A COMPARATIVE ANALYSIS OF UGANDA AND SELECTED JURISDICTIONS IN OIL AND GAS RESOURCE GOVERNANCE AND FISCAL PERFORMANCE

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DECLARATION

I, Loyce Kuhebwa, hereby declare that this dissertation is my work and it has not been submittedbefore to any other institution of higher learning for fulfillment of any academic award.

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APPROVAL

I certify that this research dissertation entitled "**A Comparative Analysis of Uganda and Selected Jurisdictions in Oil and Gas Resource Governance and Fiscal Performance"** was done under my guidance and satisfies the prerequisite for the partial fulfillment of the requirements of the award of the Master's Degree of LL.M in Oil and Gas at Institute of Petroleum Studies Kampala.

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DEDICATION

I dedicate this study to the Almighty God and my family and friends for their support. In a special way I dedicate this dissertation and give special thanks to my dear Father Mr. Mwongyezi Gordon who has played the lead role in my studies, has been the best cheerleader and ensured that I get all I ever needed.

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LIST OF ACRONYMS

AGIP	*Azienda Generale Italiana Petroli*
APT	Additional Profits Tax
ASD	Ministry of Labour and Social Affairs
ATI	Access to Information
BEAC	Bank of the Central African States
BITs	Bilateral Investment Treaties
CCSRP	*College de Contrôle et de Surveillance des Recettes Pétrolieres*
CEMAC	Economic Monetary Community of Central Africa
CGT	Capital Gains Tax
CNOOC	China National Offshore Oil Corporation
CNPCI	China National Petroleum Corporation International
CO_2	Carbon dioxide
COBAC	Central African Banking Commission
COTCO	Cameroon Oil Transportation Company
CPF	Central Processing Facility
CTNSC	Comité Technique Nationale de Suivi et de Contrôle
DEPSA	Development and Production Sharing Agreement
EACOP	East African Crude Oil Pipeline
ECMG	External Compliance Monitoring Group
EEA	European Economic Area
EI	Extractive Industry
EIR	Extractive Industries Review
EITI	Extractive Industry Transparency Initiative
EPSA	Exploration and Production Sharing Contracts
GDP	Gross Domestic Product
GGCL	Ghana Gas Company Limited
GMA	Ghana Maritime Authority
GNC	General National Congress
GNPC	Ghana National Petroleum Corporation
HSE	Health Safety and Environment
IAG	International Advisory Group
IMF	International Monetary Fund
IMO	International Maritime Organization
IOCs	International Oil Companies
ITA	Income Tac Act
IUCN	International Union for Conservation of Nature
KAPSARC	King Abdullah Petroleum Studies and Research Center
LPA	Land Petroleum Act
MEMD	Ministry of Energy and Mineral Development
MPE	Ministry of Petroleum and Energy
MTC	Ministry of Transport and Communications
NCA	National Coastal Administration
NCS	Norwegian Continental Shelf
NDPs	National Development Plans

NEMA	National Environment Management Authority
NHC	National Hydrocarbons Company
NMA	Norwegian Maritime Authority
NOC	National Oil Company
NOGP	National Oil and Gas Policy
NORAD	Norwegian Agency for Development Cooperation
NPA	National Planning Authority
NPD	Norwegian Petroleum Directorate
NRGI	Natural Resource Governance Institute
NRM	National Resistance Movement
NTC	National Transitional Council
NTRs	Non-Tax Revenues
OECD	Organisation for Economic Co-operation and Development
OHADA	Organization for the Harmonization of Business in Africa
OPEC	Organization of the Petroleum Exporting Countries
OSPAR	Oslo and Paris Commissions
PA	Petroleum Act
PAU	Petroleum Authority of Uganda
PAYE	Pay As You Earn
PFMA	Public Finance Management Act
PNDCL	Provisional National Defence Council Law
PR	Petroleum Regulations
PRIR	Petroleum Revenue Investment Reserve
PRMS	Petroleum Revenue Management System
PSA	Production Sharing Agreement
PSC	Production Sharing Contract
RGI	Resource Governance Index
RIK	Revenue-in-Kind
SARFIT	Structural Adaptation to Regain Fit Theory
SDFI	State Direct Financial Interest
SHT	*Société des Hydrocarbures du Tchad* (or National Oil Company)
TOTCO	Tchad Oil Transportation Company
UNCLOS	*United Nations Convention on the Law of the Sea*
UNDP	United Nations Development Program
UNOC	Uganda National Oil Company
VAT	Value Added Tax
WBI	World Bank Institute
WHT	With Holding Tax

ABSTRACT

Oil production will generate significant additional revenues for Uganda. However, the emergence of a natural resource windfall is usually accompanied by several challenges. These challenges are mainly of a macroeconomic and governance in nature. According to this study, Uganda's oil and gas governance is still poor despite the presence of legal framework for oil revenue administration which is in place. Transparency, accountability and corruption are still critical issues that need reform. The study further shows that Uganda has a lot to learn from other well-performing jurisdictions in oil and governance. The study recommends government to involve CBOs and NGOs in Oil and Gas governance so that oil and gas issues are handled at different levels. The study also recommends government to enforce technology transfer in all sectors of oil and gas industry. Lastly, the study recommend government to publish all annual audits conducted by reputable international firms, conventions and contracts regarding hydrocarbon exploration and production in Uganda.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The study analysed oil and gas resource governance and fiscal performance of Uganda which isan emerging oil and gas industry. A broad definition of resource governance in this study has included hard rules such as regulations, monitoring, and leadership mechanisms, and soft rules such as norms, standards, expectations, and social understandings.[1] Resource governance in this context is defined as the hard and soft rules which shape and constrain the way oil and gas contribute to sustainable development, fiscal performance and poverty alleviation within the host country. Resource governance norms[2] have evolved at multiple scales[3] to counter the potential negative socio-economic, environmental and institutional impacts of the extractive industries.

This introductory chapter of the research captures the background to the study, the statement of the problem, purpose and objectives, research questions, scope, significance and justification of the study. It also discussed the theoretical and conceptual frameworks.

1.2 Background to the study

Natural resources have long been regarded as free public goods that are non-exhaustible when consumed and non-excludable which can be enjoyed by one person without limiting what is available to another person.[4] However, earth materials and minerals are non-renewable. A non-renewable resource (also called a finite resource) is a natural resource that cannot be readily

[1]Levy D.L. and Newell P. (2005): The Business of Global Environmental Governance MIT Press, Cambridge, Mass. (2005)

[2] Kaufmann D. (2013), Natural Resource Governance Institute, Natural Resource Charter. New York NY 10004 p. 100.

[3] Bringezu S., Potocnik, J., Schandl, H., Yonglong Lu, Ramaswami, A., Swilling, M. and Sangwon S. (2016), Multi-Scale Governance of Sustainable Natural Resource Use—Challenges and Opportunities for Monitoring and Institutional Development at the National and Global Level. Academic Editor: Marc A. Rosen, p. 105.

[4] Ronald Kaggwa (2014), Natural Resource Governance in a Changing World: Challenges and Opportunities; Ronald Kaggwa is an environmental economist with the National Environment Management Authority (NEMA). Paper presented at a Regional Symposium on Public Interest Environmental Litigation for lawyers in East Africa, 17 – 20th June, 2014 at Country Lake Resort Hotel, Garuga, Uganda.

replaced by natural means at a quick enough pace to keep up with consumption.[5] An example is carbon-based fossil fuel. The original organic matter, with the aid of heat and pressure, becomes a fuel such as oil or gas. Earth materials and mineral ores, fossil fuels (coal, petroleum, natural gas) and groundwater in certain aquifers are all considered non-renewable resources, though individual elements are always conserved (except in nuclear reactions). Conversely, resources such as timber (when harvested sustainably) and wind (used to power energy conversion systems)are considered renewable resources, largely because their localized replenishment can occur within time frames meaningful to humans as well. Nonetheless, these resources generate enormous benefits including sustaining livelihoods, contributing to wealth creation (poverty reduction) and economic development.[6] They are not free goods. They are scarce and have an economic value.

Consequently, there is an urgent need to devise ways of effectively and efficiently managing natural resources in a way that ensures their sustainable and equitable use to contribute to livelihood security and rapid economic growth. It is against this backdrop that a concept "Natural Resource Governance" assumes a critical and strategic importance.[7] The concept of governanceis generally used to describe how power and authority are exercised and distributed; how decisionsare made, and to what extent citizens are able to participate in decision-making processes.[8] Thereis a growing consensus by International Union for Conservation of Nature (IUCN) emphasizing that governance has a strong effect on environmental actions and outcomes as well as fiscal performance.[9] In this regard, this study has analyzed oil and gas resource governance and fiscal performance in Uganda exploring the efficacy of resource governance in oil and gas sector; evaluating the oil and gas revenue earned and its appropriation into the growth of fiscal development in Uganda; and evaluating oil and gas tax governance system in Uganda. This study has also given a comparative analysis with selected jurisdictions of Norway, Chad, Libya and Ghana.

[5] *Earth systems and environmental sciences*. [Place of publication not identified]: Elsevier. 2013. ISBN 978-0-12-409548-9. OCLC 846463785.
[6] Ibid
[7] Ibid
[8] Swedish Environment Protection Agency (EPA) (2012): The role of governance for improved environmental outcomes
[9] Swedish EPA, Report 6514

1.2.1 Natural Resource Governance at International level

Generally, Natural Resource Governance refers to the processes of decision making involved in the control and management of environment and natural resources. The International Union for Conservation of Nature[10] defines Natural Resource Governance as the multilevel interaction among the three main actors; state, market and civil society which interact with each other in formulating and implementing policies in response to environment related demands and inputs from society for the purpose of attaining environmentally sustainable development.[11] Natural resource governance involves the norms, institutions and processes that determine how power and responsibilities over natural resources are exercised, how decisions are taken, and how citizens – women, men, indigenous peoples and local communities – participate in and benefit from the management of natural resources. Natural resources are affected by a number of elements and events which makes their governance an intricate exercise. Weak and inappropriate natural resource governance systems spur a wide range of problems including; declining resource productivity and resilience, resource scarcities, inequitable access that breed conflicts, cause displacements and worsen human vulnerability.[12]

The International Union for Conservation of Nature (IUCN- officially International Union for Conservation of Nature and Natural Resources[13]) is an international organization established on 5th October 1948 in Fontainebleau, France. They work in the field of nature conservation and sustainable use of natural resources. They are involved in data gathering and analysis, research, field projects, advocacy, and education. IUCN works on the following themes:business, climate change, economics, ecosystems, environmental law, forest conservation, gender, global policy, marine and polar, protected areas, science and knowledge, social policy, species, water and world heritage. IUCN has observer and consultativestatus at the United Nations and plays a role in the implementation of several international conventions on nature conservation and biodiversity. It was involved in establishing the World- Wide Fund for Nature and the World Conservation Monitoring Centre.

[10]International Union for Conservation of Nature (IUCN), 2014

[11] Ibid

[12] Ronald Kaggwa (2014), Natural Resource Governance in a Changing World: Challenges and Opportunities.

[13] The organisation changed its name to the International Union for Conservation of Nature and Natural Resources in 1956 with the acronym IUCN (or UICN in French and Spanish). This remains its full legal name to this day.

IUCN has drafted the Natural Resource Governance Framework with a goal of setting standards and guidance for decision-makers at all levels. This is in order to make better and more just decisions on the use of natural resources and the distribution of nature's benefits following good governance principles, such that improved governance will enhance the contributions of ecosystems and biodiversity to equity and sustainability.

It should be noted that responding to natural resources and environmental issues require a system of governance that is tailored to the required existing national aspirations and values. Natural resource governance must thus be conducted within a wider framework of overall governance. The basic principles of governance are: (i) accountability; the requirement to accept responsibility and answer for actions; (ii) transparency; sharing information and acting in an open manner; (iii) participation which entails taking part in decision making and implementation either directly or through legitimate representatives, and (iv) the rule of law which implies equal treatment both in protection and punishment under the law for everyone in the same way, all the time.

These principles can be used to guide and design natural resource governance institutions that are legitimate, transparent, accountable, inclusive and fair.[14] These principles have been used to guide this study as stated in the conceptual framework. From this the key principles of natural resource governance are identified which include: Legitimacy, Transparency, Accountability, Inclusiveness and Fairness. These key principles, if followed, should lead to legitimate, fair, inclusive and transparent distribution of natural resource in an accountable manner. Natural resources can bring considerable wealth to a country, contributing to livelihoods, food security and the green economy, as well as generating trade and enterprise at local, national and international levels.[15] But with large volumes of revenue at stake, the extractives sector is also often associated with poor governance and corruption. Oil and gas fiscal performance in Uganda can be assessed by government policies performance which should lead to economic growth.[16] This should manifestin the gross domestic product (GDP) growth rate.

[14] Taylor and Francis (2014), Local Environment. The International Journal of Justice and Sustainability, Volume 19, 2014.
[15] Natural Resource Governance Institute. 2013.
[16] Apere, Thankgod Oyinpreye (2017), Impact of Crude Oil on Nigeria's Fiscal Policy Formulation, *European Journal of Research in Social Sciences,* Vol. 5 No. 3, 2017 *ISSN 2056-5429.*

1.2.2 Natural Resource Governance at National level

Progress in bringing the oil recovery project to fruition in Uganda has placed increased attention on the need for a strong governance system to ensure that oil wealth will be used for the long-term betterment of the country.[17] Underling the call for improved governance is the fear that Uganda will experience the same "natural resource curse" that has plagued most resource-rich African nations. Rather than spur development, it is believed that countries with an abundance of a natural resource end up performing more poorly than do resource-poor countries because they squander their riches through corruption, violent conflicts, and environmental destruction.[18] The proposed antidote for avoiding this outcome is the creation of strong institutions that will assure transparency and effective economic management.[19]

The natural resource curse is very much on the minds of Ugandans as well as the international community. The fear is that the Museveni regime will use the expected oil income to further entrench its domination of the country.[20] This fear is particularly real given Uganda's recent history. The very essence of the Bush War, led by then General Museveni, was to overthrow the infamous Idi Amine and Milton Obote regimes and return proper governance to the country. Following the adoption of a new constitution in 1995, Uganda was heralded as an example of a country building its institutional capacity and working toward a positive future.[21] However, this image has increasingly come into question as President Museveni is accused of undoing reforms in order to win elections and maintain his three decades long control of the government. Examples of these actions are the elimination of presidential term and age limits, the weakening of local governments to engender political support,[22] and questionable measures taken to undermine

[17]Kamugisha, D., Muhereza, E., & Elima, D. (2008). *Promoting the application of access rights in Uganda's oil sub-sector* (No. 4). Kampala: Africa Institute for Energy Governance.
[18] Ghazvinian, J. (2007). *Untapped: The scramble for Africa's oil*. Orlando, FL: Harcourt.
[19] Bainomugisha, A., Kivengyere, H., & Tusasirwe, B. (2006). *Escaping the oil curse and making poverty history: A Review of the Oil and Gas Policy and Legal Framework for Uganda* (No. 20). Kampala: ACODE; Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center; and Mugyenyi, O., Ustin, B., & Twesigye, B. (2010, June 17-19). Equitable sharing of the treasures of oil and gas in a transparent and environmentally sustainable manner. *A synthesis report of the Proceedings of the Parliamentary Symposium on Oil and Gas Development in Uganda*. (No. 15), Entebbe, UG.
[20] Gelb, A., & Majerowicz, S. (2011, July). *Oil for Uganda – or Ugandans? Can cash transfers prevent the resource curse?* (No. 261). Washington, DC: Center for Global Development.
[21] Andrews, M., & Bategeka, L. (2013). *Overcoming the limits of institutional reform in Uganda* (Paper No. 269). Cambridge, MA: Center for International Development at Harvard University.
[22] Manyak, T., & Katono, I. (2010). Decentralization and conflict in Uganda: Governance adrift. *African Studies Quarterly, 11*(4), 1-24; and Manyak, T., & Katono, I. (2011). Impact of multiparty politics on local government in Uganda. *African Conflict and Peacebuilding Review, 1*(1), 8-38).

political opposition.[23] Several governance issues related to avoiding the resource curse are before the Uganda parliament and will undoubtedly become election issues in 2021 as potential candidates vie for political advantage. Some important governance issues are the need to: (1) ensure the proper fiscal management of oil royalties through transparency and accountability; (2) reimburse kingdoms, local governments, and citizens impacted by oil development; and (3) effectively manage the natural and ecological resources that will be impacted by the recovery and processing of oil.

The discovery of large oil deposits in Uganda in 2006 raised a one fundamental governance issue. Because developing countries, like Uganda, lack strong institutional foundations, it is widely assumed that riches flowing from oil will result in huge sums of money being diverted to politicians while the country ends up worse off in the long run. Uganda certainly faces this "natural resource curse," but the potential for corruption is only one of the many governance issues arising from the potential of oil riches. The government needs to work effectively with foreign oil companies and neighboring countries to recover and transport the oil. It must also establish institutions and procedures to manage its new oil economy. Moreover, questions must be answered regarding ownership, the oil producing lands and how the fragile environment of the country can be protected.

1.3 The Statement of the Problem

The discovery of commercial oil deposits in Uganda makes the country strategically important not only in the Great Lakes Region but also in international affairs. As one of the leading oil producers, Uganda will be expected to join the Organization of the Petroleum Exporting Countries (OPEC) which would make Uganda a key player in international politics. As Uganda prepares to start drilling and refining petroleum, one looming question is how the country will manage oil revenues and the challenges associated with oil-producing countries in a manner that promotes equity, sustainable development and political stability.

The discovery of commercially viable oil deposits in Uganda, estimated at six billion barrels by the end of December 2009, has generated intense interests and expectations from government and stakeholders (local governments, central government, the Bunyoro – Kitara Kingdom, civil society

[23] Conroy-Krutz, J., & Logan, C. (2012). Museveni and the 2011 Ugandan election: Did the money matter? *Journal of Modern African Studies, 50*(4), 625-655.

organizations, the private sector and international development partners) of economic boom resulting from future revenue windfall from Oil and Gas. Indeed, the National Oil and Gas Policy (2008) proposed measures, including revenue sharing to address this interest and expectations. There is a general expectation that oil revenues will be invested in developing public infrastructure and programmes to eradicate poverty. However, to be able to address this expectation, there is urgent need for the country to develop and manage the oil sector in a prudent manner. In order to achieve this objective, it is imperative to have in place a relevant and effective policy and legal framework for regulating oil sector as well as institutional capacities for economic management. In addition, there is need for mechanisms and procedures for implementing provisions in the National Oil and Gas Policy (2008), including sharing of oil revenues.

While the discovery of commercial quantities of oil has been received with great hope due to anticipated economic fortunes likely to be generated from oil exploitation, it has also caused anxiety about how the accruing revenues will be shared. Furthermore, there is fear that if the revenues from oil are not well governed through a transparent and accountable system that ensures equity in sharing; the resource could turn out to be Uganda's curse rather than a blessing.[24] Civil Society Organizations, oil-producing districts and traditional institutions in Uganda's oil-producing areas cite the experiences of oil-producing countries like Nigeria, Chad and Angola that have experienced violent conflicts over oil resources. These concerns and fears that have been raised by the various stakeholders include: the possibility of oil induced violent conflicts as evidenced by the skirmishes between Uganda and DRC forces on Lake Albert over Rukwanzi Island, corruption, poverty and stifling of democratic development that is currently evolving in Uganda.

Whether Uganda succeeds in turning its oil revenues into long-term benefits ultimately depends on the quality of public policy, legal framework and public accountability. The good examples of Norway and selected African jurisdictions should give Uganda opportunity to develop robust systems for revenue sharing before oil production begins in 2022. Consequently, this research has attempted to carry out a comparative analysis of Uganda and Selected Jurisdictions in Oil and Gas resource Governance and Fiscal Performance.

[24] Grace Matsiko (2006): "Oil rush: Airports, army barracks built", Daily Monitor, July 8, 2006.

1.4 General Objective

The general objective of the study was to analyze the oil and gas sector resource governance and fiscal performance in Uganda while drawing lessons from a comparative analysis with other jurisdictions.

1.5 Specific Objectives

1. To analyse the efficacy of resource governance in oil and gas sector in Uganda.
2. To evaluate oil and gas tax governance system put in place for the growth of fiscal development in Uganda.
3. To assess the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda.

1.6 Research Questions

1. What is the efficacy of resource governance in oil and gas sector in Uganda?
2. What is the evaluation of oil and gas tax governance system put in place for the growth of fiscal development in Uganda?
3. What are the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda?

1.7 Scope of the Study

The scope of the study has been divided into three perspectives; these include content, time and geographical scopes.

1.7.1 Content Scope

The study has examined the oil and gas sector resource governance and fiscal performance while providing a comparative analysis with other jurisdictions. The content of the study has been restricted to the boundaries of its three objectives which were: an analyze the efficacy of resource governance in oil and gas sector in Uganda; an evaluation of oil and gas tax governancesystem put in place for the growth of fiscal development in Uganda; and an analysis of the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda.

1.7.2 Time Scope

This study was carried out covering a period of 13 years considering the time period from the year 2006 when Uganda declared its discovery of oil and gas to 2019 although historical analysis has been given for comparative purpose with other jurisdictions. This period was used because of the availability of good quality and reliable data relevant to the topic under investigation since there were many changes that were made in Uganda's resource governance and fiscal petroleum regime. The oil and gas that has been discoverer in Uganda is about 6.5 billion barrels of commercially viable oil deposits and the recoverable oil is about 1.8 to 2.2 billion barrels of oil.[25] This has raised expectations for the industry to boost competitiveness among homegrown investors and stimulate inclusive development.

1.7.3 Geographical Scope

This study was carried out in Uganda since the study focused on Uganda as country in terms of analysing the oil and gas resource governance and fiscal performance. A comparative analysis with other jurisdictions was also done.

Uganda is found in East Africa neighbouring Kenya in the East, Tanzania in the south and D.R. Congo in the west, South Sudan in the North and Rwanda in the south West. It is located in the heart of Africa in the central sub-Saharan region of Africa. Its Oil and Gas fields are located near the border of Uganda and Democratic Republic of Congo (DRC).[26]

It is reported that Uganda has a population of 45,741,007 people at midyear 2020 according to UN data estimates.[27] The report indicated that Uganda population is equivalent to 0.59% of the total world population and the population density in Uganda is 229 per sq. km. The total land area is 199,810 sq. km and 25.7 % of the population is urban (11,775,012 people in 2020).

1.8 Significance of the Study

While the discovery of commercial quantities of oil has been received with great hope due to anticipated economic fortunes likely to be generated from oil exploitation, it has also caused anxiety about how the accruing revenues will be shared. Furthermore, there is fear that if the

[25] Oil in uganda <https://www.oxfordinstituteforenergystudies.org> accessed on 26 September 2019
[26] Ibid
[27] Worldometer, July 15, 2020.

revenues from oil are not well governed through a transparent and accountable system that ensures equity in sharing; the resource could turn out to be Uganda's curse rather than a blessing. Civil Society Organizations, oil-producing districts and traditional institutions in Uganda's oil-producing areas cite the experiences of oil-producing countries like Nigeria and Chad that have experienced violent conflicts over oil resources. This study is therefore significant in that it will show the extent of Uganda's preparedness in governing the resource, the secrecy surrounding the exploration process and enabling legal, policy and institutional framework in place which are some of the critical issues that may plunge the country into problems and or violent conflicts when oil starts flowing in 2022.[28]

It is anticipated that the contribution made by this study will result into development of a credible revenue sharing scheme that meets expectations for equitable sustainable development arising out of oil revenues. Accountability, governance, and transparency in the oil and gas sector should facilitate the efficient use of public resources to improve fiscal performance and economic growth of the nation. Reducing leakages in the petroleum sector through resource governance is especially macro economically critical, given Uganda's current fiscal and external dependence on donor economy**.**

1.9 Justification of the Study

The discovery of commercial oil deposits in Uganda makes the country strategically important not only in the Great Lakes Region but also in international affairs. As one of the leading oil producers, Uganda will be expected to join the Organization of the Petroleum Exporting Countries (OPEC) which would make it a key player in international oil market. As Uganda prepares to start drilling and refining petroleum, one looming question is how the country will govern this natural resource and manage oil revenues despite the challenges associated with oil-producing countries in a manner that promotes equity, sustainable development and political stability. This study therefore provides a comparative analysis of oil and gas resource governance and fiscal performance with some selected outstanding jurisdictions in this industry like Norway which has earned the highest place on the United Nations Development Program's list as the best performer with proceeds from oil resources.[29] The good examples of Norway should give Uganda opportunity to develop robust

[28] Uganda's first oil production is now pushed to 2022 - The Observer, 20th December, 2018.
[29] Data drawn from the 2017 Resource Governance Index, Natural Resource Governance Institute (NRGI). Available at: https://resourcegovernanceindex.org/

systems for revenue sharing before oil production begins in 2022. Consequently, this study will draw lessons from such a country on oil revenue sharing for Uganda. It is anticipated that the contribution made by this study will result into development of a credible revenue sharing scheme that meets expectations for equitable sustainable development arising out of oil revenues.

1.10 Theoretical Framework

Good governance, in the definition by the World Bank, is the capacity of management and institutional reforms conducted by state policy, that improves coordination and delivery ofeffective public services, accountability of political actors and individual citizens in the driving of development policies.[30] Good governance therefore connects adequate political institutions and practices to enable development. Good governance has 8 major characteristics:[31] It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It ensures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society areheard in decision-making. It is also responsive to the present and future needs of society.

The key attribute of good fiscal performance is the GDP growth rate. The GDP provides an economic snapshot of a country and it is used to estimate the size of an economy and growth rate.[32] It is the monetary value of all finished goods and services made within a country during a specific period.

The empirical study results[33] reveal a strong correlation between good governance and GDP growth rate per capita. We can therefore conclude that the enhancing of good governance can be a guarantee of GDP per capita growth. The implementation of good governance policies can promote economic development and ensure convergence towards level of developed economies.

[30]World Bank (2003) *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy: Implementation Update.* Washington, DC: World Bank.

[31]Kaufmann, Daniel, Aart Kraay and Pablo Zoido-Lobaton (1999): "Aggregating Governance Indicators." World Bank Policy Research, Working Paper 2196.; Kaufmann, Daniel; Aart Kraay and Pablo Zoido-Lobaton (June 2000): "Governance Matters, from Measurement to Action", Finance & Development, IMF, Vol..37, No.2.; Kaufmann Daniel and Aart Kraay (February, 2003): "Governance and Growth: Causality which way? Evidence for the World", brief World Bank, working paper.; and North, Douglass (1990): Institutions, institutional change and economic performance. Cambridge University Press.

[32] Rachid Mira, Ahmed Hammadache (2017): Relationship between good governance and economic growth: A contribution to the institutional debate about state failure in developing countries. 2017. hal-01593290

[33] Knack, Stephen and Philip Keefer (1995): "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures." Economics and Politics, 7: 207–27.

Empirical econometric studies[34] provide answers to the questions of the relationship between good governance and economic performance in developing countries. In poorly governed countries, it is argued, corrupt bureaucrats and politicians baldly hinder development efforts by stealing aid contributions or misdirecting them into unproductive activities. Less obvious but equally important, governments that are not accountable to their citizens and with inefficient bureaucracies and weak institutions are unwilling or unable to formulate and implement pro-growth and pro-poor policies. Hence, Countries with 'good' governance have higher rates of economic growth in comparison to those with poor governance.[35] Former United Nations Secretary-General Kofi Annan noted that, 'good governance is perhaps the single most important factor in eradicating poverty and promoting development.'[36]

Therefore, the theory that links good governance and good fiscal performance, that shall be used, is the Structural Adaptation to Regain Fit Theory (SARFIT). The SARFIT theory, developed by Donaldson[37] in 1996 states that a fit between contingency and structure positively affects performance, while a misfit negatively affects performance. There is a process that has been articulated in the theoretical model of SARFIT[38] that an organization in fit enjoys higher performance, which generates surplus resources and leads to expansion or growth.[39] This increases the level of the contingency variables, such as size, leading to a misfit with the existing structure. The misfit lowers performance, eventually leading to a performance crisis and adaptivestructural change into fit.[40]

SARFIT assumes a disequilibrium theory of organizations[41] that an organization only remains in fit temporarily, until the surplus resources from the fit-based higher performance produce

[34] Rachid Mira, Ahmed Hammadache. Relationship between good governance and economic growth: A contribution to the institutional debate about state failure in developing countries. 2017. hal- 01593290

[35]Knack, S. & Keefer, P. (1995) Institutions and economic performance: cross-country tests using alternative institutional measures. *Economics and Politics*, 7, 3, pp. 207–227; Easterlin, R.A. (1996) *Growth Triumphant*. Ann Arbor, MI: University of Michigan Press; and Hausmann, R., Pritchett, L. & Rodrik, D. (2004) Growth accelerations. National Bureau of Economic Research Working Paper No. 10566.

[36] United Nations (Kofi Annan) (1998): Annual Report of the Secretary-General on the Work of the Organization, 27 August. http://www.un.org/Docs/SG/Report98/ch2.htm (last accessed 22 November 2019).

[37] Donaldson, L. (1996): For positivist organization theory. London: Sage.

[38] Donaldson, L., 2001, *The Contingency Theory of Organizations*, Sage, Thousand Oaks. Eccles, R.G., and Nohria N., 1992, *Beyond the Hype: Rediscovering the Essence of Management*, Harvard Business School Press, Boston; Also see: Donaldson, L., 1987, Strategy and structural adjustment to regain fit and performance: In defence of contingency theory. *Journal of Management Studies* 24 (1): 1-24.

