reason, designing a regime that is conducive to investment, is necessary.[200]

Secondly, Uganda must consider the timing of revenues and particularly, the distinction between 'front end loaded' instruments and 'back-loaded' ones. The former are fiscal instruments which enable governments to collect revenues upfront, that is to say, 'early on in the life cycle of an extractive Project' while the latter are instruments by which governments collect revenues only when the project has turned a profit.[201] Front end loaded instruments are payable in form of 'bonuses' since they (unlike back loaded instruments) are not dependent on costs, inputs or outputs. In principle, such instruments are not fair to IOCs and there shouldn't be too many of them. In order to avoid discouraging investment, governments must toe a balancing act between front end loaded' instruments and 'back-loaded' ones.

The relationship between government's revenue and project profit is also key in establishing the types of Fiscal instruments to employ. IOCs are in business to make money but their take home typically reduces with every reduction in profit. They are impacted by changes in 'commodity prices, production techniques, production rates and the like.[202] Conversely, governments decide how changes in the project's profit margin will affect their revenues.

Governments have three options in this regard. They can opt for: 'neutral fiscal tools,' that is to say, those that 'give the state the same share of revenue whether profitability increases or decreases;' progressive fiscal tools which 'give the government a larger share of the profit when profits increase;' or regressive fiscal tools which 'give the government a lesser share as profits increase.' While regressive and neutral tools guarantee steady collection for nations with weak accounting and auditing capabilities (like many developing countries), they can discourage investment. This is because they ignore market forces by insisting on collection even in the face of loss by the project and/or the IOC.[203]

[200] Natural Resource Governance Institute, supra, p.1
[201] Natural Resource Governance Institute, supra, p.1
[202] Ibid, p.2
[203] Ibid

As our earlier discussion of economic rent shows, progressive fiscal tools are more likely to secure greater revenues for governments as well as their present and future citizens. They enable governments to collect higher revenues when profits are high whether due to reduced costs (of production or capital) or increased commodity prices. They also attract investment by reducing the liability of IOCs when project profitability is low.[204] However, Progressive fiscal tools can prove difficult to enforce due to the fact that they require specialist capabilities in 'auditing costs and calculating profits,' both of which can be arranged by the more experienced IOCs (on their books) to reflect lower levels of profitability.

The allocation of risk as between the IOC and government is another key consideration in identifying Fiscal tools for the Petroleum Industry.[205] By its very nature, the industry is risky not only because it requires unprecedented levels of investment but also because it has the capacity to affect health, safety and the environment fatally. The fact that an IOC has paid close to USD 70 million in penalties and fines in this industry is evidence of this reality.[206] Moreover, like any other business, there is no guarantee that the project will turn a profit. As such, a Fiscal regime that allocates some of the risk to government may go a long way in attracting and retaining investment.

Having reviewed the salient factors in designing Fiscal regimes, this study will discuss the instruments that Uganda and other comparative oil producing nations have employed in their laws, regulations and contracts, for collecting economic rent. This will be done bearing in mind that Uganda, which is East African, has been a 'least developed country' since 1971,[207] has a history of war and strife and is one of the most corrupt countries in the world.[208] It is noteworthy that the bulk of Uganda's fiscal instruments are accessible in its Model PSA[209] but we can also have a look at its Upstream Act, its Income Tax Act Cap 340 of 2000 (as amended), its Value

[204] Ibid
[205] Natural Resource Governance Institute, supra, p.2
[206] Z. J. Plater, supra, p.15
[207] United Nations Department of Economic and Social Affairs (UNDESA), 'Uganda Profile - Least Developed Country Category,' 2023
[208] The Independent, 'Uganda declines in corruption ranking - Global report (independent.co.ug),' 2022
[209] The term 'PSC' is used synonymously with 'PSA.' The latter is short for 'Petroleum Sharing Agreement' while the former is an acronym for 'Petroleum Sharing Contract.'

Added Tax Act Cap 349 of 1996 (as amended); its Stamp Duty Act Cap 13 of 2014; and the East African Community Customs Management Act Cap 1 of 2004. To clarify, the term 'Model PSA' when used in this Study refers to the Production Sharing Agreement template that the GOU tailors now and then, to meet the specific exigencies of a particular Licensee and/or Project.[210]

That said, the Study will also have recourse to Uganda's public revenue management laws and policies which contain a set of Fiscal instruments, the overall goal of which is to ensure that all the revenue components due to the GOU from the Petroleum Industry are paid.[211] These instruments are set out in: the Oil and Gas Revenue Management Policy for Uganda 2012; the Public Finance Management Act Cap 3 of 2015; as well as the National Oil and Gas Policy for Uganda 2008.

4.1.3.2 Industry Tools/instruments

Production sharing

Every oil producing country, whether it be developing or developed, must decide under which arrangement it will develop its Petroleum. The most common arrangements are concessions and production sharing. A concession is an arrangement by which the Host Country grants the IOC exclusive ownership over the Petroleum resources on the understanding that the latter will pay to the former, royalties in kind or cash and taxes as applicable.[212] On the other hand, a production sharing contract or agreement is an arrangement by which the Host Country retains exclusive ownership over the Petroleum but agrees to remit to the IOC a share of the same in consideration for the contract.[213] For the reasons explained below, I applaud Uganda's adoption of the production sharing model:

<u>Cost carry</u>

[210] The Model PSA is available on the official websites of both UNOC and the PAU. Conversely, the Production Sharing Agreements that the GOU has tailored and signed with existing Licensees and/ or ongoing Projects have not been made available to the public.
[211] Ministry of Energy and Mineral Development, supra, p.26
[212] Wang N, 'Comparison and research in international petroleum contract modes,' Beijing: University of International Business and Economics, 2007, p.43
[213] Ibid

The business of exploring, developing, producing, refining or transporting Petroleum is notoriously expensive and it is not uncommon for developed nations, let alone developing ones to lack the financial capacity to bank roll them. Take for example, the $10-billion 1,443-km East African Crude Oil Pipeline or the $25-billion 6,000-km Nigeria-Morocco Gas Pipeline,[214] and consider the fact that the GDP of an entire nation like Malawi is USD 13, 164.67M.[215]

Production sharing offers developing countries like Uganda the opportunity of partnering with an IOC to develop the Host Country's Petroleum, without receiving payment up front. Instead, the IOC agrees to 'carry' the cost share of the Host Country (or the state enterprise it has nominated for the purpose) from exploration, through Development to Production. This agreement is reached on the basis that the IOC will be repaid in kind, at Production.[216] At that stage, the government pays to the IOC a portion of oil that is commensurate to the costs 'carried.' This portion is known as the 'Cost Petroleum/Oil/Gas.'

Article 10.1 of Uganda's Model PSA illustrates this point. It states as follows –

> *The Licensee agrees to carry the costs of Government or its Nominee through Development to Production. These costs are recoverable and will be repaid out of the Government's or Government Nominee's share of Cost Petroleum.*

The downside of cost carrying and of Petroleum costs in general is thin capitalisation. While IOCs are typically multi-national corporations, they too are usually incapable of financing Petroleum operations on their own. This is because of quantum, risk, corporate limits and recourse factors. Often times, they obtain financing from financiers through 'project financing.' This is 'the financing of the development or exploitation of a right, natural resource or other asset where the bulk of the financing is to be provided by way of debt and is to be repaid principally out of the assets being financed and their revenue.'[217]

[214] Energy Capital, 'Top African Pipeline Projects to Watch in 2023 (energycapitalpower.com),' 2022
[215] World Bank, 'GDP Data,' 2023
[216] Open Oil, supra, p.89
[217] Denton Wilde Sapte, supra, p.6

Thin capitalisation is a practice where IOCs 'finance projects with a large amount of debt (including debt from related companies), allowing them to inflate their interest deductions and reduce taxable income.'[218] Project financing can provide an otherwise legitimate cover for thin capitalisation to thrive. The latter is typically utilised by IOCs operating in Host Countries that permit the deduction of debt interest payments for tax purposes.

Instituting tax rules that cap interest deductions can go a long way in avoiding the loss of revenues in this manner.[219] Uganda has adopted this approach vide its section 89 ITA which restricts the permissible foreign debt to foreign equity ratio to 2 to 1 at any time during a year of income. This restriction is imposed on 'foreign-controlled resident companies which are not financial institutions. Needless to say, interest in excess of this ratio does not constitute an allowable deduction for tax purposes.

