AN ANALYSIS ON THE EFFICACY OF THE LEGAL REGIME IN ENHANCING PROPER MANAGEMENT OF PETROLEUM REVENUES IN UGANDA'S OIL AND GAS INDUSTRY

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A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFULMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAWS IN OIL AND GAS AT THE INSTITUTE OF PETROLEUM STUDIES KAMPALA WITH AFFLIATION TO UCU.

AUGUST, 2021

DECLARATION

I, ISODO SAMUEL, do hereby declare that this research report is entirely my original work, except where acknowledged, and it has never been submitted to any other university or any other institution of higher learning in fulfilment of any academic award.

Signed………………………………………...…………….

Date………………………………………………………...

APPROVAL

This is to certify that this Dissertation entitled "An Analysis of the efficacy of the Legal regime in enhancing proper management of Petroleum Revenues in Uganda's oil and gas industry" has been done under my supervision and now it's ready for submission.

SIGNATURE……………………………………………

NAME. Associate Prof. George W.K.L Kasozi.

DATE…………………………………………………….

DEDICATION

This dissertation is dedicated to those with a mutual feeling and experience.

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I thank the Almighty God for giving me the courage, resources and energy to undertake this exercise. I also thank my classmates for the support they rendered me. In a special way I want to thank Petty aka Dommie for the comfort and crucial run-ins she made during the lock downs and my family for giving me the reason for striving further. I also thank Professor George W.K.L Kasozi for the close supervision he gave me throughout my research, and everyone at IPSK for the well-coordinated experience I received from them.

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LIST OF ABBREVIATIONS AND ACRONYMS

AG:	Auditor General
BOU:	Bank of Uganda
CABRI	Collaborative Africa Budget Reform Initiate
CFR:	Charter of Fiscal Responsibility
CGT:	Capital Gains Tax
CGT:	Capital Gains Tax
COSASE:	Committee of Commissions, Statutory Authorities and State Enterprises
CSBAG:	Civil Society Budget Advocacy Coalition
CSOs:	Civil Society Organisations
EITI:	Extractive Industry Transparency Initiative
EU	European Union
FY	Financial Year
GAAP	Generally Accepted Accounting Principles
GDP	Gross Domestic Product
GNI	Gross National Income
GOU	Government of Uganda
HIPC	Heavily Indebted Poor Countries
ICMM	International Council on Mining and Metals
IMF	International Monetary Fund
IOC	International Oil Company
INTOSAI	International Organization of Supreme Audit Institutions
IPSAS	International Public Sector Accounting Standards
ISSA	International Standards on Auditing
ISSAIs	International Standards of Supreme Audit Institutions

MEMD:	Ministry of Energy and Mineral Development
MoFPED	Ministry of Finance, Planning and Economic Development
MTBF	Medium-Term Budget Framework
NBIM	Norges Bank Investment Management
NCS	Norwegian Continental Shelf
NDA	Non-Disclosure Agreement
NOC	National Oil Company
NOGP:	National Oil and Gas Policy for Uganda
NPD	Norwegian Petroleum Directorate
NRGI	Natural Resource Governance Institute
NY	Network
O&M	Operations and Maintenance
OAG	Office of the Auditor General
OPM	Oxford Policy Management Ltd
PAU	Petroleum Authority of Uganda
PAYE:	Pay as You Earn
PF:	Petroleum Fund
PF:	Petroleum Fund
PFM	Public Financial Management
PFMA:	Public Finance Management Act, 2015
PIH	Permanent Income Hypothesis
PPDA:	Public Procurement and Disposal Authority
PPP	Purchasing Power Parity
PRIR:	Petroleum Revenue Investment Reserve
PSA	Production Sharing Agreement

PSA:	Production Sharing Agreement
PSA:	Production Sharing Agreement
RRA	Resource Revenue Account
SCE	Statement of Changes in Equity
SFP	Statement of Financial Performance
SWF	Sovereign Wealth Fund
TORs:	Terms of Reference
TORs:	Terms of Reference
TSA	Treasury Single Account
UAE	United Arab Emirates
UCF	Uganda Consolidated Fund
UCF:	Uganda Consolidated Fund
UCF:	Uganda Consolidated Fund
UGX	Uganda Shillings
UK	United Kingdom
UPF	Uganda Petroleum Fund
UPF:	Uganda Petroleum Fund
UPF:	Uganda Petroleum Fund
URA	Uganda Revenue Authority
URA:	Uganda Revenue Authority]
URA:	Uganda Revenue Authority
USA	United States of America
USA	Unites State of America
USD	United States Dollar
VAT:	Value Added Tax

VAT:	Value Added Tax
WHT	Withholding Tax
WHT:	With Holding Tax

ABSTRACT

The effectiveness of the legal framework on Petroleum Revenue Management in Uganda's oil and gas sector is very crucial in ensuring that the government fully benefits from the oil and gas industry. More effective legal petroleum revenue management will give rise to a thriving and manageable sector. For example, enacting laws that ensure that funds got from the oil are used in a way that is in the interest of the people and the economy which would further enhance social and economic development. This research examined the effectiveness of the legal regime in petroleum revenue management in the oil and gas sector. Looking at how the petroleum revenue is shared, revenue sharing mechanism, legal framework of revenue sharing and the structure of Uganda's petroleum fund and how Uganda has dealt with its petroleum fund, the challenges facing the fund and revenue management in Uganda's oil and gas industry.

This boost to national income offers Uganda a unique and exciting chance to alleviate poverty and create broad-based development and improved standards of living across the country. But international experience points to challenges which are often faced by resource-rich developing countries in translating mineral wealth into peace and prosperity. Much has been written about the "resource curse". Developing countries that become reliant on oil and minerals can see a deepening of a range of political, economic and social challenges. In order to ensure that the resource will be used to yield lasting benefits to the present and future generations, key issues of public debate include the need for a regulatory environment that fosters transparency concerning all revenues and in negotiation and award of contracts to ensure the effective management of petroleum revenues in Uganda's oil and gas sector. unless there is a clear and concise framework ensuring revenues are indeed well managed in the interests of current and future generations.

CHAPTER ONE

1.0 INTRODUCTION

This research sought to analyse the efficacy of the legal framework on revenue management in Uganda's oil and gas industry. It considered the oil and gas revenue flows in Uganda and established the extent to which the oil revenues have been managed and utilized to benefit the citizens. Government of Uganda has already generated oil revenue mainly from license fees, signature bonuses; Capital Gains Tax (CGT); Withholding Tax, Stamp Duty and other non-tax oil revenues.

For Uganda to economically reap from the oil and gas industry, revenue management should be its number one priority.[1] The oil and gas sector are used to dealing with stringent revenue regulations across the entire span of their activity, from exploration to sale. These regulations are not only stringent but are also constantly revised to take into consideration technological development and the more extreme conditions in which oil and gas companies operate. This leaves the revenues collected vulnerable to misuse and yet they are very critical to ensuring that the livelihood of the people of Uganda is catered for.

This is all up to the government's effort and commitment to properly manage revenue and funds got from this sector for their particular allocations and avoid misuse or, misappropriation of such funds.[2]

According to the Ministry of Energy and Mineral Development,[3] the discovered oil and gas in the Albertine Graben is 6.5 billion barrels, an amount considered viable for commercial oil production. Its estimated future output will be 200,000 barrels per day. Following oil exploration and discovery in the Albertine Graben, huge revenues have been generated from this sector from signature bonuses which form part of the front-loaded taxes for the government revenues.

This research therefore focused on the efficacy of the legal regime in enhancing proper Management of petroleum revenue in Uganda's oil and gas sector. Its objective was to examine the legal tools of revenue management of the petroleum industry in Uganda. It provides an overview of the process of oil exploration and production in relation to the Ugandan situation; by looking at the legal framework of the petroleum revenue management and the challenges it

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[1] Abjorensen. S. *Oil and Gas Revenue Management Options for Cambodia* (SenateGroup.6). Parliamentary Institute of Cambodia.2014.

[2] See, Prof. E.M.R. Kiremire, "Where Uganda stands as an African oil country" Daily Monitor, Wednesday, August 15, 2007, Pg 12

[3] See, Paul Collier, **&** Ankle Hoffer. Resource Rents, Governance, and Conflict Journal of Conflict Resolution 2005, 49(4), 625-633

faces by identifying the potential risks, causes and dangers associated with mismanagement of petroleum revenues.[4]

1.1 BACKGROUND

This study sought to determine the formal and informal points of view amongst Ugandans regarding the appropriate sustainable revenue management practices for the oil and gas industry in Uganda, while also putting in focus international lessons of success and failures sustained in the petroleum sector. This chapter puts forward the introduction, background, problem statement, research questions, the objectives, and scope of the study; the conceptual framework, justification and significance of the study as well as the operational definition.[5]

1.1.1 Historical Background

Sighting of oil in Uganda dates back as far as 1930's around Butiaba escarpment. For some non-recorded reasons, no action was taken on these discoveries until the 1980's.[6] However since then; seismic studies have revealed the presence of commercially viable oil and gas reserves in the Albertine Graben. According to Uganda Oil and Gas exploration records emanating from in 2006, the Albertine Graben Rift is laden with commercially viable oil reserves.[7] This discovery puts Uganda in a position of a major oil producer in the next decade with recoverable reserves estimated at 1.6-2 billion barrels.

This compares to oil reserves levels in African countries such as Republic of Congo (1.9 billion barrels), Chad (0.9 billion barrels), and Equatorial Guinea (1.7 billion barrels); but far short of Nigeria (36.2 billion) and Angola (13.5 billion). It is estimated by world bank that peak production will be reached at a daily range of 120,000-140,000 barrels, spanning 30 years. A more optimistic scenario in this study is based on 1.2 billion barrels and sets peak production at 210,000 barrels per day.[8]

It is expected that the current preparations geared towards the management of the oil and gas sector will depend on building national capacity to develop and execute good policies and legislation, negotiating befitting agreements, and engaging all stakeholders.

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[4] Roy Bahl, & Bayar Tumennasan, Natural resource wealth is not evenly distributed within countries, and those regions that house this natural resource are likely to clamor for a larger and more dedicated share of the returns. Debate over the sharing of wealth 2002

[5] Mugenda, M. &Mugenda, G. *Research Methods: Quantitative and Qualitative Approaches.* Nairobi:2003, Acts Press.

[6] According to NAPE

[7] *World Bank. Country Assistance Strategy for the Republic of Uganda for the Period FY 2011- 2015. The World Bank, Washington, DC.2010*

[8] Uganda Oil and Gas Info. (2015). History and Development. Kampala, Uganda, 2015

Vogt, W. P. (2007). *Quantitative Methods for Professionals.* Boston: Pearson.2007

Uganda is not new to corruption and political instability as the country has had its fair share of those evils. The institutional mismanagement and rampant disregard of the rule of law has also bred fertile ground enough to completely spiral the oil and gas sector revenues out of control. It is against this background that the citizens are sceptical about any benefits from the oil and gas sector with a perception that it will only benefit those in power.