[39] Hamilton, R.T., and Shergill, G.S., 1992, The relationship between strategy-structure fit and financial performance in New Zealand: Evidence of generality and validity with enhanced controls. *Journal of Management Studies*, 29: 95-113.

[40] Chandler, A.D. Jr., 1962, *Strategy and Structure: chapters in the history of the American industrial enterprise*, M.I.T. Press, Cambridge.

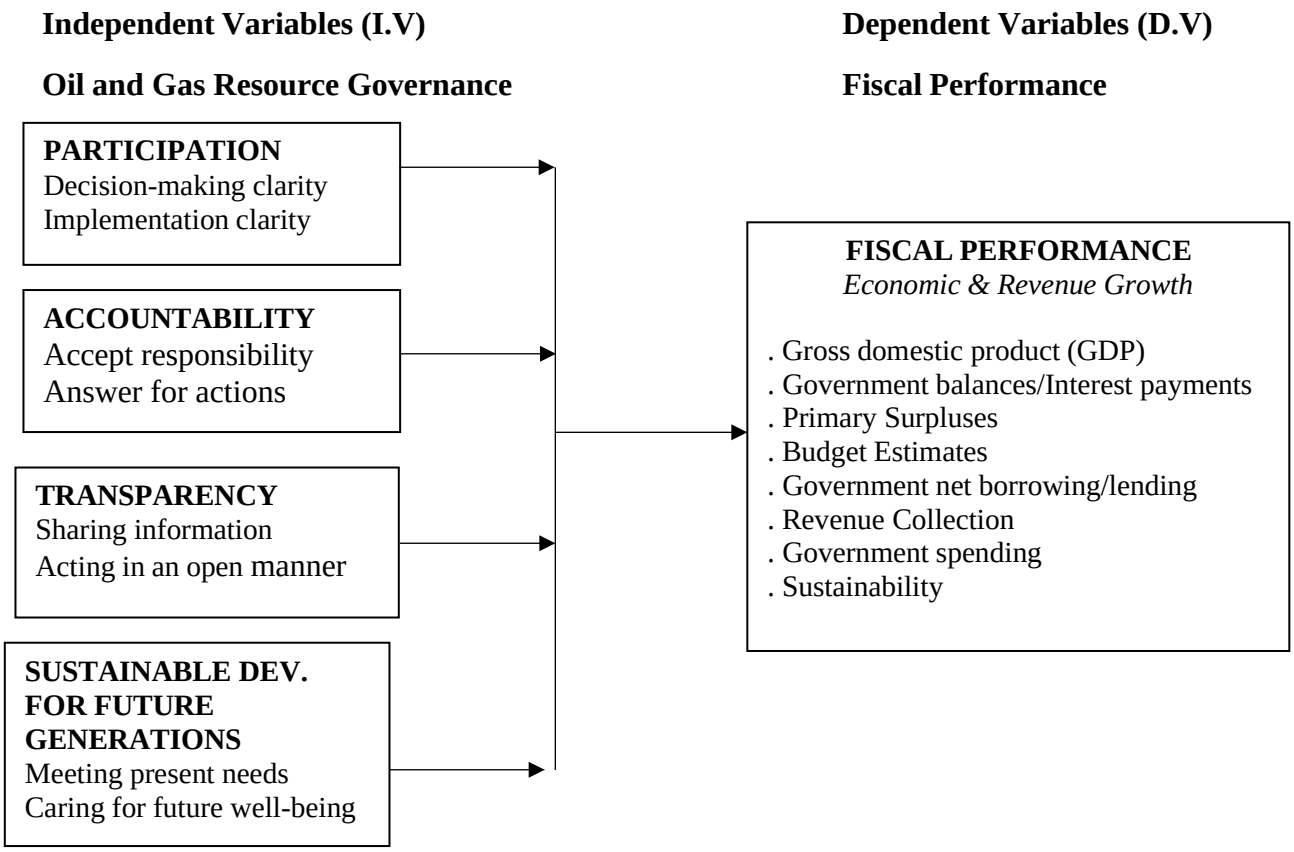
[41] Donaldson, L., 2001, *The Contingency Theory of Organizations*, Sage, Thousand Oaks. Eccles, R.G., and Nohria N., 1992, *Beyond the Hype: Rediscovering the Essence of Management*, Harvard Business School Press, Boston.

expansion which increases contingency variables leading the organization into misfit with its existing structure. SARFIT relates to the study in how good governance structural adaptation to regain fit can lead to fiscal performance by analyzing the efficacy of resource governance in oil and gas sector, evaluating the oil and gas revenue earnings and its appropriation into the growth of fiscal development and evaluating oil and gas tax governance system in Nigeria. Its major weakness though is that the optimal course of action to manage the resource governance and fiscal performance.is contingent (dependent) upon the internal and external situation.

1.11 Conceptual Framework

The conceptual framework diagram as represented in Figure 1.0 depicts the relationship between the different elements of oil and gas revenue governance and fiscal performance. The framework is an alignment of concepts and variables in a structure that shows their inter-relations and the various propositions that can be operationalized so as to guide in the direction of the research.[42]

Conceptual framework showing the relationship between Resource Governance and fiscal performance in oil and gas sector.



[42] Kisoga J. B. (2012). *Research Confidence: A detailed Step-by-Step guide to Proposal Writing*, Kampala Angel Agencies Ltd

Source: Adopted from Armstrong, M. (2010)[43] and Modified by the researcher

Figure 1.0: Conceptual Framework

The conceptual framework above explains the relationship between Resource Governance and fiscal performance in oil and gas sector. The way in which oil and gas resource governance is carried out by government particularly in regard to participation in decision-making and implementation clarities significantly influences the nature of fiscal performance likely to be achieved in the oil and gas sector and accountability in terms of accepting responsibility and answer for actions significantly influence the fiscal performance likely to be achieved in terms of economic and revenue growth. Similarly, transparency involving sharing of information and acting in an open manner by government and sustainability development for future generations in terms of meeting the present needs and caring for future well-being significantly influence the nature of fiscal performance which is to be achieved. It is a hypothesis that there is direct positive and significant relationship between oil and gas resource governance and fiscal performance in Uganda's oil and gas sector.

1.12 Literature Review

The Literature Review presents a discussion of the relevant literature that guided the research. It highlights the theoretical, empirical literature, and the gap(s) in the literature which the study set out to address.

1.12.1 Theoretical Literature Review

The theory that links good governance and good fiscal performance, that shall be used, is the Structural Adaptation to Regain Fit Theory (SARFIT). The SARFIT theory, developed by Donaldson in 1996 states that a fit between contingency and structure positively affects performance, while a misfit negatively affects performance. There is a process that has been articulated in the theoretical model of SARFIT that an organization in fit enjoys higher performance, which generates surplus resources and leads to expansion or growth. This increases

[43] Armstrong, M. (2010). Handbook of Human-resource Management Practice (11th ed.), *Kogan Page, 2010, ISBN: 9780749452421*.

the level of the contingency variables, such as size, leading to a misfit with the existing structure. The misfit lowers performance, eventually leading to a performance crisis and adaptive structural change into fit. Donaldson[44] argues that the lack of empirical support may be due to simplistic analytical models that lead to erroneous conclusions. Donaldson attempts to address contingency critics by synthesizing divergent contingency theories and research into Structural Adaptation to Regain Fit Theory (SARFIT), which provides a model for analyzing more accurately the processes in structural adaptation. SARFIT holds that a fit between contingency and structure positively affects performance, while a misfit negatively affects performance. SARFIT identifies a cycle of organizational adaptation that underlies varying structural contingency theories, as follows: fit, contingency change, misfit, structural adaptation, new fit.

March and Sutton[45] expand their criticism beyond contingency theory to the entire field of organizational studies by arguing that most organizational performance research fails to identify a connection between performance and measured variables because researchers do not pay attention to the complications of dynamic competitive environments, attempt to simplify complex scenarios, and rely on retrospective accounts rather than direct observation. While organizations researchers are aware of these limitations, competing demands from academics for scholarship and business for results cause researchers to publish conflicting conclusions, inferring that data does not support a causal relationship between performance and variables while simultaneously inferring that the connection exists.[46]

An organization in fit enjoys higher performance, which generates surplus resources and leads to expansion,[47] such as growth in size, geographic extension, innovation or diversification. This increases the level of the contingency variables, such as size, leading to a misfit with the existing structure. The misfit lowers performance, eventually leading to a performance crisis and adaptive structural change into fit.[48]

[44] Donaldson, L., 1996 For Positivist Organization Theory: Proving the Hard Core, Sage, London.
[45] March J. M. and Sutton R. I. (1997): Crossroads-Organizational Performance as a Dependent Variable. Organization Science, 1997 Vol. 8, Issue 6.
[46] Ibid
[47] Hamilton, R.T., and Shergill, G.S., 1992, The relationship between strategy-structure fit and financial performance in New Zealand: Evidence of generality and validity with enhanced controls. *Journal of Management Studies*, 29: 95–113.
[48] Chandler, A.D. Jr., 1962, *Strategy and Structure: chapters in the history of the American industrial enterprise*, M.I.T. Press, Cambridge.

This SARFIT theory subsumes several seminal works in structural contingency theory, such as Chandler[49] on divisionalisation changes in response to changing strategies and Bums and Stalker[50] on changes from mechanistic to organic structures in response to technological and market change in the environment. Thus, the structural contingency theory tradition has always contained ideas about dynamics and these are formulated in the SARFIT theory.

Despite lack of satisfactory evidence of its effectiveness, the idea of good governance is celebrated and has become the prescription of international development partners for all development challenges facing poor countries including stagnated growth, poverty, and insecurity.[51] Uganda is not an exception. Hence, the SARFIT theory, that links good governance and good fiscal performance, is fundamental in this study.

1.12.2 Empirical Literature Review

1. The oil and gas sector resource governance in Uganda

The concept of natural resource governance has generally been approached by the Swedish EPA to describe how power and authority are exercised and distributed; how decisions are made, and to what extent citizens are able to participate in decision-making processes.[52] There is a growing consensus by International Union for Conservation of Nature (IUCN) and concluding that governance has a strong effect on environmental actions and outcomes as well as fiscal performance.[53] The IUCN in their study on natural resource governance concluded that Natural Resource Governance is the multilevel interaction among the three main actors; state, market and civil society which interact with each other in formulating and implementing policies in response to environment related demands and inputs from society for the purpose of attaining environmentally sustainable development.[54]

Taylor and Francis[55] in their study on natural resource governance concluded that the key principles of natural resource governance are: Legitimacy, Transparency, Accountability,

[49] Chandler, A.D. Jr., 1962, *Strategy and Structure: chapters in the history of the American industrial enterprise*, M.I.T. Press, Cambridge.
[50] Burns, T., and Stalker, G. M., 1961, *The Management of Innovation*, Tavistock, London.
[51] Damola Adejumo-Ayibiowu (2016): *A Theoretical Basis for Good Governance.* University of South Africa. *Africanus*. Africanus Journal of Development Studies · June 2016, DOI: 10.25159/0304-615X/1179. Volume 45 | Issue 2 | 2015 Print ISSN 0304-615X
[52] Swedish Environment Protection Agency (EPA) (2012): The role of governance for improved environmental outcomes
[53] Swedish EPA, Report 6514
[54] Ibid
[55] Taylor and Francis (2014): Local Environment. The International Journal of Justice and Sustainability, Volume 19, 2014.

Inclusiveness and Fairness and that these key principles, if followed, should lead to legitimate, fair, inclusive and transparent distribution of natural resource in an accountable manner. Natural resources can bring considerable wealth to a country, contributing to livelihoods, food security and the green economy, as well as generating trade and enterprise at local, national and international levels.[56] However Taylor And Francis did not study the efficacy of natural resource governance in oil and gas in a developing country with an emerging democracy like Uganda. This study has tried to fill this gap by analysing the efficacy of resource governance in oil and gas sector in Uganda.

Kamugisha *et al*[57] in their study on promoting the application of access rights in Uganda's oil sub-sector have concluded that progress in bringing the oil recovery project to fruition in Uganda has placed increased attention on the need for a strong governance system to ensure that oil wealth will be used for the long-term betterment of the country and growth of GDP. But Kamugisha *et al*in their study did not carry out an evaluation of oil and gas tax governance system put in place forthe growth of fiscal development in Uganda. This study has therefore filled this research gap.

Underling the call for strong governance is the fear that Uganda may experience the same "natural resource curse" that has plagued some resource-rich African nations. Rather than spur development, it is believed that countries with an abundance of a natural resource end up performing more poorly than do resource-poor countries because they squander their riches through corruption, violent conflicts, and environmental destruction.[58] Bainomugisha *et al*[59] concluded that the antidote for avoiding this outcome is the creation of strong institutions that will assure transparency and effective economic management. Bainomugisha *et al*, did not provide a comparative analysis with countries that have avoided the "natural resource curse" especially those in developing countries with developing economies in Africa. This study has therefore, carried out a comparative analysis of Uganda and selected countries in oil and gas resource governance and

[56] Natural Resource Governance Institute. 2013.

[57] Kamugisha, D., Muhereza, E., & Elima, D. (2008). *Promoting the application of access rights in Uganda's oil sub-sector* (No. 4). Kampala: Africa Institute for Energy Governance.

[58] Ghazvinian, J. (2007). *Untapped: The scramble for Africa's oil*. Orlando, FL: Harcourt.

[59] Bainomugisha, A., Kivengyere, H., & Tusasirwe, B. (2006). *Escaping the oil curse and making poverty history: A Review of the Oil and Gas Policy and Legal Framework for Uganda* (No. 20). Kampala: ACODE; Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center; and Mugyenyi, O., Ustin, B., & Twesigye, B. (2010, June 17-19). Equitable sharing of the treasures of oil and gas in a transparent and environmentally sustainable manner. *A synthesis report of the Proceedings of the Parliamentary Symposium on Oil and Gas Development in Uganda*. (No. 15), Entebbe, Uganda.

fiscal performance. This study has analysed Norway as a developed economy and the developing economies of Chad, Libya and Ghana in Africa.

The Natural Resource Governance Institute (NRGI)[60] while studying the *resource curse* (also known as the *paradox of plenty*) refers to the failure of many resource-rich countries to benefit fully from their natural resource wealth, and for governments in these countries to respond effectively to public welfare needs. While one might expect to see better development outcomes after countries discover natural resources, resource-rich countries tend to have higher rates of conflict and authoritarianism, and lower rates of economic stability and economic growth, compared to their non-resource-rich neighbors. NRGI asserts that oil, mineral and gas wealth is distinct from other types of wealth because of its large upfront costs, long production timeline, site-specific nature, scale (sometimes referred to as large *rents*), price and production volatility, non-renewable nature, and the secrecy of the industry. They numerate the theories and challenges created by natural resource revenues for the country to include democracy, conflict, inefficient spending and borrowing, the Dutch disease, patriarchy and gender-based challenges, limited government capture of benefits, weaker institutional development and social and environmental problems.[61] The NRGI did not give a comparative analysis with successful countries that have avoided the *resource curse (or paradox of plenty)* or how they have successfully done so. This study has filled this gap by giving a comparative analysis of Uganda and Norway, Chad, Libya and Ghana.

In his book "The resource curse" Mansoob[62] describes the "resource curse," or "paradox of plenty," as the long-established notion central in development economics that countries rich in natural resources, particularly minerals and fuels, perform less well economically than countries with fewer natural resources. In other words, resources are an economic curse rather than a blessing. But he concludes that the treatment of "the resource curse" is nontechnical and accessible. On the other hand, Macartan *et al*[63] acknowledges that the wealth derived from natural resources can have a tremendous impact on the economics and politics of producing countries. But in the

[60] Natural Resource Governance Institute (NRGI) (March 2015): The Political and Economic Challenges of Natural Resource Wealth.
[61] Natural Resource Governance Institute (NRGI) (2015): The Political and Economic Challenges of Natural Resource Wealth.
[62] Mansoob S. Murshed (2018): The Resource Curse. Agenda Publishing, ISBN: 9781911116486
[63] Macartan Humphreys, Jeffrey D. Sachs, Joseph E. Stiglitz (2007): Escaping the Resource Curse. Columbia University Press-Business and Economics.

last quarter century, there has been surprising and sobering consequences of this wealth, producing what is now known as the "resource curse." Countries with large endowments of natural resources, such as oil and gas, often do worse than their poorer neighbors. Their resource wealth frequently leads to lower growth rates, greater volatility, more corruption, and, in extreme cases, devastating civil wars. They examine the major decisions a country must make when faced with an abundance of a natural resource. They identify such problems as asymmetric bargaining power, limited access to information, the failure to engage in long-term planning, weak institutional structures, and missing mechanisms of accountability. They also provide a series of solutions, including recommendations for contracting with oil companies and allocating revenue; guidelines for negotiators; models for optimal auctions; and strategies to strengthen state-society linkages and public accountability. Finally, they conclude that solutions to the resource curse do exist; yet, institutional innovations are necessary to align the incentives of key domestic and international actors, and this requires fundamental political changes and much greater levels of transparency than currently exist. It is becoming increasingly clear that past policies have not provided the benefits they promised but the authors lay out a path for radically improving the management of the world's natural resources.[64] This study has therefore drawn solutions to the resource curse that exist and provided them as recommendations to an emerging oil economy of Uganda.

A large body of government of Uganda documents relating to oil governance point to the need for prudent macroeconomic management policies in the face of oil production. Particularly the government has put in place a set of laws through the Public Finance Management Act (2015) to guide on the resource–funded spending. The World Bank and many other civil societies have also pushed for prudent macro- economic management of oil revenues in developing countries. However, alternative wisdom suggests that while revenue governance criteria are useful, they should not be overly strict or externally imposed, for them to survive changing bargaining strengths and external conditions.[65] Lessons from Libya, Chad and Ghana are instructive: a country will develop its natural resources whether it is "institutionally ready" to administer the benefits or not.[66]

[64] Ibid
[65] Gérin, J and C. Houdin (2010): "Chad, the Challenge of Development: Policy Implications of the Chad-Cameroon Petroleum Project'', Working Paper, The North-South Institute.
[66] Ibid

2. The oil and gas sector fiscal performance in Uganda

Kimuli[67] in his study asserts that the up-front investment required during exploration, development and production of oil and gas fields can be very high and the level of costs incurred has a direct impact to the timing and size of government revenues. Under production sharing agreements (PSAs), in addition to bonus payments, royalties, taxes and profit oil, cost recovery is one of the terms of fiscal contracts through which International oil companies (IOCs) recover exploration and production costs after successful discovery. Host governments have been comfortable with the concept, as limits are placed on the amount of costs that can be recouped from every production per year. Likewise, IOCs cost recovery provides some guarantee of early recovery of their investments and costs can be recovered from production before payment of taxes. He concludes that besides the lack of technical expertise and financial resources, the institutional framework adequately enhances efficiency.

Oil production in Uganda is estimated to generate significant revenues for Uganda's GDPgrowth.[68] However, natural resource windfall is usually accompanied by several challenges. Thesechallenges are mainly of a macroeconomic, budgetary and governance nature. The impact of theserevenues on competitiveness and economic transformation will therefore depend on the prudent management of these oil resources. While Uganda has established prudent fiscal rules to ready itself for the production of the resource, there is a scope for mitigating the impeding political pressure to expand the fiscal deficit beyond the one financed by non- oil resource. There is a strongcase for Uganda government to commit to making realistic and relatively conservative projectionsof future oil prices, to mitigate unaffordable expenditure commitments on government spending and government balances/ interest payments in the event of oil revenues shortfall of the forecast levels. More information needs to be shared to ensure that all parties are equally well-informed toenhance governance.

[67] Kimuli A. (2013): *Is Uganda's Petroleum Fiscal regime Cost efficient?* The Robert Gordon University, Aberdeen, UK. Aberdeen Business School. Dissertation MSc Oil and Gas Accounting (Unpublished).

[68] Lakuma C. P. (2018): *Oil Wealth in Uganda: Analysis of the Macroeconomic Policy Framework.* Economic Policy Research Centre (EPRC), Kampala, Uganda. Centre for Research on Peace and Development (CRPD) Working Paper No. 62.

Oil and gas revenues are subject to volatility in volume and prices. Mitigation of such risks through fiscal policies is imperative. Prudent macroeconomic management policies are key to chart the sustainable path for production and revenue minimizing the impact of *Dutch Disease* and the boom and bust cycle. Studies done by Lakuma[69] shows that enhanced oil recovery, estimates suggest that close to 1.3 billion barrels will be recovered in 26 years with a peak of 230,000 barrels per day (bpd). Production is projected to start at a modest daily output of about 20,000 bpd.[70] The government's take is 40 percent of the first 5 thousand barrels per day adjusted to 65 percent for production above 40-barrel.[71] The government's take includes National Oil Company (NOC) or State Participating Interest (estimated to be 15 percent with exploration and production and development cost carried). Uganda's recoverable oil is finite and may only last for 26 years,[72] which poses a challenge for transforming the resource into a permanent income, sustaining higher growth without over heating the economy and avoiding the *Dutch Disease.* In this regard, the government will decide on the amount of oil to be produced within a given period consistent with the National Development Plan III.[73] However, the extent to which the government resist pressure both political and from International Oil Companies (IOC) will determine the rate of extraction. Given the need to recover cost faster, it is in the interest of the IOCs to exploit the resource at a faster rate regardless of underlying national interest. However, a decision on the extraction rate should weigh the counterfactual evidence, which suggest excess exploitation has a pass-through effect on primary surpluses, government spending besides prices of products such as retail natural gas, retail electricity and commodity chemicals.[74]

As provided for by various legal instruments, including the 1995 constitution, the management of natural resources is a responsibility of the central government. However, in the interest of social cohesion, and stable investment and production environment Uganda has a revenue sharing

[69] Ibid
[70] Ministry of Finance, Planning and Economic Development (MoFPED) (2012): "Oil and Gas Revenue Management Policy", Ministry of Finance Planning and Economic Development.
[71] Doshi, T., F. Joutz, P. Lakuma, M.M. Lwanga and B. Manzano (2015): "The Challenges of Macroeconomic Management of Natural Resource Revenues in Developing Countries: The Case of Uganda", Research Series No. 124, Economic Policy Research Centre, Kampala
[72] Lakuma C. P. (2018): *Oil Wealth in Uganda: Analysis of the Macroeconomic Policy Framework*. Economic Policy Research Centre (EPRC), Kampala, Uganda. Centre for Research on Peace and Development (CRPD) Working Paper No. 62
[73] Ministry of Finance, Planning and Economic Development (MoFPED) (2012): "Oil and Gas Revenue Management Policy", Ministry of Finance Planning and Economic Development and the Third National Development Plan (NDPIII) 2020/21 – 2024/25.
[74] Hausman, C. and R. Kellogg (2015)," Welfare and Distributional Implications of Shale Gas", Brookings Papers on Economic Activity, BPEA Conference.

mechanism. The government will allocate 7 percent of all royalty revenues to local governments located in the oil and gas producing areas.[75] In this regard, 93 percent will be retained at the centre. The criteria for allocation shall consider local governments within the oil resource rich region who may not produce oil themselves but are affected by oil activities and incur the social cost related to these activities. The criteria shall also consider each local jurisdiction level of production. The transfer shall not exceed 100 percent of the current non – oil fiscal transfer in order to encourage local tax mobilization and mitigate dependency on oil revenue.

Given the poor standards of living and the infrastructural deficit in rural areas, the revenue sharing formula used by Uganda government will provides a relatively small proportion in transfers of oil proceeds to local government compared to other reference countries such as sub-national governments in Bolivia which receive 60 percent of the fiscal take.[76] The Indonesian government allocates 15.5 percent of net oil revenues to sub-national governments.[77] In Nigeria, parliament revises the formula for oil revenue sharing every five years, and a minimum of 13 per cent of oil revenue must be reserved for oil producing states.[78] The extent to which the model will facilitate the improvement of living could face significant challenges. While the revenue transferred may be perceived to be inadequate, this may be in the best interest of local government to prevent budget distortions in light of absorption constraints and fluctuating oil prices. Fluctuating oil prices could also encourage local governments to adopt shorter planning horizons in face of fluctuating prices due to uncertainty about future income. This could increase corruption if local government officials have no confidence in the stability of government funds. This creates an incentive for local governments to appropriates as much as possible and as quickly as possible before oil revenues wanes. One significant advantage with the Uganda's revenue sharing model is it explicitly specifies that the central government will regulate and govern hydrocarbon revenue sources, and has the authority to issue licenses for new explorations. While there is no ambiguity in the power relations between central government and local government in regard to policy guidance in matters natural resources, the intra local government relationships and the relationship

[75] Ministry of Finance, Planning and Economic Development (MoFPED) (2012): "Oil and Gas Revenue Management Policy", Ministry of Finance Planning and Economic Development

[76] Aresti, M.L. (2016): "Oil and Gas Revenue Sharing in Bolivia", Natural Resource Governance Institute. Fiscal take is composed of direct tax, royalties, patents and any proceeds from fiscal co-participation.

[77] Strachan, A.L. (2014): "Oil and gas revenue sharing", Help Desk Research Report, GSDRC.

[78] Haysom, N. and S. Kane (2009): "Negotiating natural resources for peace: Ownership, control and wealth sharing", (Briefing Paper). Geneva: HD Centre.

between local governments and cultural institution are not clearly defined by the law and could prove to be a source of disagreements.[79]

The extent to which Uganda strikes the right balance between resource and non-resource revenue generation will determine the degree of reliance on the former as the main source of budget financing. Empirical evidence suggest that non-resource revenue sector is often neglected which poses the risk of government over relying on one commodity for its fiscal revenues. In this regard, the willingness of government to resist the pressure to draw from the *petroleum fund* to fund off – budget and unproductive activities will define the degree of the distortion caused by oil revenues. However, pressure to expand the non-oil budget deficit given the level of infrastructural deficit and the rate of poverty could pose a challenge. Poverty rate was estimated to be at 20.7 percent in 2012/13.[80] In June 2015, the government of Uganda and United Nations Developmental Assistance launched the NDP II to guide Uganda's path to poverty eradication. The main goal of the NDP II was to propel Uganda to the middle-income status with a GDP per capita of US$1,003 and poverty rate reduced to 14.2%.[81]

The government of Uganda faces the challenge of transforming a finite resource (oil) into a permanent income sustainability. A permanent income is a sustainable constant consumption flow equal to the present value of the resource wealth. In this regard, a policy that encourages saving of the oil *windfall* provides fiscal sustainability, preserve the resource wealth for future generations, prevents intergenerational inequality and mitigates the real exchange appreciation associated with the Dutch Disease.[82]

[79] MoFPED (2016) states that each local government may in consultation with the Ministry responsible for culture and the other local governments, agree and allocate a share of their royalty grant to cultural institutions recognized by the Constitution in their localities. In addition, sub-counties within each of the eligible local government shall be entitled to share in the royalties received. However, the royalty shared with sub-counties shall be net of subventions to cultural institutions and will be on the basis of weighted population.

[80] Ssewanyana, S.N. and I. Kasirye (2014): "Uganda's Progress Towards Poverty Reduction During the Last Decade 2002/3-2012/13: Is the Gap between Leading and Lagging Areas Widening or Narrowing?'', Research Series No. 118.

[81] Second National Development Plan (NDP II) 2015/16 – 2019/2020

[82] Doshi, T., F. Joutz, P. Lakuma, M.M. Lwanga and B. Manzano (2015): "The Challenges of Macroeconomic Management of Natural Resource Revenues in Developing Countries: The Case of Uganda", Research Series No. 124, Economic Policy Research Centre, Kampala.

To address the above concern, the government will establish a *Petroleum Fund* with a twin objective of financing the budget and saving for future generations.[83] This has been successfully implemented in Norway which is one of this research study comparative countries. The *Petroleum Fund* shall hold all revenues emanating from dues, charges, taxes, royalties and fines on oil and gas. This will include the proceeds from the sale of government's share of oil extracted that will be received in kind. The government envisages quarterly reports from the Investment Advisory Committee on the performance of the fund. There is a possibility that in the future the fund could be invested in securities and equity outside Uganda. However, this aspect has not been considered in the current legal framework. However, savings in a *petroleum fund* may not be compatible to the social status (poverty, human and physical capital scarcity and credit constraints) of a developing country such as Uganda. This strengthen the argument for frontloading of public investments in the transport, education and health services. The infrastructural deficit notwithstanding, established fiscal prudence should be continued to ensure that oil and gas revenues are used productively to address the infrastructure and social needs of a fast-growing population.

However, high oil prices could produce unhealthy rates of expansion in the *petroleum fund* and pressure to expand the size of government, leading to a drop in efficiency. The government of Uganda has culture of creating new administrative jurisdiction (districts) some without thecapacity to govern. It is possible that production of oil may encourage the creation of more administrative jurisdictions. In 2016, Uganda had 114 districts more than double the number in 2002 and by 2020 it increased to 135 districts. In event of a revenue volatility, the consequence would be unexpected interruptions in government programs. Long-term projects in the transport sector that require years of sustained government funding and management will also be disrupted.In addition, people tend to invest in their future if government policies and institutions are stable.If citizens lose confidence on government policies and institutions, they will be less inclined to invest in their own future, hurting the poor.