Profit Petroleum

Under the production sharing arrangement, the state is entitled to share in the Petroleum remaining after the costs of the Project are recouped. This portion is referred to as 'Profit Petroleum' and its split is usually done 'according to a sliding scale based on the level of production or the profitability of the Project.[220]

Uganda's Model PSA underscores this point in its article 12 which provides, in part as follows –

> *The amount of the Available Petroleum remaining after the deduction of the Cost Petroleum as provided for in Article 11, is hereinafter referred to as "Profit Petroleum". The Government and the Licensee shall share in the Profit Petroleum in each Calendar Year in accordance with the provisions of this Article.*

[218] Natural Resource Governance Institute, supra, p.6
[219] Ibid
[220] Ibid, p.4

The table below (Figure 5) broadly illustrates how Petroleum revenues are shared between the Host Country and the IOC under a production sharing scheme:[221]

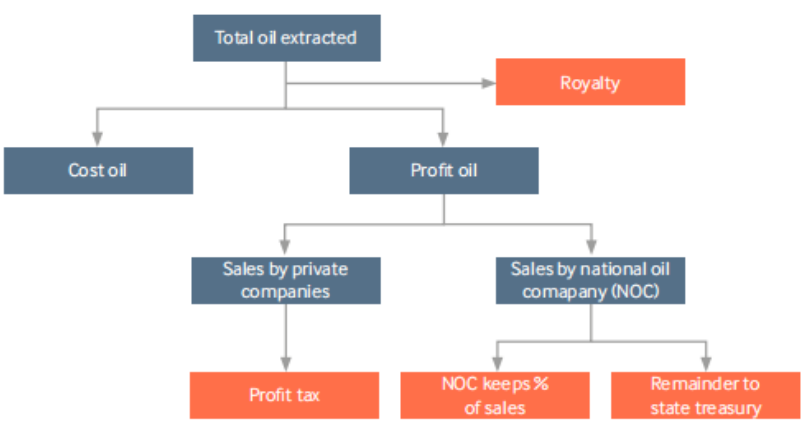


Figure 5

Ownership

Whereas a concession would require a nation to relinquish ownership of its Petroleum at the outset, a production sharing agreement can be structured to allow it to retain title up until the point at which the Petroleum is produced at the well head.[222]

This is important because it gives Uganda, a little-known developing county in East Africa leverage over the global multinational IOC in the development and utilisation of the Petroleum. It also tilts the balance of power in Uganda's favor throughout exploration, Production and Development.[223]

Politics and Constitutionalism

In a Production sharing arrangement, the fact that government retains ownership of the Petroleum often drives the perception within the public, that the IOC is merely a contractor that

[221] Natural Resource Governance Institute, supra, p.5
[222] Open Oil, supra, p.28
[223] Open Oil, supra, p.28

government has engaged to develop the natural resource on its behalf.[224] From a political standpoint, this narrative plays into anti - colonialism sentiment across the public. This is especially important for a developing nation like Uganda which gained independence from the west during the 17th century.[225]

From a constitutional standpoint, the retention of ownership supports the narrative that the GOU is committed to honoring the public trust doctrine in its Constitution. The stipulation in issue, which is enshrined in Article XXVII (ii) of Uganda's Constitution provides (in part) as follows –

> *The utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans*

These natural resources (like Petroleum) are situated on land, natural lakes, rivers, wetlands, forest reserves, game reserves or national parks which are held by the GOU in trust for its people. This is stipulated under Article 237 (1), (2) (b) of Uganda's Constitution which is on all fours with the concept of a trust in Article XXVII (ii). This means that both simultaneously: vested the legal title to natural resources in government (the **Trustee**); and required the Trustee to manage and use the said resources for the benefit of the people of Uganda (both present and future), ergo the ultimate beneficial owners of those resources (the **Beneficiaries**).

Lastly, this study contends that the production sharing tool is a more optimal option for Uganda because the ownership and control retained by states under the production sharing model is consistent with the concept of resource nationalism which enjoins states to implement systems in which their citizens benefit from the ownership and control of natural resources on their soil.[226]

Signature Bonus

[224] Ibid
[225] G Nantume, supra, p.2
[226] Open Oil, supra, p.28

The next Fiscal tool that this study commends is a Signature Bonus. Under this paradigm, every Licensee to whom a Host Country grants a Petroleum Exploration License or Petroleum Production License, pays 'a single, non-recoverable lump sum payment,' (otherwise known as a 'Signature Bonus) upon execution of the production sharing agreement.

Uganda and Trinidad are some of the developing countries that employ this tool, as per Article 8.1 of Uganda's Model PSA and Article 21.1 (c) of Trinidad's model petroleum sharing agreement respectively. However, this paper recommends the former's preference for payment on signing over the latter's preference for payment within 10 days of the effective date of the agreement. This is because the latter creates a conditional payment (which may or may not materialize) while the former is absolute.

This front-end tool has[227] and will enable Uganda to make revenues at the outset of its partnership with the IOC before any work has been done. The payment is remitted merely because the IOC has signed the agreement and while it is a one-time payment which cannot be required subsequently, its payment is not determined by the progress, success or completion of the project. Indeed, it is payable whether or not the project turns a profit.[228] It is also quite easy to administer.

Production Bonus

A Production Bonus is a payment that is agreed to be made by the Licensee well operator to a Host Country's government upon achievement of certain levels of production[229] or 'certain points in time during the life of the petroleum contract.'[230]

Basically, it entitles a Host Country to a payment every time an agreed production volume milestone is hit throughout the project's life cycle. Being a bonus payment, it too is payable

[227] Production Sharing Agreements have been signed between government, CNOOC and Total over blocks 1, 2 and 3A in the Albertine Graben. Although these were laid before Parliament, they have not been made publicly available.
[228] Open Oil, supra, p.79
[229] Energy Glossary, 'production bonus | Energy Glossary (slb.com), 2023
[230] Open Oil, supra, p.79

regardless of the profitability of the Project.[231] While it may appear (on the face of it) to be unfair to the IOC, it is widely accepted in the industry and will not inhibit investment if well structured. It is also relatively easier to administer than say, corporate taxes. Libya and Uganda are some of the developing countries that employ this tool.

In Uganda's Model PSA, it is payable within a waterfall or cumulative structure: initially, achieving a cumulative production volume of 50,000,000 BOE triggers a payment obligation of USD 5,000,000 (payable in a lump sum); and subsequently every additional 25,000,000 BOE production volume triggers a respective payment obligation USD 3,000,000 (also payable in a lump sum).[232]

In Article 15.1.2 of Libya's Exploration and Production Sharing Agreement, "(a) an amount of one million US Dollars (US $1,000,000) to be paid in respect of each Commercial Discovery within thirty (30) days after Commercial Production Start Date of such Commercial Discovery; and (b) an amount of five million US Dollars ($5,000,000) upon achieving cumulative production of one hundred million (100,000,000) Barrels of oil equivalent from each Commercial Discovery…"[233]

Rentals

As a Fiscal Tool, Rentals are fixed or per acre annual payments that the Licensee undertakes to pay to the Host Country's government at the onset of a calendar year or a contract year.[234] They are basically usage fees charged on every Licensee in respect of each acreage of land that remains subject to the Licensee's Exploration or Production License (as applicable) during the year in review. The unit and style of calculation may differ across nations that employ this tool but the spirit of the tool remains the same.

[231] Natural Resource Governance Institute, supra, p.3
[232] Art 8 (a), (b) Model PSA
[233] Natural Resource Governance Institute, supra, p.3
[234] Open Oil, supra, p.80

In Uganda, Article 26.1 of its Model PSA structures surface rentals in such a way that the Licensee of a Petroleum Production License pays government differently from a Licensee under a Petroleum Exploration License. The former pays an annual surface rental of USD 1000 per square kilometer or part thereof while the latter pays an annual acreage rental as follows –

> *(i) First Exploration Period: USD 20 per square kilometer or part thereof;*
> *(ii) Second Exploration Period: USD 30 per square kilometer or part thereof;*
> *(iii) Third Exploration Period: USD 50 per square kilometer or part thereof.*

Ghana's production sharing agreement, particularly Article 12.2 (e) adheres to a similar theme. Licensees of a Petroleum Production License pay government differently from Licensees under a Petroleum Exploration License. The former pays an annual surface rental of USD 100 per square kilometer while the latter pay an annual surface rental as follows –

> *Initial Exploration Period: USD 30 per square kilometer or part thereof;*
> *First Extension Period: USD50 per square kilometer or part thereof;*
> *Second Extension Period: USD 75 per square kilometer or part thereof.*

This tool guarantees Uganda a steady source of income throughout the life cycle of every project, whether during the Exploration or Production phase. It also acts as a permanent incentive to Licensees not to shelve, hoard or hold onto Contract Areas or portions thereof that they are not actively operating or do not intend to operate in the year in review.[235]

To this end, UNOC, which holds the exploration license for Kasuruban vide a Production Sharing Agreement that was signed with MEMD in February of 2014, is obligated to pay rentals to government even though it is yet to start exploration. Should it decide not to explore Kasuruban during this year after all, it would be best advised to cede the Contract Area back to

[235] Open Oil, supra, p.80

government. This is because holding onto it would prove disproportionately costly, on account of the rentals that it would have to pay anyway. There is of course a risk that the Licensee may relinquish an area prematurely but this would not be detrimental to the state in the long run.[236] It can and will grant this area to another Licensee who will in due time make the discoveries or operations necessary.