In 2011, parliament imposed a moratorium on the signing of new contracts until the requisite legal framework was put in place. Secondly, the government did not want to proceed to the production stage without agreeing on a large local refinery. Therefore, Uganda embarked on the development of legal and policy frameworks to facilitate coordinated exploitation and management of petroleum revenues by passing attendant legislation.

Uganda adopted a model Petroleum Sharing Agreements (PSA's)[9] to guide on the duties and roles between the international oil companies and the Ugandan government which were supported by these Acts. These Acts also established the Petroleum Authority of Uganda (PAU) as the regulatory body and designated the Uganda National Oil Company (UNOC) to manage the government's commercial interest in the sector. Formulated with Norwegian support, the two Acts formed the legal basis for the development of upstream and midstream capacity. This provided an important signal that the government intended to put in place a prudent governance framework to manage the expected revenue and also to put up policies that were aimed at influencing more investments in the petroleum industry.

Consequently the government also passed the Public Finance Management Act.[10] This was a landmark legislation that included provisions on the management of oil resources and gave birth to the Charter for Fiscal Responsibility, the Petroleum Revenue Fund, and the Petroleum Revenue Investment Reserve.

Unfortunately, despite the current on-going preparations in capacity building, many serious pitfalls have been identified that expose the country as being unprepared by the time of the imminent oil revenue influx.

In early 2000, Government established the Petroleum (Exploration and Production Department (PEPD) in Ministry of Energy and Minerals Development to manage Oil sector in Uganda. Government has since established a Directorate of Petroleum (DP), Petroleum Authority of Uganda (PAU) and National Oil Company (NOC). Government has also provided for the setting up of a Petroleum Fund as one of the mechanisms for managing oil revenue in a prudent

[9] In 1999, 2012 and another model PSA in 2016
[10] Financial Management Act of 2015

manner.[11] Despite the fact that government plans and promises for managing and utilizing oil revenues seem impressive, it has still fallen short of full information disclosure of PSAs which up to now remain a secret.

Early this year the cabinet members proposed to use oil funds to finance the national budget since its lying redundant and yet the national budget required funding. They proposed that such monies should be used and replaced later when required. This created chaos in the country as people started doubting the governments intentions. This research will clearly show that these revenues are unique and require to be properly managed and handled.

Botswana, Norway, Indonesia and Chile, have repeatedly been cited as countries that have successfully sustained the exploitation of their natural resources to the benefit of all.[12] Other resource-rich countries, such as Malaysia and Australia, have also managed to diversify their production structures, clearing way for broad-based balanced growth. In Africa, Ghana can be considered a relative success story hinged on its peaceful and stable political state.[13]

However, if the country's petroleum resources and revenues are not well managed, the sub sector has the potential to have the most negative impact on society; "The Oil Curse" or the paradox of plenty. The oil curse is the negative effect of oil and gas resource utilization leading to economic stagnation, environment degradation and increased poverty. The oil curse can and should be avoided.[14]

This research examined the existing regulatory framework and laws in relation to the management of petroleum revenues in the oil and gas sector. Whether the law formulated regulates the payment, use and management of oil and gas revenues and their use to create lasting value for the entire nation.

In order to sustain the economic and social transformation process beyond the oil and gas era, we will have to manage the oil and gas revenues in a manner that will encourage other sources of wealth creation.[15]

1.2 STATEMENT OF THE PROBLEM

In the recent past many developing countries have confirmed abundance of hydro-carbons including oil and natural gas which has fuelled expectation of high revenue generation. This

11 Government of Uganda, The National Oil and Gas Policy for Uganda 2008

12 Shepherd. B. ***Oil in Uganda: International Lessons for Success.*** The Royal Institute of International Affairs, Llatimer Trend and Co. Great Britain, 2013.

13 Moss. T., & Young. L. Saving Ghana from Its Oil: The Case for Direct Cash Distribution. ***Centre for Global Development, 2020 (416),*** 600th ser., 2009 pg. 1-24.

14 National oil and gas policy for Uganda February 2008, Ministry of Energy and Mineral Development.

15 Oil and Gas Revenue Management Policy, 2012, Ministry of Energy and Mineral Development.

has led governments to enact laws and policies to ensure maximum petroleum management in the oil and gas sector.[16] However these high expectations have not turned out into reality in most countries as the projected returns of social and economic development do not actualise even after enacting these laws and policies. This is more often than not caused by the poor management of the revenues received by the respective host government.[17]

Ugandans are in fear of oil and gas revenue poor management and most of the citizens have written off the sector saying that it will not benefit the majority but rather a few people favoured by government. This is attributed to poor governance which has led to general revenue mismanagement and less or no implementation effort on the sector laws and policies in Uganda.

If these revenues are not well managed and regulated, they have the potential to undermine the macro-economic, budgetary and governance structures that have been built over the last two decades leading to waste. A clear example can be taken from Nigeria which is one of the oldest oils producing countries in Africa, but has a low-status, its poverty levels have increased as compared to the state the country was in before the oil production began.

Uganda as a new entrant into the oil and gas industry will have to manage the oil and gas revenues in a manner that will encourage economic prosperity and wealth creation. This research analysed the existing frame work to establish whether it offers adequate regulations for sustainable petroleum revenue management of the oil and gas revenues.

1.3. OBJECTIVES

1.3.1 GENERAL OBJECTIVE

The general objective of this research is to analyse the efficacy of the legal framework on the proper management of petroleum revenues in Uganda's oil and gas sector.

1.3.2. SPECIFIC OBJECTIVES

1. To analyse the efficacy of the legal framework on proper revenue management in Uganda's oil and gas industry and the role of the petroleum fund.
2. To identify the challenges faced by the revenue management in Uganda's oil and gas sector.

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[16]Hilson, G. (2014). The extractive industries and development in sub-Saharan Africa: An introduction. *Resources Policy*, *41*, 1–3.
[17] Abubakr, R., Hooi, H., & Clark, J. (2017). The evolution of the natural resource curse thesis : A critical literature survey. *Resources Policy*, *51*, 123–134.

3. To offer a comparative analysis between the countries that have performed well and those that have failed.
4. To present findings, recommendations and solutions for the proper management of the petroleum revenues in Uganda's oil and gas sector.

1.3.3. RESEARCH QUESTIONS

1. Does the existing legal framework offer adequate protection to petroleum revenue management?
2. What challenges are faced by the oil and gas sector revenue management?
3. What lessons can we learn from countries that have failed and those that have succeeded in managing their oil and gas revenues?
4. What are the measures that can be put in place to enhance proper management of the petroleum revenues in Uganda's oil and gas sector?

1.4 JUSTIFICATIONS OF STUDY

Stakeholders in the oil and gas sector for example the citizens and the government were excited in 2006 when an oil discovery of commercially viable reserves of oil in the Albertine Graben, especially about the highly anticipated revenues from the black gold which could be used to boost all the sectors of the economy to stir economic growth and development in the country. This sector has ability to change many livelihoods of Ugandans if its funds are properly managed according to the national interests and census to avoid the paradox of plenty normally associated with resource rich nations world over. Therefore, a proper institutional and legal framework must be in place to allow the proper savings and expenditure of the petroleum revenues of which our legal regime may fail to offer enough protection to our revenues.

The research is of importance to Uganda and other stakeholders as it expounds the legal regime in regard to petroleum revenue management in the oil and gas sector. It enables all stakeholders and Ugandans at large to realize that this industry is a huge revenue base for the state if these revenues are properly managed.

1.5 SIGNIFICANCE OF THE STUDY

To the policy makers

i. The Study will help the government to see and understand the loopholes in the legal framework in proper management of petroleum revenues management and offer remedies to the oil and gas sector.

ii. **To the researcher.**

This research will fulfil the requirement for the ward of a masters of laws in Oil and Gas management.

iii. **To the students.**

The research will be a source of reference for students in regard to issues that might arise from compliance in expending Uganda's petroleum revenue from the oil and gas industry.

1.6. The purpose of the study

The purpose of this study is to inform the relevant authorities in Uganda about the complexity of revenue management from the oil and gas industry and its disastrous impact if these revenues are poorly handled. To the law makers in Uganda and the world at large to identify lessons that may be learnt from other oil producing countries that poorly handled the revenues from this sector, develop examples for planning and inform risk analysis and policy debates in areas especially those that are prone to such dangers that are seeking to understand and reduce their vulnerability to potential revenue mismanagement disasters.

Through the findings of this study, Uganda's oil revenue managers will be able to strategize and plan on how to prevent such horrific incidents from happening in Uganda. It will contribute to the growth in scholarly understanding and knowledge on the effectiveness of the law relating to revenue management in the oil and gas sector in Uganda as well as recommend areas of further research on revenue management.

1.7 SCOPE OF STUDY.

This study stretched for 10 years a period between 2009 to 2019 since most of the changes to the law came during that time in Uganda, and the content scope was aimed at fully understanding the state of petroleum revenue management in Uganda until when the Public Finance Management Act 2015 was enacted and find out if there has been a significant improvement in the protection of petroleum revenue since the Act came into force and other laws which form the legal framework of Uganda.

1.8. FRAMEWORK OF THE STUDY.

There are two types of frameworks, the conceptual and the theoretical.

A conceptual framework helps to postulate or hypothesize and test certain relationships which improve the understanding of the situation,[18] the researcher adopted the theoretical framework since it picks out the main essence of the legal framework.

1.9. Theoretical framework

Theoretically, a proper and enhanced legal regime must be able to protect the petroleum revenue from being misused or misallocated in lavish and unnecessary expenditures which normally results into the oil curse. Uganda has a legal framework in place aimed at ensuring that revenues got from the industry are well managed, but the question is; is such a legal regime adequate to guard against mismanagement of Uganda's oil and gas revenues.

The research analysed the efficacy of the legal framework for petroleum revenue management in Uganda's oil and gas sector. As indicated, Uganda is faced with challenges of revenue management in its oil and gas industry which must be sorted if the revenues are to meet the needs of the present and future generations. Petroleum revenue management is very critical to any extractive industry and its misuse can result into a resource curse which has disorganised many resource rich countries for example Nigeria, Iraq, Venezuela, South Sudan and many other countries across the world.

However, it's important to acknowledge that there is a relationship between effective laws and petroleum revenue management which involves management of the petroleum revenue fund. This revenue comprises of production bonuses, signature bonuses, taxes, royalties, VAT, Income tax, returns from companies, production sharing and many other forms of revenue. Proper oil revenue management is dependent upon various factors like the legal regime, presence of strong institutions, utilisation of the fund, revenue collection, operation of the fund, political will and many other factors.

1.9 SYNOPSIS.

This Research is structured into five chapters.

Chapter.1. Introduces the study**.** It presents an overview of the general introduction, background, historical background of the study, statement of the problem, justification of the study, statement of the problem, research objectives of the study, research questions,

[18] Sekaran, u.& R Business Research Methods 2003.

significance of the study, scope of the study, as well as the theoretical framework and a summary of the chapter.