Expected oil revenues have also incentivized a frontloading of public investment in Uganda. While this contribute to closing of the infrastructure gap, it could lead leads to a fall in the quality of public investments, which can be can be harmful. The government of Uganda needs to be

[89] Ministry of Finance, Planning and Economic Development (MoFPED) (2012): "Oil and Gas Revenue Management Policy", Ministry of Finance Planning and Economic Development.

observant because a rapid rise in revenues can lead to a desire to speed up economic growth (due to primary surpluses) or pressure form rent seekers leading to a relaxation of government standards for choosing investments leading to a squandered windfall. High revenues can create a strong incentive to accumulate debt, given the perceived ability to service the debt. Nevertheless, many countries and particularly those in Africa have used oil revenues to finance infrastructure and deliver social services.[84] Others countries have used the resource revenue to service external debt.[85] Yet others have used a mix of public investment, social service delivery and Sovereign Wealth Fund to address economic challenges and save resources for future generation.[86]

Uganda can maintain its debt at the current rate (35 percent) by servicing new contracted (accumulated) debt with oil revenues. This however will come at cost to service delivery. This calls for strengthening of the debt rules. There is also a perception that Uganda's engagement with traditional development partners in Europe and North America will be limited given the new oil find and emergence of new lending partners, especially China. However, estimates suggest that Uganda's oil output will not be sufficient to meet all its financing needs. Therefore, engagement with development partners may be sustained in the medium term.

While oil and gas present an opportunity for Uganda to accelerate its development process, utilization of these resources is subject to the absorptive capacity of the economy. More often, many developing countries face absorptive constraints, where (high) investment rates lead to large cost overruns leading to low capital accumulation.[87] On average, sub-Saharan project cost 74 percent more than initial investment estimates.[88] To mitigate misuse of natural resource revenues, Uganda plans to integrate oil and gas revenues into the overall macro economy and the fiscal framework.[89] In the short to medium term, the government will limit the growth in government expenditures by linking overall expenditures to the non - oil related revenues rather than to total revenues. However, the government plans to allow for flexibility to adjust government spending

[84] Collier, P., F. van der Ploeg, M. Spence, and A.J. Venables (2009): "Managing Resource Revenues in Developing Economies", IMF Staff Papers, 57.
[85] Daban, T. and J.L. Helis (2010): "A Public Financial Management Framework for Resource Producing Countries", IMF Working Paper, WP/10/72.
[86] Berg, A., R. Portillo, S. Yangand L.F Zanna (2013): "Public Investment in Resource-Abundant Developing Countries", IMF Economic Review, 61(1).
[87] Van der Ploeg, F. (2012), "Bottlenecks in Ramping Up Public Investment", International Tax and Public Finance, 19(4).
[88] IMF (2012), "Senegal: Staff Report for the 2012 Article IV Consultation, Fourth Review'', International Monetary Fund (IMF).
[89] Ministry of Finance, Planning and Economic Development (MoFPED) (2012): "Oil and Gas Revenue Management Policy", Ministry of Finance Planning and Economic Development.

to a level that is consistent with the economy's needs and absorptive capacity in the medium term. In the long-term, the government envisages that expenditure will be restored to a level that is equivalent to interest earned on Petroleum Fund. This will ensure that the principle on the *petroleum fund* is saved for future generations.[90]

1.13 Research Methodologies

The study was conducted through a qualitative doctrinal legal research methodology. It focused on key parameters on which lessons were drawn for Uganda from selected jurisdictions involving legal and non-legal aspects in the oil and gas sector.

1.13.1 Research Design

The research design enabled the legal researcher to take the theoretical frameworks as a starting point and focus of the research objectives.[91] This conventional legal research took place in the library to locate authoritative decisions, applicable legislation and secondary discussion and analysed material, formulated conclusions and wrote up the study results.[92]

1.13.2 Research Method

Data was collected using a qualitative doctrinal legal research approach which provided a systematic review of the rules governing oil and gas resource governance and fiscal performance. A doctrinal legal research was a suitable research method because this study was based on legal concepts and principles of law, statutes, cases and rules concerning resource governance and fiscal performance in Uganda with a comparative analysis from Norway, Chad, Libya and Ghana.
This research method enabled the legal researcher to take one legal proposition as a starting point and focus on the research objectives. This method was justified because the legal aspects of this research such as laws, statutes, case law doesn't require the researcher to undertake field data collection since this is knowledge that could be acquired through literature. Henceforth, being of

[90] Ibid
[91] Terry Hutchinson, Nigel Duncan, (2012). "Defining and Describing what we do: Doctrinal Legal Research" Vol.17 No 1 2012
[92] Ibid

legal nature, the researcher chose the legal research method as the best method to collect and review data.[93] The research also relied on internet sources for secondary information to supportthe study especially in ascertaining current global trends in resource governance and fiscal performance.

1.13.3 Sources of Data

The required data related to this study were from secondary sources. Secondary sources refer to legal instruments, and available data in literature, journals, publications and company annual reports on any of the areas of interest in measuring governance and fiscal performance level. The impact of fiscal taxation on Uganda's economic performance was also assessed using similar data sources.

1.13.4 Research Challenges

Adequacy of Secondary data. Secondary data that were obtained for analysis were not adequate to answer the present research questions but were evaluated for certain criteria such as accuracy, period of data writing, purpose for which it was written and the content of the data therein.[94] The researcher endeavored to collect data from different sources that answered each research question.

1.13.5 Data Analysis Plan and Presentation

Data were collected in a raw format and thus the inherent information was difficult to understand. Qualitative data analysis used involved the researcher interpreting observations, words, and symbols in the data, which consists of written texts[95] in vast array of document types, ranging from rule of law donor reports, to minutes of donor meetings, laws and regulations, personal and public letters, transcripts of speeches, and organizational memos. The analysis included a range of processes and procedures whereby the researcher analyzed the qualitative data that had been collected and gave explanation or interpretation of the data to understand the research context.[96] Data analysis process did not follow a fixed sequence, instead, it took place simultaneously with

[93] Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) *Law Text Culture* 159, 161. For a breakdown of empirical and doctrinal PhDs in Australia see Desmond Manderson, 'Law: The Search for Community' in Simon Marginson (ed), *Investing in Social Capital* (University of Queensland Press, 2002) 152.
[94] British Sociological Association's Statement of Ethical Practice (2004).
[95] Kristina Simion (2016): Qualitative and Quantitative Approaches to Rule of Law Research. INPROL—International Network to Promote the Rule of Law. Practitioner's Guide July 2016.
[96] Kristina Simion (2016): Qualitative and Quantitative Approaches to Rule of Law Research. INPROL—International Network to Promote the Rule of Law. Practitioner's Guide July 2016.

data collection, as the researcher looked for patterns and ideas in the data while continuing to collect data. The analysis followed four basic steps: (1) to prepare the data for analysis; (2) to explore and code the data; (3) to identify themes in the data; and (4) to validate the accuracy of the findings.[97] The data was analyzed in a deductive manner where the research questions were used to group or code the data and identify themes in the data to be placed in frameworks. The data was then validated for accuracy of content, using other secondary information. Content analysis is the procedure for the categorization of data for the purpose of classification, summarization, tabulation and writing.[98]

Data which were analyzed and written was thereafter presented in text format. Text was the main method of conveying information as it is used to explain results and trends, and provide contextual information. Data has been fundamentally be presented in paragraphs or sentences.

1.13.6 Ethical Considerations

This research study followed the Uganda Christian University (UCU) Law Students' research guidelines. In line with UCU research ethics procedures, potential participants, for sources of secondary data collection, were provided with details of the research project and its objectives, associated benefits and risks, and privacy and confidentiality measures. Prior-informed consent forms were signed before secondary data was collected. The researcher obtained consent of access to carry out research from all sources after full disclosure of the purpose, nature and benefits of the study.

[97] Creswell, supra note 17 at 237-38.

[98] Qualitative Data Analysis http://writing.colostate.edu/guides/research/content/pop2a.cfm 40 accessed 25th January 2020.

CHAPTER TWO

LEGAL AND INSTITUTIONAL FRAMEWORK FOR RESOURCE GOVERNANCE AND FISCAL PERFORMANCE

2.1 Introduction

This chapter reviews the legal and institutional frameworks for resource governance and fiscal performance in Uganda. It has also given a comparative analysis of legal and institutional framework with that of other jurisdictions, namely Norway, Chad, Libya and Ghana.

2.2 Legal Instruments for Resource Governance in Uganda

The 1995 Constitution of the Republic of Uganda

The Constitution of the Republic of Uganda vests the ownership and control of Petroleum in the Government on behalf of the people (Article 244 of the Constitution of Uganda). Accordingly, the Government of Uganda holds in trust for the people of Uganda all the natural resources, such as minerals and petroleum. Within the constitutional context, the primary framework that guides the management of Oil resources in Uganda is the National Oil and Gas Policy (NOGP).[99] With the overarching theme of using the resource to eradicate poverty and create lasting value to Ugandans, NOGP recognizes that to attain the ultimate goal, it should have as a primary objective the "development of institutions, including legislation and manpower, necessary for effective management and regulation of the sub-sector." Legal Instruments are important factors necessary in the realization of good governance in the Extractive Industry.[100]

Petroleum Acts 2013

The Petroleum (Exploration, Development and Production) Act 2013 governs upstream activities as is known as the Upstream Act. The Act provides for licensing and management of the Oil

[99] Ministry of Energy & Mineral Development (MEMD) (2008, 2014, 2015, 2016 & 2017): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug); and National Oil and Gas Policy for Uganda. Ministry of Energy and Mineral Development, February 2008.
[100] Oil and Gas Sector Reforms Implementation Committee Final Report (2008).

resources and the establishment of the principal institutions that are charged with overseeing and supervising the Oil exploration, production and distribution processes in the country.

The second relevant legislation is the Petroleum (Refining, Conversion, transmission and midstream Storage) Act, 2013 ("Midstream Act") that focuses on the subsequent process of refining. The Oil exploration and production activities are also guided by the following subsidiary legislations passed in 2016. These are: Midstream National Content Regulations; Midstream General Regulations; Midstream HSE Regulations; Upstream General Regulations; Upstream HSC Regulations; Upstream Metering Regulations; and Upstream National Content Regulations.

The Petroleum Acts were adopted in 2013 after months of heated debate. The purpose of the Petroleum Acts is to implement Article 244 of the Uganda constitution that vests all minerals and petroleum in the government to use on behalf of the Republic of Uganda. The Acts regulate all phases of exploration, development, transportation and marketing of Uganda's oil and gas resources. They give the Minister of Energy and Mineral Development broad discretionary powers to grant and revoke licenses, negotiate contracts, approve field development plans, and assure transparency in the oil and gas sector.

The Petroleum Development Acts 2013 also establish the National Petroleum Authority and the National Oil Company. These agencies are responsible for managing the development and marketing of the oil and gas resources on behalf of the government. The Petroleum Acts contain numerous clauses dealing with the regulation of licensing. While rather technical, a recurring concern is the need to ensure transparency and open competition. For instance, the law contains no provisions for competitive bids in awarding exploration and production licenses.[101] It is suspected that some clauses, if not carefully managed, can result in a petroleum production monopoly in Uganda. A key to successful management would be to make licensing information available for public assessment. Unfortunately, the Petroleum Acts give the executive branch full authority to set fees for access to information, limit access to the terms of oil agreements signed by the government and licensees, and provide licensees the right to deny access if a person is not a government official. While justifications can be found for these provisions, it is of concern that

[101] Civil Society Coalition on Oil and Gas (CSCO). (2010). *Enhancing oil governance in Uganda: Critical review of the draft Petroleum (Exploration, Development, Production and Value Addition) Bill*. Kampala: CSCO.

transparency can be easily undermined with the public given no recourse for legal action. An option to the present approach would be to vest licensing authority in the national Petroleum Authority because the agency is intended to be independent of the Minister of Energy and Mineral Development.[102] The government responds to this option by noting that Article 244 vests all control of mineral and petroleum resources in the government. While parliament makes laws regulating the exploitation of these sources, the president appoints ministers and they are answerable to him. As expressed by the then Prime Minister Amama Mbabazzi, "… removing the minister is tantamount to removing the President from control of the oil resources."[103] Consequently, the Petroleum Acts effectively exclude parliament and the independent National Petroleum Authority from participating directly in the licensing process and approving plans for oil field development.

The government contends that mandated annual audits and the submission of audited financial statements to the secretary to the treasury and the auditor general are sufficient to protect the public's interests. However, the reports do not require the government to provide the actual revenues and expenditures of the petroleum fund, the volumes and values of the petroleum produced, or the source of the petroleum revenue. While the audits and reports are a positive step toward transparency, a former minister of finance noted that reports and audits will not protect the public interest if the funds are poorly invested. The only direction given to the Ministry of Energy and Mineral Development is that monies invested in the Petroleum Revenue Investment Reserve are to be placed in any qualifying interest account the minister prescribes, including highly speculative derivatives. Without proper leadership, these vague directives could open the system to dangerous speculation.[104]

Production Sharing Agreement (PSA)

The Government of Uganda also developed a model Production Sharing Agreement (PSA) that is central in guiding negotiations with potential licensees in the Oil exploration and production activities. A model Joint operating agreement has also been put in place.

[102] Human Rights Network-Uganda. (2012). *Key concerns in the Petroleum (Exploration, Development and Production) Bill.* Retrieved from Human Rights Network-Uganda website: http://www.hurinet.or.ug

[103] Etukuri, C. (2012, December 12). President must have control over oil-Mbabzai. *In2EastAfrica*. Retrieved from http://in2eastafrica.net, para. 5.

[104] Red Pepper. (2013). Suruma: Public Finance Bill weak. *Red Pepper*. Retrieved from http://www.redpepper.co.ug.

The Oil fiscal regime is defined in the model PSA and the relevant tax legislation, including the Income Tax Act, (Cap. 340), and the Value Added Tax Act, (Cap. 349). The Public Finance Management Act, 2015, is another legal document that defines a framework for the collection, deployment and management of the revenue from the Petroleum resource. This includes the establishment of a Petroleum Fund (under Section 56 of the Act) that will keep the petroleum revenues collected by Uganda Revenue Authority and the Petroleum Revenue Investment Reserve that will keep the petroleum revenues for investment. Additional laws relevant to the Petroleum Sector include:

(a) The Land Act, 1998, which defines property rights in relation to land, and governs access and utilization of land in Uganda.

(b) Access to Information (ATI) Act, 2005, that guides access to information especially of public interest in Uganda. The ATI Act grants every Ugandan citizen a right of access to state-held information, with exception to infringement of national security or sovereignty, and individual privacy.

(c) Investment Code Act (Cap. 92 of Laws of Uganda), which defines access to investment opportunities, especially in respect to a foreign investor. Crucially, Uganda is a liberalized economy and there are no ceilings or limits on foreign or local shareholdings.

(d) Penal Code Act, (Cap. 120 of Laws of Uganda), which defines basic standards in (of) compliance in the country.

(e) Wildlife Act, (Cap. 200 of Laws of Uganda), is significant in that a number of National parks and wildlife sanctuaries lie within the Albertine Graben. It is estimated that the Albertine Graben accommodates up to 39 per cent of Africa's mammal species, 51 per cent of its bird species, 19 per cent of its amphibian species and 14 per cent of its plant and reptile species.[105]

(f) National Forestry and Tree Planting Act, 2003, is also important as the Albertine Graben region is home to a number of multiple-use natural and planted forest reserves.

[105] Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment.

(g) Public Health Act, (Cap. 281), is also important in that Oil exploration and production activities have implications for the health of the citizenry. This is primarily because there will be public health perils if there are no deliberate quality controls imposed on oil production and products.

(h) Water Act, (Cap. 152). This Act governs management of water extraction activities in Lake Albert for use in petroleum activities. It is pertinent in the sense that without proper environmental and water management guidelines, water resources would be polluted and mismanaged to the detriment of the society.

National Development Plan

The Oil and Gas sector is also being developed and governed in accordance with the National Development Plan that is underscoring programs such as fiscal expansion for front-loading physical infrastructure investment, industrialization through resource beneficiation, fast-tracking skills development and strengthening governance or enabling business environment. The next section explores and analyses the different institutions and practices that have been put in place in Uganda to manage and regulate the Oil and Gas sector.

National Oil and Gas Policy, 2008

The Policy Goal is to use the Country's Oil and Gas Resources to Contribute to early achievement of poverty eradication and create lasting value to society. The National Oil and Gas Policy supersedes the Energy Policy for Uganda published in 2002 in matters of exploration, development, production and utilization of the country's oil and gas resources.

Prior to the coming in force of the National Oil and Gas Policy (NOGP), Uganda's Oil and Gas activities were regulated under the Petroleum Exploration and Production Act, (1985) Cap 150 that was implemented by the Petroleum Exploration and Production Department under theMinistry of Energy and Mineral Development (MEMD). This was a single department handling all the Oil and Gas activities in the country. This 1985 law, covered exploration operations but didnot have adequate provisions to cover development and production operations. The NOGP recommended the establishment of: The Petroleum Authority of Uganda to handle the regulatory functions; The National Oil company to handle the commercial interest of the state; and Directorate

of the Petroleum to advise on policy issues and resource management. These were eventually established under the Petroleum (Exploration, Development and Production) Act, 2013.

2.3 Institutional Framework for Resources Governance in Uganda

Uganda's Oil and Gas sector shares similar characteristics with the East Timor's governance framework which is internationally recognized as a robust system. The Timor-Leste Model[106] of Oil and Gas Revenue Management was developed with assistance from the Norwegian government. The model shows the interconnectedness of various institutions including civil society organizations for the prudent management/governance of oil and gas revenues in Timor-Leste.[107] The Timor-Leste oil and gas revenue management model has been hailed for providing strong foundation for fiscal stability. Investing oil and gas revenues in foreign portfolio and reducing the possibility of the "Dutch Disease."[108] The Institutional framework include the following:

The Parliament of Uganda

The Parliament, which has overarching responsibility to provide checks and balances to the Executive, is critical in preventing the occurrence of the resource curse through judiciously using its 'power of the purse.'[109] The National Oil and Gas Policy (2014) provides that the role of Parliament is to enact "petroleum legislation including legislation on petroleum revenues and monitoring performance in the petroleum sector through annual policy statements and budget approval processes."[110] The role of Parliament can be exercised across the Oil and Gas value chain, starting from Upstream activities of exploration, development and production; to Midstream

106 Valerie Marcel (October 2011): Creating a National Oil Company in East Timor: Building on the Experience of Other Producers

107 Ibid

108 In Economics, the Dutch disease is the apparent causal relationship between the increase in the economic development of a specific sector (for example natural resource) and a decline in other sectors (like the manufacturing sector or agriculture). The putative mechanism is that as revenues increase in the growing sector (or inflows of foreign aid), the given nation's currency becomes stronger (appreciates) compared to currencies of other nations (manifest in an exchange rate). This results in the nation's other exports becoming more expensive for other countries to buy, and imports becoming cheaper, making those sectors less competitive. While it most often refers to natural resource discovery, it can also refer to "any development that results in a large inflow of foreign currency, including a sharp surge in natural resource prices, foreign assistance, and foreign direct investment

109 World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"

110 Ministry of Energy & Mineral Development (MEMD) (2014): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)

activities, of refining, storage and conveyance through pipelines, to Downstream activities of processing, marketing and distribution.[111]

The depth of Parliamentary involvement varies among different countries, and this usually starts at the point of initial licensing and contracts of the companies extracting the resource. Given the importance of this level in developing a framework in which the resource will be exploited, some countries raise the profile of Parliament in having powers to approve and/or veto resource contracts.[112] In Azerbaijan and Georgia, the Parliament has constitutional powers to ratify or veto international agreements, including extractive industry contracts. In Egypt, a Production Sharing Contract can only take effect if approved by the Legislature. In Liberia, investment contracts are ratified by Parliament consequent to negotiation and signature by the line Minister.[113]

The Constitution of the Republic of Uganda mirrors the above practices, as it places considerable responsibility over the Parliament to provide oversight role in the management and exploitation of resources and other operations of the state of Uganda. Parliament of Uganda is accordingly the apex institution mandated to make regulatory laws for the management and exploitation of the minerals and natural resources such as Oil and Gas in the country and the sharing of royalties arising from petroleum exploitation and other related activities.

The legal regime in Uganda is however not as strong as say in Liberia or Egypt, where the international agreements or investment contracts are only given effect after Parliamentary approval/ratification. In Uganda, MEMD is responsible for petroleum negotiates and enters into petroleum agreements (Section 9 of Upstream Act and Section 8 of the Midstream Act) and only informs Parliament. Although there is a National Resources committee of Parliament, the oversight role of parliament is not visible. As a result, parliament has no control of the negotiated contract terms and appears to be merely a bystander or spectator in the process. The Minister in essence is an extension of the executive and as such this process is prone to political interference and direction. The only way this can be avoided is to allow the Petroleum Authority to negotiate and enter petroleum contracts instead of the Minister. This was the view held by several legislators during the discussion of the petroleum bills in 2012. In addition, government ought to open up to

[111]Tordo S, Tracy B S, & Arfaa N (2011): National Oil Companies and Value Creation; (World Bank working paper; no. 218) ISBN: 978-0-8213-8832-7 extracted from www.worldbank.org on July 9, 2017; and World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"

[112] World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"

[113] Ibid

public scrutiny by providing full disclosure of the contracts, signature bonuses, royalty fees and other payments the government receives from companies. Parliament as well, should be empowered to exercise its oversight role in this sector.

One of the major challenges for the sector is that the agreements that the executive enters into have always been shrouded in secrecy. The executive argues that agreements have proprietary information that would be inimical to the interests of the investor if placed in the public arena.[114] This is a contentious matter and is part of the general point of contention of access to information.[115] For example, when Parliament passed a resolution requiring executive to submit Production Sharing Agreements, the members of parliament were only allowed a glimpse of the signed PSA's. This does not auger well for the future developments in the oil and gas sector.
Sections 151 and 152 of The Petroleum (Exploration, Development and Production) Act (2013) seem contradictory. Whereas Section 151 avers that the Minister may provide information about petroleum agreements to the public, Section 152 restricts access to information provided by a licensee to the Minister. In some countries such as Timor-Leste, information on contracts for the exploration, development and production of natural resource is in the public arena.[116] The Ugandan legal regime is accordingly weak on accountability[117] and is not even comparable to theregime in Sierra Leone where Parliament has access to resource contracts but with its obligation restricted to providing advisory role that can be accepted or otherwise.[118]

In the execution of its legislative function, the Parliament of Uganda has enacted a number of laws, as highlighted above, to guide Oil operations in Uganda. The significant slip-up mentioned in this regard is that most of the laws passed by Parliament concentrate powers in the hands of the Executive (the Minister of Energy and Minerals Development), and this has implications on ensuring accountability and transparency in the Oil sector.

[114] Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment.
[115] Ibid
[116] World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"
[117] Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment.
[118] World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"

The Natural Resource Committee of Parliament

In execution of its oversight role, the Natural Resource Committee of Parliament noted the following issues that have implications for the quality of governance of the Oil and Gas sector in Uganda.[119] The Ministry of Energy and Minerals Development is constrained to competently execute its role due to its size and capacity as pitted against the scope of its operations and the widening mandate largely precipitated by the emerging Petroleum sub-sector operations; There is lack of an adequate monitoring and inspection regime to oversee mining and generally the extractive industry operations in the country; Parliament expressed concern over Government's slow pace in joining the Extractive Industry Transparency Initiative (EITI). This situation was attributable to the Executive's failure to put in place "regulatory and institutional frameworks" that would facilitate Uganda joining global transparency forums. This is a recognition that Uganda has some distance in attaining acceptable governance standards; The country lacks a Petroleum Technical Committee, which is provided for under Section 8 of Petroleum Supplies Act, 2003, and Petroleum Supply (General) Regulations, 2009. The Committee is supposed to advise the Minister on "legislation, technical standards, levies, taxes, prices of petroleum products, develop policies for improving supply of petroleum products - in the country, coordinate preparation of emergency petroleum plans, dispute resolution between participants in the industry and manage applications and licenses to the Petroleum Committee. The last fully constituted Committee had its term expiring in 2014; and The Parliament also noted that the Executive has failed to provide the necessary finances for the operationalization of the Petroleum Fund as required under Section 9(2)(a) of the Public Finance Management Act.

These parliamentary observations have however not led to desired changes because the Parliament only makes recommendations while the Executive is charged with implementation. Moreover, the limited influence of Uganda's Parliament is largely attributable to the political system in which Cabinet Ministers who are Members of Parliament are selected from the majority party.[120] In such a scenario, where the ruling party has an overwhelming majority (that controls 293 out of 400

[119] Parliament of Uganda (2016). The Report of the Parliamentary Committee on Natural Resources for the 2016/17
[120]World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector" https://www.agora-parl.org/sites/default/files/parliamentary_oversight_and_the_extractive_industries.pdf

members of 10th Parliament, 2016-2021), Parliament will have no firm basis to develop independent capacities.[121] No wonder therefore that it is a common practice in the Ugandan Parliament for the ruling party, the National Resistance Movement (NRM), to have critical Parliamentary decisions made based on prior deliberations and commitment agreed on in the NRM party caucus. Parliament has generally become a rubber stamp of the NRM party decisions, as all Parliamentary institutions are under the control of the NRM which is the dominant party.

The Cabinet

The Cabinet is the Executive arm of Government that directly supervises the Ministry of Energy and Mineral Development. The Cabinet is responsible for approving policies and administrative mechanism to guide governance and operations. It also approves draft legislation that is submitted to parliament, and gives consent to production sharing agreements.[122] The Cabinet approved the National Oil and Gas policy and model production sharing agreement that have been used in the negotiation by MEMD with potential investors.[123]

There is, however, a grey area over Parliamentary and Cabinet oversight. The Cabinet approves the Policy which guides the design and enacting of the appropriate legislation. If the policy was to be in discord with the legislation, the framework does not provide how such a contradiction will be managed. For example, whereas the National Oil and Gas Policy places the responsibility for approving the policy on Cabinet, and the Minister providing policy guidance to the sector, the Petroleum (Exploration, Development and Production) Act 2013) provides in Section 8(b) that the Minister will be responsible for "initiating, developing and implementing the oil and gas policy". On this count, it is possible for the Minister to change policy without recourse to any party in the country.

The Ministry of Energy and Mineral Development

The Ministry of Energy and Mineral Development is the parent ministry under which the oil sector is managed and regulated.[124] Section 8 of the Upstream Act, 2013, spells out the functions and

[121] Ibid
[122] Ministry of Energy & Mineral Development (MEMD) (2014): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)
[123] Ministry of Energy & Mineral Development (MEMD) (2008, 2014): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)
[124] Ministry of Energy & Mineral Development (MEMD) (2008): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)

powers of the Minister in this Ministry to include issuing and revoking licenses, submitting draft legislation to Parliament; developing policies and regulations; negotiating and approving agreements and field development plans; and promoting and sustaining transparency in the petroleum sector.

The Act gives the Minister of Energy unlimited powers to negotiate, grant and revoke oil licenses. The Minister of Energy in Uganda has evidently been given unusually strong powers to manage the sector and this has raised some eyebrows in many sections of the population.[125] The concentration of powers and responsibilities in a single person may breed risks. For instance, Section 47 of the Upstream Act gives power to the Minister of Energy and Mineral Development to open up areas for petroleum activities. The Act stipulated the process as follows: An assessment must be made of the impact of petroleum activities on trade, industry and environment, possible risks of pollution and of the economic and social effects that may result from the petroleum activities. A report is then submitted to Parliament and the Minister makes a public announcement of the new areas to be opened, while impact assessments are made available to the public. Within 90 days, interested parties may present to the Minister their written views on the intended petroleum activities. Where the views are positive, the areas will be opened but where the views are negative. The Minister has the authority to determine whether or not to open the area. This evidently presents an opportunity for public involvement with one hand, but takes it away with the other by giving the Minister total discretion to decide whether or not to open the areas.

The Minister is also mandated to develop a model Production Sharing Agreement, which has to be approved by Parliament. Once approved, this model is supposed to guide future agreements. The Act has been criticized for not having any provision for disclosure of the contents of the agreements that Uganda has made over the years in the oil sector. The Ugandan public has been left in the dark regarding the details of all production sharing agreements, which is contrary to the International norms of transparency in the sector and the local access to information act. This

[125] International Alert, (20011). Harnessing Oil for Peace and Development in Uganda, Investing in Peace, Issue No. 2. International Alert, Kampala; World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector"; Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment; Golombok, R., Jones, M. I. (2015) Oil Governance in Uganda and Kenya: A review of efforts to establish baseline indicators on the impact of the oil sector in Uganda and Kenya. UNEP, Nairobi, Kenya.

matter became a point of public interest[126] when in 2005 a Member of Parliament and two journalists took Government to Court over the restriction of access to information on Oil contracts on account of public transparency. The Court ruled in favour of Government as the petitioners failed to show "the public benefit of disclosing the information to the public."[127] In 2010, Government conceded and tabled parts of the Oil contracts in Parliament with a caveat that the matter cannot be subject to parliamentary debate.

According to the law, the Minister is also responsible for appointing the Boards of Directors for the Uganda National Oil Company (UNOC) and the Petroleum Authority of Uganda (PAU) although these have to be approved by the entire Cabinet and Parliament. Interestingly, Parliament rejected the nominee for the Chair of the Board for the Petroleum Authority on account of lack of requisite knowledge and exposure to the Oil and Gas industry.[128]

In general, the Petroleum Act gives the Minister too much discretionary power to approve licensees and their content, which arguably puts the sector at risk, as there seems to be no checks and balances on the Minister. The powers vested in the Minister appear to be too far-reaching. There is also potential for confused lines of authority. Many countries that have failed to utilize oil for the benefit of their citizens like Nigeria and Angola have similar institutional structures where substantial decision-making powers are vested in a single institution with very limited checks and balances.[129]

Centralization of power poses a major challenge to the oil sector and undermines the authority of the oil governance institutions.[130] There is evident political interference in the management of Uganda's oil and gas sector. Several newspaper reports have revealed the President's role in the management of the sector.[131] The President has insisted on maintaining a firm control over the oil

[126] "Uganda: Govt to Take 80 Percent of Oil Profits" http://allafrica.com/stories/201006300153.html and "MPs Refuse to Keep Oil Agreements Confidential" http://allafrica.com/stories/201006291150.html, as cited in WBI, 2012.