Royalties

Royalties are a Fiscal tool that operate as 'payments made by the Licensee to Government in reference to the amount and value of petroleum produced.'[237] They are deemed to be the minimum entitlement of government as the owner of finite Petroleum assets, who has permitted an IOC to extract and make use of its resource. To that extent, they operate as ordinary royalties do in intellectual property. Libya and Uganda are some of the developing countries that utilise this tool as per Article 19.1 of Libya's Exploration and Production Sharing Agreement and Article 9 of Uganda's Model PSA.

Although they can be structured based on profit or even on quantity produced, they are most commonly structured as ad valorem payments, that is to say, collected 'based on a percentage of the value of the resource extracted.[238] In general, ad valorem royalties do guarantee that a Host Country will receive an amount of income from the IOC at this stage. However, they completely ignore the impact of costs and prices and can therefore disincentivize investment - a reality which may not be conducive for a developing Host Country.

Balancing the need to attract investment with the need for revenue would best be served by a structuring that is progressive, that is to say, generates more revenue for the Host Country when the level of production increases and less revenues when the level of production reduces. This can be done through 'progressive sliding scale royalties, which adjust the percentage of government take based on measures of the profitability of the Project.[239]

[236] Z. J. Plater, supra, p.15
[237] Open Oil, supra, p.81
[238] Natural Resource Governance Institute, supra, p.3
[239] Ibid

Uganda is one of the developing countries that employ this tool. Article 9 of its Model PSA underscores this point as follows –

> *Where the production does not exceed 5,000 (2½ + X) %*
> *Where the production is higher than 5,000 but does not exceed 10,000 (5 X) %*
> *Where the production is higher than 10,000 but does not exceed 20,000 (7½ + X) %*
> *Where the production is higher than 20,000 but does not exceed 30,000 (10 + X) %*
> *Where the production is higher than 30,000 but does not exceed 40,000 (12½ + X) %*
> *Where the production is higher than 40,000 (15 + X) %*

Over and above the structuring of royalties, it is important to note the timing of their remittance to government. As the production sharing table above illustrates[240], royalties are a priority payment that are due to government immediately upon extraction of oil, that is to say, before any other deduction (including costs) is made.[241] Section 154 (1) of Uganda's Upstream Act which requires the Licensee to pay royalty to government on Petroleum recovered at the delivery point, corroborates this position. Its payment is therefore not subject to the costs of the project or (strictly speaking), its profitability.

State Participation

State participation is a Fiscal tool that permits a state to 'purchase or negotiate shares in an oil or mineral project.[242] Participation may entail the state securing a share in the distributed profits of the IOC or obtaining an entitlement to share in the distribution of the produced Petroleum alongside the IOC. In a participation paradigm, the IOC and Host Country are partners in the Petroleum project.

[240] Ibid, p. 41
[241] Open Oil, supra, p.81
[242] Natural Resource Governance Institute, supra, p.4

Whatever the form that participation may take, it is within the prerogative of every state to decide whether to partner with IOCs in this way or not. A decision to participate is in effect an assumption (not just of distribution rights) but also of a share of the project's risk and in some cases, additional obligations regarding the project.[243]

Should a state elect to do so, it must designate a state-owned enterprise or other entity through which it will participate and indicate the percentage of its participation. This will inform its distribution rights, financing obligations and other such machinations in the partnership. The dynamic is no different from the equity requirements and obligations of subscribers to companies or other partnerships. This tool is used by Indonesia and Uganda, among other developing countries. In Uganda, government incorporated the Uganda National Oil Company (UNOC) vide section 42 (1) of the Upstream Act 'to manage Uganda's commercial aspects of petroleum activities and the participating interests of the State in the petroleum agreements.'

Through UNOC, Uganda's government has exercised its option to participate in Petroleum projects. As far as equity is concerned, Article 10 (1) of Uganda's Model PSA prohibits it from exercising or holding a share that exceeds 20%. Government is at liberty to negotiate and participate in different Petroleum projects at varying levels, provided that it does not exceed that ceiling. For its part, Indonesia has taken up a 10% participating interest in a 1999 Petroleum Yapen contract.[244] That contract provides that '[The National Oil Company] shall have the right to demand from CONTRACTORS that a ten percent (10%) undivided interest in the total rights and obligations under this Contract be offered to either itself or a [company]… designated by Pertamina…' Indonesia participates in Petroleum projects through Pertamina or its nominees. The former is Indonesia's state-owned Petroleum corporation.

As far as how participation plays out practically, terms are secured through the creation of the joint venture between the IOC and the national oil company. Typically, the parties create an incorporated Joint Venture, much like your ordinary company, vest in it rights over the extracted

[243] Ibid
[244] Ibid

Petroleum and set out the terms of their partnership in a Joint Venture Agreement.[245] The parties then constitute a joint management committee through which the Joint Venture acts.[246] The constitution of that decision making body as well as the manner by which it makes its decisions are driven and informed by the joint venture partners' participating interests.

Profit Share

When petroleum is extracted, the first deductions to be made are usually royalties and cost Petroleum (in that order). The portion of produced Petroleum that remains after cost oil and/or gas has been allocated to the Licensee[247] is what the Petroleum industry designates as 'profit oil' or 'profit gas' (as applicable). It is a Fiscal Tool that ensures that revenues are distributed between the Host Country and the IOC Licensee in each successive calendar year, typically in accordance with their participating interest. States, through their national oil companies or their nominees are usually at liberty to choose whether to receive their share of Profit Petroleum in cash or kind.

Whatever their choice, Profit Oil can guarantee that a Host Country receives a steady flow of in - kind revenues from the beginning of Production to the end of the project's life subject to Production volumes. It is a progressive Fiscal tool in so far as the revenues it remits to government increase with an increase in volumes and vice versa. This makes it neutral, fair and conducive to the attraction of investment. Uganda uses this Fiscal tool and has secured its progressiveness through Article 12 of Uganda's Model PSA which calculates profit share against the 'R-Factor.' Such a basis for calculation ensures that the Host Country receives a larger share of profit in the event of a windfall.[248]

The downside to Profit share is the timing of its remittance and the impact that costs have on it. Since it is calculated after costs are deducted, costs have an undue effect on its volume and share. These costs are predominantly initiated and managed by IOCs since most states do not actually

[245] Open Oil, supra, p.28, 47
[246] Ibid
[247] Ibid, p.86
[248] Ibid, p.94

conduct Petroleum operations. Uganda falls in that category.[249] In order to ensure that government receives its proper share of Profit oil, costs and cost oil must be properly determined. Cost Oil is the portion of produced oil that the parties agree to be allocated to the recovery of costs incurred in the conduct of the petroleum operations.[250]

In the spirit of keeping costs fair and thereby maximizing profits, most production sharing arrangements set limits on the kind of expenses or costs that an IOC can actually recover at the time of awarding Cost Oil. This limit is supported by the state's regulatory oversight over the cost designation. In Uganda, section 10 (2) (h) of the Upstream Act empowers the Authority to ascertain the cost oil or gas due to Licensees.

There are also auditory, quantitative and operational limits placed on cost recovery. All cost recovery is generally subject to auditing processes by the state's Petroleum regulator in accordance with the petroleum sharing agreement and applicable laws. Of course, this means that the fairness of government's profit share will turn greatly on the accounting and audit capabilities of its regulator or its nominee,[251] and that government must invest greatly in building that capacity. IOCs are not above 'gold plating, spending more on production than is necessary, or inaccurate accounting.[252]

In terms of quantity, governments rarely permit IOCs to recover all their costs as a lump sum. For instance, Uganda has a 65% recovery limit in Article 11.3 of its Model PSA. Under that proviso, IOCs can only recover up to 65% of the available oil and 65% of the available gas in any given year. Any costs that exceed the limit will be carried forward to the following year, until they are finally settled.

From an operational standpoint, the costs recoverable can be limited by barring 'consolidation of costs.' This is a practice by which IOCs 'deduct costs incurred on a project from the taxable

[249] G Nantume, supra, p.2
[250] Open Oil, supra, p.89
[251] Natural Resource Governance Institute, supra, p.6
[252] Ibid

income of another project.[253] It is intended to inflate the costs of production and as a result, the Cost Oil. This would in turn reduce the Profit Oil due to government, leaving the IOC with the bulk of the profits.