Chapter 2. Focuses on the literature in regard to petroleum revenue management, revenue collection, and revenue management goals, oil and revenue management.

Chapter 3: Methodology**;** this part looks at the research methodology, bringing out the research design, study population, research instruments, data sources, ways of analysing data and research ethical considerations.

Chapter 4. Legal framework. This provides an overview of the public finance management in terms of petroleum revenue fund as a mechanism of effectively managing the oil both international and national regimes, oil revenue management challenges,

Chapter 5, Conclusions and Recommendations

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction.

This chapter presents the theoretical framework of the research and review of relevant previous research works.

Reviewing literature involved the systematic identification, location and analysis of documents containing information related to the research problem being investigated. The activity of literature review involves location, reading and evaluating reports of research as well as reports of observation, discussions and opinions that are related to the individual's planned research project.[19]

Library and desk research methods was also employed to review national policy, international and regional legal frameworks that provide for environmental health and safety standards during the oil and gas exploration and production industry in Uganda. In the review, the strength and weaknesses of the legal framework were analysed. Also, important textbooks and articles were reviewed to obtain and contextualize scholarly opinions for the guidance of this paper. The researcher also reviewed newspapers to ascertain the current trends in the industry. Reliance was also placed on some internet sources for secondary or tertiary information to support the study especially in ascertaining current global trends in the industry so as to find out the efficacy of the law relating to petroleum management in the oil and gas industry.

If well managed, the natural resource sector of any country will completely transform its economy, enrich its citizens, give huge returns in high class service delivery and cushion the economic livelihoods of the future generations. The huge revenue inflows will be well smoothened to avert the likelihood of the paradox of plenty that usually translates into the resource curse. This has already been attested to by the ongoing situation in Norway, Malaysia, Botswana etc. Failure to do this will end up in the oil curse.

In the recent past many developing countries have confirmed huge reserves of natural resources like oil, gas etc; and these are expected to generate a lot of revenues.[20] While the expectation runs that much, many countries do not live to see the expected returns from the natural resource

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[19]Barifaijo, K., Basheka, B. and Oonyu, J. How to write a good Dissertation Thesis, 1st Edition, The New Vision printing and publishing Company Limited, Kampala. 20100

[20] Hilson, G. The extractive industries and development in sub-Saharan Africa: An introduction. *Resources Policy*, *41*, 1–3 2014.

endowments. All these boil down to management failure that usually hits the natural resource revenues and sector resulting from mismanagement.

The main challenges faced in collection and management of oil and gas revenues include; weak institutions that are grabber friendly, weak or non-respected legal framework that is often overridden due to failure or disrespect of the rule of law, corruption, poorly negotiated oil contracts with the IOC's, lack of political will to ensure effective management of the revenues, and the dreaded resource curse that is often the effect of the listed failures among others.

According to Stiglitz,[21] governments often fail to get appropriate bargain for their resource endowments. This is mainly because the investors often seek to maximize their profits to the disadvantage of the host country. That to counter these threats, transparency on the side of government in handling the agreements between host country and the IOCs is required, which should be done to instil trust in the people. In addition to transparency, he advocates for the state to take part in the ownership of the resources in this way as the public will be informed on how much revenues have been generated from resource. After all, the state is holding the resource on behalf of its citizens hence need to be informed on how these resources are to be used.

Despite that, I find that Stiglitz did not delve into the arena of the legal regulation of the oil revenue funds even if a host government was to negotiate good oil agreements with IOC's. The legal regime is so important that it actually forms the basis of even getting good bargains with the IOC's. I however agree with Stiglitz and conclude that it is sometimes better not to have these agreements signed with the IOCs and simply keep oil wealth put underground.

According to Hunter,[22] it is necessary for the state and private oil companies to operate as a joint venture in the exploitation of the resources in either a contractual or concessionary arrangement, despite the political, regulatory, economic, commercial and technological challenges that this relationship will bring. Private oil companies are not just tourists, they want to maximize profits from their investments, and the state has the objective of maximizing the resource for sustainable development for both the now and future generations and also ensure that revenues are used and managed effectively as a way of ensuring maximum benefit to the Ugandan people. Be that as it may, partnering with the IOC *per se* does not secure the way the oil revenues will be run, having a strong and implemented legal regime should always be in

[21] Chapter 2: what is the role of the state. 22 http://www.cenet.org.cn/userfiles/2008-5-8/20080508031711836.pdf (accessed on the 23rd march, 2021)
[22]T Hunter Legal, Regulatory *Framework for the Sustainable Extraction of Australian 2010. Offshore Petroleum Resources: A Critical Functional Analysis PhD Thesis*, University of Bergen

focus, and Hunter did not look into this very crucial arena. This research lessons that are context specific for Uganda.

Starling argues that the confirmation of hydrocarbon resources in any country often attracts both optimism and pessimism across the globe. While the exploitation and administration of these resources have brought success to certain countries, some have greatly suffered a curse of sorts.[23] Crude oil accounts for over 90% of global energy consumption. In India, China and Russia, the rapid economic growth and improvement in standard of living has required more energy to sustain those economies.

Unfortunately, discovery of large deposits of hydrocarbons does not necessarily translate into improvement in quality of life of citizens of the host country.[24] He argues that proper management resulting from a strong legal regime will make it easy for a country with natural resources to avoid mismanagement of its resources. While we entirely agree with Starling on the importance of a strong legal regime, this alone is not a magic wand to solve oil revenue mismanagement. A good legal regime needs the support of strong and operational institutions, political will and general amiable environment for the full operation of the rule of law. His opinions alone cannot answer the question of Uganda's readiness in the aspect of the legal regime.

According to Corrigan,[25] the fiscal policy of a country can be greatly affected by the influx of large oil revenues. Measures to adapt specifics like the exchange rate should be put in place to contain the economy or else risk it running out of control.[26] Again it is clear here that the host country's laws must be alert and strong enough to be able to neutralise the unintended results of high revenue influx and all this starts by ensuring that there is a strong legal regime on place.

The government should regulate this relationship and ensure that there is a fair share of the resource revenue. It should work hand in hand with the IOCs to ensure that it keeps check on the activities of these investors because they are capable of gold plating or exaggerating their cost recovery and keep recovering hence robbing our revenues and this explains the passing of Uganda Production Sharing Agreements of 1984, 1998, 2010 and 2016 exclusively. The government should ensure that such incidents don't happen if the state is to benefit from their

[23] Boohene, R., &Peprah, J. A. (2011). Women, Livelihood and Oil and Gas Discovery in Ghana: An exploratory Study of Cape Three Points and Surrounding Communities. ***JSD Journal of Sustainable Development, 4 (3).*** 2020, from http://www.monitor.co.ug/News/-/688324/688324/- /b69tvd/-/index.html

[24] Gelb. A., & Grossmann. S. How Should Oil Exporters Spend Their Rents? *Centre for Global Development, 2020 (416)***,** 600th ser., 1-24.

[25]Corrigan, C. C. breaking the resource curse: Transparency in the natural resource sector and the reactive industries transparency initiative. *Resources Policy*, 2014, *40*, 17–30.

[26] Corrigan, C. C. breaking the resource curse: Transparency in the natural resource sector and the reactive industries transparency initiative. *Resources Policy*, 2014, *40*, 17–30.

resource or else the investors at the end of the day, are not tourists and therefore want profit maximization at any cost. The international oil companies have always enjoyed huge profits in the oil and gas sector in the face of rising oil prices yet the host countries remain in a deplorable state. This results into an enclave of sorts that leaves the country without any forward or backward linkages of the oil industry.

It is the finding of this research that very determined measures need to be put in place to ensure that this gap between the IOC's and the host countries does not widen leading to resource capture. All these must be legislated.

Sulaimanov[27] argues that foreign investment mobilization as an investment tool is an effective means deployed my many developing countries to strengthen their oil production activities in the industry. The success of this initiative variously depends on the respective country's investment climate.

It should be noted however that in deciding to invest in a country, the potential investors will consider the key prevailing factors in a country, such as the political stability, the financial worth of the oil resources; and the legislative framework that regulates the investment possibilities and natural resources extraction policies.

Meghir propounds that, the theory of PIH is based upon a theory by Milton Friedman, a Nobel Laureate for Economics, which states that; "an economic actor will aim to smooth their consumption and expenditure out between income peaks and essentially expand the average of their expected total income lifetime."[28]

Meghir propounded that the PIH when applied to a country's oil or gas wealth, only lets the government to spend what is commensurate to the country's total oil and gas wealth. He argues that to achieve this, the respective country needs to invest all its oil and gas revenue in an external sovereign wealth fund, which is expected to generate interest to effectively manage the oil and gas revenues. Meghir only looked at the economics of large revenue spending and did not delve into the arena of the legal specifics that must always be present to captain the collection, investment ns expenditure of the oil and gas revenues.

Similarly, Apostolou[29] adds on its advantages stating that it eliminates the chances of instability

[27] Sulaimanov R. Balancing State and Investor Interest in International Petroleum Contracts: Comparison of Legislations in Kazakhstan and Other Central Asian Countries. LLM Thesis (2011), 1 www.etd.ceu.hu/2011/sulaimanov_ruslan.pdf

[28] Meghir. C. *A Retrospective on Friedman's Theory of Permanent Income* 2004 (pp. 1-28). Chicago: The Institute for Fiscal Studies.

[29] Apostolou, T. *The permanent income hypothesis: Estimation of a European Union consumption function: A thesis in Applied Economics.2011*

which would result from the spend-as- you-go-approach, while at the same time preserving the country's wealth for future generations' benefit, and also leads to the accumulation of a large fund open for expenditure than the Bird in the Hand approach, while still saving for the future.

Meghir, on the other hand raises caution on this approach arguing that it overlooks a country's instant poverty state which may have greater economic utility which capital expenditure may obtain in the face of scare resources in the environment. Clearly here, the authors have articulated the importance of being aware of the current and the future. While an oil fund is crucial for the future stability of a country, failing to attend to the current biting poverty could also end up in causing instability of a country. A proper legal regime and policies must be put in place to ensure that both are taken care of.

Segura[30] reported that Sao Tome and Principe in apparent approval of the Permanent Income Hypothesis (PIH) propagated by Friedman were the African pioneers to adopt this rule. This was precipitated by the successes registered by Norway which is widely seen as a guarantee to sustainability of government's consumption and create a balance with the demands of the future generations while at the same time ensuring steady revenue flows for to meet the present needs.

Despite the uncertainty that shrouds Uganda's exact oil endowments, even going by the most conservative assumption as low as Sao Tome, it is still projected to be significant enough to ease smooth financing of the country's development needs. It is also possible that in the event that a country's oil wealth is so big, in comparison to its relative size, its low capacity to absorb might make it fail to fully utilize its annual funding dictated by the PIH rule.