[127] There has been an argument that the Courts may have been overzealous in taking the Government position as there is universal consensus on accessing information by the citizens. For example, see Edwards, Jocelyn, (2010): "Uganda: Court's Decision On Secret Oil PSAs May Be Unconstitutional," allafrica.com, 17 February 2010, online at: http://allafrica.com/stories/201002170338.html

[128] New Vision (2007) 'Oil Cash Will Not Be Wasted, Says M7', New Vision Newspaper. Africa News, Uganda.

[129] Hammond J L (2011): The Resource Curse and Oil Revenues in Angola and Venezuela; Science & Society, Vol. 75, No. 3, July 2011, 348–378; and Mähler A (2010): Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta; GIGA Working Paper, No 120 January 2010.

[130] Patey L (2015). Oil in Uganda: Hard Bargaining and Complex Politics in East Africa, Oxford Institute for Energy Studies, OIES Paper: WPM660.

[131] See for instance (www.theguardian.com *Feb 10, 2012*), (www.katu.com/news/local/politics-bribery-charges-swirl-around-uganda-oil-11-19-2015) and (www.monitor.co.ug *April 24, 2017*)

industry, reportedly stating: 'In the case of petroleum and gas, I direct that no agreement should ever be signed without my express written approval of that arrangement.'[132] The powers vestedon the Minister of Energy and Mineral Development in Uganda are excessive and create a conducive milieu for possible misuse and abuse.[133]

There have been a number of opaque events swirling around the Government's management of the Oil and Gas industry in Uganda that undermine the credibility and quality of governance institutions and practices. For instance, top ministers were accused of taking bribes to support some international oil companies in acquiring a stake in the country's resource in October, 2011.[134] Similar accusations were also made against the President.[135] Although accused officials have denied the allegations, the suspicions and allegations have dented the image of the Government of Uganda.

Transparency is undermined by the limitations of access to information laws that give contradictory positions on the right of citizens to access information.[136] In spite of passing the Access to Information Act, Uganda has the following laws which seem to impinge on unfettered right to access information: (a) 1964 Official Secrets Act[137] of the Laws of Uganda, that provides for secrecy in matters such as security and defence), (b) the Evidence Act of 2000 and the 1955 Parliament (Powers and Privileges) Act.

The Petroleum Act allows access to information in Section 152, and then prohibits access to information in Sections 153, 155 and 156 in a manner reminiscent of the authoritarian regimes.

Eric Watkins (2010): 'Uganda's president wants final approval of all oil, gas deals', The Oil and Gas Journal, Vol. 108, Issue 32, 30 August 2010.

[132] Eric Watkins, 'Uganda's president wants final approval of all oil, gas deals', The Oil and Gas Journal, Vol. 108, Issue 32, 30 August 2010.

[133] Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment; Golombok, R., Jones, M. I. (2015) Oil Governance in Uganda and Kenya: A review of efforts to establish baseline indicators on the impact of the oil sector in Uganda and Kenya. UNEP, Nairobi, Kenya; and International Alert, (20011). Harnessing Oil for Peace and Development in Uganda, Investing in Peace, Issue No. 2. International Alert, Kampala

[134] This information was reported in Uganda's Press, The Daily Monitor (www.monitor.co.ug) on Dec 23, 2011: '*Uganda's Oil Corruption & Benefits*' & on Dec 13, 2011: '*Court Halts Oil Bribery Probe*') and '*Oil in troubled waters*' in Africa Confidential, Vol. 52, No. 21, 21 October 2011. Also, in Wikileaks cable: '*Uganda: Corruption allegations accompany arrival of major oil firms'*, 3 December 2009, https://wikileaks.org/plusd/cables/09KAMPALA1356_a.html.

[135] 'Oil in troubled waters' in Africa Confidential, Vol. 52, No. 21, 21 October 2011. Wikileaks cable: 'Uganda: Corruption allegations accompany arrival of major oil firms', 3 December 2009, https://wikileaks.org/plusd/cables/09KAMPALA1356_a.html.

[136] Veit, P., Excell C. & Zomer, A (2011): Avoiding the Resource Curse: Spotlight on Oil in Uganda. WRI Working Paper. World Resources Institute, Washington DC. Available online at http://www.wri.org/project/equity-poverty-environment;

[137] 1964 Official Secrets Act (CAP. 302)

The government has of today released only partial details of the PSAs to Parliament but has not disclosed these to the public.[138] This lack of transparency has created lingering suspicions that the PSAs were not well negotiated for the benefit of the people of Uganda.[139] Uganda does not subscribe to the Extractive Industries Transparency Initiative (EITI) which requires its member Countries to publish all payments made by oil, gas, and mining companies to government, and all revenues received by the government from those companies. EITI compliance helps to prevent oil, gas or mining revenues being mismanaged or lost to corruption. Experience shows it also leads to improvements in the tax collection process and boosts public finances as it has in Ghana and Nigeria.[140]

The Petroleum Authority of Uganda – The Regulator

One of the key institutions put in place to regulate Uganda's Oil sector is the Petroleum Authority of Uganda (PAU). Section 9 of the Petroleum Act provides for the establishment of PAU. The Authority was established in 2015 as an independent body corporate with the following major functions (as defined in Section 9 of the Act): advising the Minister over the negotiation of petroleum agreements and in the granting and revoking of licenses; ensuring that licenses uphold laws, regulations, rules and contract terms; and overseeing compliance by oil licensees with the provisions of the Act and regulations made under it. The PAU had its Board of Directors approved by the Parliament in September 2015, so work begun 2016 mainly to organize the company and recruit personnel.

The Petroleum Authority of Uganda is a potential source of public protection created under the Petroleum Development Act. The Petroleum Acts intend for this agency to be politically independent in overseeing the exploration, development and production of oil and gas. Under the Acts, the Minister of Energy and Mineral Development issues instructions to the authority regarding government policy. The authority is then expected to carry out these policies as an independent agency. The minister is also granted the power to appoint members of the board for a four year, with the approval of Parliament, and can remove members for "incompetence." However, no provision is made for justifying a claim of incompetence before the Uganda Public

[138] World Bank Institute (WBI) 2012: "Parliamentary Oversight of the Extractives Industries Sector

[139] The Black Monday protestors used these restrictions as one of the justifications for protesting against corruption in Government (see: www.monitor.co.ug: Dec 3, 2012; *'Anti-corruption activities call for Black Money protests'*)

[140] See: http://neiti.org.ng/index.php?q=category/tags/audit-report

Service Commission. The concern raised by this arrangement is whether the ministry can undermine the authority's independence because the appointees are totally dependent on the ministry for their jobs.[141]

Although the mandate of the Petroleum Authority is laid out in the law, there is still potential for confused lines of authority.[142] The legislation lays down some important rules for ensuring the impartiality of the Petroleum Authority, intended to 'monitor and regulate' petroleum activities. However, there are also significant ambiguities like the relationship between that body and the Minister. The Petroleum Authority is set up as an independent body but in practice it may play more of an advisory role. It is required by law (Section 13(1) of the Act) to comply with written instructions from the Minister and this poses risks of political interference in its decision-making. This paves way to possible blurring of lines of accountability. As a number of critiques have observed, it seems that there is some dual governance structure where the Authority and the Minister share the top seat depending on the issue at hand. It is important that there is a clear definition of mandate between the Authority and the Ministry, lest the country is open to a risk as the system will create unnecessary duplication or bureaucratic delays, and multiply the potential for bureaucratic competition, corruption or mismanagement.[143] This may easily lead to situations where the Minister and the Authority may try to deflect the responsibility for their actions onto the other.

At this point, the lines for conflict and blurred relationship is a conjecture as the Authority has not fully started operations to make those hard-operational decisions that may bring it in the way of political leadership of the country. It is after that point that more objective analysis of the relationship can be made.

There is growing recognition that governance institutions such as the MEMD -and more specifically the Directorate of Petroleum- is simply too lean to fully execute its role in the Petroleum sector; MEMD, 2016; Parliament of Uganda, 2016). The effort to reorganize and strengthen the Ministry has been constrained by limited funding. Funding has also affected both strategic and operational business activities of fully developing the oil and gas sector in the

141 Akello, J. (2014, August 10). Slippery oil boards. *The Independent*. Retrieved December 18, 2014 from http://www.independent.co.ug.

142 Shephard B (2013): Oil in Uganda, International lessons for Success, Latimer Trend and Co Ltd, Chatham House, London.

143 International Alert, (2011). Harnessing Oil for Peace and Development in Uganda, Investing in Peace, Issue No. 2. International Alert, Kampala.

country. Government has also been slow in developing and skilling human resources for the sector.[144]

Uganda National Oil Company (UNOC) – The Business Arm

Section 42 of The Petroleum Act (2013) also provides for the establishment of a National Oil Company, which is supposed to handle the state's commercial interests and manage the business aspects of state participation in oil. According to Section 43 of the Act, the role of the National Oil Company (UNOC) will primarily include handling Government commercial and business interests and participation in the Oil and Gas sector.

The National Oil Company, the second institution created under the Petroleum Acts, is charged with promoting the government's commercial oil interests. It is unclear from the legislation how the shareholders will be selected and how the interests of citizens will be represented in policy development. Should the National Oil Company evolve as a private company, it would be answerable only to the shareholders.[145] Another concern is the role of the Ministry of Energy and Mineral Development that has the power to issue instructions to the National Oil Company with respect to how its management tasks will be conducted and stipulating rules relating to secrecy. Consequently, opponents argue that misuse and corruption can arise given the vagueness of the law. One option to assure that state interests are being achieved is to make the National Oil Company a public company.[146] The National Oil Company could then be privatized when accountability systems show a record of acting in the public interest is established.[147]

UNOC was officially incorporated on June 12, 2016 as a company limited by shares, under the Companies Act 2012, but wholly owned by government. The company has two shareholders namely; the Minister of Energy and Mineral Development who holds 51 percent shares and the Minister of Finance, Planning and Economic Development who owns 49 percent shares on behalf of the Ministry.[148] Upon its incorporation, the company became a separate and distinct legal

[144] Kashambuzi R, (2010): The Story of Petroleum Exploration in Uganda Impro Publications Ltd, Kampala
[145] Mawejje, J., & Bategeka, L. (2013, September). *Accelerating growth and maintaining intergenerational equity using oil resources in Uganda* (No. 111). Kampala: Makerere University, Economic Policy Research Centre.
[146] Eller, S., Baker, J., Hartley, P., & Medlock III, K. (2011): Empirical evidence on the operational efficiency of national oil companies. *Empirical Economics, 40*(3), 623-643.
[147] Magelahpeter. (2012, November 5). Why a government corporation and not private company should be in charge of Uganda's interests in the petroleum sector. *Legal and Policy Review* Retrieved from http://lawuganda.wordpress.com.
[148] See: Oil in Uganda (2016) 'Recruitment for Oil Institutions Commences'. http://www.oilinuganda.org/features/companies/recruitment-for-oil-institutions-commences.html

entity from its subscribers and it can sue or be sued in its own name, enter into legally binding contracts and own property. The PSAs also provide for government participation through carried interest of up to 15 percent in licensed oil fields.[149] The Governing Board for UNOC has already been put in place by government and a number of top managers have also been recruited.

Uganda National Oil Company is set to manage the government's interests in upstream and downstream activities. It will manage the country's share of petroleum received in kind, as well as business aspects of state participation and develop in-depth expertise in the industry. The company is expected to boost energy security, improve revenue generation, and help reinvest profits in economic development and job creation. It is also expected to handle up to 40% government interests in an oil refinery that has an estimated cost of US$4 billion.[150] UNOC is also expected to hold a substantial interest in the East African Crude Pipeline through its subsidiary the National Pipeline Company.

The Act provides high standards for appointment to the Board of Directors of both PAU and UNOC. The power to appoint the members of the Board lies with the President and subject to approval of Parliament. The high standards (or vigilance of parliament) resulted in non-confirmation of some of the nominees that the President had submitted to Parliament.[151]

The Act stipulates that the Petroleum Authority will focus on regulation, while the National Oil Company will actually engage directly in the industry on behalf of the government. The standard model for the organization of oil regulation is one that sees a 'separation of powers' between a petroleum authority, national oil company and Ministry.[152] This is the kind of model that was adopted by Norway, which brings the major advantage of -separating licensing and monitoring functions from the day-to-day pressures of government, and allowing an independent national oil company to develop technical capacity.[153] The same is recommended for Uganda.

[149] Ministry of Energy and Mineral Development, 2014.

[150] Ministry of Energy & Mineral Development (MEMD) (2017): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)

[151] New Vision July 14, 2014

[152] Shephard B (2013): Oil in Uganda, International lessons for Success, Latimer Trend and Co Ltd, Chatham House, London.

[153] Ibid

The Investment Advisory Committee (Investment Reserve)

Section 66 of the Public Finance Management Act (PFMA) provides for the establishment of the Investment Advisory Committee, which is mandated to advise the Minister of Energy on the Investments to be made under the Petroleum Revenue Investment Reserve (PRIR).

Although this investment committee is not yet in place, it is supposed to be composed of seven members with representatives from the Ministry of Finance; the Ministry for Petroleum Activities; and the National Planning Authority (NPA) as well as four persons who are not public officers but appointed by the Minister of Energy.[154] Again here, it is left to the discretion of the Minister to decide what the terms of appointment for this committee will be, which may be risky in itself, as the Minister can be prone to corrupt tendencies if there is no clear system in place to check any excesses.

Section 62 of the PFMA provides that funds to be invested in the PRIR will be appropriated annually from the Petroleum Fund by Parliament. The red flag on this matter has been raised by the Parliament's Natural Resource Committee which has indicated that in line with the subsisting legal framework, Government is obliged to remit Oil and Gas revenue to the Fund[155] which can easily be misappropriated if the regulatory framework in weak. Government for instance received funds from the Tullow Operations Uganda that was assessed by Uganda Revenue Authority to the tune of USD 36,058,521 or UGX. 119,323,709,754 and this was supposed to have been remitted to the Fund (Parliament of Uganda, 2016). It is not clear today where this money is now. The notable omission and challenge to Government is that it currently does not have clear guidelines and procedures for managing the oil revenue.[156] This is an indictment of the Governance institutions responsible for the Oil and Gas sector. It is also important to note that if the Petroleum Fund is not credited with the inflows, then the Reserve will be non-functional.

Section 63(2) of the Public Finance Management Act provides that the PRIR is to be managed by Bank of Uganda within the framework of a written agreement signed between Minister responsible for Finance and the Governor of the Bank of Uganda.

[154] Ministry of Energy & Mineral Development (MEMD) (2017): Ministerial Policy Statements, Government of Uganda, Kampala (www.energyandminerals.go.ug)
[155] Section 57 of the Public Finance Management Act, 2015
[156] Natural Resources Committee report 2016/17

Supporting Ministries, Departments and Agencies.

The following Ministries, Departments and Agencies are supportive institutional framework for resource governance and fiscal performance in Uganda: Ministry of Finance, Ministry of Environment, Bank of Uganda, Uganda Revenue Authority, National Environment Management Authority, Uganda Investment Authority, Public Procurement & Disposal Authority among others.

2.4 Legal and Institutional Framework of Selected Jurisdictions

2.4.1 Norway

1. Legal Framework in Norway

System of Petroleum Ownership

The State's ownership of offshore petroleum resources and its exclusive and sovereign rights to exploration for and exploitation of such resources were established by law in 1963. Excluding the Svalbard special regime, State ownership of onshore petroleum resources was established by law in 1973. There is no petroleum activity ongoing pursuant to the 1973 onshore resources legislation. No specific secondary legislation has been adopted for the purpose of petroleum activities governed by the 1973 legislation. All comments and descriptions included relate to offshore petroleum resources and related petroleum activities only.

For commercial entities to conduct upstream operations, government authorization is required. A production license (concession) is required for entities wishing to hold exclusive exploration (including drilling of wells) and production rights. Production licensees become owners of petroleum at the extraction point, but may only take their proportionate entitlement to petroleum at the production point, which is the point where petroleum may be transported in bulk as a commodity. An exclusive facility license (concession) is required to operate upstream facilities not included in an approved production project development plan.

Facilities may not be operated or used without a petroleum license. Entities may own facilities used for petroleum activities, however, without itself holding a petroleum license provided the operator of the facility holds the required petroleum license (concession). A specific facility license (separate from a production license) does not grant licensee rights to petroleum exploration or production, only to construct and operate facilities.

An exploration license (concession) is required to conduct non-exclusive collection of geoscience data for upstream operation purposes. An exploration license only grants the right to collect data and does not confer any other rights or preferences to petroleum, or a production license. The exploration license does not include the right to drill any well, which is intended to penetrate petroleum-bearing strata. It only grants a licensee the right to drill a shallow well for calibration purposes.

Direct state participation is exercised through the State Direct Financial Interest (SDFI), as determined by the government on a discretionary basis. The SDFI participation in a petroleum license is considered and subject to the petroleum regulatory and concessionary regime as a licensee, save for that pursuant to law the SFI is prevented from obtaining information relevant to selection of suppliers of goods and services and partaking in related procurement decisions. SDFI is not a legal entity separate from the state, but the SDFI petroleum license interest and associated petroleum activities is not managed by an organ of the state, but managed by Petoro AS on behalf of the state. Petoro AS is a joint-stock company wholly owned by the state. Petoro is a portfolio manager conducting its business subject to Chapter 11 of the 1996 Petroleum Act (as amended) and with shareholder and corporate decision-making according to Norwegian corporate law, in particular the 1997 Private Limited Liability Companies Act. The Norwegian state also holds approximately two thirds of the shares in Statoil ASA, a publicly listed company. Only Statoil may be appointed operator of a petroleum license, not Petoro. Gassco AS, another company wholly owned by the Norwegian state is appointed as system operator of the large submarine natural gas gathering and landing pipeline system having its landfall and onshore receiving terminals located in a number of continental European counties, as well as in the United Kingdom.

Principal Petroleum Law(s) and Regulations

The Norwegian legal system is based on civil law, and the oil and gas industry is regulated primarily by legislation – the principal law being the Petroleum Act.[157] The Norwegian regulatory system for petroleum exploration and production is administrative law, concession, permit and approval based. All petroleum activities are subject to prior authorization by the relevantregulatory authorities. The most important concession is the production license.

[157] Act 29 November 1996, No. 72

A production license grants exclusive rights to exploration and production of petroleum to licensees (concessionaires) within a predefined area. Production licenses are usually granted to a group of three or more licensees. As a condition for award, the licensees are required to form an unincorporated joint venture under the Petroleum Agreement, which includes a joint operating agreement and an accounting agreement. The Petroleum Agreement is a non-negotiable model agreement.

Pursuant to the Petroleum Act, petroleum activities must take place within a sound health, safety and working environment framework. Environmental concerns must be taken into account throughout the industry. Mandatory provisions relating to health, safety and environmental protection are also addressed in: The Pollution Control Act; The Working Environment Act; The Fire and Explosion Prevention Act; The Electrical Supervision Act; and The Wage Agreements Application Act.

The more detailed provisions are set out in a number of secondary regulations. Generally, these regulations stipulate functionally defined risk and performance-based requirements through descriptions of required results, levels and standards to be met. Compliance with regulatory functionality is secured through application and reference to established standards and guidelines, allowing the industry to choose among several methods, tools, procedures or solutions to achieve regulatory compliance.

The state's share of the value of the natural resources is secured through direct and indirect state participation, and corporate and petroleum special tax. There is no production sharing, production bonus or royalty (previous royalty requirements were abolished stepwise from 1986). Special provisions relating to taxation of petroleum activities are set out in the Petroleum Tax Act and the CO_2 Tax Act.

The Norwegian upstream petroleum regime may be divided into three segments, based on the location of the resource in question. All current exploration and production of petroleum from offshore resources is subject to the Act of 29 November 1996, No. 72, the Petroleum Act (or PA), together with sundry secondary legislation passed by the King in Council, the Ministry of Petroleum and several directorates. The PA is supplemented by a number of regulations, predominantly adopted as Royal Decrees, Ministerial or Directorate Regulations. The King in

Council, the MPE and the NPD also make individual decisions of a regulatory nature based on delegated power under public administrative law. Non-binding guidelines are also published.

The title to all petroleum resources in the ground, whether on the NCS or mainland territory, is vested in the state. The PA regulates resources located in the seabed of the NCS, facilities and petroleum operations (exploration and production, including transportation) and related activities associated with these resources when subject to Norwegian jurisdiction and petroleum rights licenses granted to licensees are awarded as public administrative law concessions, not negotiated as private law contracts. The PA also covers exploitation of these resources when exploitation takes place outside of Norwegian law jurisdiction or in association with production (as defined by the PA). Upstream facilities, petroleum (operations) activities conducted onshore in Norway and outside the NCS may be governed by the PA when Norway exercises jurisdiction consistent with its international law obligations.

In accordance with Sections 1-5 of the PA, other Norwegian laws also apply to petroleum operations and facilities subject to the PA. It is worth noting that the PA operates within a wider scope of activities, referred to as "petroleum activities", which are more extensive than the common industry understanding of "petroleum operations". This is particularly relevant when planning, preparation and management of NCS operations is undertaken by staff located outside of Norway.

Other important Acts with substantial impact on petroleum activities are: The Act of 13th March 1981, No. 6 relating to protection against pollution and waste; The Act 17th June 2005 No 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act). This Act has resulted in several regulations partly applicable to the upstream petroleum sector; and The Act of 4 June 2015 on wage agreement terms. This Act has resulted in several regulations partly applicable to the upstream petroleum sector; The Act of 14 June 2002, No. 20 relating to prevention of fire and explosions caused by hazardous substances, and emergency response by fire protection agencies. This Act has resulted in several regulations partly applicable to the upstream petroleum sector; Act 24 May 1929, No 4 pertaining to supervision of electrical installations and equipment. This Act has resulted in several regulations partly applicable to the upstream petroleum sector; Act 21 June 1963, No. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources; and

Act 21 December 1990, No. 72 relating to tax on discharge of CO_2 in the petroleum activities on the continental shelf.

The core purpose of the Norwegian petroleum regime applicable to offshore resources is expressed in sections 1-2 of the PA, in particular the second paragraph stating that: "Resource management of petroleum resources shall be carried out in a long-term perspective for the benefit of the Norwegian society as a whole. In this regard the resource management shall provide revenues to the country and shall contribute to ensuring welfare, employment and an improved environment, as well as to the strengthening of Norwegian trade and industry and industrial development, and at the same time take due regard to regional and local policy considerations and other activities."

The PA has remained in place, with moderate amendments, since it entered into force on 1 July 1997. The most significant amendments that have been made to it came in 2003 following the part privatization of Statoil and the formation of Petoro AS and Gassco AS, including the establishment of rules applicable to third-party access to the upstream gas pipeline system operated by Gassco (the "tariff regulations"). Gassco now manages capacity bookings and capacity allocation, and the MPE has issued regulations stipulating conditions for access and tariffs to be paid to Gassled. All shippers with a duly substantiated need for capacity shall have access to Gassled on a non-discriminatory, objective and transparent basis. Tariffs are based on booked capacity, not throughput.

There are also a number of subsequent Ministerial and Directorate Regulations adopted pursuant to the PA or in combination with other Norwegian Acts. The PA and the petroleum regulations (PR) form the legal basis for the licensing regime organizing licensing rounds for frontier acreage and annually for previously licensed acreage.

In 2005 a separate regulation for third-party access and use of facilities for extraction, production and transportation was passed,[158] regulating the procedures and requirements for access to and use of facilities other than those regulated by the tariff regulations related to the Gassled facilities.

There are several additional regulations adopted by the MPE, NPD and the PSA on resource management, operations, facilities, HSE and fiscal metering governing upstream petroleum activities pursuant to a petroleum license (concession). The main regulations enforced by the NPD

[158] Ministerial Regulation of 20 December 2005, No. 1625

and the PSA are adopted by Royal Decree, Ministerial or Directorate Regulations pursuant to the Petroleum Act, the Working Environment Act, the Fire Protection Act, the Product Control Act and the Electric Installations Act and several Acts pertaining to healthcare and healthcare personnel. In addition to the Petroleum Regulations, the main regulations are to be found at the locations indicated.[159]

There are also a number of labour law regulations adopted by the ASD and Labour Inspection Authority relating to the workplace, including acceptable threshold values and limits for exposure in the working environment, performance of work, organization, management and employee participation, labour hire undertakings, and worker identification requirements, etc.[160]

The Land Petroleum Act (LPA)[161] governs upstream petroleum operations and facilities for the purpose of exploration for and production of petroleum resources in the subsoil of Norwegian land territory, as well as the narrow band of seabed close to shore that may be subject to private property rights. No detailed regulations have been adopted to implement the LPA to date. No exclusive upstream rights or petroleum (operations) activities based on onshore resources have yet been conducted due to the geological structure (mostly base rock) on most of mainland Norway.

The PA and LPA do not apply to Svalbard. Svalbard's territory is subject to Norwegian sovereignty pursuant to the Svalbard treaty. The Svalbard regime follows a separate Mining Code applicable only to activities in the Svalbard territory.

Principal Environmental Laws and Environmental Regulations

Other important Acts, beside Chapters 7-9 of the PA (supported by the Petroleum Regulations and the Framework Regulations) that have a substantial impact on petroleum activities with regard to HSE are: The Act of 13 March 1981, No. 6 relating to protection against pollution and to waste; and The Act relating to working environment, working hours and employment protection, etc. (the Working Environment Act). This Act has resulted in several regulations partly applicable to the upstream petroleum sector (see above on PSA-enforced regulations), including the Act of 14 June 2002, No. 20 on prevention of fire and explosions from hazardous substances and emergency response by fire protection agencies. This act has resulted in several regulations partly applicable

[159] Locations are www.npd.no and www.ptil.no.

[160] In addition consult www.ptil.no, www.arbeidstilsynet.no

[161] Land Petroleum Act (or LPA) of 4 May 1973, No. 21.

to the upstream petroleum sector. For example, the Act of 24 May 1929, No 4 pertaining to supervision of electrical installations and equipment. This act has resulted in several regulations partly applicable to the upstream petroleum sector and the Act of 21 December 1990, No. 72 relating to tax on discharge of CO_2 in petroleum activities on the continental shelf.

Climate Change Laws

Rules apply with regard to emissions to air and discharge to land or sea under the Pollution Control Act, including fiscal disincentives in the form of e.g. the CO_2 tax. The CO_2 tax rate applied to offshore petroleum (operations) activities is higher than for non-offshore activities. There is also limitation of emissions to air of NOx and volatile components.

Legal or Regulatory Restrictions on Production Rates

Petroleum production may in principle not be conducted expect for in accordance with an approved development plan and a production permit. The production premium is issued primarily subsequent to regulatory authorities having satisfied itself that the concessionaires are conducting their activities consistent with regulatory requirement, in line with previously submitted production profile and supporting information and in such a manner that petroleum or reservoir pressure is not wasted. The production permit system is primarily in place to ensure systematic pursuance of optimal resource depletion, as concessionaire communication to the authorities the reasons supported by documentation of why any deviation from the development plan and the associated forecast production profile is necessary or recommended. Over the 50 years of Norwegian petroleum production the production permit has been used to regulate the production level at individual production projects in a few isolated incidents of limited duration. That has in each case been justified for state economic reasons and implemented in such a fashion that individual licenses among themselves, and in relation to the state, carried the economic impact proportionally.

Requirements for Decommissioning

Cessation of activities, decommissioning and potentially disposal of facilities are regulated by the provisions in the Petroleum Act (PA) Chapter 5 and those of the Petroleum Regulations (PR) Chapter 6. Wells are not considered facilities, so the plugging and abandonment of them are not included in a decommissioning plan before final decommissioning of production or use of related facilities. Norwegian decommissioning legislation is consistent with requirements that follow from

ratified public international treaty obligations such as UNCLOS, the London Anti-dumping Convention and the OSPAR Convention.

A development plan pursuant to a production license or a facilities license must contain information of a general nature with regard to the decommissioning or potential removal of an installation.

There is a general requirement of removal of installations, but it is expected that certain gravity base concrete structure will be left in place because of the potential safety risk and negative environmental effects associated with removal. However, concrete foundations to steel structures have previously been removed and dumped inside Norwegian internal waters.

To date, submarine pipelines do not have to be removed. Flowlines and umbilical connecting offshore installations within the same development area are normally considered part of installations and are thus required to be removed. Flowlines and umbilical between installations located in different development areas or to onshore facilities are also normally removed.

The licensee holding a participating interest in an exclusive petroleum license or the owner of a facility is obliged to submit a decommissioning plan no earlier than five years and no later than two years prior to planned cessation of petroleum (operations) activities or use of a facility. A plan may comprise one of more facilities in one or more areas. If licensees or owner(s) fail to submit a decommissioning plan or implement an approved decommissioning plan the authorities may cause a third party to undertake the preparation of the plan or implement an approved plan at the risk, liability and cost of the licensee or owner.