This practice can be avoided by implementing a ring-fencing structure by which 'recoverable costs incurred in respect of license area can only be offset against oil produced from that area.'[254] Uganda is one of the countries that have incorporated ring fencing in their production sharing arrangements. Article 11.2 of its Model PSA provides as follows –

> *For purposes of Cost Recovery, ring fencing around each Contract Area shall apply. In the event that a Licensee has more than one Contract Area, the calculations shall be done on a Contract Area by Contract Area basis. There shall be no consolidation.*

Corporate income Tax

Once the IOC and the Host Country have successfully distributed Profit Petroleum between themselves, the Host Country's tax man becomes entitled to classify the IOC's share of that distribution as income in the hands of the IOC Licensee for the respective year in which it is received.

This is in keeping with most tax laws around the world. Specifically, Uganda's section 4 (1) of the ITA stipulates that 'a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income.' This chargeable amount is arrived at upon removing allowable deductions (read recoverable costs) from the IOC Licensee's gross income which consists of 'Cost oil, the Licensee's Profit Oil share and any credits that the Licensee has earned from petroleum operations."[255]

[253] Ibid, p.4
[254] KW Bahati & B Beyeza, supra, p. 17
[255] section 89A (1) ITA

Upon determining the chargeable amount of the licensee for the year in review, that amount is subject to corporate income tax at the Host Country's corporate tax rate. In Uganda, section 89G (3) of the ITA read alongside paragraph 2 of Part IX of its Third Schedule set the corporate tax rate at 30% of the Licensee's Chargeable Income.

The pitfall with corporate tax is the risk of transfer pricing. This is a practice that IOCs and other multinational corporation undertake to reduce their chargeable income and therefore the corporate tax that they are due to pay to Host Countries. It 'occurs when taxable income is shifted from a relatively high to a relatively low tax jurisdiction.'[256]

IOCs (typically subsidiaries of multinational corporations) usually conduct transfer pricing in one of two ways: they 'may sell their oil or minerals to a sister company at an artificially low sales price in order to reduce their declared revenues and thus the size of their royalty or income tax obligations' in the Host Country. Alternatively, they 'may purchase goods and services from a sister company at an inflated price, thereby increasing their declared costs and decreasing their declared profits' in the Host Country.'[257]

In developing countries like Trinidad, governments have sought to mitigate the loss of revenues in this way by designating themselves as withholding agents and settling Licensee's tax obligations at source. Article 21.5 of Trinidad's model production *sharing agreement provides as follows –*

> *The Minister shall pay on behalf of the Contractor out of his share of production referred to in Article 18.14 the Contractor's liability for Petroleum Profits Tax, Unemployment Levy or any other taxes or impositions whatsoever measured upon income or profits.*

In some of these countries, taxes are deducted much like royalties, that is to say, before Licensees receive their profit share. Although it has been done, it is extremely complex, attracts

[256] Natural Resource Governance Institute, supra, p.6
[257] Ibid

tax disputes between the IOC and the Host Government and may act as a disincentive to investment.

Alternatively, transfer pricing risk can be mitigated through close and effective auditing capabilities on a Host Country's Petroleum regulator's side. Specifically, the government can 'require commodity sales to be accounted for tax purposes using objective market prices rather than the sales value declared by companies.'[258] Uganda is one of the states that has opted to take the alternative route - designating, building capacity and equipping a specialised office within the Uganda Revenue Authority, exclusively for the Petroleum Industry.[259]

Windfall or Resource Rent Tax

This study also commends the use of windfalls or resource rent tax as an optimal fiscal tool for developing Host Countries. This is a progressive Fiscal Tool 'designed to capture part of the excess profit that can arise when international prices of resources soar.'[260] This tool is utilised by Ghana and Uganda, among other developing countries.

Section 89GDA of Uganda's ITA sets out circumstances in which the IOC Licensee will be required to pay a windfall tax to government because the price of oil has guaranteed a windfall for the Licensee. The obligation to pay Uganda's windfall tax is generally triggered by two factors: first, the international price of oil hits USD 75 or more per barrel on any given day of a year of income; and second, the Licensee in question holds a License to operate one of the areas designated for that purpose in the ITA. This tax is separate and distinct from the corporate income tax, and is charged at a rate of 15%.

In Ghana, windfall tax is payable in kind by the IOC to government. Article 10.2 of Ghana's model production sharing agreement creates an 'additional oil entitlement' which 'gives a larger share of the oil production to the government as the company's rate of return increases.'[261] The

[258] Ibid
[259] G Nantume, supra, p.2
[260] Natural Resource Governance Institute, supra, p.4
[261] Ibid

tax is payable every time the IOC's rate of return on a given Contract Area has been inflated in accordance with the specifications under the agreement.

Windfall taxes can be a great source of substantial revenues for government, especially since they keep Licensees from wringing in unprecedented profit shares at the expense of Host Countries and the indigenous citizens, for whose benefit the Petroleum is supposed to be utilised.

The tax is set in the spirit of meeting government's collection policy objectives. In Uganda for example, ensuring that all the revenue components that are due to government (whether they are tax or non-tax based) are paid, is a core policy objective.[262] However, the tax itself is complex and difficult to administer.

Withholding Taxes

Due to the highly specialised and complex nature of Petroleum operations, IOCs typically sub contract the provision of various goods and or services to the Project. More often than not, these sub-contractors are not domiciled within the Host Country and their payment by the IOC is likely to result in the government losing revenues. This also applies to dividend payments to foreign shareholders, seeing as most IOCs are subsidiaries of foreign multinational corporations.

Withholding tax is an imposition by the Host Country on the IOC by which the latter is 'required to withhold a share of payments to … their lenders, owners (in the form of dividends) subcontractors... and other third parties …, and to transfer it to the government.'[263] In Uganda, dividends distributed into the hands of foreign shareholders attract 15% withholding tax. Part XIII of Uganda's ITA imposes withholding tax at 15%.

4.1.3.3 Non industry Fiscal Instruments

Overview

[262] Ministry of Energy and Mineral Development, supra, p.26
[263] Natural Resource Governance Institute, supra, p.3

Although the bulk of tax and non-tax levies to which Licensees are subject are specific to the Petroleum Industry, they are not thereby exempted from paying the non-industry specific taxes, fees and levies applicable to all corporations doing business in the Host Country or to their operations therein.[264] This is par for the course in countries all over the world. Article 13 of Uganda's Model PSA dictates that 'all taxes, duties, levies or other lawful impositions applicable to the Licensee shall be paid by the Licensee in accordance with the laws of Uganda.

Article 21.4 of Trinidad's model Petroleum sharing agreement also provides as follows -

> *The Contractor shall be subject to and must observe the laws in force from time to time in Trinidad and Tobago and nothing herein contained shall be construed as exempting the Contractor from complying with the laws imposing taxes, duties, levies, fees, royalties, charges or similar impositions or contributions which the Contractor would be liable to pay or is called upon to pay under such laws by virtue of its conduct of Petroleum Operations hereunder.*

Value Added Tax (VAT)

This is an indirect tax that is charged incrementally on a VAT chargeable good or service throughout its life cycle (each stage of production, distribution and sale to the end consumer). All users of such goods or services, whether they are IOCs or not will be liable to pay this tax.

The complexity of petroleum development operations necessitates the use of highly specialised equipment that will almost always have to be imported into the country. Such imports of goods are generally subject to value added tax under Ugandan law. In particular, section 4 (b) of the Value Added Tax Cap 349 (as amended) imposes VAT on every import of goods that is not exempt from tax.

[264] Open Oil, supra, p.94

Like many other developing countries that have made strides and adjustments in order to attract investment into the Petroleum industry, there is a cap on the kinds of imported goods (read equipment) that are charged VAT in the industry. As a general rule, all inputs and equipment, except motor vehicles, that the IOC Licensee imports directly and exclusively 'for use in the development and distribution of oil or gas,' are exempt from value added tax.[265]

Stamp Duty

This is another Fiscal tool by which governments collect revenues from persons doing business on their soil, and can collect revenues from Licensees. Stamp duty is 'generally charged on instruments executed in respect of things done or intended to be done in Uganda, or in respect of property (*read oil and gas*) that is situated in Uganda.'[266]

This can include sub contracts executed between the IOC Licensee and third parties in respect of goods or services that are incidental to the Petroleum operations. They may also be contracts executed between affiliates of the Licensee and third parties provided that the consent of the Minister of Energy is set as a condition precedent to 'the arrangement resulting in less tax revenues to Uganda.'[267]

4.2 Environmental Protection

4.2.1 Economic Instruments

The majority of tools applicable to Uganda's Petroleum Sector can be found in the Model PSA. They can also be found in Uganda's petroleum laws, particularly the Upstream Act. Furthermore, Uganda's revenue laws (as amended)[268] such as the Income Tax Act Cap 340 of 2000; the Value Added Tax Act Cap 349 of 1996; the Stamp Duty Act Cap 13 of 2014; and the East African Community Customs Management Act Cap 1 of 2004, also uphold a system of Fiscal tools.