It is important to note that, any near mismanagement of the oil revenues owing to un-productive and unreasonable public expenditures motivated by gross corrupt tendencies will potentially reduce benefits expected from the sector. In addition, as international experience has shown, mechanisms to shield public expenditure from unexpected drops in oil revenue and protect these revenues from mismanagement are necessary if Uganda is to fully benefit from oil production.[31]

According to Revenue Watch Institute policy paper, the government of Uganda will need to implement a fiscal rule that smoothes expenditures to mitigate the negative effects of oil revenue volatility, with some front loading of spending in the early portion of the production lifecycle if absorptive capacity allows it. By implementing such a system, it would save

[30] Jaen. C. *Lessons from the Failure of Chad's Oil Revenue Management Model*. ARI. Sub-Saharan Africa. Universidad Autonoma De Barcelona: Department of Applied Economics. 2010.
[31] (NRGI, 2014)

revenues for the benefit of future generations, improve the quality of public spending, and improve macroeconomic stability, a prerequisite for strong, sustainable and balanced growth.

The legislature can be of great help as a means of providing a good investment climate. This it can do by enacting and enforcing international petroleum agreements designed to protect the interests of both parties while ensuring that the citizens benefits from their oil wealth.

According to Mehlum, et al,[32] institutional weakness coupled with resource abundance is a dangerous mix that causes the resource curse. They introduce the rent seeking argument in respect to institutions. Producer friendly institutions will compliment production and rent seeking while grabber friendly institutions create competition between rent seeking and production. Grabber friendly institutions channel resources to unproductive areas and are a result of a weak rule of law, malfunctioning bureaucracy and corruption. This is a recipe for economic development disaster while producer friendly institutions would attract entrepreneurs into production yielding to higher growth. Natural resources put a country's institutions to a test such that the resource curse only appears in countries with weak institutions.

Understanding the Resource-Curse

The resource curse can be explained as arising from various evils, and eight of them are advanced here. First is the national risk when a country entrenches a non-renewable commodity like oil as the main source of its revenue generation. This in the face of today's world spells doom as things will get very difficult when the natural resource is over. of entrenching a primary commodity economy that is dependent on God-given (or 'natural') advantages. To avoid this, it calls for the structural transformation of the national economy into a high value-added industrial and information economy.

Secondly, with the flow of revenues from the natural resource, the government will down play the role of the private sector since it is able to finance its budgets and render social services making it the key driver of growth. This is very dangerous as it can only go for long. Third, is that the citizens will be locked out the decision table since they are no longer necessary nor have a right to demand for accountability. Citizens can only demand for accountability when they pay taxes but when the oil revenues are rushing in, there will be no need to tax them and many taxes will be removed. This is not sustainable. The fourth problem is that of political instability, for example like in Angola, Nigeria, or DRC). Fifth is the problem is corruption,

[32] Halvor Mehlum, Karl Moene & Ragnar Torvik: Institutions and the Resource Curse, The Economic Journal, 116 (January), 1–20. Royal Economic Society 2006. Published by Blackwell Publishing, 9600 Garsington Road, Oxford OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, USA.

which is common in resource-rich countries with weak governance institutions like Nigeria. The sixth problem is the likely entrenchment of authoritarian rule or unaccountable governance arising out of greed from political actors. Seventh is the health and environmental risk posed by oil-related activities in particular, the possible negative effects of oil spills on fisheries and the environment.

The problem of exaggerated expectations is the eighth evil. Knowledge of large revenues typically puts pressure on governments to spend, leading to fiscal indiscipline to the detriment of long-term economic management. The weaknesses or loopholes in the current institutional set up that might be a trigger to the oil curse which comes a result of misuse of oil revenues by host governments.

According to Acemoglu et. al,[33] corruption, failure of rule of law and malfunctioning bureaucracy are all antecedent to institutional failure. Acemoglu,[34] commenting on Botswana's economic success attributed it to strong institutions. These articles and their findings are however generalized and cannot guarantee the situation in Uganda. This result dismissed the finding by Sachs and Warner,[35] that institutions have nothing to do with the resource curse and instead upheld the Dutch disease argument as the sole cause of the slow economic growth in resource rich countries. A context specific evaluation needs to be done to see if Uganda is legally and institutionally ready for the anticipated oil revenues.

Oloka Onyango,[36] on his part limited himself to the policies and laws but did not indulge in the operationalization of those policies and laws. It is one thing to enact a law or policy but a completely different thing to implement it as intended by parliament. To him, the legal regime has a lot of gaps that need to be filled up. This study will go further to assess Uganda's implementation of its policies and laws and see if with the approach they have, the existing laws and policies can help the country avoid the resource curse.

Auty et al defined 'resource curse,[37] as "a tendency of resource-rich countries to have weaker economic performance than resource-poor countries – is not new". Also known as the 'paradox of plenty, the resource-curse is embedded in the age-old maxim: *Necessity is the Mother of*

[33] Acemoglu, D., Robinson, J. A. and Verdier, T. 'Kleptocracy and divide-and-rule: a theory of personal rule, Journal of the European Economic Association 2004, vol. 2, pp. 162–92

[34] Acemoglu, D., Johnson, S. and Robinson, J. An African success: Botswana, in (D. Rodrik ed.) Analytic Development Narratives, Princeton: Princeton University Press, 2002.

[35] Sachs, J. D. and Warner, A. M. 'Natural resource abundance and economic growth, 1995, NBER Working Paper No. 5398

[36] Dr. Oloka Onyango: Courting the oil curse or playing by the rules; an analysis of the legal and regulatory framework governing oil in Uganda, 2019.

[37] During our field interviews, anxiety was expressed over the 'secrecy' surrounding the licensing process and the signature bonuses; the level of corruption in public office; the poor quality of roads works and infrastructural investments; and the exclusion of different stakeholders (such as Bunyoro and researchers).

Innovation. The argument is that while resource-poor countries are forced to innovate so as to attain economic viability, the resource-rich countries are victims of the paradox of plenty and remain poor. Simply put, the resource 'curse' arises when the abundance of traded natural resources (such as oil, gold or diamonds) paradoxically leads to stagnation of an economy and the death of the agricultural and manufacturing sectors of the economy and conflicts over the allocation of resources.

The oil curse is not the oil itself but arises out of political, administrative and economic mismanagement of the abundant oil revenues. The sudden presence of the loads of oil revenues triggers the appetites of financially greedy rent-seeking insurgents that steal and mismanage the resources leading to mismanagement of the oil revenues. Weak laws, lack of transparency and accountability, weak institutions are some of the factors that lead to the oil curse. Uganda can avoid the oil curse by setting up strong and operational institutions to ensure transparency and accountability in the management of the oil sector.

Halvor Mehlum, et al (2006)[38] argued that institutional weakness coupled with resource abundance are a dangerous mix that cause the resource curse. They introduce the rent seeking argument in respect to institutions. Producer friendly institutions will compliment production while grabber friendly institutions create competition between rent seeking and production. Grabber friendly institutions channel resources to unproductive areas and are a result of a weak rule of law, malfunctioning bureaucracy and corruption. This is a recipe for economic disaster while producer friendly institutions would attract entrepreneurs into production yielding to higher growth. Natural resources put a country's institution to a test such that the resource curse only appears in countries with weak institutions.

[38] Halvor Mehlum, Karl Moene & Ragnar Torvik: Institutions and the Resource Curse, The Economic Journal, 116 (January), 1–20. Royal Economic Society 2006. Published by Blackwell Publishing, 9600 Garsington Road, Oxford OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, USA.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0. Introduction

This chapter presents the methodology that was used in the study. It covers the research design, study population, sample population, size, samplings procedures, data collection methods and their corresponding data collection instruments, data management and analysis procedures, reliability, validity and the ethical considerations.

3.1. Research Design

This study used a cross-sectional research design. Under this a subset of the target population was selected and individuals were interviewed to obtain data for answering the research questions of interest. The information gathered represents what is going on at the time of study. This snapshot of the population at that time, allowed the researcher to make conclusions about phenomena across a wide population from which the respondents were drawn. This type of design was appropriate because it was not costly to perform, didn’t require a lot of time and also captured a specific point in time. The researcher was able to gather information without manipulating the study environment.

The benefit of a cross-sectional study design is that it allowed the researcher to compare the many different variables at the same time. The researcher for example, looked at the efficacy of the polluter pays principle and its relevancy to the environmental protection against the dangerous activities of oil and gas in Uganda, the implementation of the polluter pays principle, its legal and regulatory framework, its implementation challenges and how its implementation can be improved looking the problem facing Uganda’s petroleum revenue.

Cross-sectional analysis helped in avoiding various complicating aspects of the use of data drawn from various points in time. Further, the data analysis itself does not need an assumption that the nature of the relationships between variables is stable over time although this comes at the cost of requiring caution if the results for one-time period are to be assumed valid at some different point in time.[87]

The study was qualitative in nature aiming at investigating the efficacy of the legal regime in enhancing petroleum revenue management in Uganda’s oil and gas sector. The design was selected to describe in-depth, the measures taken by the government in enhancing revenue management. A qualitative research approach was adopted, in order to exploit the synergies offered by this kind of research methodology. [88] Primary Data was collected from the interviews and secondary data was collected through document review.

3.2. Research Population and Sampling Methodology

The key informants were drawn from the Directorate of Petroleum of the Ministry of Energy and Mineral Development mainly because they are core to the oil and gas industry. Others included the parliament of Uganda, political actors and the Ministry of Finance Planning and Economic Development.

Sampling Techniques

Purposive sampling was employed and in doing this, samples were selected with a purpose in mind. This was in one or more specific predefined groups the researcher was seeking to gather information about the topic under investigation. In this study, purposive sampling technique was used to select key respondents from UNOC, ME, NEMA, OPM, UWA, PLC, PCA, MEMD; CNOOC because it was best suited for selecting information rich cases for in depth study.

3.3 Data Collection

The researcher used both primary and secondary sources of data collection for the study. Through primary sources the researcher conducted a number of interviews with key stakeholders through individual and group interviews whereas through secondary sources, data was collected by reviewing literature on existing materials on the subject matter.

3.4 Interviewing

An interview is a conversation between two people (the interviewer and the interviewee) where questions are asked by the interviewer to obtain information from the interviewee.[91] in this method; the researcher interviewed the respondents to obtain in-depth information about the efficacy of the legal regime in petroleum revenue management in Uganda’s oil and gas industry. The face to face interviews were comprised of a set of issues on which the researcher wished to draw data and the same questions were posed to the respondents using an interview guide.

3.5 Documentary Review

Document analysis involved reviewing existing published and unpublished information relating to the influence of the legal regime on revenue management in Uganda’s oil and gas sector. The researcher reviewed material from the internet, text books, reports and journals among others. This helped the researcher to access all the relevant information on the study.

References from which data is drawn were recognized in this study. The study used a documentary review checklist to gather information objective by objective, in line with the variables of the study.

3.6 Validity and Reliability

Validity refers to the degree in which our test or other measuring device is truly measuring what we intended it to measure. Reliability refers to the test's consistency among different administrations.