2. Institutional Framework in Norway

Regulatory Bodies

Roles and responsibilities are allocated between governmental bodies on various levels and the commercial sector. The various regulatory authorities administer the activities through enacting or enforcing regulations, making individual administrative law-based decisions and issuing orders. The most important governmental bodies and some of their key powers are as outlined below.

Stortinget

The *Stortinget* (Parliament) is the primary legislature in Norway passing laws, state budgets and confirming government petroleum policy through adopting formal proposals and discussing policy

white papers. Approval by the *Stortinget* is necessary for the government to open new acreage for petroleum activities.

King in Council

The King in Council approves the award of production licenses, the appointment of operators and development plans. It also submits budget proposals, projects, procedures, white papers and bills to the *Stortinget*. Much of the powers afforded to the King in Council through law are delegated to the Ministry of Petroleum and Energy.

Ministry of Petroleum and Energy

The Ministry of Petroleum and Energy has general responsibility for the management of the petroleum sector, including a wide range of tasks and responsibilities, such as: administration of licensing rounds and preparation of the award of production licenses, pre-qualification of licensees and operators; approval of the main plans and procedures required to perform petroleum activities, including: the plan for development and operation; the plan for installation and operation of facilities; the decommissioning plan; and approval of production plans and production schedules; regulating third-party access to upstream production facilities, including approving agreements for pipeline transportation and stipulating tariffs for transportation of natural gas in upstream gas transportation network facilities; consent to direct and indirect transfer of participating interest in exclusive petroleum rights and approval of operators and change of operator; enforcement measures pursuant to the Petroleum Act; oversight of the state's direct participation portfolio (the State Direct Financial Interest) managed by the wholly state-owned Petoro AS; managing the state's majority shareholdings in Statoil ASA; managing the State Petroleum Insurance Fund; and oversight of the upstream gas transportation network, operated by the wholly state-owned Gassco AS.

Petroleum Directorate

The Petroleum Directorate has key technical expertise on petroleum resource matters and provides input to the Ministry of Petroleum and Energy on matters such as opening new acreage for petroleum activities, nomination of acreage, pre-qualification of licensees, evaluation of applications for award of production licenses, development plans, production profiles, schedules and plans, as well as partitioning of license areas or areas for unitization.

The Petroleum Directorate individually administers and decides on several matters, including: awarding exploration licenses; area fee collection; approval of plans or procedures during exploration; approval of drilling programmes; administration of the Petroleum Register; exploration and production data storage and filing; petroleum production measurement; carbon dioxide emission regulation; follow-up of license activity through technical meetings; and monitoring compliance with regulatory requirements.

Ministry of Finance

The Ministry of Finance is in charge of tax policy and fiscal regulation, state budget and other tax, customs or excise matters relevant to petroleum activities. It is also responsible for the administration of the fiscal system (e.g. tax assessments and the tax effects of license transfers). Tax assessments and supervision of petroleum special taxation have been delegated to the Oil Taxation Office.

Ministry of Climate and Environment

In respect of the petroleum industry, the Ministry of Climate and Environment is responsible for initiating, developing and implementing environmental and climate-related legislation, measures and actions, promoting and coordinating the government's environmental protection policies. The Environment Agency is the key authority on environmental matters, working with the Petroleum Safety Authority and the Petroleum Directorate on environmental issues related to exploration, development and production (focusing particularly on water and air emissions, waste handling, climate surveillance and the environmental status of the sea).

Ministry of Labour and Social Affairs

The Ministry of Labour and Social Affairs has the overall responsibility for the working environment and for safety and emergency preparedness in the petroleum sector. The Petroleum Safety Authority is the key subordinate agency of the Ministry of Labour and Social Affairs, responsible for technical and operational safety, working environment and emergency preparedness. The Petroleum Safety Authority regulates, inspects and exercises enforcement powers over all health, safety and environmental matters throughout the petroleum industry.

Ministry of Transport and Communications

The Ministry of Transport and Communications is the responsible authority for preparedness and response to acute sea pollution. The Coastal Administration is the subordinate agency responsible for oil spill preparedness and response, coordinating with the other relevant authorities.

All regulatory functions are fulfilled by state institutions. No regional or local authorities have any specific regulatory authority over petroleum resources or upstream operations. Pursuant to applicable law and delegated powers, regional and municipal authorities have regulatory functions of a general nature that may also affect commercial petroleum activities, i.e, where a development includes onshore facilities may require authorizations for planned use and management of land (including internal waters and harbours).

Stortinget (the national assembly) has ultimate legislative and budgetary authority pursuant to the constitution of 1814. Stortinget passes laws as well as the state budget, and grants Government authority to ratify all major international legal instruments. Any expense incurred in relation to petroleum resources, facilities or upstream activities not covered by applicable law or budgetary approvals must be submitted to Stortinget for approval.

The Government forms a cabinet comprising 20 ministers. The cabinet makes formal regulatory and budgetary decisions in meetings ceremonially headed by the King. The King in Council also adopts secondary legislation referred to as Royal Decrees.

Ministries are headed by cabinet ministers. One ministry may have more than one cabinet minister and may be in charge of more than one sector or activity. Each minister is in charge of the day-to-day activities within his or her area of responsibility. A ministry may, as in the case with the upstream petroleum sector, make administrative decisions applicable to individual cases and pass secondary legislation generally applicable to the sector in the form of ministerial regulations subject to applicable laws.

The Ministry of Petroleum and Energy (MPE) is the core upstream operations ministry in charge of petroleum resource management, upstream facilities and operations subject to Norwegian law and jurisdiction. This includes resources, facilities and operations on the Norwegian Continental Shelf (NCS) and the Norwegian mainland. It also includes activities outside the NCS when

consistent with public international law, such as in relation to the gas and liquids trunk export pipelines to the United Kingdom and the European continent. The MPE is also in charge of activities conducted on transboundary fields subject to bilateral treaties. It manages the state's participation in SDFI, the SDFI upstream interest management company Petoro AS, the gas pipeline-system operator Gassco AS and the state's interest as shareholder in Statoil ASA. The MPE is also in charge of the Petroleum Insurance Fund and is the appeal body for appeals against decisions taken by the Norm Price Board. There is no upstream petroleum activities undertaken subject to the 1973 Land Petroleum Act (LPA).

The Norwegian Petroleum Directorate (NPD) reports to the MPE. Its primary task is to contribute to optimal, efficient and responsible resource management. The NPD is the technical advisor to the MPE and conducts NCS-relevant petroleum sector analysis and data management. In cooperation with other authorities, the NPD ensures comprehensive follow-up of petroleum operations and, subject to delegated power, develops secondary regulatory instruments and non-binding guidelines for upstream operations. The NPD is the registrar of the Petroleum Registry, in which exclusive petroleum rights must be registered as well as any MPE-approved mortgage or other security on facilities used in petroleum operations, subject to Norwegian law.

The Ministry of Finance is in charge of personal, corporate and petroleum special taxation, VAT and other indirect taxes, customs and excise. A special tax authority, the Oil Taxation Office, deals with corporate and petroleum special tax matters relevant to those companies that hold exclusive petroleum rights and participate in Norwegian upstream operations.

The Ministry of Labour and Social Affairs (ASD) is in charge of working environment and petroleum operations safety. The ASD's regulatory role comprises safety supervision, emergency preparedness (on facilities) and the working environment in both off- and onshore Norwegian upstream operations.

The Petroleum Safety Authority (PSA) is a directorate reporting to the ASD. The PSA has been delegated authority to monitor the core health, safety and working environment aspects of the upstream sector. Pursuant to law and delegation by the ASD, it is authorized to issue regulations covering safety and working environment for the upstream industry. It may take administrative decisions in the form of consents, make orders (prohibitions and exemptions) and issue fines. The PSA may temporarily suspend or shut down upstream operations. Its supervisory responsibility

comprises oil and gas activities on the NCS as well as at production and processing facilities on land and their associated pipeline systems.

The Ministry of Transport and Communications (MTC) is in charge of the government's preparations for emergencies involving acute pollution from petroleum operations and shipping. Its advisory and executive body is the National Coastal Administration (NCA). The NCA is organized into five coastal regions. Its Department of Emergency Response is the specific department responsible for governmental preparedness against acute pollution.

The Norwegian Maritime Authority (NMA) is the administrative and supervisory authority in matters related to health and safety, material security and the environment on vessels flying the Norwegian flag and foreign ships in Norwegian waters. The NMA is also responsible for ensuring the legal protection of Norwegian-registered ships and registered rights in those ships. The NMA is subordinate to the Ministry of Trade, Industry and Fisheries and the Ministry of Climate and Environment. The NMA's activities are governed by national and international legislation, agreements and political decisions.

3. National Oil or Gas Companies of Norway

At its sole discretion, the state may take a direct participatory interest in an exclusive petroleum licence by reserving a participation interest for the State Direct Financial Interest (SDFI). The state participation interest held by SDFI and managed (almost without exception) by Petoro AS. SDFI participation is no longer "carried" during the exploration phase. The previous "carried state interest" (Statoil- and SDFI held licence participating interest) required the commercial participants in a production licence to pay initially, but subsequently after approval of a development plan, have refunded the costs associated with exploration. SDFI contributes subject to cash-call issued by the Operator, its proportionate share of costs associated with petroleum activities in the respective petroleum licence from the day of licence award until completion of facilities decommissioning.

State-owned or controlled entities have no special privileges or rights with regard to the awarding of exclusive upstream licences. Neither Statoil ASA nor any of its subsidiaries any longer have privileges or preferences with regard to participation in exclusive upstream petroleum licences. Statoil competes with other applicants for any participation interest and for appointment as operator.

Norway is a member of the European Economic Area (EEA) and through this agreement part of the European Union internal market. As a result, non-discriminatory rules, including the so-called four freedoms, apply to Norwegian upstream and downstream petroleum activities and entities applying to hold petroleum exclusive or other rights or conduct petroleum activities, including in particular downstream natural gas transmission, storage and distribution. The non-discriminatory obligation principle only legally applies to legal or physical persons resident in EEA jurisdictions. Unless special circumstances apply, such as UN- or European Union-mandated sanctions, the non-discriminatory practice applies to all entities.

Petoro AS

Petoro AS (Petoro) is a wholly state-owned company, which manages the State Direct Financial Interest (SDFI) in petroleum licences. Petoro itself does not apply for petroleum licences, as direct state participation in production licences is decided by government on a discretionary basis. The SDFI is considered a licensee, but the SDFI licence interest is managed by Petoro on behalf of the state. Petoro is not in charge of selling SDFI petroleum production entitlements, which is done by Statoil on behalf of the state, and only supervised by Petoro.

Petoro AS was established pursuant to Chapter 11 of the Petroleum Act and legislation applicable to limited liability companies. Petoro's corporate governance, documents and decisions are subject to the 1997 Limited Liability Companies Act. Beyond what follows from ordinary limited liability company corporate law requirements, Petoro has to submit certain long-term and other qualified plans for the general assembly's approval. Petoro votes in the unincorporated joint venture established pursuant to the petroleum licence with, in principle, the same powers as any other licensee, but it does hold certain veto rights in the joint venture for the protection of the state's resource management interests. Petoro is, however, excluded from participating in public procurement decisions, consistent with applicable law based on EEA public procurement obligations.

Gassco AS

Gassco AS (Gassco) is a wholly state-owned joint-stock company dedicated to functioning as the system operator of Gassled - the submarine gathering, transportation and landing pipeline system for natural gas extracted from NCS resources. Gassco cannot own any pipelines, terminals or gas extracted or produced. Gassled IS (Gassled) is the owner of Gassled and holds a facilities licence.

Gassled is organised as an unincorporated joint venture in the same fashion as the NCS production licence. Gassled jointly owns almost all upstream gas transportation pipelines and their related onshore terminals.

Equinor ASA (previously Statoil ASA)

Statoil ASA (Statoil) changed its name to Equinor ASA in 2018. No corporate changes were made and the company remains a publicly listed joint stock company in which the state holds 67% of the shares. Previously, when the company then named Statoil was wholly owned by the state, the company was allocated participation interests without application, according to government decisions. Currently, however, it is awarded rights like any other applicant and is subject to the same regulatory requirements as other licensees. Equinor still sells the SDFI oil and gas production entitlements on behalf of the state. Previously it also sold royalty volumes on the state's behalf, but this has been discontinued as royalty on all petroleum production has been terminated.

2.4.2 Chad

1. Legal Framework in Chad

Chad's Constitution of 1996 (as amended 2018)

Chad, proclaimed a republic on November 28, 1958, granted national and international sovereignty on August 11, 1960. Since this date, it has experienced turbulent institutional and political development. Years of dictatorship and of single-party rule prevented the flourishing of any democratic culture and political pluralism. Different successive regimes created and maintained regionalism, tribalism, nepotism, social inequalities, violations of human rights and of fundamental collective and individual freedoms, of which the consequences were war, political violence, hatred, intolerance, and distrust between the different communities which compose the Chadian nation.

This institutional and political crisis that has destabilized Chad for more than four decades has only fueled the determination of the Chadian people to achieve the building of one nation, of dignity, of freedom, of peace and of prosperity. Thus, the Sovereign National Conference, held at N'Djamena from January 15 to 7th April 1993, at the initiative of the President of the Republic and having assembled the political parties, the civil society associations, the organs of the State, the traditional and religious authorities, the representatives of the rural world and the resources of

leading figures, have restored confidence to the Chadian people and enabled the advent of a new era.

This new era was consecrated in the Constitution of 31st March 1996, and revised in 2005, 2013, 2015 and 2018. After two decades of experimentation by institutions deriving from this Constitution, the Inclusive National Forum held at N'djamena of 19 to 27th March 2018 enabled the bringing of the reforms necessary for the reinforcement of democracy and of the State of Law. The processes of the reforms validated by the People and consecrated by this constitutional law adopt the form of a State strongly decentralized and profoundly modernized the institutions of the State.

Article 1: Chad is a sovereign Republic, independent, secular, social, one and indivisible, founded on the principles of democracy, the rule of law and of justice. The separation of the religions and of the State is affirmed.

Article 65: The executive power is exercised by the President of the Republic. The President of the Republic is the person elected by the Nation, and he personifies national unity. He is the guarantor of national independence, territorial integrity, respect for the Constitution, as well as treaties and international agreements. He assures, by his arbitration, the regular functioning of public powers as well as the continuity of the State.

Law relating to the Management of Oil Revenues

Pursuant to the Constitution, at its December 30, 1998 sitting the National Assembly debated and adopted, and The President of the Republic promulgated Law number 001/PR/99, the terms of which follow: Article 1: This Law is intended to define the mechanisms for the management of oil revenues from the development of the three (3) oilfields at Kome, Miandoum and Bolobo; Article 2: Oil revenues entail both direct and in direct resources. Direct resources are composed of dividends and royalties, while indirect resources are composed of the taxes, customs and other duties related to the exploitation of petroleum resources; Article 3: The direct resources, referred to in line two of Article 2, are to be deposited in a special account in the name of the Government of Chad specifically opened for this purpose with an international financial institution, hereafter called the offshore escrow account. These funds are to be allocated as follows: 90% of these funds are to be deposited in a special consolidated revenue fund in one or two major banking institutions active in this area; and the remaining 10% is to be deposited in a savings account, as per the

stipulations of Article 9 of the present Law; and Article 4: Indirect resources, taxes, customs and other duties are to be deposited directly into the nation's public accounts among other articles.

Laws regarding the Allocation of Revenues

These are according to Priority Sectors and Regional Allocation. Article 7: In essence, direct resources are to be allocated to the priority sectors. Priority sectors include public health and social welfare, educational infrastructure, rural development (agriculture and livestock), environment and water resources; Article 8: Direct resources, involving dividends and royalties, are to be deposited in the special account foreseen under Article 3 and are to be allocated as follows: a) Eighty percent (80%) of these revenues are to be directed to expenditures related to the priority sectors as specified in paragraph two of Article 7; b) For a period of five years from the date that production begins, fifteen percent (15%) of these revenues are to be devoted to the State's recurrent operating and investment costs; and c) As per the stipulations of Article 212 of the Constitution, five percent (5%) of oil royalties are to be directed to the decentralized authorities in the producing regions. Based on available resources, existing needs and the absorptive capacity of the region, these allocations can be modified by decree every five years. The ways and means for managing and controlling these revenues will conform to the public accounting regulations in force at any given time.

Law relating to Savings

Article 9: The remaining ten percent (10%) of direct revenues, that is the taxes and royalties specified under Article 3 of the present Law, are to be deposited in a savings account maintained with an international financial institution for the express purpose of benefiting future generations, in accordance with the regulations of the Bank of the Central African States (BEAC).

Law relating to Mechanisms for Managing the Special Accounts

Article 10: With respect to approvals, withdrawals, follow-up and control over the General Budget of the State, the mechanism for managing the Special Accounts falls under the Government's normal budgeting processes and Article 11: The Special Accounts are to be maintained with one or two of the available major commercial banks certified by the Central African Banking Commission. These accounts are to be directly fed by the escrow account referred to in the first paragraph of Article 3 of the current Law.

Law relating to the Criteria for Withdrawals

Article 12: Funds deposited in the special account for purposes of financing priority sector expenditures are to be committed in accordance with the Government's annual public spending estimates. Parts of the three-year development framework, the public spending estimates are the point of reference for the Finance Law and are subject to annual review by the Government. In accordance with the principle of additionality, oil revenues expenditures on priority sectors are understood to be in addition to the general budget for the fiscal year prior to the initial receipt of oil revenues. Article 13: Requests for withdrawals by the Director General of the State Budget must adhere to the procedures outlined in the Finance Law and must be submitted for the explicit authorization of the Petroleum Revenue Oversight and Control Committee (the Collège).

The Petroleum Code

The main legislation governing petroleum activities is Law No. 07-006 dated 2 May 2007 as amended by Ordinance no.10-001 dated 30 September 2010 and its implementing decree no.10-796 PR/PM/MPE dated 30 September 2010 (the 'Petroleum Code').[162]

Due to the general nature of the Petroleum Code, most of the specific provisions governing petroleum exploration and production are included in production sharing contracts ('PSCs') or concession contracts (together the 'Petroleum Contracts'). PSC under which the State grants an exclusive exploration right to the contractor and, in case of a discovery, an exclusive production right. The contractor assumes financial and operating risks and production is shared with the State in accordance with the PSC terms. Petroleum Contracts are all negotiated with the MPE and the NCNPC and must contain all dispositions applicable to the relevant exploration and/or production phase.[163] A model form PSC has been issued and provides a basis for negotiation. Petroleum Contracts must be signed by the MPE. Entry into force is subject to ratification by the National Assembly. Authorizations and the law ratifying the relevant Petroleum Contract are published in the Official Gazette. In addition, Chad implements the principles of the Extractive Industries Transparency Initiative.

[162] Jean-Jacques Lecat and Bob Palmer (2016): Conducting oil and gas activities in Chad at www.cms.law.
[163] Ibid

Uniform Acts

Uniform Acts adopted by the Organization for the Harmonization of Business in Africa (OHADA), of which Chad is a member State, apply to companies carrying out oil and gas activities in Chad, especially the OHADA Companies Act. CEMAC Oil and gas activities are subject to Exchange Control Regulations applicable within the Economic Monetary Community of Central Africa (CEMAC).

2. Institutional Framework in Chad

The main institutions of the Chadian hydrocarbons sector include:

Ministry of Petroleum and Energy (MPE)

The Ministry of Energy and Petroleum is responsible for the design, coordination, implementation and monitoring of government policy in the field of hydrocarbons and energy. As such, it provides the organization and control of research, exploration and transportation of hydrocarbon liquids and gases, refining, storage and distribution of petroleum products, inputs and energy activities on the national territory. The Ministry of Petroleum and Energy also initiates laws and agreements relating to oil, gas and energy.

The National Oil Company SHT

SHT (*Société des Hydrocarbures du Tchad*) is the National Hydrocarbons Company ('NHC'). Created in Hydrocarbon Company 2006, the SHT plays a growing role in Chad's oil sector. It is a public enterprise, 100 percent government owned, and under the supervision of the Ministry of Petroleum. Its governance is set out in the 2006 law of its establishment, a 2007 decree describing its statutes, and a 2011 management contract with the Government, covering in particular its marketing of government oil. The SHT has a broad mandate permitting it to engage in the whole oil value chain: prospecting, exploration, development, production, and transport. Its activities can also include refining, and the storage and distribution of refined products. However, the 2011 Contract, stipulates that the SHT is not a regulator, and that only the Government has the right to issue licenses. Also, the Government receives all payments from companies other than the RIK, explicitly assigned to the SHT. The resources of the SHT consist of a 2 percent commission on the sale of oil, plus the net income from its oil assets, plus interest income, loans, and state subsidies. The SHT is subject to the oil fiscal regime for its production activities, and to the general income

tax for its marketing. It is not subject to any dividend rule, and the Statutes give its General Assembly great latitude to re-invest any net income.

In practice, so far, the SHT concentrates on managing the government's oil assets and marketing the government's and its own oil. Its largest asset is the 25 percent in the Doba Consortium, known as Badoit, purchased in 2014 for US$1.3 billion from Chevron. It entitles the SHT to 25 percent of production (after royalties). From the proceeds it must cover the associated costs.[164] In addition to the Badoit oil, the SHT sells the government's RIK, altogether 36 K b/d in 2015, or one quarter of Chad's total production. All SHT sales currently are to Glencore, under a monopsony marketing contract that is an integral part of the prepayment agreement. SHT also has shareholdings in a number of other enterprises, notably the refinery, NRC, of which it owns 40 percent and the CNPCI 60 percent. The SHT does not publish a report on its activities, nor does it publish financial statements; its website is under construction.

Regulatory Bodies

Article 14: Control over the movement and use of oil revenues is exercised separately or jointly by the Financial Controller of the Ministry of Finance and Economy, the Petroleum Revenue Oversight and Control Committee, the Auditor General of the Supreme Court and the Parliament.

The Petroleum Revenue Oversight and Control Committee (The Collège)

Article 15: Institutes the Petroleum Revenue Oversight and Control Committee and article 16 gives the composition of the committee while article 18 gives the mission of the Collège as: a) to ensure that commitments under the Special Accounts conform to the Finance Law and b) to authorize and control withdrawals from the Special Accounts and to oversee the allocation of these funds. Article 19 gives a separate decree will outline the organization, operational procedures and control and oversight mechanisms available to the Collège.

Other Regulatory Bodies

Article 20: The Parliament controls the allocation of oil revenues by adopting and monitoring the implementation of the General Budget of the State and Article 21: The Auditor General of the

[164] Importantly, Badoit is not a "carried interest" participation as described in par. 13. The joint venture partners are under no obligation to make advances to help the Government pay its cash calls.

Supreme Court exercises control over the legality of State expenditures by official writ over its revenue accounts and by overseeing the legal stipulations defining the division of resources between the State's General Budget and that of the decentralized authorities and the provisions dealing with developing reserves or investing surplus funds outside of the country.

Oversight Measures

Article 22: Oversight of the movement, allocation and utilization of oil revenues is guaranteed by virtue of periodic audits and reports to Government and particularly through: annual audits of the Special Accounts and of the Future Generations Fund; periodic reports on the management of the Future Generations Fund and on the stabilization account; periodic reports from the Collège; the COBAC reports and audits on the major banks charged with the effective management of specific Special Accounts; the Auditor General's annual audit of the General State Budget; and the Government's practice of annually publishing these various reports and audits.

2.4.3 Libya

1. Legal Framework in Libya

The law of Libya has historically been influenced by Ottoman, French, Italian, and Egyptian sources. Under the Great Socialist People's Libyan Arab Jamahiriya, Libya has moved towards a legal system based on Sharia, but with various deviations from it.

Petroleum Law No 25 of 1955

Libya's key petroleum legislation is the Petroleum Law No. 25 of 1955 (the "Petroleum Law"), which came into force the same year that saw the first Libyan concessions awarded. It was seen as one of the more sophisticated oil laws in existence, offering smaller concession areas and including relinquishment requirements. By 1968, 137 concession agreements were in place with over 40 different companies. Over the following decades the Petroleum Law has been amended by various regulations, negotiations and new versions of model contracts. [165]

After the enactment of the Petroleum Law, the Libyan government conducted numerous renegotiations of concessions previously offered under the original Petroleum Law and managed

[165] Amir Kordvani (2012): Libya: An Overview of The Libyan Oil And Gas Regime (Article 1 of 4) Clyde & Co

to impose tough fiscal terms on IOCs, using favourable market conditions to its advantage. By the 1970s the Libyan Government began to demand higher shares of petroleum revenue and exercised greater control over the industry. This led to a series of various degrees of nationalizations of oil assets. In 1972, participation agreements replaced the concessions, transferring 51% of all concessions to the Libyan National Oil Company (NOC). During 1971-1973 BP, Occidental and Hunts' Libya assets were fully nationalized.

In relation to the petroleum sector, Law No.25 of 1955 (the 'Petroleum Law') is still in effect. However, in 1961, 1965 and 1970 the law and the concessions were amended significantly with the terms and conditions changing to be heavily in favour of the Government.

The Petroleum Law established a concessionary framework for the exploration and production of petroleum within Libya. In Article 1 it laid down the basic rule that all petroleum in Libya in its natural state, contained in strata, is the property of the Libyan State and that no person shall explore or prospect for, mine or produce petroleum unless authorized by a permit or concession issued under the law. The Minister of Petroleum shall consider applications for permits or concessions submitted by eligible applicants. At present, the usual way for a foreign oil company to undertake oil operations in Libya, unless it takes over an existing concession interest, is to enter into an EPSA or a Development and Production Sharing Agreement ('DEPSA') with NOC. The Government usually authorizes NOC to announce a need for EPSA candidates, usually announced in the international media, and this is done in the form of open bidding. The bids are made by the foreign parent company and then the company that is successful in the bid must open a branch office in Libya.[166]

The Petroleum Law established a concessionary framework for the exploration and production of petroleum within Libya. In Article 1 it laid down the basic rule that all petroleum in Libya in its natural state, contained in strata, is the property of the Libyan State and that no person shall explore or prospect for, mine or produce petroleum unless authorized by a permit or concession issued under the law.

Article 3 of the Petroleum Regulation details decommissioning and abandonment requirements. The concession holder should notify the NOC of its intended abandonment 3 months prior to the

[166] Bob Palmer (2016): Conducting oil and gas activities in Libya, at www.cmslegal.com.

abandonment date. Expenses for abandonment related to exploration and appraisal operations is the sole responsibility of the company. The company shall be liable for 50% of expenses incurred as a result of development and exploitation operations.

Exploration and Production Sharing Contracts (EPSA)

In 1973 the Libyan Government introduced Exploration and Production Sharing Contracts (EPSA). EPSAs are subject to the principles set out in the Petroleum Law (as amended by subsequent amending acts and regulations).

Under an EPSA, the Libyan Government, through the NOC, retains exclusive ownership of oil fields while signatory oil companies are considered contractors. Numerous versions of the EPSA have since been released. The last EPSA round under the old regime was held in 2005 on an arguably more attractive version of the EPSA, "EPSA-IV", as a post-sanctions initiative to invite the much-needed foreign investment to the country's oil and gas sector. The key difference between various versions of EPSA relates to the scope of obligations of the Government and the IOC with respect to the recovery of development and production costs. In addition, EPSA-IV contracts were awarded on a competitive-bidding basis rather than the negotiated method used in the previous rounds.

EPSA-IV created tough terms for oil companies, who agreed to low profit shares and the handing over of large signature bonuses in return for licenses in order to win the concessions. Whilst being criticized for their lack of transparency, EPSA-IV contracts remain in force under the General National Congress (GNC), although it was reported that the GNC was to subject them to a corruption review process.

Under the EPSA IV, an IOC or a consortium of IOCs commonly enter into a joint venture with the NOC. The IOC or consortium undertakes exploration work and bears the costs for a minimum of 5 years, while the NOC retains exclusive ownership. The joint venture company management is assigned to a committee comprising of two NOC representatives and one IOC with decisions being made using unanimous voting.

Over the course of 2008, a number of IOCs had the terms of their Exploration and Production contracts with the NOC renegotiated outside of the bidding rounds, to bring them into line with the new EPSA IV framework.

The EPSA-IV contract is seen as having particularly tough commercial terms relative to the global oil industry and IOCs have been keen to express their desire for a new version of the EPSA offering more attractive terms (Royal Dutch Shell has recently ceased exploration under its Libyan licenses citing poor exploration results that cannot be economically justified under the EPSA-IV terms).

The National Transitional Council (NTC) (the predecessor to Libya's General National Congress) made suggestions in June of this year that production-sharing agreements with IOCs will be offered on improved terms in order to encourage IOCs to invest more money in exploration and enhanced oil recovery. However, it has also made clear such a development will not occur this year. More recently NOC officials have been reported as stating that there are plans to make Libyaa more attractive upstream destination by offering more favourable contract terms.

The NOC recently indicated that there will be no new bidding rounds until at least a permanent fully sovereign Government is in place which will not occur until after new elections are held following enactment of the new Constitution. However, they failed to elaborate further on the nature of any contracts that will be offered in the future.