[265] East African Community Customs Management Act, 2004
[266] Section 3 of the Stamp Duty Act Cap 13 of 2014
[267] Ssection 172 (2) Upstream Act
[268] These statues have since been amended. This study takes those amendments into account.

The GOU has also put in place public revenue management laws and policies that are a great source of Fiscal and Economic instruments for the oil and gas sector. These include the Public Finance Management Act Cap 3 of 2015; the National Oil and Gas Policy for Uganda 2008; as well as the Oil and Gas Revenue Management Policy for Uganda 2012. These instruments secure the payment of both non – tax and tax revenues to the GOU. In fact, one of Government's core strategies for the industry is to ensure that all the revenue components due to it are paid, regardless of whether they are tax or non-tax based.[269]

The major incentives and disincentives that Uganda's Fiscal Regime utilizes to drive environmental compliance are the very tools that generate income. These have been discussed in detail under section 4. 1 of this study and are dealt with summarily under this segment for the sole purpose of highlighting their reinforcement of ordinary command and control measures:

First, are **signature bonuses** which are in effect a surcharge[270] for the resultant disturbance to the environment that Petroleum Project occasion. In executing the Model PSA, Government, as public trustee,[271] authorizes the conduct of activities which are inconsistent with the natural habitat and sanctity of the environment in the Project Area. A premium is charged for this right, the sentiment being that parties that are unable to pay it should not be permitted to distort the natural habitat let alone conduct the said operations. This sentiment is an offshoot of the view that no quota should be given in the effort to protect the inherent value of all forms of life as doing so would threaten life as we know it.[272] It is therefore the basis for legislative and other government efforts to enforce compliance by Licensees, their contractors and subcontractors.

Additionally, the levy of **Production Bonuses** is another avenue through which the Licensee is parting with a substantial cost to Government before it has even got its share of the income.[273] This in itself is an incentive for the Licensee to conduct its operations by the book, particularly with regard to the environment, in order to ensure that it is able to see the Project through and

[269] Ministry of Energy and Mineral Development, p.26
[270] The Cambridge English Dictionary defines this term as 'a charge in addition to the usual amount paid for something, or the amount already paid.'
[271] Article 237 (1), (2) (b) of the Constitution of Uganda vests the ownership of natural habitat in Government for the benefit of the people of Uganda.
[272] BK Sovacool et al., supra, p.20
[273] Art 8 (a), (b) Model PSA

recoup its cost-plus profit. This obligation plays into the mandate of the Authority, as prescribed by section 1 (e) of the Upstream Act, to ensure that there are measures in place for the protection of the environment during the conduct of Petroleum Projects.

As far as **Rentals** go, GOU has fixed annual payments that the Licensee undertakes to pay per square meter of land which remains subject to a Petroleum Exploration License or Petroleum Production License.[274] In so stipulating, the Model PSA incentivises Licensees to decommission or relinquish early those areas that they do not intend to operate in a given year.[275] This significantly reduces the Licensee's environment foot print in those areas, thereby protecting the natural habitat therein.

Royalties are yet another guaranteed source of income for Government since they are payable on gross production volumes, that is to say before cost deduction.[276] At this point, the Licensee is yet to even recoup costs and so is disincentivised from taking any action, particularly against the environment, that would affect its License or its ability to successfully see the Project through. It is one of the instruments that law and oil policy deems a fair remittance made to future generations, on account of the unavoidable changes that the Licensee makes to the former's environment.[277]

Moreover, **State participation** is an instrument that not only sets a fixed percentage[278] at which Government is willing to participate (*read finance*) but also allows it to require the Licensee 'to carry the costs of Government or its Nominee through Development to Production.'[279] In essence, the state participation instrument makes the Licensee a creditor who will protect the project at all costs, environmental protection obligations inclusive, in order to secure payment in full of the debt. Participating also guarantees the state influence and a say throughout the life cycle of the Project in accordance with its participating interest. This ensures that GOU is in the

[274] Art 26 Model PSA
[275] Open Oil, supra, p.80
[276] Open Oil, supra, p.81
[277] C Nakhle, supra, p.42, 43
[278] As per Article 10 (1) of the Model PSA, the percentage shall not exceed 20%
[279] Article 10.1 Model PSA

know of environmental performance obligations of the Licensee and can vote to safeguard their performance.[280]

Embedded in the structure of the Model PSA is also the concept of '**cost oil.'** This is the portion of produced oil that the parties to a Production Sharing Agreement agree to be allocated to the recovery of costs incurred in the conduct of the petroleum operations.[281] There are limits in terms of what expenses are actually recoverable[282] subject to the auditing processes under that Production Sharing Agreement. There is also an upper limit in so far as only 65% of the available oil and 65% of the available gas in a particular year may be utilised toward cost recovery.[283] Any other recoverable costs are carried forward, until paid.

Most notably however, the cost recovery process is structured in a ring-fenced manner. The costs recoverable for every Contract Area in respect of which the Licensee is authorised to operate, are assessed and audited on their own. In other words, 'Recoverable costs incurred in respect of license area can only be offset against oil produced from that area.'[284] Consolidations are not permitted.

The audit of recoverable costs is a disincentive against unreasonable, unauthorised and unlawful practices, particularly in regard to environmental protection. This is because the expenses for such practices may not be recoverable. On the other hand, ring fencing acts as an incentive for best practices in each and every Contract Area, seeing as every such area's profitability is assessed on its own merit.

Profit Share

This is the share of produced oil and/or gas that remains after cost oil and/or gas has been allocated to the Licensee.[285] Since Profit share is determined after deduction of costs, the amount of recoverable costs affects the amount of the Profit share. It is therefore an in-built mechanism

[280] Open Oil, supra, p.28, 47
[281] Open Oil, supra, p.89
[282] Section 10 (2) (h) of the Upstream Act vests the Authority with the responsibility of ascertaining the cost oil or gas due to licensees
[283] Article 11.3 Model PSA
[284] KW Bahati & B Beyeza, supra, p.17
[285] Open Oil, supra, p.86

that incentivises the Licensee to use best practices in the conduct of its petroleum operations, particularly in environmental protection, in order to reduce its costs and thus improve its Profit share.

Corporate income Tax

Once the Profit share has been distributed, it becomes income in the hands of the Licensee for the respective year in which it is received. According to section 4 (1) of the ITA, 'a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income.' This income is arrived at after removing allowable deductions from the Licensee's gross income which 'includes cost oil, licensee's share of profit oil and any credits earned by the licensee from petroleum operations.'[286]

A Licensee is subject to corporate income tax at the rate of 30% of the Licensee's Chargeable Income. This is provided for under section 89G (3), paragraph 2 of Part IX of the Third Schedule to the ITA. It is indelibly linked to Profit Share and therefore holds the same capacity for incentives and disincentives that the latter does.

Windfall Tax

In certain cases where the price of oil guarantees a windfall for the Licensee, the Licensee may have to pay to Government a windfall tax at a rate of 15% in addition to the corporate income tax.[287] This tax applies where the international price of oil reaches USD 75 or more per barrel on any day of a year of income and where the licensee in question owns a license to operate any of the areas specified for that purpose in the ITA.

Government has imposed this tax to ensure that licensees do not receive unprecedented profit at the expense of Ugandans to whom the petroleum belongs and whose environment has been affected by the production of that petroleum. Government has made a commitment to use Uganda's petroleum resources to 'create lasting value to society'[288] and this is one of its strategies for ensuring that this is achieved.

[286] section 89A (1) ITA
[287] section 89GDA ITA
[288] Ministry of Energy and Mineral Development, supra, p.1

4.2.2 Other Economic incentives and disincentives

General Obligation

A Licensee has an obligation to meet its financial obligations under the Upstream Act, the Regulations and the specific conditions upon which it was issued its License.[289] This obligation is not waived or satisfied by the revocation, suspension or cancellation of the License. Neither is it discharged by reason of the Licensee's rights thereunder being waived or lapsing. In fact, unpaid tax takes on the nature of debt and is even subject to periodic cumulative interest at a rate of 2% incurred upon each late payment or statutory filing.[290]

Moreover, where there is a revocation or other cessation or interruption of the License, the licensee is obligated to pay the cost of fulfilling any obligation that it has not fulfilled. Section 91 (2) of the Upstream Act corroborates this position in so far as it requires such Licensee to pay the amount that it would have paid if it had fulfilled the obligation. In other words, there is no avoiding obligations, including environmental protection obligations. This is a great incentive for Licensees to fulfil these obligations at the earliest opportunity.