Data Analysis: Qualitative data analysis involved identification and transcribing the qualitative findings into different themes. The themes were then edited coded and arranged in different categories to generate useful conclusions and interpretations on the research objectives which were deduced for reporting in a narrative form.

3.7 Chapter Summary

The chapter is basically considered to be the backbone of the research. This is so because it tackles the issues of why is the research study undertaken, how the research problem was formulated, how the different types of data were collected, the particular method that has been used and why a particular technique of analysis of data used in order to come up with the different research findings.

3. 9. Ethical considerations

Research ethics are meant to ensure that there will be no negatives during and after the research and dissemination. The guarantee of this gives the respondents confidence on participating in the research. The researcher undertook to protect the rights of the respondents by:

- Obtaining formal authorization/ introduction to conduct the research from Uganda Christian University, Mukono. which is the sponsoring institution. This was crucial in gaining access to various institutions and individuals.
- Training research assistants on their role during the research process so as to ensure data quality during its capture processes.
- Ensuring that all information received form the respondents and informants is kept confidential and respected.

The research such as this may focus on topics that are sensitive and it would be difficult to illicit honest responses to some of the questions posed when a participant did not feel secure in knowing that their identity is protected. Privacy matters should be addressed from the inception of the research to the publication of the results. There should be safety nets put in place to guarantee confidentiality. The only amount of personal data that should be collected for the research is the minimal amount needed to insure a proper sampling of the population.[94]

As such, the data obtained from the respondents was treated purely as academic and confidential for the safety, social and psychological well-being of the respondents and appropriate documentation was kept.

The respondents, who for purpose of study preferred anonymity, were selected on the basis of their willingness to participate without compulsion and their informed consent was sought. The researcher explained to the respondents the purpose of the study and that the information they provide would be kept confidential.

Furthermore, much as some of the ideas used by the researcher were his own, there was information read and that obtained from people interviewed about the topic. As such the researcher was able to explain where he got information from by way of citation and use of quotation marks respectively. This helped the researcher to maintain credibility of the literature to avoid plagiarism.

3.10. Limitation

There was a limitation of reliance on interview data. With the use of interviews, it was hard to control respondent behaviour because some of them were sensitive to minor changes in interview wording. There were elements of item non-response as the answering process failed to proceed smoothly because the respondent lacked motivation or ability. Some respondents also gave responses such as; the questions are too difficult, not interesting, among others which the researcher found somewhat unsatisfactory of the expected findings. However, the researcher conducted reliability and validity tests to ensure the consistence and accuracy of the tools that were used.

Limited trust availed to the researcher was another challenge experienced during the study. Some respondents were hesitant to reveal as well as avail the researcher with information they believed to be confidential. To this end the researcher had to first assure the respondents of utmost confidentiality and secrecy of each one's details, and that the information they gave would be held with utmost concealment and strictly for academic purposes.

CHAPTER FOUR

4.1. REVENUE MANAGEMENT IN THE OIL AND GAS INDUSTRY

Management of natural resource revenues is central to Uganda's oil exploitation chain because poor management and use of the oil proceeds will over-ride any processes and investments made in the oil sector. It is pivotal in determining whether or not the country will benefit from the years of investment and labour to get the oil, thereby becoming an asset to the nation, or simply yield the dreaded oil curse. Inappropriate revenue management can potentially cripple any nascent economy, increase poverty, income inequality, grow dictatorial regimes, and propagate conflict, amongst other evils. In that respect, this section presents a critical analysis of the existing oil revenue management legal regime in Uganda and its likely impact in the oil sector and the country at large. The Public Financial Management Act (PFMA)[39] plays a particularly important role in this part.

The PFMA repealed the Public Finance and Accountability Act,[40] and has since been seen as a very viable piece of legislation for that provides strong checks against government excesses as it demands it to conform with the sector budget guidelines. The PFMA[41] emphasises on four major areas namely, the Petroleum Revenue Investment Reserve (PRIR), the Petroleum Fund, the issue of royalty-revenue sharing and the Investment Advisory Committee. These are separately discussed below.

The Petroleum Fund. The Act creates a fund where all oil revenues received by government are to be paid. By the 7th day of the next month, it is required that all petroleum revenue due to government should be deposited to the petroleum fund by the person due to make payment, and this includes payment in kind by way of crude oil. This will enable the country to have its own petroleum reserve under the fund. Under section 57(5)[42] payments made to government should be received and recorded by the National Oil Company and a copy submitted to the Minister, URA, the Secretary to the Treasury, the Accountant General as well as to the Auditor General.

This is expected to help in record maintenance in the spirit of acceptable management of the Petroleum Fund. Under section 58[43] withdrawals from the petroleum Fund can only be done as specified in the Appropriation Act upon the Auditor General's warrant. Although Section

[39] Passed in 2015
[40] Public Finance and Accountability Act,[40] 2003
[41] Public Procurement and Disposal of Public Assets Act
[42] Public Procurement and Disposal of Public Assets Act
[43] Public Procurement and Disposal of Public Assets Act

59(3)[44] dictates that withdrawals from the fund shall be used to finance government infrastructure and development projects instead of recurrent expenditure, the distinction between the two remains blurred in the absence of any other measures to distinguish the two; and this opens a door for misuse of petroleum funds by unscrupulous government elements. For purposes of accountability, Section 60[45] requires that proper books of accounts and proper records to be maintained by the Accountant General.

The Accountant General is required to file both the semi-annual and annual reports to the minister, secretary to the treasury and the Auditor General. Section 61[46] requires the minister to present to parliament the estimated petroleum revenue for the financial year together with both the semi-annual and annual reports indicating the deposits and withdrawals from the petroleum fund. These reports are to be published in newspapers and on the website. Besides encouraging transparency, this provision also keeps the public involved in the petroleum fund activities. However, the Act gives the Minister of Energy and Mineral Development the responsibility for the overall management of the Petroleum Fund. The problem here is that it concentrates power in an individual without creating the necessary checks and balances. A creation of multi-tiered mechanisms of accountability rather than to concentrate power in the hands of a single individual would be the best way to go.

The Petroleum Revenue Investment Reserve (PRIR) is another important creation of the Act.[47] It demands that investment of the money should be upon the Auditor General's warrant, and must be in line with the petroleum revenue investment policy. Under Section 63(2)(a-c)[48] the investment policy has a duty to ensure that the macroeconomic stability of Uganda is not unsettled by the investments.

Although the Act requires the minister to lay such instrument before parliament, by virtue of the fact that there is no mechanism put in place to assist the minister in determining the qualifying instrument; the Act can be seen to give the minister fairly wide discretionary powers which can be open to mismanagement and incompetence hence inflicting a negative effect on the investment reserve. Under Section 64(1-3),[49] BoU is mandated to manage the PRIR within the framework of a written agreement between the minister and the governor.

[44] Project Finance Management Act; 2015
[45] Project Finance Management Act; 2015
[46] Project Finance Management Act; 2015
[47] Project Finance Management Act; 2015
[48] Project Finance Management Act; 2015
[49] Project Finance Management Act; 2015

The said agreement is to be designed on the principles of accountability, transparency, equity and intergenerational fairness. Liability shall fall in form of payment of damages by government or any other entity offering that particular service under an agreement with BoU; if any negligence leads to losses. There is also a provision for the PRIR to be managed separately from the other reserves of the BoU. Undue risk is covered under Section 64(6) (a-b) that requires BoU to establish a satisfactory risk management arrangement for instruments to be used in the management of the reserve. BoU is mandated to appoint an external investment manager in accordance with the Public Procurement and Disposal of Public Assets Act,[50] and the appointee must adhere to the Petroleum Investment Policy.

The minister may after tabling to parliament for approval, issue policy guidelines to BoU in regard to government expectations on the performance of the PRIR, in effect checking the minister's powers under Section 69.[51] BoU has to prepare and submit semi-annual and annual financial statements of the reserve to the minister with a copy to the Auditor General, the secretary to the treasury and the Accountant General. This provision denies parliament and the public access to these financial statements. The Bank must also submit monthly performance reports to the minister which should be made public. Under Section 71, annual plans for each financial year for the reserve must be prepared by BoU and submitted to the minister for approval, who in turn submits it to parliament for approval.

In fulfilment of the constitutional requirement of access to information, the Act requires that this information be published and made public. An annual report must also be submitted to the Auditor General and the minister which must be tabled before parliament by 1st April of the following financial year. Under section 73[52] the petroleum F\fund and the PRIR are be audited as provided for under the National Audit Act.[53] Under section 74, the financial assets of the petroleum fund shall not be identified, pledged as security, loaned or otherwise encumbered by any person or entity.

Government is not allowed to borrow money from the petroleum fund in the spirit of transparency and accountability. The Investment Advisory Committee is created under section 66 of the Act to advise the minister on the reserve investments. The committee consists of 7 members with representatives from the ministry in charge of petroleum activities, the Ministry of Finance and; a representative from the National Planning Authority and 4 persons who are not public officers, appointed by the Minister, at least one half of them should be women. All

[50] Public Procurement and Disposal of Public Assets Act 2003
[51] Project Finance Management Act; 2015
[52] Project Finance Management Act; 2015
[53] Passed in 2008

members must be knowledgeable and experienced with adequate expertise on financial investment. The terms of appointment of the committee members are to be determined by the minister, although the Act requires all the names of those appointed to be published. The functions of the committee are set out under Section 68 and they include; advising the minister on the performance of the PRIR and all other issues incidental thereto. In carrying out its advisory role, the committee must take into account the opportunities and constraints in the investment markets, the constraints under which BoU operates and the prevailing economic conditions. Under section 36 the committee has a duty to submit its performance report to the minister within 30 days. This will keep the minister updated with the performance of the committee and provide accountability. However, there is no stipulation requiring these reports to be shared with the public or presented to parliament.

Sharing revenues from royalties. According to the current sharing status, the central government is to retain 94% revenue or the national petroleum share while 6% will be shared among local governments located within the petroleum production areas. While 50% of the revenue from the royalties allocated to the local governments will be shared among the local governments involved in production based on the level of production of each local government, the balance of 50% meant for local governments will be shared among all the local governments based on population size, geographical area and terrain. 1% of the royalty due to the central government shall be granted to a gazetted traditional or cultural institution. From the way the issue of revenue sharing is formulated, the following can be deduced. First of all, as it stands; there is no reporting mechanism for these payments to enable proper accountability. Using local government budget lines makes it complicated for ordinary stakeholders within the districts to know if the local governments are getting a fair share.[54]

Secondly, the percentages allocated to the local government and cultural institutions are very meagre compared to what is retained by the central government. This gets serious in the current state of decentralization enshrined in our constitution.[55] The local governments are the ones that are directly connected with the people and would deliver better services. Allocating them more would make more sense. Finally, these provisions are not enshrined in the constitution but only in ordinary legislation, whereby they can easily be amended to the detriment of the national interests. It is therefore very important that an acceptable sharing formulae be agreed upon especially with the communities where the oil extraction is based, and also constitutionalise the sharing provisions to avoid unnecessary disruption and illegitimate

[54] (Avocats Sans Frontieres, 2015: 8
[55] 1995 as amended

tampering by the powers that be. It is in the best interests of the nation that this be done to avoid the remotest possibility of conflict that usually arise from revenue/royalty sharing arrangements like is the case with Nigeria.