2. Institutional Framework in Libya

The National Oil Corporation (NOC)

The National Oil Corporation ('NOC'), recognized by Decree No. 10 of 1979, is the State corporation regulating the oil sector and is the State representative in oil exploration contracts, regulating the affairs of completely owned companies, Joint Ventures ('JVs') and Exploration and Production Sharing Agreements ('EPSA').[167]

NOC is responsible for many aspects of the upstream and downstream oil and gas sector in Libya, including licensing procedures and implementation, oil policy and contract negotiations. NOC carries out the objectives of Libya's development plan by increasing, developing and exploiting

[167] Bob Palmer (2016): Conducting oil and gas activities in Libya, at www.cmslegal.com

oil and gas reserves, and operating and investing in those reserves. Furthermore, NOC has de facto taken over the technical and regulatory functions that were previously held by the Minister of Petroleum. The new government intends to divide the NOC into two bodies, as follows: 1) NOC – Exploration and Production of Oil and Gas. 2) NOC – Refinery and Petrochemicals.

The NOC of Libya is a state-owned company that is responsible for implementing EPSA-IVs and controlling Libya's oil and gas production. The NOC was established in 1970 replacing the Libyan Petroleum Company and oversees all petroleum activities in Libya including oil and gas exploration, drilling and production; refineries operation; petrochemical production; marketing and distribution of petroleum products and petrochemicals. The NOC's main upstream subsidiaries are: The Sirte Oil Company and Arabian Gulf Oil Company. The main downstream subsidiaries are: Ras Lanuf Oil and Gas Processing Company; Zawia Oil Refining Company; and Brega Petroleum Marketing company.

The role of the NOC going forward is unclear. It is unlikely that there will be any significant changes to the oil and gas sector prior to the establishment of a permanent government and the enactment of the new constitution.

Also unclear is the new structure of the NOC. The creation of the Ministry of Oil by the NTC indicates that some of the NOC's power will be redistributed to the new Oil Ministry. Prior to the 2011 conflict, control over oil and gas was heavily centralized in Tripoli. It seems likely that power will be somewhat decentralized in order to reflect the geographical distribution of oil and gas reserves and allow greater autonomy for the oil-rich region of Cyrenaica in the East of Libya. Certainly, the Eastern Region's arguments for federal rule have been driven by the long-standing complaint that it has been deprived of a fair share of oil wealth. Given Benghazi's importance in relation to the oil sector it is likely to become a new economic hub in Libya and will want its own policy making role.

The Ministry of Petroleum

The Minister of Petroleum shall consider applications for permits or concessions submitted by eligible applicants. At present, the usual way for a foreign oil company to undertake oil operations in Libya, unless it takes over an existing concession interest, is to enter into an EPSA or a

Development and Production Sharing Agreement ('DEPSA') with NOC. The Government usually authorizes NOC to announce a need for EPSA candidates, usually announced in the international media, and this is done in the form of open bidding. The bids are made by the foreign parent company and then the company that is successful in the bid must open a branch office in Libya.

Article 17 states that permits and concessions shall not be assigned except with the written consent of the Minister of Petroleum, which may impose any conditions that it deems appropriate in the public interest. The notice of the grant, renewal, assignment, revocation, termination or surrender of the whole or any part of any permit or concession must be published in the Official Gazette, as per Article 19.

The Government has the right to participate and be carried in the Licence. The foreign company undertakes all exploration and appraisal expenditures at its own risk. Development expenditure and exploitation capital expenditure are usually shared 50/50 between NOC and the foreign company. The foreign company is guaranteed an initial share of production with a view to enabling it to recover the expenditure it has incurred during the exploration, development and production phases.

EPSA IV allows for NOC to receive a share of production with the remainder being available for cost recovery by the company. Under EPSA IV provisions cost recovery ranges from 30% to 40% depending on the field size. Once full cost recovery has taken place, net production (profit oil) is shared between the NOC and the company.

2.4.4 Ghana

Under the Constitution of Ghana, all untapped natural resources including oil and gas resources are vested in the President of Ghana for and on behalf of the people of Ghana. This is restated in the E&P Act. Therefore, the right to explore and develop such resources is subject to agreement or licence granted by the government (acting through the Ministry of Energy) and approved by Parliament. Initial petroleum activities in Ghana were governed by the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64), which constitutes an establishing instrument of the national oil corporation and the Petroleum Income Tax Act, 1987 (PNDCL 188). However, owing to increased activities in the upstream oil and gas sector after the commercial discoveries in the deep-waters, various regulatory reforms were initiated. This resulted in the enactment of the Petroleum

Commission Act 2011 (Act 821), the E&P Act that provides an overarching framework, and the Petroleum (Local Content and Local Participation) Regulations 2013 (LI 2204) enacted to ensure local participation in the sector given the increase in the activities of foreign-owned entities in the sector, among others. There is also the Petroleum Revenue Management Act 2011 (Act 815) that governs the use of petroleum revenue accruing to the state from petroleum exploration. These laws are in addition to other regulations, directives and guidelines issued to guide operations in the sector.

The primary laws governing the upstream oil and gas sectors are the E&P Act and the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64) and a taxation regime under the Petroleum Income Tax Act, 1987 (PNDCL 188)[168] and the Income Tax Act, 2015 (Act 896) as amended.[169]

1. Legislative overview in Ghana

In the mid-1980s, the government introduced the first legislative framework for upstream oil and gas activities in Ghana. Three main pieces of legislation were enacted by the government to regulate the upstream oil and gas activities. Chief among the reforms was the passage of the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64), which established the Ghana National Petroleum Corporation (GNPC) as the national oil corporation to champion state activities in the upstream oil and gas sectors. In addition, the now repealed Petroleum (Exploration and Production) Law, 1984 (PNDCL 84) was enacted to regulate exploration and production activities as well as provide the framework for engagement of international oil firms by the government to undertake exploration and production activities. Lastly, the Petroleum Income Tax Law 1987 (PNDCL 188) was passed to regulate operations and taxation in the upstream oil and gas sector. Of the three pieces of legislation, PNDCL 84 and the PNDCL 188 have been repealed and replaced with new pieces of legislation that are currently applicable. This is discussed further below.

The Fourth Republican Constitution, which came into force in 1992, provides that 'every mineral in its natural state in, under or upon any land in Ghana, rivers, water course throughout Ghana, the exclusive economic zone, any area covered by the territorial sea or continental shelf in the Republic of Ghana is the property of the Republic of Ghana and is vested in the President on behalf of, and

[168] Only applicable to specific pre-2015 petroleum agreements with fiscal stabilisation clauses.
[169] Income Tax (Amendment) Act, 2016 (Act 907)

in trust for the people of Ghana'.[170] As a check on the powers of the President to control and manage the resources on behalf of the people of Ghana, the Constitution requires parliamentary approval for all transactions involving the grant of a right for the exploitation and production of natural resources in Ghana and further mandated the establishment of specific commissions to be responsible for the regulation and management of the utilization of the natural resources and the coordination of the relevant policies.

Upon the discovery of oil in commercial quantities offshore Ghana in 2007, the Petroleum Commission Act, 2011 (Act 821) was subsequently passed to set up the Petroleum Commission as the regulator to coordinate activities in the upstream petroleum industry in accordance with the Constitution.[171] In addition, the Petroleum Revenue Management Act, 2011 (Act 815) asamended by Petroleum Revenue Management (Amendment) Act, 2015 (Act 893), was enacted toprovide the framework for management of petroleum revenues. In 2016, the Petroleum (Exploration and Production) Act, 2016 (Act 919) (the E&P Act), was passed to replace the PNDCL 84, as the primary legislation for the regulation of petroleum activities in the upstream sector. Also, the Income Tax Act 2015 (Act 896) as amended provides a regime for the taxation of income of contractors and subcontractors in the sector. In order to support the implementation of the key laws in the sector, the government through the Minister of Energy (the Minister) and the Petroleum Commission have enacted a number of regulations, guidelines and developed policies for the sector. These include the following: the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204); the Petroleum Commission (Fees and Charges)Regulations, 2015 (LI 2221); the Petroleum (Exploration and Production) (Measurement) Regulations, 2016 (LI 2246); the Petroleum Exploration and Production-Data Management Regulation, 2017 (LI 2257); and the Petroleum (Exploration and Production) (Health, Safety andEnvironment) Regulations, 2017 (LI 2258) among others.

[170] Article 257(6) of the 1992 Constitution.

[171] Prior to the establishment of the Petroleum Commission, the function was somehow performed by the national oil company in addition to its mandate as the national oil corporation.

2. Domestic Oil and Gas Legislation in Ghana

The main legislation relating to the upstream oil and gas sector is as follows.

The Ghana National Petroleum Corporation Act, 1983 (PNDCL 64)

The first major activity to set the stage for regulatory reform of the upstream sector was the establishment of the GNPC under PNDCL 64. The GNPC is established as the national oil corporation charged with the responsibility to explore, develop, produce and dispose of hydrocarbons.

The law also mandated GNPC to advise government on oil and gas matters and to promote the exploration and orderly development of the petroleum resources of Ghana. In effect, the GNPC was created as a regulator and operator performing both regulatory and commercial functions under the supervision of the Ministry of Energy. At the earlier stages, the GNPC led the effort to acquire data to establish Ghana's reserves potential, and also led efforts to market the potential to IOCs interested in investing in the upstream sector in Ghana. However, the dual roles played by GNPC created conflict in the upstream sector as it seems to be a regulator and a player in the sector. This conflict, or potential conflict, was addressed in later regulatory reform; with the passage of the Petroleum Commission Act, 2011 (Act 821), which transfers the GNPC's regulatory functions to the Petroleum Commission. Currently the GNPC is a commercial operator and the holder of government interests in petroleum operations in Ghana. It is also the national aggregator of natural gas from upstream operators to service the local market. Under the Petroleum Revenue Management Act, a specific percentage of the net cash flow from the carried and participating interests of the state is ceded to the GNPC to fund its operations.

The Petroleum (Exploration and Production) Act, 2016 (Act 919)

The Exploration and Production Act is the main legislation that regulates the grant of licence for upstream oil and gas activities, and regulates the exploration, development and production of petroleum in Ghana. The Act, in line with the Constitution, provides that petroleum existing in its natural state within Ghana is the property of Ghana and is vested in the President on behalf of the people of Ghana. The Act also permits the Minister to grant rights and enter into agreements for the exploration and production of oil and gas subject to the ratification of such rights or agreements by Parliament. The Act further mandates the Minister and the Petroleum Commission to develop

regulations on safe construction, health and safety, product standard, reference maps for oil blocks, competitive bidding and terms and conditions of petroleum agreements.

Except in the case of the GNPC, any person who intends to engage in the exploration, development and production of petroleum can only do so in accordance with a petroleum agreement entered into between that person and the government of Ghana and the GNPC. Under the Act, a petroleum agreement can only be entered into after an open, transparent and competitive public tender process. However, the Minister may, on stated grounds, enter into a petroleum agreement without going through a tender process.

The Act mandates the Minister to prepare a reference map showing areas of potential petroleum fields within Ghana divided into numbered areas (blocks). Subject to rights granted to other entities under petroleum agreements entered into, the GNPC has the right to undertake exploration, development and production of petroleum over the blocks declared by the Minister as open for petroleum operations. Prior to exploration activities, the GNPC or the contractor must submit to the Minister for approval, a development plan in respect of a petroleum field to be developed directly by the GNPC or the contractor, as the case may be.

The essential terms and conditions that must be in a petroleum agreement are prescribed under the Exploration and Production Act. The Act prohibits the assignment of petroleum agreements, directly or indirectly, without the written consent of the Minister. The essential provisions of the Act cover the following: the power of the Minister to open an area for petroleum activities;[172] the power of the Minister to close an area or redefine the boundaries;[173] and that petroleum agreements must be entered into in accordance with an open, transparent and competitive public tender process;[174] among others.

The Act also prescribed specific terms that must be provided in the petroleum agreements. These include: the right of GNPC to hold an initial participating carried interest of at least 15 per cent for exploration and development; the GNPC has the option to acquire an additional participating interest as determined in the petroleum agreement within a specified period of time; and the

[172] Section 7 of Act 919.
[173] Section 8 of Act 919.
[174] Section 10 of Act 919.

petroleum agreement must be for a term not exceeding 25 years subject to ability of the Minister to extend among others.

The general requirements for petroleum activities under the Act include: the standard of operations in conducting petroleum activities;[175] supervision and inspection;[176] and data and information obtained by a licensee, contractor or subcontractor as a result of petroleum activities are property of Ghana among others.

The Petroleum Commission Act, 2011 (Act 821)

As part of the regulatory reform following the commercial discovery of oil and gas, the Petroleum Commission was established under the Petroleum Commission Act as the upstream petroleum regulator with the object to 'regulate and manage the utilization of petroleum resources and to coordinate the policies in relation to them'.[177] Essentially, the Act establishes the Petroleum Commission to perform the regulatory functions previously performed by the GNPC under the PNDCL 84.

Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204)

Pursuant to Act 821, the Petroleum (Local Content and Local Participation) Regulations were passed in July 2013 to, among other things, 'promote the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country'.[178] The Regulations focus on ensuring the maximum participation of indigenous Ghanaians, increasing local capacity and also safeguarding the interest of foreign participants in the oil and gas sector.

The Regulations apply to contractors, subcontractors, service providers, licensees and allied entities in the petroleum sector.[179] The Regulations provide minimum thresholds for indigenous equity participation in petroleum activities.[180]

[175] Section 10(14) of Act 919.
[176] Sections 50–55 of Act 919.
[177] Section 2 of Act 919.
[178] Regulation 1 of LI 2204.
[179] Regulation 3 of LI 2204.
[180] Regulation 10 of LI 2204.

A key provision under the Regulations is the requirement of 5 percent indigenous participation in petroleum agreements.[181] This is, however, subject to negotiation and the approval of the Minister. Service providers in the sector must have a minimum of 10 per cent Ghanaian ownership.[182] Other provisions include the requirement for the development and approval of local content plans, which must at the minimum include sub-plans on employment and training, research and development, technology transfer, legal and financial services.[183] In respect of legal services, operators are required to use the services of only Ghanaian lawyers or law firms for legal services required in Ghana.[184] The oil companies are required to submit regular reports on their levels of compliance to the local content committee, which is set up to oversee the implementation of the regulations and to ensure measurable and continuous growth in local content in the petroleum sector.[185]

Petroleum (Exploration and Production) (General) Regulations, 2018 (LI 2359)

LI 2359 came into force in June 2018. The Regulations provide for the procedures and conditions for the grant of a petroleum agreement including qualification requirements, terms and conditions for open and competitive tendering procedures and direct negotiations. The Regulations mandate the Minister acting in collaboration with the Commission as well as other relevant agencies to prepare a strategic assessment plan for the opening up of areas for petroleum activities.[186] It also indicates that the initial participating interest of the GNPC in relation to exploration and development shall be a carried interest, and in the case of production operations, an additional participation interest.[187] Other relevant provisions include the procedure for licensing and the criteria for grant of licences, change of ownership and operating standards under a petroleum agreement.

The Petroleum Exploration and Production-Data Management Regulation, 2017 (LI 2257)

The Regulations apply to the reporting and management of petroleum data obtained from the conduct of petroleum activities within Ghana. This includes the receipt, interpretation and analysis

[181] Regulation 4 of LI 2204.
[182] Regulation 4(6) of LI 2204.
[183] Regulation 7 of LI 2204.
[184] Regulation 29 of LI 2204
[185] Regulation 5 of LI 2204
[186] Regulation 3 of 2359.
[187] Regulation 34 of 2359.

of petroleum data, provision of a safe environment for storage of petroleum data submitted, efficient management of the data and the documentation and reporting for information related to acquisition and submission of petroleum data. The purpose of these Regulations is to specify the format, content and standards required for the preparation and submission of geological, geophysical and production data related to petroleum activities to support efficient exploration of petroleum resources in Ghana.[188]

The Petroleum (Exploration and Production) (Health, Safety and Environment) Regulations, 2017 (LI 2258)

LI 2258 applies to all petroleum operations. Among others, it aims to prevent the adverse effects of petroleum activities on health, safety and the environment and promotes high standards of health and safety. It provides the minimum health and safety requirements applicable to contractors, subcontractors and other players within the industry. The key regulations relate to design and operation of facilities, systems and equipment, maritime facilities, load-bearing structures, drilling and well systems, emissions and discharges, decommissioning, risk analysis and emergency preparedness and reporting.[189]

The Petroleum Revenue Management Act, 2011 (Act 815) as Amended[190]

This Act was also enacted after the Jubilee Fields discovery to provide a regime for the collection, allocation and management of petroleum revenue in a transparent, accountable and sustainable manner for the benefit of the citizens of Ghana. The Act establishes a number of funds – the Petroleum Holding Fund,[191] the Ghana Stabilization Fund[192] and the Ghana Heritage Fund[193] – and indicates how revenues accruing from petroleum operations to the state are to be disbursed and utilized. All the funds created under the Act are public funds[194] and may not be encumbered, used to provide credit or collateral for the state or private entities.[195] The Act also prohibits borrowing against petroleum reserves.[196]

[188] Regulation 1 of LI 2257
[189] Ibid
[190] The Petroleum Revenue (Amendment) Act 2015 (Act 839).
[191] Section 2 of Act 815.
[192] Section 9 of Act 815.
[193] Section 10 of Act 815.
[194] Section 42 of Act 815.
[195] Section 5 of Act 815.
[196] Ibid

The Petroleum Revenue (Amendment) Act, 2015 (Act 839) was enacted to amend the Petroleum Revenue Management Act 2011. The amendment provides for the allocation of funds to the Ghana Infrastructure Investment Fund for the purposes of infrastructure development,[197] the establishment of the Investment Advisory Committee[198] and other related matters.

Petroleum (Exploration and Production) (Measurement) Regulations, 2016 (LI 2246)

LI 2246 came into force in November 2016 for the main purpose of ensuring that an accurate measurement and allocation of petroleum forms the basis for the determination of revenue that accrue to the parties to a petroleum agreement. It applies to the planning, design, testing, calibration, operation and maintenance of metering systems as well as equipment and methods for measuring the quantities of oil and gas produced, transported and sold. The Petroleum Commission is mandated under this regulation to supervise and inspect metering and allocation systems from the design to operation stage. These Regulations also permit an authorized agency to place a seal on export valves downstream of a metering station to prevent offloading of petroleum without authorization.[199]

Petroleum Commission Fees and Charges Regulations, 2015 (LI 2221)

These Regulations provide the framework for determining the applicable fees to be paid by participants in petroleum activities to the Petroleum Commission for various activities including permitting, third-party access over a facility that is owned by a contractor, registration of assignment of interest or transfer of shares, and registration of encumbrances over participating interest in petroleum agreements. Other costs include expenses and costs incurred by the Petroleum Commission in conducting its regulatory and supervisory services as well as fees for extension of exploration working periods and appraisal periods.[200]

[197] Section 11 of Act 815.
[198] Section 10 of Act 815.
[199] Regulations 1,2 and 4 of LI 2246.
[200] Regulations 3 and 12–16 of LI 2246.

3. Institutional Framework in Ghana

Government of Ghana (through the Ministry of Energy)[201]

The 1992 Constitution vests all petroleum resources in the president of Ghana as the head of the executive branch of government.[202] The presidency expresses its ownership and control over oil and gas activities through the Ministry of Energy. The mandate of the Ministry of Energy includes the formulation, implementation and monitoring of national policies for the sector.[203] The Ministry is the driver of government policy and has the overall responsibility to provide policy direction on oil and gas matters based on advice from the Petroleum Commission.[204]

The Ministry receives applications from prospective contractors, negotiates terms of petroleum agreements and grants the right to explore, develop and produce oil and gas products. It is also responsible for granting consent for the transfer of petroleum rights and resolving disputes between the Petroleum Commission and contractors (prior to resorting to other dispute resolution options).[205]

Parliament of Ghana

The 1992 Constitution requires all petroleum agreements to be ratified by Parliament.[206] Parliament may also exempt particular transactions or agreements from ratification.[207] These exemptions must be supported by the resolution of at least 75 percent of the members of Parliament.[208]

Petroleum Commission

As indicated above, the Petroleum Commission is established under Act 821 as an upstream petroleum regulator. The functions of the Petroleum Commission include: promoting planned, well-executed, sustainable and cost-efficient petroleum activities; recommending to the Minister

[201] Formerly Ministry of Petroleum.
[202] Article 257(6) of 1992 Constitution and Section 3 of Act 919.
[203] https://www.energymin.gov.gh/about.
[204] Section 94 of Act 919.
[205] Sections 10 and 16 of Act 919.
[206] Article 268 of 192 Constitution.
[207] Article 268(2) of 1992 Constitution.
[208] Ibid

national policies on petroleum activities; and monitoring compliance with national policies, laws, regulations and agreements among others.

2.5 Conclusion

Uganda has put in place legal and institutional framework for resource governance and fiscal performance. The 1995 Constitution of the Republic of Uganda vests the ownership and control of Petroleum in the Government on behalf of the people (Article 244 of the Constitution of Uganda). Within the constitutional context, the primary framework that guides the management of Oil resources in Uganda is the National Oil and Gas Policy (NOGP). With the overarching theme of using the resource to eradicate poverty and create lasting value to Ugandans, NOGP recognizes that to attain this ultimate goal it should have as a primary objective, the development of institutions, including legislation and manpower, necessary for effective management and regulation of the sub-sector. Legal instruments are many and they include the Petroleum Acts 2013 among others. Implementing institutional framework range from the Parliament, the Cabinet and relevant Ministries among others. Notably one of the key institutions put in place to regulate Uganda's Oil sector is the Petroleum Authority of Uganda (PAU).

Uganda's legal and institutional framework has also been compared with those of selected jurisdictions in the world. Some of these jurisdictions have the best resource governing system in the world. These jurisdictions include: Norway, Chard, Libya and Ghana. It is therefore, hoped that Uganda, as it prepares for oil production, will pick lessons from these good functional sub-sectors.

CHAPTER THREE

NON-LEGAL ASPECTS RELATING TO OIL RESOURCE GOVERNANCE AND FISCAL PERFORMANCE

3.1 Introduction

This chapter has discussed the non-legal aspects relating to oil and gas resource governance and fiscal performance in Uganda's oil and gas sector. Key in this regard are leadership and fiscal performance, control of corruption and fiscal performance, accountability and fiscal performance, transparency and fiscal performance, revenue collection and fiscal performance and taxation of Oil and Gas and fiscal performance.

3.2 Leadership and fiscal performance

It is globally acknowledged[209] that the extractive industries (EI) in developing nations have the potential and the ability to meet the development goals and poverty reduction in the world. Nonetheless, most countries with high dependence on extractive industries revenue are not able to effectively manage their resources for development outcomes. Experience and studies[210] carried out have shown over time that good governance and its attendant qualities such as transparency and accountability is indispensable and equally plays a significant role in a country's use of EI revenue. Good governance is a necessary precondition for the achievement of sustainable development and also vital in the management and distribution of a nation's natural resources.

Several initiatives[211] have been developed globally to address the issue of governance and transparency in the management of EI. Such initiatives include Extractive Industry Transparency Initiative (EITI), which is a global standard that ensures transparency of revenue from natural resources,[212] Revenue Watch Institute,[213] Oxfam Transparency International,[214] Global

[209]Global Witness, (July 11, 2013), http://www.globalwitness.org.
[210]Jesumiseun O. A. (2013): LL.M. Thesis in partial fulfillment of the requirements for the Master of Laws degree in Rule of Law for Development; Loyola University Chicago, School of Law; (PROLAW); July 2013, JFRC
[211] For example: Extractive Industry Transparency Initiative (EITI).
[212] EITI, (July 11, 2013), http://eiti.org/eiti.
[213] Revenue Watch, (July 11, 2013), http://www.revenuewatch.org
[214] Oxfam, (July 11, 2013), http://www.oxfam.org.

Witness,[215] Global Reporting Initiative,[216] Alliance for Responsible Mining,[217] Natural Resource Charter,[218] and Transparency and Accountability Initiative.[219]

Nonetheless, it appears the development challenges affecting most resource-rich countries continue to increase on a daily basis. Uganda for instance despite her vast reservoir of natural resources especially in oil and gas and the several billions of dollars which accrue to the government from the extractive industries in terms of revenues has not achieve much human development outcomes. Nigeria has perpetually remained near the bottom of the human development index rankings in the world, with the majority of her citizens living below the poverty line of $1.25 dollars per day.[220] The level of human development in the country therefore calls for serious concern and urgent action to address the situation.

Although the Uganda government is aware of her national development challenges and has tried to put in place so many economic policies and poverty alleviation programs, these appear to have yielded little or no positive result. This is because the lack of good governance in the EI results in corruption, lack of transparency and lack of accountability. The government has also made efforts to increase the level of transparency in the management of natural resources in the country, which is evident by the country's bold step to sign up to the EITI principles in 2019.[221] The country has achieved some improvements with respect to the level of transparency since subscribing to the initiative. Nevertheless, a lot still needs to be done to achieve meaningful human development with the available revenue. After all, it has been said that citizens are the rightful owners of their resources in their country and they should enjoy the benefit.[222]

The quality of governance can be measured by certain key indicators. The World Bank for instance developed a set of indicators for measuring good governance in a country. These indicators are: control of corruption, accountability, transparency, government's effectiveness, political stability

[215] Global Witness, (July 11, 2013), http://www.globalwitness.org.
[216] Global Reporting, (July 11, 2013), https://www.globalreporting.org.
[217] Community Mining, (July 11, 2013), http://communitymining.org.
[218] Nature Resource Charter, (July 11, 2013), http://naturalresourcecharter.org.
[219]Transparency Initiative, (July 11, 2013), http://www.transparency-initiative.org.
[220] Poverty line of $1.25 dollars per day was mentioned in the report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda titled: A new global partnership: Eradicate poverty and transform Economies through sustainable Development.
[221] Njiraini Muchira, (2019). Uganda joins Extractive Industries Transparency Initiative to enhance transparency in oil deals. The East African (Kenya), Published on: 11 March 2019.
[222] 'It is ten years since the first EITI Conference, where leaders from governments, extractive companies and civil society came together and agreed the EITI Principles. They agreed that since a country's natural resources belong to all of its citizens, all citizens should be able to see benefits from them', (July 11, 2013, 10.30am), http://eiti.org/files/EITI-progress-report-2013.pdf.

and absence of violence, rule of law and regulatory control among others. However, for the purpose of examining resource governance for this study, the core principles that will be looked at include transparency, accountability, and control of corruption. These principles will be examined below to assess the quality of governance in the oil and gas sector in Uganda.

3.3 Control of Corruption and fiscal performance

While the resource curse refers to many different negative impacts of resource extraction, this section discusses one particular element, i.e. corruption and mismanagement of resource revenues. For the purposes of this discussion corruption will be defined in line with Transparency International's definition as 'the abuse of entrusted power for private gain.'[223] This includes any unauthorized and deliberate manipulation of circumstances leading to private benefit derived from public revenue.

According to Global Witness[224] projections, the outlook for good governance of oil revenues is concern with Uganda's recent history of deteriorating governance standards, high-level corruption and nepotism, and 'the succession of scandals surrounding the misappropriation of public and donor funds over the last ten years.' [225]

According to World Bank,[226] Uganda loses US$ 286 million annually from corruption. Instances of bribery, embezzlement and graft persist from the most local levels of government up to the highest executive offices. For instance, in 2012 the Office of the Prime Minister was alleged to have stolen US$ 12.7 million in donor funds intended to go to recovery programmes in war-torn Northern Uganda.[227] Unfortunately, this type of scandal has been continuously repeated in the country's recent history, leading some to believe that a general level of impunity has set in among government officials.

Despite the country's history of corruption, Government has not put in place adequate safeguards to prevent malfeasance in Uganda's oil sector. Discounting international best practice guidance promoting enhanced transparency and accountability in the extractive industries, the Government

[223]Transparency International Uganda (2018), 'Corruption: Anticorruption Glossary'. Retrieved from: http://www.transparency.org/glossary/term/corruption.
[224] Global Witness (2010), 'Donor Engagement in Uganda's Oil and Gas Sector: An Agenda for Action'. Retrieved from: https://www.globalwitness.org/documents/uganda_final_low. p.16
[225] Ibid
[226]World Bank worldwide governance indicators, (2012). See World Governance Indicators. Available at: http://info.worldbank.org/governance/wgi/index.aspx#home.
[227] Reuters, 2012.

has continued to operate in secrecy, keeping critical information about oil sector developments hidden from the general public. This opacity presents a serious risk that oil and gas revenues may be wasted or corruptly diverted instead of spending it on much needed public services.

Oil production has not yet started in Uganda but there is already sufficient evidence of mismanagement associated with pre-production revenues. In 2011, the Government of Uganda, struck a deal with a Russian arms exporter for a US$ 740 million advance for the purchase of six fighter jets. Addressing Members of Parliament, the Governor of the Bank of Uganda said he consented to the advance payment on the assurance that it would be repaid by future oil revenues.[228] In January 2017, US$ 1.6 million had was paid as a reward to 42 government officials loosely involved in the recovery of Shs 1.5 trillion in capital gains tax owed from Heritage Oil and Gas. The scandal, named the 'presidential handshake' controversy, revealed a disturbing lack of regard for the protocols outlined in the petroleum section of the Public Finance Management Act, 2015 governing withdrawals from the Petroleum Fund. These instances paired with a continuous lack of access to information for citizens, mean that the oil sector is developing in Uganda with little transparency or accountability. Citizens simply lack the information necessary to hold Government accountable. According to the needs analysis performed in the creation of *The National Communication Strategy for Oil and Gas*, a widely evidenced information gap exists between the Government and people related to oil and gas sector development.[229] According to Ross,[230] without coherent and insistent demands from an informed public, the Government-citizen relationship could break down in the process of resource extraction and the Government could become increasingly despondent. Unless this is averted through greater access to information for citizens regarding oil sector developments, the industry will continue to operate in secrecy, devoid of public scrutiny.