Security

Licensees are required by section 173 of the Upstream Act, to obtain security for the performance of their obligations under the License. As early as at the application stage, the Minister is to require Licensees to: make arrangements 'for the execution of a bond or other form of security for the performance and observance of the conditions to which the license may be subject'; and 'to take the necessary insurance policies to protect against liabilities that may arise as a result of petroleum.'[291]

Section 141 NEA also empowers NEMA to require a developer to take out financial security for a project or activity likely to have a deleterious effect on human health or the environment. NEMA can access it where there is need, among others, for environmental response action to an emergency occasion by the project or activity. Moreover, while the Licensee may assign its

[289] section 91 (1) of the Upstream Act
[290] Part XIV of the Tax Procedures Code Act Cap 14 of 2014
[291] section 173 of the Upstream Act

interest to a non-affiliated company, such company must 'provide to the Government an unconditional undertaking to assume all obligations of the Licensee under the Production Sharing Agreement, including a Bank Guarantee, an Insurance Bond, and/or Parent Company Guarantee substantially in the form set forth in the Regulations.'[292]

These obligations, in and of themselves create an incentive for IOCs to take extreme care in the conduct of their operations[293] not only because the risk of harm from Petroleum operations is potentially grave and extensive but also because any harm which triggers the insurance or other such security ultimately increases the premiums due to the security provider,[294] not to mention the resultant reputation damage on the IOC's brand and business. This is evidenced by the Deep-Water Horizon Oil Spill that occurred in the Gulf of Mexico in 2010, which saw BP PLC pay close to US$ 70 million in fines, charges, penalties, clean-up costs and other settlements around the world.[295]

Remedial Action Interest

The G0U has also put in place instruments for the mitigation of damage to the Environment in the event of an oil spill, fire, emergency or accident affecting the environment. In cases of fires and spills, the Licensee is mandated to promptly implement the relevant contingency plan and in emergencies or accidents, to 'take such action as may be prudent and necessary in accordance with the applicable law and Best Petroleum Industry Practices in such circumstances.'[296] Due to the danger posed to the public and to the Environment in these cases, delay or failure to act are not permissible. Where the Licensee fails to comply as required or to comply within the time specified by the Authority, the Model PSA permits Government to take the action required, upon notifying the Licensee.

In such a case, the GOU is entitled to recover from the Licensee immediately after taking the required action, all the expenses incurred plus 'interest determined at an annual rate equal to

[292] Article 22 Model PSA

[293] Some IOCs for example adhere to a full HSE wear policy in their Contract Area, so much so that visitors who would have otherwise been permitted more access to sites are prohibited from leaving 'safe zones' simply because their lack of proper HSE wear heightens the HSE risk for the IOC.

[294] The cost of taking up insurance and therefore of doing business would increase substantially from an incident of damage to human or environmental life.

[295] Z. J. Plater, supra, p. 15

[296] Article 23.10 Model PSA

London Inter Bank Offered Rate plus five (5) percentage points.'[297] There is no greater incentive for the Licensee to be prepared for any contingency than the possibility of imposing interest on it for unpreparedness.

Liability

Government takes damage to the environment very seriously and has structured economic and fiscal instruments to ensure that such damage is prevented or in the worst case, managed in line with the polluter pays principle set out by section 81 (5) of NEA. This principle requires the persons responsible for the pollution to meet the cost for alleviating, repairing or otherwise restoring the environment.[298] Indeed, the responsibility for operating the Contract Area in accordance with the Act, the Regulations and any other applicable law, lies squarely on the Licensee.[299] Licensees are mandated to ensure that their employees, contractors and sub-contractors comply with these obligations.

Part xvi of the NEA sets out instances where offences have been committed against the environment. They are generally strict liability offences, as section 80 (1) thereof illustrates. It stipulates that a person who pollutes the environment contrary to NEA or any other applicable law is strictly liable for any damage caused to human health or the environment, regardless of fault. Additionally, a person who does an act or makes an omission that may aggravate the damage or nuisance caused by earlier pollution is equally and jointly responsible for the pollution. Similarly, where the offender is a corporation, any director, manager whose connivance, neglect or consent can be proven, is also deemed to have committed the offence.[300]

Administrative Orders and Notices

The Authority is empowered under section 130 (1) of NEA to issue an environmental restoration order to any Licensee whose activities cause or are likely to cause pollution contrary to NEA or which are deleterious to human health or the environment. The order may, among others, require

[297] Article 23.11 Model PSA
[298] KW Bahati & B Beyeza, supra, p.4
[299] regulation 3 of the Regulations
[300] section 153 of NEA

the recipient to restore the environment, as near as possible, to the state in which it was before the taking of the action which is the subject of the order.[301]

Under the auspices of section 135 (1) NEA, an environmental inspector may also issue an environmental improvement notice to a Licensee whose activity is causing or is likely to cause pollution contrary to NEA or is deleterious to human health or the Environment. These orders and the money they would require act as disincentives to Licensees from conducting the petroleum operations in a manner that does not comply with the Upstream Act, Production Sharing Agreement, NEA and other laws.

Fines and penalties

This particular instrument imposes administrative fines, express penalties and coercive fines and empowers the Authority or the court as the case may be to issue them as prescribed under regulations.[302] Fines by court are issued upon conviction and in accordance with the sentence or fine prescribed by the law creating the offence.[303] For example, a Licensee who fails to take requisite action to prevent or manage pollution or who fails to notify the Authority and other government agencies of pollution as required by law, may be liable upon conviction, to a fine not exceeding fifty thousand currency points or imprisonment not exceeding fifteen years, or both.

As Gatti puts it, the sheer scale of investment and the highly specialized nature of Petroleum Projects, has created an elite group of players that are more or less operating, owning, participating in or backing (through Project Finance) all or sections of all Petroleum Projects in the world.[304] These players have built reputations among themselves, and have the wherewithal (on the strength of said reputations) to bring on board or convince other players to participate in a Project.[305] For this reason, they take their reputations very seriously.

Uganda's present Licensees - at least those that are IOCs - are no different. Their ability to obtain Petroleum deals (both within the local and international scene) and to keep them greatly depends

[301] section 130 (2) (b) of NEA
[302] section 171 (2) of NEA
[303] section 163 (1) of NEA
[304] Stefano Gatti, supra, p. 3
[305] Ibid, p. 213

on their reputations in the market.[306] For that reason, the adverse repercussions that a possible conviction and/or fine would have on their business prospects is usually not worth it to them, not to mention the significant sums of money that such fines often entail.

Forfeiture

By virtue of section 143 (a), (b) of NEA, the court before which a Licensee is prosecuted for an offence under that Act may make an order for the forfeiture of any funds, documents, substance, premises, facility, equipment or appliance used in the commission of the offence or of any materials or substance at the site of the offence.

Community service

Upon conviction, court may also issue an order requiring the convicted Licensee to do community work which promotes the protection or improvement of the environment. Section 143 (e) of NEA mandates that such service would be done at the cost of the Licensee.

Compensatory Orders

Section 144 NEA further empowers courts to issue the following compensatory orders where a Licensee is convicted of an offence under the Act:

i. to pay to the Government, in addition to any penalty imposed on him or her by the court for the offence, an amount of compensation for the loss or damage not exceeding five times the value of the loss or damage caused by the convicted person; or

ii. to pay up to ten times the amount of any fees, royalties or other payments which, had the act constituting the offence been authorised, would have been payable in respect of the authorised act.

[306] The stakeholder theory of business ethics has made sure of this

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Proposals for reform

In accordance with its prospected outcomes, this study makes the following practical recommendations:

5.1.1 Review the structure for VAT Exemptions

The East African Community Customs Management Act, No 1 of 2004 (as amended) generally exempts from VAT, inputs and equipment and services that are exclusively 'for use in the development and distribution of oil or gas.'[307] What this means is that if Total procures well infrastructure services from Mcdermot[308] which in turn procures welding artisans from CCCC (a general construction company), not all the services contracted in that value chain are exempted from VAT. Obviously, Tilenga is a 'Petroleum only' Project run by an SPV. As such, Mcdermot can benefit from the exemption because Total (the SPV) procured their services solely for the operation of that Project.