The petroleum fund which is the designated reservoir for Uganda's petroleum revenue is completely distinct from the consolidated fund, from which all moneys from which public expenditure is derived. In the event that payment due to the state is affected in form of oil, the National Oil Company holds such oil as an asset belonging to the Petroleum Fund and upon sale the proceeds must be paid to the Fund. Money from the fund can only be used as already discussed above.

This proliferation of duties is key to the de-concentration of power and a further deterrence to mismanagement. The problem however, as already mentioned, is the fact that the minister is given too much power and control by the PFMA as it places overall control and management of the petroleum fund in the hands of the minister, which is likely to create avenues for mismanagement. The fact that the minister can issue instructions to the National Oil Company, means that the minister can unduly influence its operations. The National Oil Company is also subject to influence from the minister who under Section 46.[56] Uganda has had a bad record of deviating from its otherwise good policies and laws and wander into risky and costly paths. For anything good to come from these apparently sound policies and laws, there must be commitment to ensure that the benefits envisaged actually get achieved. As it is, the upstream law needs some improvements in regard to perfecting the bidding process, greater role of parliament and better oversight of the licensing and allocation process.

There is also the need to augment the independent and oversight role of institutions like the Auditor General and for the introduction of a better and more robust regulatory framework that limits the scope of companies to negotiate on key terms such as revenue rates, social safe guards and environment among others.[57] Furthermore, the license allocation process is still quite opaque despite the fact that Section 42 of the Petroleum (Exploration, Development and Production) Act,[58] demands for an open, transparent and competitive licensing process. In all these, the excessive powers of the minister must be checked and curtailed accordingly to reduce the likely incidence of undue influence from government.

The GoU has of recent ascribed to the global Extractive Industries Transparency Index (EITI), the framework that helps us consider the extent to which Uganda is actually playing by the

[56] Petroleum (Exploration, Development and Production) Act
[57] Global Witness 10.
[58] Petroleum (Exploration, Development and Production) Act,2013

rules or moving closer to affliction by the Oil Curse. The EITI promotes openness and accountability in the management of oil, gas and mining industries through public sharing of all necessary information.

Several African countries including Sierra Leone, Nigeria, Liberia and Ghana, have domesticated EITI in their national laws. Both Kenya and Tanzania have adopted transparent and progressive policies and legislative frameworks in tandem with the EITI. Positive outcomes have been enjoyed by countries by playing in accordance with EITI. Countries like Sierra Leone have even gone a step further, by establishing an online electronic Mining Cadastre Administration System (MCAS) that has improved the recording and reporting of mining revenues. This ensures that All information related to mineral processing and any financial transactions in the sector are thus available to the general public in real time.

The other present problem is that the joint venture of Total, CNOOC and Tullow, operating in Uganda are by domestic law not required, to disclose their payment records made to government.[59] As far as now is concerned, we have to rely on foreign law to bind them. In this regard, the Wall Street Reform (Dodd-Frank) Act may have been binding on Total and CNOOC to disclose information on payments made to the government of Uganda by way of an annual report to the securities and exchange commission of the US government. However, the recent amendments to the law could change this. On a positive note, Tullow has up to now made voluntary disclosure of payment information in line with mandatory European Union (EU) standards. This may not be the same case in the future as other companies that may obtain licenses may not be covered by the EU or US laws on disclosure.

This uncertainty makes it crucial that domestic law is passed to create such a requirement. In the end, the biggest safeguards that the government of Uganda will put in place will be determined by whether it has learnt from the mistakes of others and help it to employ the experience obtained to circumvent its own oil curse. As it stands, not so much can be said to excite the watchful eye of any citizen. What we have so far in structure and operation is quite worrisome at best. There is need for a joint effort of all players to jointly influence government on the ultimate path Uganda's oil and gas sector will take. All said, the government of Uganda's preparation is largely not compliant with the tested international best practices in the oil sector. This creates fertile ground for the dreaded oil curse.

An open commitment to the principles of openness and full access to information that enables the various stakeholders to fully participate is still lacking. While the legal regime is applauded

[59] Peter, Carole, & Alisa, 2011: 10

for creating certain good parameters necessary to keep off the resource curse, a couple of improvements are urgently needed. These include streamlining the bidding process, greater oversight of the licensing and allocation process, and a much central role for parliament.

There exist various practices that governments can use to manage its natural resource revenues, including allocating revenues to natural resource funds to state owned companies, the state budget, sub-national organizations, or directly to the people in the form of cash. According to Venables,[60] each of these institutions requires a unique management strategy, and I entirely agree with Venables that the government has to ensure that it properly allocates these revenues to different departments and also provide a fiscal regime for the distribution of these revenues. Or else such funds are bound to be misappropriated by the officials in which its entrusted.

According to Corrigan,[61] large and volatile capital influxes also affect fiscal policy in a unique way as it creates adaptation mechanisms to contain exchange rate appreciation, inflation, or macroeconomic volatility. The government can make judgments to practice their natural resource revenues in a manner that has short and long-term positive political and socio-economic impacts in the nation.[62]

Sahu found out that, while in theory the oil wealth is a boom to an economy,[63] in sub- Saharan Africa it has created and fattened corrupt, repressive, unaccountable and incompetent governments that hinder development. This explains why most oil producing countries have tyrant rulers who do not care about their society.

In many countries, oil wealth has failed to be a cure to poverty and instead caused suffering to the citizens as a result of massive corruption, political instability, civil wars and irreversible environmental damages for example Nigeria.[64] Resource boom in these kind of mismanaged countries is often accompanied by an economic decline.[65]

This is simply because the revenues and wealth are largely left to the officials heading different departments without proper checks and balances to ensure that there is no mismanagement. The resulting effect is that the nation suffers while a few individuals benefit. This greatly

[60], A. J. Venables, Using Natural Resources for Development: Why Has It Proven So Difficult? *Journal of Economic Perspectives*, 2016 *30*(1), 161–184.
[61]Corrigan, C. C. breaking the resource curse: Transparency in the natural resource sector and the reactive industries transparency initiative. *Resources Policy*, 2014, *40*, 17–30.
[62] Corrigan, C. C. breaking the resource curse: Transparency in the natural resource sector and the reactive industries transparency initiative. *Resources Policy*, 2014, *40*, 17–30.
[63] http://www.mu.ac.in/arts/social_science/african_studies/sahuwp.pdf accessed on 25th march, 2021.
[64] http://www.mu.ac.in/arts/social_science/african_studies/sahuwp.pdf accessed on 25th march, 2021.
[65]http://www.mu.ac.in/arts/social_science/african_studies/sahuwp.pdf accessed on 25th march, 2021.

affects the economy which is meant to be a top priority the moment the state starts reaping from the resource.

4.2 An analysis of Uganda's oil revenues: The past and the future

The oil sector will naturally generate a significant amount of revenue streams for Uganda, at least going by the way it behaves internationally. According to Kazi et al,[66] oil revenues accruing to government will be collected in either cash or in kind. According to the PFMA, the institutions mandated to assess and collect oil sector revenues in Uganda are DOP, URA, and UNOC. The in-kind revenues to be collected by UNOC will be disposed of as provided for under the PFMA, 2015. The revenues must be collected transparently in a coordinated manner using mandated collection and reporting systems and oil receipts by each organ shall be transmitted to the Petroleum fund. In the next two sub-sections, we shall analyse how much oil revenue has been collected since 2001, and the projected government revenue inflows in the future.

Henstridge et al[67] employed the production time horizon and oil prices assumptions to generate forecasts for Uganda's oil revenues and estimated that between 86% and 99% of the net present value of the combined investments would accrue to the government from various revenue streams.[68]

Oxford Policy Management study[69] puts the baseline government oil revenue estimate over the 30-year oil production period at 17%. These findings are reflective of both the significant project size and Uganda's current low tax collection rates.[70] Over the first 10 years of production, new oil revenues are expected to account for 2% of GDP if prices declined by 25%, and 6.9% of GDP if prices increased by 25%. In absolute terms under the circumstances, Uganda's oil revenues are projected to be USD 2.6 billion over the first 10 years of production. This will represent 31% of GDP reflecting the country's relatively narrow tax base and low tax collection rates.

While quoting the World Bank, Global Witness Report,[71] predicted a peak revenue of USD 3bn per year production for Uganda while the Oxford Centre for the Analysis of Resource Rich Economies. Ox care however predicted that Government will receive USD 20bn for its oil over

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[66] W.B. Kazi & T.K. Sarker, 2012, Fiscal Sustainability and the Natural Resource Curse in Resource-rich African Countries: A Case Study of Uganda, 66 Bull. Intl. Taxn. 8 Journals IBFD.
[67] Henstridge and Page (2012) Managing a Modest Boom: Oil Revenues in Uganda, Oxford Centre for the Analysis of Resource Rich Economies Research Paper 90, June 2012.
[68] W.B.Kazi & B. Beyeza, Supra n. 3
[69] 2013
[70] In 2009 Uganda's total revenue expressed as a share of GDP was only 12.5 per cent (IMF 2013a)
[71] World Bank, Global Witness Report 2014

the life of the project at a discount rate of 7%. According to Global Witness, these estimates were most likely based on lower rates of production that reflected the smaller finds at the time. While putting their estimates in perspective, Global Witness reported that in 2013 GDP was about USD 21bn, while the government budget was about USD 4.4bn. Using the World Bank's Commodity Market Review Report[72] quoted crude oil price of USD 60.43 per barrel and the 1.4billion recoverable reserve, the authors estimated that Uganda's oil revenues from the Albertine Graben project would amount to USD 43.4 billion (not discounted) over a 30- year period.[73] Clearly with the production of oil, Uganda's GDP, budget and revenues will potentially increase and socio-economic infrastructures will be provided to the people of Uganda absent corruption.

4.3 LEGAL AND POLICY FRAMEWORKS IN OIL REVENUE MANAGEMENT IN UGANDAS OIL AND GAS INDUSTRY.

Following the Oil and Gas discovery in 2006, as already mentioned, Uganda took further steps to formulate the National Oil and Gas Policy,[74] with an objective which deals with revenue management, however in order to give specific attention to revenue management. The Oil and Gas Revenue Management Policy,[75] was formulated to provide specialized guidance on how oil and gas revenue will be collected, managed and spent and finally the Public Finance Management Act,[76] (Section VIII) which clearly stipulates how Oil and Gas revenues will be handled in Uganda.