There are many risks in ensuring transparency and accountability in the emerging extractive industries in Uganda, as in any country. These risks can be divided between the horizontal (company to government) and vertical (intra-government) opportunities for corruption in the

[228]Mugerwa, Y. (2015), 'MPs Want Mutebile, Minister Sacked', *Daily Monitor*. Retrieved from: http://www.monitor.co.ug/News/National/MPs-want-Mutebile--ministersacked/-/688334/2722692/-/bttrno/index.html..

[229] Republic of Uganda (2013), *Draft Report on the Investigation into the Oil and Gas Sector by the Parliamentary Ad Hoc Committee in Respect of the Regularization of the Oil Sector and Other Matters Incidental Thereto*. Retrieved from: https://www.parliament.go.ug.

[230] Ross, M. (2001), 'Does Oil Hinder Democracy?', *World Politics*, 53(3), 326–361. Retrieved from http://www.jstor.org/stable/25054153.

petroleum revenue chain. 'Horizontal' risks can be summarized as *illicit reductions* in the revenue base paid to government while 'vertical' risks can be thought of as *illicit diversions* of the oil revenue once paid to government. In other words, these risks can be phrased as two separate but interrelated questions—did the Government get what it was rightfully owed and did those revenues paid to Government successfully reach citizens? This conceptualization is based on the standard petroleum revenue chain, modelled in this case according to the petroleum revenue management scheme established in Uganda's Public Finance Management Act, 2015. According to the Constitution, petroleum is a national resource, to be managed by Government in trust of the citizens. Therefore, the Government is the agent, managing natural resource extraction on behalf of the citizens as ultimate owner and principal.

Conceptually, 'corruption' in the petroleum revenue chain can also be thought of as 'revenue leakages' or instances where money may go 'missing'. Weak areas in the revenue chain can cause revenue leakage in so far as they may be exploited to divert money from the public financial realm into the private in an unauthorized manner. This must also include money that never formally entered the public domain in the first place, but rightfully should have. Thus, standards for good governance dictate that oil revenue management schemes should be insulated and protected from this sort of discretionary diversion through statutory requirements for transparency, accountability and oversight throughout the entire revenue chain.

In the oil and gas sector, leaks can happen between government and the oil companies prior to and during extraction which may during contract negotiations, corporate tax planning and tax base erosion, executive capture and institutional mismanagement of funds (lacking oversight and accountability).[231]

3.3.1 Preventing Oil Sector Corruption in Uganda

Anti-corruption Framework in Uganda

Uganda has instituted multiple government bodies and entities tasked with preventing and prosecuting corruption, including the Anti-Corruption Court, the Inspectorate of Government, the Auditor General, the Directorate of Public Prosecutions and other related bodies. However, due to lack of capacity, these entities continuously fail to fulfil their important tasks, bringing into

[231]Kathleen B. and Wandera P. (2020): Keeping Corruption in Check in Uganda's Oil Sector? Uganda's Challenge to Let Everybody Eat, and Not Just the Lucky Few; In Arnim Langer, Ukoha Ukiwo, and Pamela Mbabazi (Eds) (2020): Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities and Challenges, Leuven University Press, p. 75-102.

question whether these bodies will provide the oversight necessary to prevent oil sector corruption. This is also due to the chronic incapacitation of Uganda's many anticorruption entities. As the report states:

> *…. Most importantly, President Museveni and parliament, which is heavily dominated by ruling party members, have failed to empower key institutions, either by failing to fill key vacancies or by failing to establish institutions such as the Leadership Tribunal which could challenge inaccurate financial asset declarations.*[232]

In 2015, Transparency International Uganda produced a report examining in detail the reasons for failure of key institutions. Particularly, the report investigated the exact reasons for continuous failure to prosecute high-level corruption by the relevant bodies including the Anti-Corruption Division of the High Court, the Directorate of Public Prosecutions and other related government entities. While the report details many technical obstacles to prosecution in corruption cases, many of these technical issues arise out of lack of political will fully to operationalize and capacitate these corruption-focused prosecutorial bodies. Moreover, 'it is paradoxical that the government commits to the resource-demanding establishment of anti-corruption organs and legislation while simultaneously leaving these organs incapacitated.'[233] Such concerns are directly relevant to the country's ability to deter corruption in Uganda's burgeoning oil sector.

Oil Legislation and Attempts to Stop the Leaks

The Government of Uganda has put in place multiple pieces of legislation to guide oil exploration, development and production. Most relevant to the topic of corruption are the Petroleum (Exploration, Development and Production) Act, 2013 and the Public Finance Management Act, 2015. These two pieces of legislation dictate how rights to extraction will be granted to companies and how the monies from the oil sector will be managed by government—addressing both the horizontal and vertical risks for corruption. The Act establishes a tripartite structure for oil sector management, dividing roles between a petroleum directorate, a petroleum authority, and the national oil company (NOC). The petroleum directorate is tasked with managing the sector headed by the Minister of Energy. The petroleum authority is tasked with providing independent oversight

[232]Human Rights Watch (2013), 'Letting the Big Fish Swim: Failures to Prosecute high-level Corruption in Uganda'. Retrieved from; http://www.hrw.org/sites/default/files/reports/uganda1013_ForUpload_0.pdf. p.3
[233] Transparency International Uganda (2015), 'As Strong as its Weakest Link: Stakeholders' Perceptions of the Ugandan Legal and Institutional Anti-corruption Framework. Retrieved from: https://www.transparency.org/country/UGA.p.36

over the sector, while the NOC is tasked with managing Government's commercial interests in the sector.

Apart from transfers to the Consolidated Fund, petroleum monies will also be put into a petroleum investment reserve.[234] The investment reserve serves many purposes and has an important mandate to help guarantee macroeconomic stability throughout the entire period of oil extraction through diversification of the oil revenue portfolio. Yet, protocols to ensure sound management ofthe investment reserve are relatively weak compared to the Petroleum Fund. Specifically, the protocols mandating transparency and sharing of information regarding the petroleum revenue investment reserve are largely absent.[235] If details of the activity of the petroleum revenue investment reserve are not made public, this fund runs the risk of becoming a slush fund for corruption as petroleum monies could easily be invested into foreign assets and offshore accountsconnected to politically exposed persons. Sovereign wealth funds have notoriously been linked tocorruption in numerous countries around the world, so any sovereign wealth fund established in Uganda must be managed transparently with strong rules for investment and adequate protocols for effective oversight.[236]

Non-governmental Efforts to Promote Good Governance

Apart from government efforts, civil society actors, bilateral donors and other stakeholders have undertaken concerted efforts to prevent corruption and mismanagement in Uganda's oil sectors. Since the discovery of oil, a strong coalition of local and international civil society organizations has persistently engaged Government to ensure that a strong governance framework is put in place for oil sector management. In 2010, civil society organizations analyzed the country's first ever leaked production-sharing agreements, providing critical feedback to Government on many problem areas in the initial agreements.[237] Again in 2014, Global Witness leaked two of the current PSAs, providing in-depth analysis of the environmental, social and economic provisions of the

[234] Public Finance Management Act, (2015), p.66
[235]Public Finance Management Act, (2015), p.76
[236]Bauer R, Busch T. and Marc Orlitzky (2015): Sustainable Development and Financial Markets: Old Paths and New Avenues p. 60
[237] Civil Society Coalition on Oil and Gas in Uganda (2010), 'Contracts Curse: Uganda's Oil Agreements Put Profits before People'. Retrieved from: http://www.acode-u.org/documents/oildocs/CSCO_oilcurse.pdf.

agreements, to instruct the Government on how to improve future agreements truly to get the best 'deal.'[238]

The international donor community also provides another form of pressure on the Government of Uganda to adopt strong mechanisms for transparency and accountability in the extractive industries. Since 2009, the Government of Norway, through the bilateral NORAD Oil for Development Programme, has provided official assistance to the Government of Uganda in capacity and institutional development regarding the country's nascent oil sector. According to the stated outcomes of the partnership, the NORAD assistance aims to ensure government accountability in the management of the oil sector through the establishment of a strong policy, legal and regulatory framework 'for managing the petroleum sector in an economically, socially and environmentally sustainable way.'[239]

Notably, the Oil and Gas Revenue Management Policy[240] commits the Government of Uganda to 'observe the highest standards of transparency' by joining the Extractive Industries Transparency Initiative (EITI), an international initiative to promote good governance in the global extractive industries through payment transparency. Through EITI implementation, companies publish their payments to government while governments publish their payment receipts from companies, enabling reconciliation between the disclosures and reconnaissance of any discrepancy or 'missing funds' between the two.

Despite this assertion, the Government remained reticent to actually operationalize this commitment. However, in 2019, the Government publicly declared its intention to join the EITI. It is still too early to tell whether this intention will be carried out or whether this is empty rhetoric.

3.4 Accountability and fiscal performance

For any country to succeed in its development agenda, it must be accountable to its citizens. According to a statement by UN Human Rights Office:

> *Governance is not just about ensuring that a country's administration functions smoothly. It is also about how people can review what those in power do and how they can hold the*

[238] Global Witness (2014), *A Good Deal Better? Uganda's Secret Oil Contracts Explained*. London: Global Witness Limited. Retrieved from: https://www.globalwitness.org/en/reports/good-deal-better/.
[239] Ministry of Energy and Mineral Development (2015), *Strengthening the Management of the Oil and Gas Sector in Uganda: Phase II – 2015–2018*. Retrieved from: https://www.norad.no/contentassets/36585925a4814255bd1916fe9a4248b2/programme-document.pdf. p.22
[240] Oil and Gas Revenue Management Policy (2012), p.37

powerful to account if something goes wrong. Accountability is the core of governance. If there is no accountability, governance is an empty concept,[241]

Accordingly, unless public officials can be held to accountable, critical benefits associated with good governance such as social justice, poverty reduction, and development will remain elusive. The nation's leaders must be forced to be accountable to the electorate and the nation.[242] On the Worldwide Governance Indicators for the year 2011 Nigeria had a 28% rank on voice and accountability.[243] It is well known that revenues from the petroleum industry and other natural resources in form of taxes, royalties, signature bonuses, and other payments are important engines for economic growth and social development in developing countries. However, lack of accountability and transparency in these revenues can exacerbate poor governance and lead to corruption, conflict, and abject poverty. This is essentially what happened to Nigeria, a developing country that is rich in oil and gas resources. Where accountability is low or poor, corruption is inevitable and most able to thrive.34Increasing transparency and informed knowledge about revenues received from EI will empower citizens and institutions to hold governments accountable and to demand that government spends revenue exclusively for sustainable developmental purposes.

Accountability is particularly difficult to achieve in a country where the president and the National Resistance Movement (NRM) so completely dominate the policy making process. From the ruling party's perspective, no comparable finance laws in other countries mention the parliament as often as do the laws in Uganda. The laws give extensive powers to parliament for controlling and monitoring the expenditure of public funds. For instance, the Bank of Uganda no longer has the power to guarantee any payment on behalf of the government or make any advance to the government without parliamentary approval. The difficulty with the government's position is that oversight requires transparency of information, but the government claims that oil companies demand confidentiality as a precondition for conducting business in Uganda. This point is reflected in the Petroleum Acts that limit the National Petroleum Authority from disclosing information about oil company operations despite the apparent conflict between this requirement and the

[241]Kran (2015): The Director of the Research and Right to Development Division of the UN Human Rights Office, http://www.ohchr.org/EN/NewsEvents/Pages/GlobalDevelopmentPost 2015.aspx
[242] Malena and McNeil, (2010); Democracy, Governance, Legislative Challenges and Impediments in Nigeria
[243] World Bank, available at http://info.worldbank.org/governance/wgi/pdf/c161.pdf

requirements of the Access to Information Act.[244] The issue of confidentiality by the oil companies may be subject to change from two quarters outside Uganda. The Dodd-Frank Wall Street Reform and Consumer Protection Act, passed by the U.S. Congress in 2010, mandates that all extractive companies traded on American stock exchanges and filing annual reports with the U.S. Securities and Exchange Commission disclose all payments made to foreign governments for the commercial development of oil. Total and CNOOC, which are highly involved in Uganda oil development, file annual reports in the U.S. and would be subject to the new disclosure rules.

Human development can be achieved if government can be more accountable[245] to the people and if the revenues and benefits received from the EI are maximized, well-managed and evenly distributed and invested specifically for sustainable development purposes such as health, education, infrastructure and employment.

3.5 Transparency and fiscal performance

The International Monetary Fund (IMF) has defined transparency as "openness, honesty and accountability in public and private transactions."[246] Resource transparency is said to be the application of transparency to the management of resource wealth. It implies the public disclosure of necessary, reliable and accessible information about all the activities and processes involved in the natural resource wealth management chain from discovery and exploitation, to the revenue collection and expenditure.[247]

Natural resource wealth is easily susceptible to rent-seeking and corruption due to high level secrecy within the industry and high dependency on natural resource wealth as government revenue for most resource-rich nations. This occurs mostly because of information asymmetry that exists between the people and the few individuals saddled with the responsibility to manage natural resource wealth. Resource transparency therefore enhances the availability of information

[244] Civil Society Coalition on Oil and Gas (CSCO). (2012). Uganda: CSCO memorandum on the Public Finance Bill. *The Independent*. Retrieved from http://www.independent.co.ug; and Human Rights Network-Uganda. (2012). *Key concerns in the Petroleum (Exploration, Development and Production) Bill.* Retrieved from Human Rights Network-Uganda website: http://www.hurinet.or.ug.

[245]Malena and McNeil, (2010); Democracy, Governance, Legislative Challenges and Impediments in Nigeria. (2008):

[246] International Monetary Fund.

[247]Uchenna-Uzoigwe, G. M. (2008): 'Exploring Multi-Stakeholder Initiatives for Natural Resource Governance the Example of the Nigerian Extractive Industries Transparency Initiatives (NEITI).' A Thesis submitted to the University of Birmingham for the Degree of Doctor of Philosophy (September, 2011).

to interested parties and empowers them to demand accountability and a fair distribution and responsible use of resource revenue.[248]

The Dodd-Frank law is in part an extension of rules set by the Extractive Industries Transparency Initiative (EITI), which is an international standard for establishing transparency within the extractives sector. When governments become EITI signatories, they must agree to publish reports on the income received from extractive companies. The companies in turn publish their own record of government payments. The reports are then audited and reconciled with the results made available to the public.[249] The Uganda government committed itself to joining EITI in 2008. However, no formal action has yet been taken by the government to begin the application process. Becoming a signatory to EITI would increase public information so the Uganda government can be held accountable for the fiscal management of resource revenues.[250] Transparency will also serve to attract future investors in Uganda's economic development.[251]

3.6 Revenue Collection and fiscal performance

The 2008 National Oil and Gas Policy[252] requires that an appropriate framework be put in place to aid the sustainable management of oil and gas revenues. This policy provides details on how the anticipated revenues shall be managed and integrated into the existing Government systems with a view of mitigating the overall impact of these revenues on the economy. The policy requires the highest standards of transparency and accountability in the management of oil and gas revenues and gives the institutional and governance structures to be used to achieve this. To promote harmony and social cohesion, the policy provides for a mechanism for the sharing of royalty revenues with the local governments within the oil producing region.

The oil and gas sector is expected to generate a significant amount of different cash streams that will in turn generate revenues for Government.[253] Streamlining the collection of these revenues is essential to ensure transparency and accountability. In this regard, all revenues shall be collected and deposited in a special petroleum fund to be established in Bank of Uganda. This will include

[248] Ibid
[249] Ngabiirwe, W., & Allen, E. (2011). *The extractive industries transparency initiative* (No. 12).
[250] Corrigan, C. (2014). Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative. *Resources Policy*, *40*, 17-30.
[251] Seyoum, B., & Manyak, T. (2009). The impact of public and private transparency on foreign direct investment in developing countries. *Critical Perspectives on International Business*, *5*(3), 187-206.
[252] National Oil and Gas Policy for Uganda (2008). Ministry of Energy and Mineral Development, February, 2008.
[253] Oil and Gas Revenue Management Policy (2012). Ministry of Finance, Planning And Economic Development, February 2012.

the proceeds from the sale of Government's share (marketed by National oil and Gas Company) of oil extracted that will be received in kind, income from income tax and royalties. Royalties are payments levied on resource exploitation, and are based on either quantity or value of the resource extracted. Under the terms of the PSA's and as contained in the Income Tac Act, 1997 (ITA), oil companies will pay a royalty on gross oil production, at a rate that varies with the rate of production (the rate ranges between 8% and 18%).[254]

3.7 Taxation of Oil and Gas and fiscal performance

Oil companies will be subjected to the usual personal and business taxes on their share of profit oil, as prescribed in the relevant tax laws. Other taxes include; windfall gains, resource rent and environment taxes. In addition, as the sector develops, the operations further down the value chain shall also be subject to tax.[255] These include activities such as refinery operations and sale of petroleum products.

For fiscal performance, the tax provisions applicable to resource companies should be provided for in the relevant tax legislation rather than in mining and petroleum agreements.[256] While the latest model PSA cross-refers to the tax provisions in the ITA, recently negotiated mining agreements include tax provisions. There is a risk to the government if tax provisions are negotiated on a case-by-case basis as the licensee or contractor is likely to have better information about the value of a resource and also may be more skilled at negotiation. A further issue for the case-by-case negotiation is that the tax provisions will differ from agreement to agreement depending on the negotiations. This increases the administrative burden on Uganda Revenue Authority as there will be multiple tax regimes that it will have to enforce.

3.8 Conclusion

There are significant non-legal aspects relating to oil and gas resource governance and fiscal performance. These pose as challenges associated with the management of substantial resource revenues. These challenges are mainly of a macroeconomic, budgetary and governance nature. World-over, countries that have successfully used natural resource revenues to transform their societies have adhered to best-practices in natural resource revenue management. For Uganda, the manner in which these challenges are dealt with will determine the long-term competitiveness of

[254] Petroleum Royalty Scale from Draft Model PSA of 2015 as in IMF, Uganda Country Report No.17/367, December 2017, p. 22.
[255] Oil and Gas Revenue Management Policy (2012). Ministry of Finance, Planning and Economic Development, February 2012.
[256] IMF, Uganda Country Report No.17/367, December 201, p. 58.

the economy, in particular the non-oil sectors and the extent to which these resources will transform the Ugandan society.

The aspects have been discussed under the topics of leadership, control of corruption, accountability, transparency, revenue collection and taxation of oil and gas all of which influence fiscal performance. There are some key guidelines that Uganda need to stick to when dealing with these aspects, for example the Extractive Industry Transparency Initiative (EITI), which is a global standard that ensures transparency of revenue from natural resources. Uganda is still faced with the challenge of corruption which can be defined in line with Transparency International's definition as 'the abuse of entrusted power for private gain' despite anti-corruptions measures that are in place. Like corruption, accountability is particularly difficult to achieve in a country where the president and his supporters so completely dominate the policy making process.

Natural resource wealth is easily susceptible to rent-seeking and corruption due to high level secrecy within the industry and high dependency on natural resource wealth as government revenue for most resource-rich nations. This occurs mostly because of information asymmetry that exists between the people and the few individuals saddled with the responsibility to manage natural resource wealth. Resource transparency therefore, enhances the availability of information to interested parties and empowers them to demand accountability and a fair distribution and responsible use of resource revenue.

CHAPTER FOUR

A COMPARATIVE ANALYSIS WITH SELECTED JURISDICTIONS

4.1 Introduction

This chapter has given an analysis of selected jurisdictions from various parts of the world. Starting with Uganda's resource governance and fiscal performance, the chapter has provided comparative analyses with Norway, Chad, Libya and Ghana. These nations have had their different success stories from which Uganda is bound to draw lessons for its oil and gas industry.

4.2 A comparative Analysis with other Jurisdictions

4.2.1 Norway

The Norwegian petroleum era started with a request from Phillips Petroleum for permission to conduct geological exploration off the Norwegian coast in 1962. In 1965, the first licensing round was carried out, and in 1969 the large Ekofisk oilfield was discovered. Along with ensuing discoveries, this led to a rising wave of petroleum revenue, which was further inflated by the two oil crises in the 1970s and the steady expansion of Norwegian oil extraction.

To put the income into perspective, there have been periods when Norway; a country with a population of only five million was one of the world's top three oil exporters.[257] In many other countries, such windfalls have been associated with the problems referred to as the 'resource curse'. In Norway, things worked out differently. As of 2016, the country had one of the lowest unemployment rates in Europe, the highest Human Development Index value in the world and a sovereign wealth fund worth USD 840 billion.[258] Many skilled jobs for locals had been created in the oil and gas industry. Despite the constant pressure from Dutch disease—through which general production costs are driven up, making it too expensive for a country to produce much else than oil and gas—Norway retained other export industries. At the political level, Norway remained

[257] Steigum, Erling. (2002). *Oil Price Risk, Prudent Fiscal Policy and Generational Accounting*. Bergen: SNF. Google Scholar, p. 5.
[258] NBIM. 2016. Historien. http://www.nbim.no/fondet/historien/. Accessed on 9 December 2019.

a stable and well-functioning democracy and was rated the sixth least corrupt country in the world.[259]

According to the standard Norwegian encyclopedia, 'The history of the Norwegian petroleum sector is not one of unilinear development characterized by a gradual, harmonic approach to the challenges faced. Even in cases where permanent solutions were found there was often a complicated prehistory characterized by conflicting interests and confrontations.'[260] Unravelling the (relative) success story of Norwegian natural resource management is therefore complicated, and civil society involvement and open public debates are not the only important elements of Norwegian petroleum governance. Despite its small size in terms of population, Norway has eight political parties represented in the Storting (the national parliament), more than 200 newspapers, over 400 municipalities and a highly active and diverse civil society.[261] The resultant multitude of voices and views serve to check and balance each other, ensuring the selection overtime of good ideas and practices and allowing the public to challenge and expose poor practices.[262]

Early Years: 1960s and 1970s

Accounts of the start of oil and gas extraction in Norway dwelt on the role of international oil companies, negotiations on the delimitation of the North Sea maritime boundary, access to technology and the interaction between key actors in the ministries. Civil society and the broader public seem to have played a limited role,[263] and even the Prime Minister and the Storting were initially not heavily involved.[264]

A 1971 White Paper spelled out the 'Ten Oil Commandments', which came to guide Norwegian petroleum policy for many years.[265] However, none of the commandments concerned the

[259] Transparency International. (2015). Corruption Perceptions Index 2015. http://www.transparency.org/cpi2015. Accessed on 15 December 2019.
[260] Standard Norwegian encyclopedia 2016. Accessed on 11 April 2019, p. 8.
[261] Salamon, Lester, Wojciech Sokolowski, Megan Haddock, and Helen Tice. (2013). *The State of Global Civil Society and Volunteering: Latest Findings from the Implementation of the UN Nonprofit Handbook*. Baltimore, MD: Johns Hopkins University Press.
[262] Berrefjord, Ole, and Per Heum. (1990). Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, ed. Helge Ole Bergesen and Anne Kristin Sydnes, 28–48. Oslo: Fridtjof Nansen Institute, p. 34.
[263] Ibid p. 30
[264] Standard Norwegian encyclopedia, Volume I of *Norsk oljehistorie* [*Norwegian Oil History*].
[265] Ten Oil Commandments'1971 White Paper no. 294, p. 638

involvement of broader segments of society in policy formulation: it was assumed that the state would take care of things.

Thus, the first decade or so of Norwegian oil revolved around a small number of high-level political operators. During this period, the lawyers and politicians played a central and celebrated role. When the first permits to carry out exploration were allocated to international oil companies, very few people, including politicians, received enough information to have much of an opinion on the matter. The licensing system established during that period came to constitute the backbone of Norwegian petroleum sector management for several decades.[266]

The Labour government of Trygve Bratteli[267] managed to play a pivotal role in the development of the country's petroleum industry. The government worked energetically for the creation of a large national oil company—Statoil. The ministerial and parliamentary policy documents needed for establishing Statoil were urgently produced during the Bratteli government's brief tenure. Statoil became a relatively efficient, commercially successful company that largely served the interests of the Norwegian populace.[268] When Prime Minister Trygve Bratteli in 1972 proposed establishing new institutions to manage the petroleum sector, he stated that it would be desirable for the national oil company and the governmental oil directorate to be 'physically integrated', for example, in the form of shared office facilities. This indicated a failure to separate the institutions of petroleum governance, something that has led to problems in many an oil-producing country.[269]

However, again the Norwegian experience diverges from that of many other countries. Over time, the Norwegian government institutions governing the petroleum sector evolved towards greater

[266] Berrefjord, Ole, and Per Heum. (1990). Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, ed. Helge Ole Bergesen and Anne Kristin Sydnes, 28–48. Oslo: Fridtjof Nansen Institute, p. 30.

[267] Trygve Bratteli Labour government from March 1971 to September 1972

[268] Benedicte Tangen Istad. (2012). Norway's Evolving Champion: Statoil and the Politics of State Enterprise. In *Oil and Governance: State-Owned Enterprises and the World Energy Supply*, ed. David Victor, David Hults, and Mark Thurber, 599–654. Cambridge: Cambridge University; Thurber, Mark, David Hults, and Patrick Heller. 2011. Exporting the "Norwegian Model": The Effect of Oil Sector Design on Oil Sector Performance. *Energy Policy* 39 (9): 5366–5378; and Eller, Stacy, Peter Hartley, and Kenneth Medlock. 2007. *Empirical Evidence of the Operational Efficiency of National Oil Companies*. Houston, TX: James A. Baker III Institute for Public Policy.

[269] McPherson, Charles. 2003. National Oil Companies: Evolution, Issues, Outlook. In *Fiscal Policy Formulation and Implementation in Oil-Producing Countries*, ed. J.M. Davis, R. Ossowski, and A. Fedelino, 184–203. Washington DC: IMF, p. 190; Luong, Pauline Jones, and Erika Weinthal. 2010. *Oil Is Not a Curse: Ownership Structure and Institutions in Post-Soviet Successor States*. Cambridge: Cambridge University Press, p. 11; Tordo, Silvana, Brandon S. Tracy, and Noora Arfaa. 2011. *National Oil Companies and Value Creation*. Vol. 1. Washington, DC: EBRD/World Bank; and Wainberg, Miranda Ferrell, and Michelle Michot Foss. 2007. *Commercial Frameworks for National Oil Companies.* Austin, TX: University of Texas at Austin.

transparency and accountability. Already in the 1974 White Paper No. 25, it was stressed that democratic institutions should maintain control over the petroleum sector.[270] In 1978, the government decided that the Resource Division of the Petroleum Directorate was to report to the newly created Ministry of Oil and Energy, whereas the Directorate's Safety Division would be under the Ministry of Local Government and Labour Affairs. The State Pollution Control Authority retained responsibility for oil spills and reported to the Ministry of the Environment. The division of labour and power between these institutions was crucial in ensuring checks and balances and created more openings for public engagement with a system that might otherwise have become a closed circuit.

Checks and balances were created at multiple levels within government and between government and the private sector: between the Storting and government, between multiple state institutions in the petroleum sector, between state institutions and the national oil company, between the national oil company and private and international oil companies.[271] Despite the narrow beginning, the Norwegian institutions ultimately came to be seen as the 'canonical model of good bureaucratic design for a hydrocarbon sector.'[272]

However, there was little serious media coverage of the North Sea oilfields until around 1977–1978. The increase in media interest was triggered by a rise in trade union activity in the petroleum sector. There had been numerous fatal accidents in connection with the construction and operation of the first Norwegian oil platforms and a serious blow-out at the Ekofisk Bravo platform in 1977. In 1978, the unions launched a series of strikes aimed at improving working conditions and pay for oil workers. The strikes went on sporadically until 1986 and reaching a peaking around 1981. Thus, the trade unions were one of the first elements of Norwegian civil society that sought to

[270] Ministry of Finance. (1974). White Paper No. 25. (St. Meld. nr. 25 (1973–74)).
[271] Berrefjord, Ole, and Per Heum. (1990). Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, ed. Helge Ole Bergesen and Anne Kristin Sydnes, 28–48. Oslo: Fridtjof Nansen Institute, p. 31 and 35.
[272] Thurber, Mark, and Benedicte Tangen Istad. 2012. Norway's Evolving Champion: Statoil and the Politics of State Enterprise. In *Oil and Governance: State-Owned Enterprises and the World Energy Supply*, ed. David Victor, David Hults, and Mark Thurber, 599–654. Cambridge: Cambridge University, p. 599.

influence the petroleum sector and to place it firmly on the public agenda. As noted,[273] 'Norwegian oil policy was no longer a matter to be left to a few people to define.'

Norwegian Oil Reaches Maturity Years: 1980s and 1990s

Even before Statoil was established, there were concerns that the economic and political power that such a company could amass would enable it to control political processes in the country rather than vice versa.[274] People on the right of the political spectrum feared that a powerful, state-owned Statoil would move Norway towards a centrally planned economy; people on the left feared that Statoil could undermine Norwegian democracy.