This is not the case for the services contracted to CCCC. Since it deals in other infrastructure projects outside the Petroleum industry, it does not benefit from the exemption or at least, URA has taken the view that it does not.[309] Perhaps this ought to be streamlined across the board to allow Tier 2, 3 and 4 contractors to secure VAT exemptions. In order for GOU to transform its economy through Petroleum resource management, building the capacity of its service industry by allowing VAT exemptions to trickle down the value chain may prove invaluable. The strength of that service industry would then translate into industry gains for other sectors, which would undoubtedly widen the tax base.[310]

[307] Stefano Gatti, supra, p.53
[308] This is a Tier 1 Contractor for Tilenga
[309] The Independent, supra, p. 14
[310] R Baldwin et al, supra, p.17

5.1.2 Review payment modalities

There is also the stipulation that VAT is payable by the 15th day of each month across all sectors and industries in the country. In an industry like Petroleum which is not just new but is notoriously expensive to fund and service, this stipulation may not be appropriate. To illustrate this point, the industry average for payment provisos in Petroleum contracts is typically between 45 and 90 days from the 'date of approval.'[311]

Using our example above, assume that when Mcdermot contracted CCCC, the contract stipulated that CCCC was to be paid 60 days after approval. Assume also that CCCC successfully complement a segment of the contract works for which payment is due and payable. CCCC would have to put in an invoice for that segment with Mcdermot, which could take 10 days to confirm that the amount is payable and approve its payment to CCCC. At this point, URA could well be entitled under the present '15-day stipulation' to receive VAT on the contract between Mcdermot and CCCC, never mind that CCCC is yet to be paid!

This scenario and many like it across the industry are to be reviewed across the exigencies of two factors: first, the values of Petroleum contracts (even Tier 3 or 4) are not measly and so a requirement to pay tax for funds not realized is not an inconsequential matter in this market.[312] Secondly, one of the bedrocks of responsible legislation that governments should legislate in such a way that the specific dynamics at play in the industries for which they legislate, are not subverted but are used to harness the power of said industry to contribute sustainably to the economy.[313]

The present '15-day' dynamic is not only impractical for industry players but it also creates cash flow issues, rendering them incapable or at the very least constrained to perform their contracts without obtaining short term, costly funding to do so.[314] This increases the cost of doing

[311] G Nantume, supra, p.2
[312] Gatti, supra, p.13
[313] R Baldwin et al, supra, p.17
[314] G Nantume, supra, p.2

business, undermining another core principle of a favorable fiscal regime which is that the regime should permit players to get a return commensurate to their investment.[315]

In view of these factors, the appeal made by this study is that GOU reconsiders the remittance terms for VAT, specifically for the Petroleum Industry. Perhaps we could discuss the potential for the tax being payable within 15 days from the date on which the player in question receives payment. Alternately, we could make payment the contingency upon which VAT becomes due immediately. In both propositions, the tax would be easy to administer because the Uganda Revenue Authority and the Authority have access to remittances by industry players and are therefore able to track payment modalities in real time.

5.2 Highlights from the Sector's Regime

In the financial year 2024/2025, URA is expected to collect UGX 32 trillion in domestic revenues. This should be juxtaposed with the UGX 55 trillion projection for 2025/2026 which is based on post Production forecasting.[316] Ongoing Project Developments in the Contract Areas are on track to deliver First Oil in the fourth quarter of 2025 and 93 of the required 170 wells have been drilled.[317]

In terms of debt to per capita ratios, revenue collections from this Sector are expected to augment[318] what Professor Nuwagaba calls Uganda's 'Fiscal capacity to manage debt.' The International Monetary Fund (the IMF) projects that the country's expected exports of 70 million barrels of Petroleum for the financial year 2025/2026 will translate into 'double digit growth' gains in terms of GDP for that year. IMF is confident that Uganda will have grossed UGX 70.6 trillion in GDP by the financial year 2028/2029.[319]

[315] L Kambedha, supra, p.12
[316] M Kitubi, 'Revenue from Oil will help in servicing national debt,' (2024, September 17), The New Vision, p.3
[317] Ibid, p. 6
[318] The New Vision reports that Uganda is presently unable to service her national debt through URA's net collections
[319] International Monetary Fund, 'Uganda Country Report,' No. 24/290, 2024

5.3 Parting Remarks

There is no doubt that Uganda has put in place robust legislation for the sector, generally.[320] I must say that this is also the case for the fiscal leg of this legislation. If nothing else, the study above proves this to be the case – from the tools employed, their basis and even their resonance with generally accepted international best practices.[321] However, like almost all growth curves this side of eternity, the application of these laws has highlighted some areas for improvement that specifically affect sector players but ultimately trickle down to government and the national resource envelope.[322]

It is for this reason that even as this study registers projections and tables proposals for reform, it reiterates two foundational principles for successful legislation in this Sector: first, Licensees and their sub-contractors are ultimately responsible for taking the regulatory compliance decision;[323] secondly, their decisions are driven by the universal factors that lie at the heart of business decision making. Empirical findings in Sustainable Development have not only demonstrated that individual business executives differ in their view of sustainability and its relevance to decision making but that their personalities, values, gender and so forth create predilections for or against taking the compliance decision.[324]

For that reason, tailoring legislative interventions that reinforce ordinary command and control measures of compliance is a study in circumventing these predilections and biases in order to escape the 'deterrence' rat race in favor of the 'sustainability partnership' dynamic. The latter is a system in which both the regulator and the Licensee[325] play on the same team with shared objectives.[326] This study commends the efforts that Uganda has taken in this regard - harnessing the concept of partnership and aligned interests through what we wish to call 'combined gain legislation'[327] in its Fiscal regime.

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320 L Kambedha, supra, p.34
321 C Nakhle, 'Petroleum Taxation: Sharing the oil wealth. A study of Petroleum Taxation Yesterday, today and tomorrow,' Routledge studies in international business and the world economy, 2008, p.39
322 Ibid, p.71
323 Ibid, p. 31
324 J Craft, supra, p. 21
325 Or its sub-contractors
326 R Baldwin et al, supra, p.1
327 This term is coined specially by this study to refer to market-based approaches of legislation

By so doing, it has elevated Licensees into sustainability partners that work with it toward the common goals of:

> *Harnessing sustainable collection of petroleum revenues for generational equity; and*
>
> *Employing the very same fiscal instruments to secure legislative gains in the area of environmental protection.*

The ingenuity of these fiscal tools is that they drive positive compliance decision making by Licensees and their subcontractors with little to no participation from the Authority, URA, NEMA or any other regulator. For a developing country like Uganda, the time, manpower and cost saving gains of this dynamic are incalculable. From an SDG Perspective, the performance of the country in terms of both Goal 9 and 10 indicators is enhanced by these gains. Most importantly, the Government of Uganda is able to register progress against a successful Fiscal Regime, an efficient environment management system for the Sector and a hefty bank balance either way! Call it a windfall… I certainly would.

BIBLIOGRAPHY

1. 2B1stconsulting, ‘CNOOC, Total and Tullow move on Uganda Kingfisher project,’ May 2013

2. AFP, ’Uganda launches first oil drilling programme,’ Daily Monitor, 2023

3. Avocats Sans Frontières, ‘Business, Human Rights and Uganda’s Oil and Gas industry: A Briefing of Existing Gaps in the Legal and Policy Framework. Kampala,’ 2015

4. B.A Garner, ‘Black’s Law Dictionary,’ 10th Edition, 2014

5. Bahati KW & Beyeza, B, ‘Getting a Good Deal? An analysis of Uganda’s Fiscal Oil Regime,’ CRPD Working Paper No. 64, 2018

6. Baldwin, R. et al., ‘Understanding regulation: theory, strategy, and practice,’ 1999

7. Becker, G. S., ‘Crime and Punishment: An Economic Approach,’ Journal of Political Science, 1968

8. Bhandari, P, ‘What is Qualitative Research?’ Scribbr, 2020

9. Bugembe B. K, ‘The Feasibility of Attaining Sustainable Development of Uganda’s Oil and Gas Industry: An Analysis of The Framework on Environmental Sustainability,’ 2022

10. Butterfield K and O’Fallon M, ‘A Review of the Empirical Ethical Decision-Making Literature: 1996–2003,’ 2005

11. CNOOC Uganda, ‘Statement on Kingfisher Oilfield Drilling RIG shipment,’ Press release, 2022

12. Coomer, J ‘Quest for a sustainable society,’ Oxford: Pergamon, 1979

13. Craft, J, ‘A review of the Empirical Ethical Decision-Making Literature: 2004–2011,’ Journal of Business Ethics, 117(2), 221–259, 2012