In addition, other sets of legislations have since been enacted to properly manage the sector. They include; The Petroleum (Exploration, Development and Production) Act,[77] and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act.[78] It is important to note that the Petroleum Supply Act,[79] is Uganda's downstream petroleum law at the moment which no doubt requires urgent review to take care of the petroleum supply and distribution

[72] June 2017
[73]The authors also assumed42 an average royalty rate of 8%, cost oil of 60%, state share of profit oil of 65% and corporate tax at 30%. We also assumed that the amount of oil produced throughout the 30-year period would be uniform. This revenue comprises royalty, additional royalty state share of profit oil and corporation tax but excludes the dividend on 15% of equity share, NTRs and CGT.
[74] Signed in 2008
[75] Signed in 2012
[76] Comprehensive law governing not only oil gas revenues but also the entire public financial management, passed in 2015.
77. Legislation for regulating downstream activities mainly exploration, evaluation of discoveries, development and production of petroleum resources; storage of petroleum before transporting it to the delivery points, signed in 2013.
78. Legislation for regulating midstream operations i.e the development of petroleum refining, gas conversion, pipelines, transmission pipelines and midstream storage facilities; investment in midstream operations; licensing, installation and maintenance of facilities for midstream operations; public safety and protection of public health and the environment etc, signed in 2013.
[79] Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2003

when production starts. The legal framework will certainly be complete with the completion of all the legal instruments which are expected to build a strong foundation in the proper management of oil and gas sub-sector in Uganda. However, the above set of laws do not work in isolation, they are certainly complemented by other laws related to public finance such as; the Constitution of Uganda,[80] the Budget Act,[81] the Public Procurement and Disposal of Assets Act,[82] URA Act, Local government Act,[83] etc. and other important legally binding documents such as Production Sharing Agreements (PSAs) which up to now, has not been made publicly available.

The fact that oil and gas are non-renewable and finite resources meant that the policy had to be developed in a manner which strives to ensure that oil and gas resources are managed efficiently through reducing costs of operations and maintaining optimal levels of production and safeguarding these resources and managing them in a manner that will create lasting benefits to society. This is the current aspiration of the policy - but whether this aspiration shall be attained in the short, medium and long-term remains to be seen.

According to the national Oil and Gas Policy for Uganda[84] an appropriate institutional and regulatory framework was established to take into consideration the different roles of the state and oil companies for implementation of oil and gas activities.[85]

The National Oil and Gas Policy also endorsed regulatory best practice (RBP) as the cornerstone for government's institutional reform policy where the regulatory agency should be separate and independent from the entities being regulated. Following RBP model, three separate institutions were formed namely, (i) Directorate of Petroleum under the Ministry of Energy and Mineral Development (MEMD) charged with the responsibility of making policies and monitoring oil and gas activities, (ii) Petroleum Authority of Uganda (PAU) which regulates different players in the sub-sector; and (iii) The Uganda National Oil Company (NOC) which handles the commercial interests of the state in the sector. The directorate is currently functional, while the officers for the Petroleum Authority and the National Oil Company are still in the process of establishment.

This policy recognizes the roles of other institutions of government in facilitating the desirable implementation of oil and gas activities and managing oil and gas revenues.[86] Government

[80] 1995 as amended
[81] The Budget Act,[81] 2001
[82] The Public Procurement and Disposal of Assets Act 2003
[83] Chapter 243 Laws of Uganda.
[84] Passed in 2008.
85. See section 7.1 of National Oil and Gas Policy for Uganda (2008)
86. See (section 7.2.6) of the National Oil and Gas Policy for Uganda (2008)

stakeholders relevant to oil revenue collection, utilization and management include; Ministry of Finance, Planning and Economic Development (MoFPED); Ministry of Works and Transport; Auditor General; Bank of Uganda, Uganda Revenue Authority; Ministry of Land Housing and Urban Development; National Planning Authority and Ministry of Industry. The National Oil Company also has a role to play in the collection and expenditure of oil revenues.

4.4 Challenges of extractives revenue management in Uganda's oil and gas industry

Government revenue generated directly from the exploitation of natural resources takes different forms, including production shares, royalties, taxes, dividends and signature/discovery bonuses. If well managed, the additional fiscal space generated by this increased revenue can promote growth, increase employment and improve overall living standards. However, in numerous cases, poor management has led to economic stagnation, squandered revenue and pernicious corruption, perpetuating the notion of the 'resource curse', by virtue of which countries with abundant natural resources may often achieve worse economic and development outcomes than those without.

While the discovery of Oil and Gas offers Uganda an opportunity to raise revenue needed to finance the country's development priorities, petroleum revenues are known to be extremely volatile. The uncertainty in production levels and volatility of oil prices on the world market may have an impact on the fiscal and budget landscape in Uganda which may make budgeting difficult leading to unfulfilled expectations. At the same time, this volatility in oil prices affects how much money will accrue to recipient districts in form of royalties, since at the national level, the selling price will fluctuate from time to time. The amount of revenues collected could vary from current estimates depending on oil prices, future discoveries, government's capacity to collect revenue as well as advancements in technology in the oil and gas sector.

4.5 CONCLUSION AND RECOMMENDATIONS

4.6 Conclusion

Although oil production has not commenced, Uganda has already received revenue amounting to USD 709,039,687 from oil activities since 2001 to February 2017 in form of license fees, signature bonuses, stamp duty, capital gains tax and other oil related revenues like sale of well data. About USD 633,764,848 was deposited in consolidated fund while a sum of USD 72,383,862 is held on the dollar account of the petroleum fund and UGX 10,003,386,387.00 held on the shilling account of the petroleum fund. However, there have been lapses regarding proper management of oil revenues mainly emanating from gaps and lack of proper implementation of legal and policy frameworks. There is urgent need to fix loopholes that exist in policy and legal frameworks, strengthen them and enforce proper management of oil revenues to the required standards. If we fail to address the above challenges, oil revenue management will remain problematic and it will be impossible for Uganda to eliminate the ‘resource curse’ as there is currently a high likelihood that oil revenues will not be used properly and/or will not impact positively on the lives of ordinary Ugandans.

4.7 EXPERIENCES FROM OTHER COUNTRIES IN REVENUE SHARING REVENUE MANAEMENT IN THE OIL AND GAS INDUSTRY

The Norwegian Petroleum fund

The Norwegian experience with oil production is held as a "best practice" in natural resource revenue management.[87] It is hailed as a good example of well-governed central budgeting and saving for the future with a high yielding investment strategy. The infusion of oil revenues in the country has helped to fund the expansion of Norway's welfare system. Directly, the revenues have sustained Norway's strong growth in public sector employment and social security while indirectly helping to avoid accumulation of public debts and the attendant large interest payment obligations that burdens most other nations.

The Norwegian parliament "the sorting" founded the multi-stake holder fund,[88] and the petroleum fund in 1990. Oil revenues are accumulated in this fund as collected from various avenues such as taxes, royalties, and state-owned production and they flow into the central government budget. All fiscal decisions are made through the central budgeting process and any budget surplus flows into the fund. The petroleum fund is meant to provide a reserve for continued future expenditures given the four-decade life prediction of the North Sea oil deposits. All the oil fund resources are reported to parliament which must authorize any appropriation from the fund to the budget as all expenditures are done from the regular budget.

While the responsibility of managing the petroleum fund is technically with the ministry of finance, it was delegated to the central bank, 'Norges Bank' for day-to-day operations, while the ministry retains the duty to issue guidelines for the fund’s capital investment. As a small and open economy, Norway invests the funds' assets exclusively in foreign bonds and equity, which reflects the main goal of risk diversification and income generation. While reporting is transparent, publicity is available and oversight is strong; Norway has recently developed and employed guidelines for ethical investing.

87 See, Bantekas Ilias. (2005). Natural Resource Revenue Sharing Schemes (Trust Funds) in International Law. Netherlands International Law Review, LII, 31-56; Jonas Hjort. (2006). Citizen Funds and Dutch Disease in developing countries. Resources Policy, 31, 183-191.

88 Segura, A. (2006). Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Saotome and Principe. ***IMF Working Papers, 06(183),*** 1.

The sound effect of such effective operational management systems is that the Norwegians as a nation all benefit from the oil revenues through a sustainable expansion of the government budget. In recent years, petroleum-related revenues have covered one quarter of the budget, allowing room for the citizens to get public services as emanating from their taxes. This has led to great economic growth.

The petroleum fund is designed to benefit future citizens in that; three quarters of its current revenues are saved and invested to ensure continuity after resource rents diminish. None of the funds are earmarked for particular projects or benefit sharing. The Norwegian case is a classic example of the effectiveness of strong and well governed institutions in the management of natural resource assets for the greater good, without need for specific earmarking. Transparency and accountability are fundamental to the Norwegian success.

Legal-Institutional framework for oil revenue administration for Uganda.

The legal framework for Uganda's oil revenue administration is derived from the PSAs,[89] the revenue laws,[90] the Upstream law,[91] the Midstream law,[92] the Public Finance Management Act,[93] the National Oil and Gas Policy[94] and the Oil and Gas Revenue Management Policy. These laws define the scope of oil revenues[95] and the manner of how the revenue will be collected, reported and accounted for.

The Uganda Revenue Authority (URA) and the Directorate of Petroleum (DOP) are responsible for the assessment and collection of the tax and non-tax revenues respectively from the oil industry. The Uganda National Oil Company (UNOC) will be responsible for receiving and marketing the government's share of profit oil and the UNOC, as a government nominee, has elected to take government's participating interest in all the production licences so far issued at a level of 15% as provided for in the respective PSAs. The Bank of Uganda (BOU) will manage the petroleum fund on behalf of government. The auditor-general's office is responsible for ensuring that government accounts including the petroleum fund are prudently managed and there is value for money in its application. The Petroleum Authority of Uganda (PAU) will monitor and regulate the exploration, development and production activities. All

[89]These can be classified into pre-2008 PSA and the 2012 PSAs. This is because Uganda signed its first PSAs before 2008 and others in 2012.
[90]These include the Income Tax Act, Stamp Act, Customs Management Act, VAT Act, Traffic and Road Safety Act
[91]Petroleum (Exploration, Development and Production) Act, 2013
[92]Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013
[93] Public Finance Management Act,[93] 2015
[94] The National Oil and Gas Policy 2008
[95]The royalties, taxes, bonus payments, dividends, premiums, and in-kind revenues will be reported on gross basis, indicating all adjustments required in official fiscal documents (oil & gas revenue management policy, 2012).

these institutions are mandated with the collection and prudent management of the oil revenues.

Institutional Framework

By constitutional enactment, all natural resources in Uganda like petroleum and other hydro carbons are largely owned by government and regulated under the Oil and Gas Policy[96] and the attendant laws. The Petroleum Exploration and Production Department (PEPD) of the Ministry of Energy and Mineral Development (MEMD) runs the management issues of hydro-carbons.

This department is the one responsible for licensing Uganda's hydro-carbon resources to prospective developers who in turn have to meet their obligations towards government in accordance with the terms of the agreement signed, which usually manifests in form of royalty, taxes, share of production etc. The government could opt for a joint venture with the IOC’s to ensure its participation in the decision making process in the oil industry which in turn entitles it to corporate advantage which will be paid into the consolidated fund as required by law.

The researcher is concerned to know as to whether Uganda is institutionally ready and whether it has the necessary discipline to handle the expected influx of oil revenues. Bategeka et al[97] directly discussed this aspect and stated that strong and operational domestic institutions are what has made some countries very successful. They argued that being endowed with natural resources will yield nothing for a country if it has a malfunctioning institutional set up, bureaucracy and insecure property rights. It often breeds corruption, conflicts and eventual economic failure in the face of abundant natural resources. When the domestic institutions are 'grabber-friendly,' the benefits of resource abundance are stolen by a few in collusion with the IOC’s. The reverse will be true if the institutions are well managed. This is an institutionalised theoretical perspective that challenges the Sachs and Warner[98] claim that institutions do not play a key role.

Being a young democracy with all its challenges, Uganda’s investigative and judicial system may be too slow to detect, determine and deter theft of official resources by rent-seeking officials or groups. This will only entrench evils like theft, grabbing of collective wealth via corruption, among others. It is understood that government has taken numerous steps to put into place institutions that will ensure the smooth running of the oil sector but however, it remains to be seen that the said institutions are running well within the limits of the rule of law.

[96] Oil and Gas Policy 2007
[97] Bategeka et al 2008
[98] Sachs and Warner 2001

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.0. RECOMMENDATIONS ON THE LEGAL REGIME AS AWAY OF ENSURING EFFECTIVE MANAGEMENT OF PETROLEUM REVENUES.

(i) Review of the legal framework to provide for the following:

(a) An oversight role for parliament and CSOs regarding the management of the PF operations: Even though Parliament has the opportunity to allocate PF revenues to the Appropriation Act, it does not have oversight regarding the operations of the Fund and utilization of the allocated revenues. The framework should also create an expenditure cap/ceiling on the petroleum revenues transferred into the CF so as to avoid two issues: (a) overdrawing the Petroleum fund; and, (b) appropriating huge sums of money that would end up in the economy and cause inflationary tendencies. Prudent macroeconomic tendencies should be at the forefront to avoid chocking the economy.

(b) A supporting legal framework for EITI implementation and petroleum revenue transparency: If the Government of Uganda is to become EITI-compliant, the PFMA,[99] and regulations, the Petroleum Revenue Management Policy[100] will need to include details to set the government up for compliance. In some cases, the PFMA will need to be amended to accommodate EITI principles and standards such as disclosing revenues on a project-by-project, company by-company basis, disaggregated by payment type. This will bring Uganda closer to compliance with the EITI standards.

(ii) Government should make follow-up and report on payments of the CGT balances on the Heritage Oil case. It has been noted that from this case, government still has to receive payments but is not sure when they are to be paid. Hence follow-up should be made. If the company fails to pay in time, section 57(3) of the PFMA should be invoked.

(iii) The appropriation should clarify on exact sources of funds transferred to the CF and how they are appropriated. There is a likelihood that if this is not clarified, politicians may use this loophole and allocate funds from the PF to non-development activities, hence violating the law.

(iv) The government should finalize the establishment of the Petroleum Revenue Investment Reserve Policy framework and the TORs for the Investment Advisory Committee

[99] Petroleum Finance Management Act, 2015

[100] Petroleum Revenue Management Policy 2012

(IAC). Failure to do so will imply that funds cannot be appropriated for investment as required by the PFMA. Since the creation of the Petroleum fund, it's now 4 years and the committee has just been inaugurated, the PRIR policy framework and TORs for IAC are not yet in place. This implies that even though the IAC was inaugurated, it still has no work to do, until the policy and TORs are developed and approved by the relevant authority.

(v) Establish Petroleum fund social safeguards and controls such as giving parliament and CSOs more powers to have oversight role regarding the management of the Petroleum fund. Others include: (a) compelling the members of the Investment Advisory Committee to disclose their financial interests in the Oil and Gas sector. Failure to do so creates a loophole for conflict of interest in the management of the fund;(b) ensure strict adherence to set protocols, laws and procedures meant for proper management of oil revenues; (c) develop and publish an annual petroleum revenue utilization plan, which should be approved by parliament to avoid ad hoc oil revenue expenditures by government.

(vi) In order to be EITI-compliant, government should establish an independent, multi-stakeholder oversight group to supervise transfers into and disbursements from the PF, and the infrastructural projects on which they are appropriated, as well as all major activities of the PF. This body should include government officials, company representatives and full, independent, active and effective participation of civil society. Audits of the PF undertaken by the Auditor General should be supplemented by independent third-party audits.

The Government of Uganda should also commit to making contracts publicly available and publish petroleum revenue as per PFMA requirements and EITI standards. In addition to certain information being included in the semi-annual and annual reports of the PF, information should also be made publicly available in newspapers and on the Ministry's website. This would ensure effective management of the oil and gas industry through creating an effective legal regime which aims at creating a system which can ensure effective management of the oil revenues.

5.1 Conclusions on Experiences and Lessons for Uganda from these countries above.

As Uganda gears towards commercial oil production thereby joining the club of Oil Producing and Exporting Countries (OPEC), she is affronted by the delicate aspect of especially oil revenue management and sharing which now demands an effective legal regime to ensure proper management of oil revenues. Irrespective of the approach Uganda will take in allocation of her oil revenue, the following key standard considerations should be taken into account in those approaches: (i) distributional principles; (ii); a coherent energy policy (iii) compensation to producing areas for costs of production; (iv) expenditure responsibility and (v); national and regional/local economic stability.

For a developing country like Uganda, the temptation to spend the oil revenue influx may become irresistible, especially during the periods of high prices.

As Uganda enters the phase of commercial production of oil, it is important that;

a) It broadens its economic base to avoid over reliance on the oil sector revenues as a country this will cushion it from the often severe revenue variations that are synonymous with the oil sector. In the event that the oil industry is affected by whatever eventuality, it is important that the other sectors of government like manufacturing and agriculture continue to support the government operations by generating revenue. The challenge is to dare other sectors of the economy to get in a full production mode, which calls for strategic planning to sustain those sectors.

b) Managing price volatility: price volatility is synonymous with oil the oil sector. To navigate this, successful countries have created a stabilization fund that helps to smoothen the situation overtime. While this is good, there is a risk of establishing a parallel budget system especially in developing countries. The following lessons can be picked from the Norwegian successful experience; (i) all resources coming to the oil fund are reported to parliament, (ii) parliament authorizes any transfers from the fund to the budget, (iii) all spending is done from the regular budget.

c) Saving: knowing that oil is exhaustible, it is very important to create a saving fund that addresses issues of the future generation. There must be very limited spending from that funs to the extent that it needs a parliamentary resolution to access it.

d) Developing a sharing formula and mechanism: this is very crucial and should be developed at the earliest opportunity. By the time the production starts, there should be an agreed formula tom ensure equitable benefit to the oil and non-oil-producing regions should be negotiated.

e) Consulting with local stakeholders. Adequate consultations need to be made with the various stakeholders that are likely to be affected by the oil production activities. If this is not attended to, there will be conflicts arising that will continually interfere with the production activities. At this point, it is irrelevant whether or not they have legal tenure; as long as they are likely to be affected by the oil production activities. A clear process of incorporating their views in the decision making chain and making relevant compensation where necessary should be executed. The development forums of Papua

New Guinea are one good example.

f) Assessing institutional capacity: This is central to the success of oil wealth management that primarily thrives on good governance that demands that appropriate institutions should be placed and properly managed both at central and local levels. Continuous assessment and improvements should be run and implemented and any arising capacity gaps addressed immediately.

g) Offering of benefits. This needs to be done in a way that is productive to the beneficiaries and not susceptible to mismanagement. While some commentators push for cash transfers to the beneficiaries, it is herein argued that the best way forward is to offer benefits in form of productive infrastructure like roads, water, electricity, health, sanitation etc. while cash transfers can alleviate the current prevailing poverty, they are short term and will leave the communities in poverty within a short time.

h) Management structures and priorities. It is imperative that government puts into place a management structure that will have the full mandate of how the trust fund will be spent. This has worked well in Botswana and should not fail here in Uganda. This will help in identifying priorities and expenditure to ensure effective utilization of the fund and effective development.

i) Environmental Impacts Assessment. This is one of the major evils that results from the oil production. It may be as a result of poor management or an accident. It therefore important we carry out an assessment to; (i) to identify the likely victims and how to remedy the loss in the event of a likely pollution; like for example determining compensation parameters and liability responsibility. (ii) to ensure that the environmental costs do not exceed the expected benefits from oil production, and (iii) to develop and regulatory strategies for mitigation and enforcement. The above can also incorporate revenue-raising mechanisms like levying environmental taxes to ensure that the costs of environmental damage are internalized. A liability fund, which creates a resource pool that will fund the likely clean-up costs or health costs that may arise to the government.

j) Maintenance of the fiscal consolidation plan. This involves taking care of the future when the oil resource is depleted, when the earnings from oil have ceased. This calls for diversification of the economy by investing in other long-term assets and building the capacity that smoothens the country’s economic balance when the oil revenues stop. To avoid catching the 'Dutch Disease', certain principles for oil revenue management have been suggested.[101] These include;

i. Adequate negotiations to ensure that the host country obtains the highest possible return from the resource endowments.

ii. Regulation of the economy to keep a good foreign exchange prevalence and accumulation of surpluses.

iii. Promotion of transparency and good fiscal practices.

iv. Prioritising public infrastructural and human capital development Investment in human capital.

v. Fair distribution of wealth of the resource wealth tot eh citizenry with a keen special consideration of the affected communities.

vi. Creation of a stabilization fund to smoothen the economy in the event of the ever present price volatility in the oil market.

vii. Avoiding corruption and preventing misuse of funds.

It is widely believed that credible oil revenue sharing schemes are very crucial in stimulating sustainable development. Norway and Botswana are a success story of how natural resources can develop a country. Norway for example is ranked as the best by the United Nations Development Program's list of the best performers with proceeds from oil resources.[102] The success in Norway demonstrates that the lurking economic and social evils in regard to natural resources are not inherent, rather it is how the individual country manages its affairs that determines the final outcome being a blessing or a curse.

Whether countries succeed in turning their oil revenues into long-term benefits for the citizenry ultimately depends on the quality of public policy, legal framework and public accountability. Simply stated, given the right policy and legal frameworks and public accountability petroleum revenues can be "black gold" rather than the curse. Norway and Botswana should give Uganda impetus to develop robust systems for revenue sharing before oil production begins. Without these, we doomed.

5.2 FINAL Conclusion

Uganda's legal regime is very sufficient in ensuring effective management of revenues from

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101 Sarraf Maria, & Moortaza Jiwanji. (2001). Op cit.

102. See, Newsedge (2010). Oil in a Week Norway's Model in Government Cooperation with Oil Companies. Available online at: http://www.poten.com/NewsDetails.aspx?id=10519177. Accessed on 1/042021

oil and gas sector if all these laws and policies are followed and implemented to the letter but right now it has challenges of political interference and lack of political will coupled with corruption which has made it very hard for the fund to serve its intended purpose.

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