14. Dausen, N., & Barbara, E., ‘Uganda, Tanzania to do feasibility study on gas pipeline,’ Reuters, 2023

15. Denton Wilde Sapte, ‘A Guide to Project Finance,’ August 2018

16. DJ Bakibinga, ‘Revenue Law in Uganda,’ 2003

17. East African Community Customs Management Act No. 1 of 2004 (as amended)

18. East African Community Customs Management Oil and Gas Operations – Clearance Guidelines 2022

19. Energy Capital, ‘Top African Pipeline Projects to Watch in 2023,’ 2022

20. Energy Glossary, ‘production bonus,’ 2023

21. Ford RC and Richardson DW, ‘Ethical Decision Making: A Review of the Empirical Literature,’ Journal of Business Ethics, 13, 1994

22. G. Nantume, ‘What Uganda has gone through since 1962,’ Monitor, 2025

23. Gatti Steffano, ‘Project Finance in Theory and Practice: Designing, Structuring and Financing Private and Public Projects,’ Elsevier, 2013

24. George, T. E., Karatu, K., & Edward, A., ‘An evaluation of the environmental impact assessment practice in Uganda: challenges and opportunities for achieving sustainable development,’ Heliyon, 6(9), 2020

25. Government of Uganda, 'Model Production Sharing Agreement for [Petroleum Exploration, Development and Production] Or [Petroleum Development and Production] in The Republic of Uganda by and between the Government of the Republic of Uganda and Company X'

26. Graham D. Vinter & Gareth Price 'Project Finance: A Legal Guide,' Sweet & Maxwell, 2006

27. Gupta, N, 'Economic Rent - Definition, Formula and Examples, ' 2020

28. Hayes A, 'Economic Rent: Definition, Types, How It Works, and Example,' Investopedia, 2023

29. Hayes, A, 'Economic Rent: Definition, Types, How It Works, and Example,' Investopedia, 2023

30. Hunter, T 'Sustainable Socioeconomic Extraction of Australian Offshore Petroleum Resources through Legal Regulation: Is it Possible?' Journal of Energy & Natural Resources Law,' 2011

31. Income Tax Act Cap 340 of 2000 (as amended)

32. International Energy Agency, 'Energy Policy Review Report for Uganda,' Paris, 2023

33. International Monetary Fund, 'Uganda Country Report,' No. 24/290, 2024

34. Kagan J, 'What Is a Progressive Tax? Advantages and Disadvantages,' Investopedia, 2023

35. Kambedha, L., 'The Influence of Uganda's Fiscal Policy in Promoting Sustainable Financing in The Oil and Gas Sector in Uganda, 2022

36. Kitubi, M, 'Revenue from Oil will help in servicing national debt,' The New Vision, September 2024

37. Kitubi, M, ‘Uganda Races Towards First Oil,’ The New Vision, November 2024

38. Loe, TW et al, ‘A review of empirical studies assessing ethical decision making in business,’ Journal of Business Ethics

39. Milbank, Tweed, Hadley & McCloy LLP, ‘Identifying and Managing Project Finance Risks,’ Practical Law UK

40. Ministry of Energy and Mineral Development, ‘National Oil and Gas Policy for Uganda,’ 2018

41. Model Petroleum Agreement of Ghana 17.8.2000

42. Mugenyi, A., ‘PAU To Train SMEs Along EACOP Route,’ Deep Earth International, January 2022

43. Musoke R, ‘Tullow’s 16-Year Acrimonious Relationship with Uganda Ends,’ The Independent Uganda, 19 November, 2020

44. Nakhle C, 'Petroleum Taxation: Sharing the oil wealth: A study of Petroleum Taxation Yesterday, today and tomorrow,' Routledge studies in international business and the world economy, 2008

45. Namata E, ‘Analysis of The Role of Renewable Energy Towards Successful Implementation of Sustainable Development Pillars: A Case Study of Uganda,’ 2022

46. Natural Resource Governance Institute, ‘Fiscal Regime Design,’ NRGI Reader, 2015

47. NTV, ‘Government confirms 62% completion of oil pipeline, first oil expected in 2026,’ 2025

48. Oil and Gas Journal, ‘Uganda, Tullow sign agreements to complete farm out deal,’ 2012

49. Oloka-Onyango, J., 'Courting the oil curse or playing by the rules? An analysis of the legal and regulatory framework governing oil in Uganda,' 2020

50. Open Oil, 'Oil Contracts: How to read and understand them,' Open Oil book sprint team, 2012

51. Paliwal, M, 'Business ethics,' New Age International, 2006

52. Pascual, C, 'The New Geopolitics of Energy,' (2015), In Columbia University Journal

53. Pearce, D., Hamilton, K., & Atkinson, G, 'Measuring sustainable development: progress on indicators. Environment and Development Economics,' 1996

54. Pearsall, J., Hanks, P., Soanes, C., & Stevenson, A, 'Oxford Dictionary of English,' Oxford University Press eBooks, 2010

55. Peck, S & Chayes, S, 'The Oil Curse: A Remedial Role for the Oil Industry,' 2015

56. Petroleum Authority of Uganda, 'Final Refinery Funding Negotiations Announced Among Other Positive Developments in Uganda's Oil and Gas Sector.'

57. Plater, Z. J., 'Learning from Disaster: Lessons for the Future from the Gulf of Mexico,' Boston College Environmental Affairs Law Review, 38(2), 2010

58. Porter, M. E., & van der Linde, C, 'Toward a new conception of the environment competitiveness relationship,' Journal of Economic Perspectives, 1995

59. Procter, P, 'Cambridge international dictionary of English,' Cambridge University Press, 2000

60. Rev Mtikila v A.G of Tanzania HCCS No.51 of 1993 (TZ)

61. Sebbit, A, 'The impact of energy on sustainable economic development in Uganda,' 2006

62. Semra F. AŞCIGİL, M. Burak ATASEVER, Uğur SOYTAŞ, 'Energy ethics: a decision-making perspective,' Sakarya Üniversitesi İşletme Enstitüsü Dergisi, Cilt 3,' 2021

63. Singh, A., & Mishra, N, 'Ethical Theory and Business, 'International Journal of Humanities and Social Development Research,' 2018

64. Sovacool BK et al., 'Energy Decisions Reframed as Justice and Ethical Concerns,' 2016

65. Tapas, P., 'Business Ethics in decision making,' Periapex Indian Journal of Research, 2012

66. The Constitution of the Republic of Uganda 1995

67. The Independent, 'Total signs USD 2 Billion deal for Tilenga project,' The Independent, June 2021

68. The Independent, 'Uganda declines in corruption ranking - Global report (independent.co.ug), 2022

69. The Independent, 'Uganda Wins $407m Tullow Case,' July, 2020

70. The London School of Economics and Political Science, 'What is the polluter pays principle?' Gratham Research Institute on Climate Change and the Environment, 2022

71. The National Environment Act Cap 5 of 2019

72. The National Oil and Gas Policy for Uganda 2008

73. The Petroleum (Exploration, Development and Production) Act Cap 3 of 2013

74. The Stamp Duty Act Cap 13 of 2014

75. The Tax Procedures Code Act Cap 14 of 2014

76. The Value Added Tax Cap 349 of 2014 (as amended)

77. Total Energies, “Tilenga and EACOP: Key Project Progress Indicators,” May 2024

78. Total, CNOOC, & Tullow Oil, ‘Environmental and Social Impact Assessment: Tilenga Project,’ 2018

79. TRINIDAD - Model Production Sharing Contract 2000 (Reissued in 2002)

80. Tullow Oil Plc, ‘Tullow announces a substantial farm down to Total in Uganda,’ press release, LSE: TLW

81. Tullow Oil Plc, ‘Tullow completes the acquisition of Heritage’s Ugandan assets,’ LSE: TLW

82. Uganda Broadcasting Corporation, ‘Uganda Changes commercial oil production timeline from 2025 - attributes it to a mix of challenges,’ 2025

83. Uganda National Oil Company, ‘Kingfisher Project – UNOC: Uganda National Oil Company’

84. United Nations Department of Economic and Social Affairs (UNDESA), ‘Uganda Profile - Least Developed Country Category,' 2023

85. United Nations Development Program (UNDP), ‘Uganda Poverty Status Report 2021,’ November, 2024

86. United Nations, ‘Report of The United Nations Conference on Environment and Development: Rio Declaration on Environment and Development,’ A/CONF.151/26, Vol. I, 1992

87. United Nations, ‘Transforming our World, THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT,’ A/RES/70/1, 2015

88. Wanamaker, C., ‘The Environmental, Economic, and Social Components of Sustainability: The Three Spheres of Sustainability,’ 2018

89. Wang N, ‘Comparison and research in international petroleum contract modes,’ Beijing: University of International Business and Economics, 2007

90. World Bank, ‘GDP Data,’ 2023

91. World Commission on Environment and Development, ‘Our common future: report of the World Commission on Environment and Development,’ International Affairs 64(1) 126, 1987