When the large Statfjord oil and gas field started generating substantial revenue for Statoil around 1980, the company's clout grew substantially, deepening fears about its dominant position in society.[275] After protracted debate, the parties in the Storting reached a compromise in 1984, whereby a large portion of Statoil's assets would be spun off into a separate economic entity referred to as the State's Direct Financial Interest (SDFI). Over time, the value of SDFI became significantly greater than that of Statoil. This limited Statoil's dominant position in the petroleum sector and in Norwegian society, without disrupting the high degree of government control over petroleum revenues. Statoil went on to become a major centre of power in Norwegian society, but would probably have become even more of a behemoth had it not been for SDFI.[276]

In 1986, the three main companies on the Norwegian continental shelf were forced into the Gas Negotiating Committee established to negotiate the sale of all Norwegian gas collectively. Part of the logic behind the creation of this new institution was to limit the dominance of Statoil while ensuring continued Norwegian control.[277]

In 1988, a major scandal erupted in connection with Statoil's construction of an oil refinery at Mongstad on the west coast of Norway. Steadily worsening cost overruns ended up at NOK 6

[273] Berrefjord, Ole, and Per Heum. (1990). Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, ed. Helge Ole Bergesen and Anne Kristin Sydnes, 28–48. Oslo: Fridtjof Nansen Institute, p. 36.
[274] Berrefjord, Ole, and Per Heum. (1990). Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, p. 34 and 39.
[275] Ibid p. 189
[276] Ibid p. 190
[277] Austvik, Ole Gunnar. 2012. Landlord and Entrepreneur: The Shifting Roles of the State in Norwegian Oil and Gas Policy. *Governance* 25 (2): 315–334.

billion (USD 900 million), a sum that caused a public uproar.[278] The matter received intensive media coverage; the Statoil board was disbanded. The term '*mong*' was coined, meaning a sum of money equivalent to the Mongstad cost overrun, and was used many years afterwards to ironize over wastage in Norway's nouveau riche, oil-fuelled economy.[279]

However, the next major development caused relatively little public discussion: in 1990, Statoil entered a strategic alliance with BP. The two companies were to work closely together in China, the Soviet Union, Vietnam and West Africa. This signaled a major shift—from Statoil as the key instrument for securing Norway's national interest on its continental shelf against powerful international oil companies, to a striving to become one of those companies. The deal as 'dramatically comprehensive'[280] and the financially weak BP was mainly interested in Statoil's considerable cash reserves. Statoil's CEO had little trouble mobilizing the support of the politicians, officials and journalists who surrounded him.

Privatization of Statoil: 2000s

On 18 June 2001, Statoil was partially privatized and listed on the Oslo Stock Exchange. Early on in the preceding debate on privatization, only the Conservative Party and the Progress Party had been clearly in favour. The Socialist Left Party opposed any form or degree of privatization, while the parties at the centre of the political spectrum (the Centre, Christian Democrat and Liberal parties) did not initially have a clear position on the matter. The two unions of oil workers held differing views, and Labour was divided on this question.[281] As the country's largest political party, the Labour Party's conclusions was decisive for the outcome.

After the initial partial privatization of Statoil in 2001, the state's share of the company was 81.7%. Following further sale of stock in 2004 and 2005, the government share fell to 70.9%. In 2005, left-wing group[282] in cooperation with the SAFE union of oil workers, issued a report proposing an alternative petroleum policy, arguing that the state should fully renationalize the company.

[278] Ibid
[279] Ibid
[280] Ibid
[281] Ryggvik, Helge. (2010). *The Norwegian Oil Experience: A Toolbox for Managing Resources?* Oslo: TIK. p. 104
[282] Ibid

In 2007, when Statoil merged with the oil and gas division of its rival Norsk Hydro, which had a majority of private shareholders, the state share of the new company fell to 62.5%. However, in subsequent years the government bought back shares to raise its stake to 67% again. This represents a typical Nordic compromise between state and private ownership, each of which is championed by different political parties and interest groups.[283]

The Sovereign Wealth Fund

The oil price hikes in the 1970s made it clear that the flow of petroleum revenues was determined by exogenous factors that could be neither controlled nor predicted. A consultative committee, led by the Director of the Central Bank, was appointed to come up with suggestions for how to handle such fluctuations. The committee proposed that the state's petroleum revenues should be decoupled from its budget expenditure by saving the revenues in a fund. It also proposed that the fund should be placed in international capital markets to avoid overheating of the Norwegian economy. This fund was finally established in 1990.[284]

The creation of the sovereign wealth fund was also associated with the departure from the policy of limiting the expansion of oil and gas extraction. This had been a central element of Norwegian petroleum policy and policy debates in the first half of the 1970s but had gradually faded.[285] The first departures from the policy of limiting the growth of oil and gas extraction were counter-cyclical economic measures taken during periods of economic crisis.[286] As the petroleum sector and its clout grew, vested interests within the sector started pushing harder for expansion. When the financial spokesperson for the Conservatives, proposed that petroleum development should be slowed down, he was met by a 'storm of protest' from the oil companies.[287] The creation of the sovereign wealth fund marked the death knell for self-imposed limitations on oil and gas development in Norway: it could now be argued that there was no need to limit the pace of oil and

[283] Berrefjord, Ole, and Per Heum. 1990. Political Governance of the Petroleum Industry: The Norwegian Case. In *Naive Newcomer or Shrewd Salesman? Norway—A Major Oil and Gas Exporter*, p. 46.
[284] Steigum, Erling. 2002. *Oil Price Risk, Prudent Fiscal Policy and Generational Accounting*. Bergen: SNF, p. 7.
[285] Kristoffersen, Berit. 2014. *Drilling Oil into Arctic Minds? State Security, Industry Consensus and Local Contestation*. PhD Thesis, Faculty of Humanities, Social Science and Education, University of Tromsø, p. 20.
[286] Ibid
[287] Ibid

gas extraction, because any surplus created could be placed in financial assets abroad—earning more interest than resources in the ground while avoiding overheating of the Norwegian economy.

Spending the Proceeds

Over the years, most actors came to see the fund as a good thing, nonetheless many aspects of fund management continued to be debated and adjusted.[288] In 2001, the Labour government introduced the 'fiscal rule', according to which a maximum of 4% of the fund's value—equivalent to the expected annual capital gains after inflation—could be spent per year.[289] Trying to rein in the urge to spend the country's wealth, the Governor of the Central Bank proposed in 2012 that the limit set out by the fiscal rule be reduced from 4% to 3%. Humphreys and Sandbu[290] state that the limitations on what Norway's sovereign wealth fund can do are actually 'extremely weak', that the fiscal rule is in fact an informal convention rather than written law and that it is mainly the broader societal context that limits the actions of policymakers and fund managers. They believe that, in a different context, the fund would be unlikely to function as successfully.[291]

Where to Invest?

Initially, the fund was invested exclusively in foreign government bonds, but in 1997 the Storting voted to place 40% of the fund's capital in foreign stocks. In 2007, the Ministry of Finance decided to increase the ratio of stocks from 40% to 60%.[292] Many different actors contributed to discussions about the allocation of the fund's capital. Some recommended that the fund be invest in real estate in addition to stocks and bonds, arguing that it would bring diversification while helping to prevent the fund from becoming too influential on the world's stock markets.[293] The Norwegian government decided in 2010 that up to 5% of the fund should be invested in real estate.

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[288] Ibid
[289] Holden, Steinar. 2013. Avoiding the Resource Curse the Case Norway [sic]. *Energy Policy* 63: 870–876
[290] Humphreys, Macartan, and Martin Sandbu. 2007. The Political Economy of Natural Resource Funds. In *Escaping the Resource Curse*, ed. Macartan Humphreys, Jeffrey Sachs, and Joseph Stiglitz, 194–233. New York: Columbia University Press, p.195 and 216
[291] Stevens, Paul, and Evelyn Dietsche. 2008. Resource Curse: An Analysis of Causes, Experiences and Possible Ways Forward. *Energy Policy* 36 (1): 56–65.
[292] Ibid
[293]Isachsen, Arne Jon. (2004). Working Paper 4/14, Centre for Monetary Economics, BI Norwegian Business School. http://www.bi.edu/cmeFiles/pdf/wp_14_4.pdf. Accessed on 20 December 2019, p. 3

Ethical Guidelines for Fund Investments

In 2001, a Human Rights Council was established by the Ministry of Finance to help the fund avoid getting involved in human rights violations through its investments. However, some actors wanted a stronger structure to ensure ethical investment of the fund's vast holdings, with clearly defined guidelines and a Council on Ethics with a broader scope than the Human Rights Council. These were ultimately created in 2004, after considerable push by civil society and public debate.

A broad range of civil society actors contributed to the public debate that led up to the creation of the ethical guidelines and ethics council. In March 2002, the NGO- The Future in our Hands published a report concluding that the fund had invested in companies that damaged the environment and violated human rights. In June 2002, an expert on international law, harshly criticized a set of ethical guidelines proposed by the government.[294] Prior to the parliamentary vote on the ethical guidelines, the Norwegian Forum for Development and Environment, a networkof 50 Norwegian developmental, environmental, peace and human rights organizations, produced recommendations for the contents of the ethical guidelines.

The five members of the Council on Ethics are appointed by the Ministry of Finance. They do their work not as government employees but as individuals with academic expertise, high-level experience from private business or links to civil society.[295] The council receives a steady flow of suggestions from NGOs and other organizations concerning specific companies or business areas that should be banned from the fund's holdings. As a result, it functions as a channel for contact with civil society, and the public debate over the council continues, with input from organizations such as Amnesty Norway, Nature and Youth, Bellona, Friends of the Earth Norway and individuals such as business development specialists.

Environmental Policy Issues

Exemplifying the continuing debate surrounding the sovereign wealth fund are the efforts of the Rainforest Foundation to stop the fund from investing in companies that contribute to the destruction of tropical forests.[296] Also, the Church of Norway has contributed to the debate,

[294] Ibid.
[295]Ibid
[296] Ibid

arguing that the overarching goal of the fund must not be to achieve the highest possible returns and encouraging it to prioritize climate change and poverty reduction. 'Faith in … God makes sustainable management of His creation, compassion and solidarity with future generations, poor and marginalized people, indispensable values for the Church of Norway', the Church wrote in a statement after its 2013 synod. It also had several specific suggestions, for example, that 5% of the fund should be invested in poor countries, rising to 10% over time.[297]

Another example of the growing importance of environmental issues in the public debate about petroleum policy concerned whether to start using natural gas to generate electricity, which had previously been generated almost exclusively from hydropower in Norway. In March 2000, after a protracted public debate, the opposition parties forced through changes to the legislation on pollution to facilitate the building of gas power plants in western Norway. The government chose to relinquish power rather than retract its climate policy pledges.[298]

Oil Exploration in the Lofoten and Vesterålen Archipelagos

One of the most controversial petroleum policy issues after the turn of the millennium was whether to carry out an environmental impact assessment of potential petroleum extraction in the seas off the Lofoten and Vesterålen archipelagos in the Arctic part of Norway. This area was expected to hold vast oil and gas resources but is also a spawning ground for some of the world's richest fish stocks and an area of great touristic potential.[299] An environmental impact assessment was considered by many as the first step towards oil and gas extraction there.

In 2009, the Popular Campaign for an Oil-Free Lofoten and Vesterålen was founded, bringing together several smaller initiatives. In 2010, three of the most active environmental organizations in Norway—Bellona, Friends of the Earth and Nature and Youth—presented a joint statement to the government concerning petroleum activity in Lofoten and Vesterålen, recommending permanent protection. The oil companies argued vigorously that opening Lofoten and Vesterålen to the petroleum industry could counteract the expected fall in production from existing fields on the Norwegian continental shelf after 2020. But the environmentalist appears to be winning and

[297] Ibid
[298] Ibid
[299]Overland, Indra, and Andrey Krivorotov. (2015). Norwegian–Russian Political Relations and Barents Oil and Gas Developments. In *International Arctic Petroleum Cooperation: Barents Sea Scenarios*, p. 97–96. Abingdon: Routledge.

now that the fight for Lofoten and Vesterålen appears to have been won, environmental activists are turning their attention elsewhere. The next likely target for the oil companies is the Barents Sea.

Technology Transfer

In the early 60s, when Norway had no oil industry, there was no possibility of the IOCs procuring oilfield goods and services in the country, but only non-technical supplies, such as food or shipping. However, by 1972, the Norwegian Ministry of Industry had established the Goods and Services Office which controlled oil companies' contracts and procurement activities. Prior to tender invitations, the Norwegian operator had to announce the tender schedule and the companies to be invited. The Ministry's role was to ensure that qualified Norwegian companies were included on the bidders list. The strong emphasis placed on Norwegian content made it crucial factor for all bidders; it was a key criterion when evaluating companies competing for new areas. A high level of cooperation between the authorities and operators, together with the contracting and supply industry, was essential in developing the high local content in Norway. Under Norwegian licensing terms for IOCs, it was mandatory to transfer skills and competence to Norwegian companies. Initially, only staff from Statoil, Norsk, Hydro and Saga could attend the oil companies' major training courses, receiving on-the-job-training in operations abroad. The majors were later forced to recruit young Norwegian engineers for overseas training for substantial periods before they returned home to "Norwegianize" their organizations. Today, it is evident that the technology transfer has been a resounding success and that the cooperation in research and development had achieved much for the Norwegian oil industry. Norway has become a leading oil technology nation by forcing the oil companies to transfer their know-how coupled with cooperation in the development of new technology.

Norway's Oil and Gas Sector: How did Norway avoid the Resource Curse?

This section has tried to explain the dynamics behind a successful model of wealth distribution in one of the top oil producers in the world: Norway. The first part explains the concept of "resource curse" to describe the challenges that resource rich nations face in their economies. The next section describes the conditions in Norway since the late 1950s to make the point that efficient wealth management, savings, and distribution systems of a given country are usually based on

three major initial aspects: comparatively low oil and gas production prospects in its initial phase of exploration, high level of economic and political development, and a political system that does not pressure the government to directly use the revenues obtained from natural resources to alleviate social, political, and economic problems. The third section explains the "Norwegian model," as well as the future challenges to keep its good performance. Finally, after a few conclusions on the particularities of the Norwegian model, the section provides lessons from Norway.

The Resource Curse

When referring to the development of natural resources in any country, one of the first issues that pops up is that of the "resource curse," the notion that the more natural resources a country has, the slower economic growth it will experience. This concept was born in the 1970s based on a number of research studies about the "Dutch disease," which illustrates how the flow of money from oil exports resulted in an inflated currency that harmed exports, provoked inflation, and led to a decade of unemployment and inequality in the Netherlands.[300]

Jeffrey Sachs and Andrew Warner pioneered on the statistical research of the correlation between high natural resources endowment and slow growth rates, finding that countries that exported raw materials, minerals, agricultural products and fuels tended to grow less than more industrialized countries.[301] Nonetheless, other researchers found that most of these countries had authoritarian and corrupt leaders that used the resource rent for their own political and economic agendas, thus destabilizing the macroeconomic performance of the country.[302] In this vein, scholars like Daron Acemoglu and James A. Robinson have put emphasis on the institutional framework of countries, as stated in their book *Why Nations Fail?* Their argument tends to blame leaders for the perils of development, without considering more complex issues like levels of economic development and socio-political structures. For instance, according to Charles Kenny, scholars like Christina

[300] Sanders, Doug. "How Oil-Rich Norway Avoids the Resource Curse." Spaceperson, Available at: <http://dougsaunders.tumblr.com/post/28552419189/how-oil-rich-norway-avoids-the-resource-curse>
[301] Sachs, Jeffrey and Warner, Andrew (1995). "Natural Resource Abundance and Economic Growth." National Bureau of Economic Research, Cambridge, Mass.
[302] Kenny, Charles (2010). "What Resource Curse? Is It Really True that Underground Riches Lead to Aboveground Woes? No, Not Really." Foreign Policy, December 6, 2010. Available at: http://www.foreignpolicy.com/articles/2010/12/06/what_resource_curse

Brunnschweiler found no evidence that resource wealth is actually associated with more fragile institutions.

Furthermore, researchers like Stephen Haber and Victor Menaldo have studied the relationship between oil wealth and democratic governance, finding that in some cases democracies were strengthened by the presence of wealth associated to the production of hydrocarbons. What is more important, they found that there are as many cases of oil revenues being used by autocracies in detriment of the population, as oil revenues used in favor of democratic societies.[303] This whole academic debate about the causality of the success and failure of the usage and distribution of wealth from natural resources illustrates how difficult it is to assess the conditions by which an efficient model of resources exploitation can be implemented. In fact, countries like Canada, the Netherlands, UK, and territories like Alberta and Alaska, have not been as efficient as Norway in maximizing the value of their oil savings, not to speak about developing or poorer countries like Nigeria, Mexico, Venezuela, among many others.[304]

The Norwegian Model

The political environment in the pre-1973 decade in Norway enabled the country to set a particular institutional framework that shielded wealth from being used in discretionary spending. This institutional, legal, technical, financial, and fiscal scheme is what the essay will describe as the Norwegian Model in the following pages, as well as its pros and future challenges. Today, despite a decline in oil production since 2001, when it peaked at 3.4 million barrels per day to an average of 1.9 million barrels in 2012, the country stands still as the 14th most important producer in the world right after Venezuela (2.5 million bb/d).[305] The country obtains money for the fund from taxes in the oil and gas sector, ownership of petroleum fields, and dividends from its 67% ownership of Statoil ASA, a publicly traded oil and gas company with headquarters in Stavanger, the country's hydrocarbons center. The government deposits 100% of its oil and gas revenues into its sovereign fund, and then withdraws an average of 4% to pay for public services. The state company Statoil competes for the licenses just as any other company and operates over 80% of the

[303] Haber, Stephen and Menaldo, Victor (2007). "Do Natural Resources Fuel Authoritarianism? A Reappraisal of the Resource Curse." Yale University Press, 2007. Available at: <http://www.yale-university.org/leitner/resources/papers/HaberandMenaldo_May409.pdf

[304] Persily, Larry (2011). "Norway's different approach to oil and gas development." Alaska Natural Gas Transportation Project. September 7, 2011. Available at: <http://www.arcticgas.gov/norway's-different-approach-to-oil-and-gasdevelopment

[305] EIA. "Top Oil Producers in 2012." 2012. Available at: <http://www.eia.gov/countries/

country's hydrocarbon production. In addition, it operates in 33 countries all over the world. Its market capitalization as of April 18th, 2014, was $92.85 billion.[306]

Norway taxes 78% of the profits of the exploring companies, which are channeled to the fund, however at the end of the financial year the government refunds companies' tax loss related to oil exploration.[307] This tax has two components, a regular 28% tax on profits, which is the same income tax levied on every company in the country, and a special 50% tax on profits earned from off shore oil and gas production. Within this structure gas stations and refineries in Norway are only supposed to pay regular income tax.

In terms of the licensing rounds in the NCS, the government established in 2003 the Awards Predefined Areas system, replacing the traditional annual North Sea Awards.[308] The bidding process is very rigorous, and unlike many other licensing processes around the world, Norway does not grant exploration rights to the highest bidder, but to the best company based on its experience, expertise and work plan to develop any particular field.[309]

Furthermore, despite the participation of the state in oil extraction, a significant share of the earnings is obtained from the state-owned company Petoro, which is in charge of managing the State Direct Financial Interest. Petoro does not operate oil fields; it just takes an equity stake in any lease the government deems worthwhile to exploit. Petoro pays its full share of development costs, operations and maintenance just as any other business partner would. The share that the company takes on a particular project is based on the conditions for the leases of the fields. The government deposits all the revenues of the company into a savings account in the oil fund and then decides how much to invest in new projects.[310]

Norway's sovereign fund was initially created in 1990 as the Petroleum Fund of Norway, aiming at supporting savings for future government spending and propping up the country's oil revenues. The government only uses 4% of the money from the fund to pay for universal health care, free

[306] Bloomberg. "Statoil ASA. STL: NO" April 18, 2014. Available at: <http://www.bloomberg.com/quote/STL:NO
[307] Chazan, Guy (2011). "UK oil tax rise drives drillers to Norway, bank says." The Wall Street Journal, June 29, 2011.
[308] Norwegian Petroleum Directorate (2014). "Licensing rounds in the Norwegian Continental Shelf." March 4, 2014.
[309] Ibid
[310] Ibid

education through college, and a generous pension system. The mandate of the fund is established under the Government Pension Fund Act, and as dictated by law, the Ministry of Finance is in charge of the management of the fund through the Norges Bank Investment Management (NBIM), led by its CEO Yngve Slyngstad. In 2006 the fund changed its name to the Government Pension Fund - Global, in order to acknowledge its role as a mechanism for long-term savings. The fund is instructed by law to hold over 60% of its investment asset allocation in equity, 35% to 40% fixed income, and up to 5% in real estate.[311]

The savings of the fund are highly protected and the management is based on the so-called Ten Commandments, an act of self-discipline that among other things establishes that nothing can be withdrawn from the fund until the oil runs out, the government cannot use more than 4% for current expenses, and none of the investments from the fund can be placed in Norway. According to the general manager of the fund, Mr. Slyngstad, the result of these guidelines is that the fund acts like a shock absorber for the economy, avoiding inflation and forcing domestic competitiveness. As of March 2014, the total worth of the fund was close to a trillion dollars ($920 billion) and rapidly growing. In fact, during 2013 the government earned a record of $115 billion in a year, even exceeding by 0.1% the benchmark established by the Ministry of Finance. In this regard, Oeysten Olsen, Chief of the Norwegian Central Bank, acknowledged that during 2013 the average return rate of the fund's investments was 15.9%, and that the fund has never earned so much money in one single year.[312] Mr. Slyngstad also mentioned that the excellent performance was explained by the high returns of the stock market investment.[313]

According to the most recent report issued by the Norges Bank, by the end of 2013 the $840 billion stocks (equity) of the fund returned 26.3%, the bond investment (fixed income) returned 0.1%, and real estate (properties) investments returned 11.8%. In order to maintain the investment allocation mandated by law, the fund follows a strategy of buying assets whose price is rising andselling those that fall, which is also known as the rebalancing of equity allocation.[314] In fact, by the end of the third quarter of 2013, the fund´s benchmark equity allocation surpassed 64%,

[311] Norges Bank Investment Management. (2013). "2013 Government Pension Fund – Global Annual Report." Deloitte, Oslo, Norway. February 12, 2014. p. 21.
[312] Norges Bank Investment Management. Op. Cit., p. 4-8.
[313] Clean Technica. Op. Cit.
[314] Holter, Mikael (2014). "Biggest wealth fund forced to sell stocks as limit breached." Bloomberg, February 28, 2014.

initiating for the first time in the history of the fund the rebalancing system that required the selling of stocks in order to adjust its investment portfolio and maintain the 60% share holdings.[315] After the good results in 2013, the fund's management decided to look for new investment opportunities in Asia (14.3%) and Latin America (2.6%), as these regions play a more dynamic role in the world economy.[316]

Regarding the fund's government bond holdings, the investments resulted in negative return rates due to increases in interest rates in developed markets. On the contrary, returns on bonds by the private sector yielded positive results, especially securitized debt, with an average return of 7.7%. Corporate bonds returned 2.1% and the weakest investments were placed on inflation-linked bonds, returning a negative 3.0%. Last year the fund reduced its share of fixed-income investments in developed markets from 81.4% to 78.8%, increasing the participation of emerging currencies especially from Colombia, the Philippines, and Hungary from 10.1% to 12.3%. Overall fixed income investments (government, private, and inflation-linked bonds) returned a meager 0.1%.[317] Nonetheless, to correct these results the Central Bank governor recently stated that the fund should consider lowering the bond portion to a figure between 20% and 25%, in order to increase the returns in other areas. In addition, the Norwegian Prime Minister Erna Solberg plans to increase the exposure of the pension fund to renewable energy, investing as much as 5% in renewable energy infrastructure, an equivalent to $40 billion.[318]
In terms of real estate, the sector accounted for only 1.0% of the total investments, however with a return rate of 11.8%. In 2013, the fund entered the US market mainly in Boston, New York, and Washington DC, and added new properties in Europe.[319]

Another element that has contributed to the sustained growth of revenues is the establishment of a strict policy of market and risk assessments for any investment of the fund (stocks, bonds, and real estate). This strategy is based on the individual evaluations of all the countries, markets and companies in environmental, social and governance issues, as a mean to reduce risk through diversification.[320] In addition, the government of Norway also established a pricing policy that

[315] Ibid
[316] Norges Bank Investment Management. Op Cit., p. 22.
[317] Ibid p. 30
[318] Clean Technica (2014). "Norway may use oil fund to provide renewable with $40 billion boost." March 18, 2014.
[319] Norges Bank Investment Management. Op. Cit., p. 34.
[320] Ibid p. 40

discourages the use of hydrocarbons in daily consumption. In that sense, the Petroleum Price Council meets with oil producers before setting the taxable price each quarter. The gasoline tax in the country is one of the highest in the world, where a liter is priced at $2.30.[321] Nonetheless, Norwegians do not complain much about the high tax burden they have to pay for energy and the rest of the economy, because they have one of the highest disposable incomes in the world, a low unemployment rate, good quality public services, and one of the highest living standards in the world as measured by the Human Development Index of the United Nations Development Program (UNDP).[322]

Furthermore, according to the Revenue Watch Institute and the Natural Resource Charter, Norway is rated the best performing country in the management of revenues from the hydrocarbon sector. According to the Resource Governance Index from the Revenue Watch Institute, Norway is the country that best manages its wealth fund in the world in the areas of: institutional and legal setting (100/100), reporting practices (97/100), safeguards and quality controls (98/100), state-owned companies (99/100), natural resource funds (100/100), and enabling environment (98/100).[323]

In terms of cash-flow transparency, the Scandinavian country was first accepted as a candidate for the Extractive Industries Transparency Initiative (EITI) in 2009, and after two years the country established an adequate organizational structure for the reporting and reconciliation of revenue streams in line with the EITI guidelines. Since then, the country has been among the top performers of transparency in the reporting of oil revenues.[324]

The Norwegian model is based on a clear and relatively simple legal and institutional framework that allows the country to maximize the value of its oil revenues. However, these rules have gradually evolved since their inception in the early 1970s, after a period of relatively low exploration prospects in the North Sean. Currently, Norway stands out as an example of transparency, good governance, and planning, but is not exempt from challenges, as presented in the next section.

[321] Persily, Larry. Op Cit.
[322] UNDP. "Human Development Report 2013." United Nations, 2013.
[323] Revenue Watch Institute. "Resource Governance Index - Norway Country Profile."
[324] Deloitte (2010). "Extractive Industries Transparency Initiative: Reconciliation of cash flows from the petroleum industry in Norway 2009." Deloitte November 9, 2010.

Norway has avoided becoming economically and politically dependent on oil revenues by excluding oil wealth from the political system, avoiding market distortions that allowed its industry to gradually develop. This was partly achieved by relatively stable economic, social and political conditions in the country during the 1960s and 1970s. In contrast with other countries, Norway did not require oil revenues to alleviate poverty-related issues or to fuel any particular political regime. Oil prospects were very few in the early years, so they did not pose any temptation for Norwegian politicians.

Furthermore, besides good governance practices, the Norwegian sovereign fund has been successful considering that, during the 1990s, growing oil production (from 1.7 million bb/d in 1990 to 3.2 million bb/d in 1997 according to EIA data) in the country allowed the government to obtain large revenues. These economic resources were further capitalized by a relatively simple, yet sophisticated, financial strategy to invest in equity, debt, and real estate all over the world. Transparency has played a key role in the management of the cash flows, because it gives citizens and foreign companies certainty regarding the competitive environment in the country. Finally, regular taxes on income, in addition to the 4% from the fund destined to the payment of public services, have resulted in tangible benefits for Norwegian citizens.

Lessons

According to the document, the most appealing element of the Norwegian management is the Government Pension Fund – Global, which acts as a mechanism for inter-generational equity and wealth distribution. However, as described in the essay, the implementation of the policies required for the establishment of an efficient oil fund depends on two factors that at this moment have traditionally been lacking in Mexico: a political structure relatively independent from oil revenues, and high levels of poverty and inequality that pressure government to use those resources in the alleviation of those problems. This is not to say that an efficient fund is beyond the reach of the Mexican government, but that major structural changes are still pending, in particular a second fiscal reform (after the one approved in 2014) that addresses the increase in local tax collection, and aims at reducing the informal sector in the country.

If the government is supposed to allow Oil Company to become a “productive state enterprise”, as mandated in the energy reform, and use its own resources for its own needs instead of sending them to Congress as an element of the federal budget, the fiscal structure of the production

royalties, export taxes, and the oil fund must be synchronized into a coherent policy, as that of Norway. In addition, it is not possible to expect that the Mexican oil fund will receive comparable proportions of resources as the Norwegian pension fund. This means that the country has to maintain high production and charge high prices to start the cash flowing into the fund. At times of price volatility and uncertain production, the fund might find it difficult to receive decent earnings to operate as an efficient mechanism of wealth distribution.

4.2.2 Chad

1. Overview

Chad is a leading producer of crude oil in Central Africa. International companies, represented by the Esso Exploration & Production Chad Inc (EEPCI), the China National Petroleum Corporation International (CNPCI) and the Glencore consortiums, are key actors in the exploration, production and refining of oil, alongside the Hydrocarbons Company of Chad (SHT). Chad however ranks 187 out of 189 countries in the United Nations Development Program's 2019 human development index.[325] Social conflicts and public debate have arisen around the management of oil revenues, including the oil-backed loans granted by Glencore in 2013 and 2014, environmental impact of extractive industries and poverty alleviation.

Chad has included oil transport (the Chad-Cameroon pipeline) and refining (the Djermayarefinery) in the scope of its EITI reporting. This has led to better public understanding of the midstream hydrocarbons sector. Chad EITI pioneered efforts to publicly disclose information about the terms of the oil-backed loans granted by Glencore, showing that most of Chad's revenuesfrom the oil sector were primarily directed to reimbursing the loan. Chad also participates in the EITI's targeted efforts on commodity trading, achieving progress in disclosing information about the sale of the government's shares of oil. The government is also starting to open up its own systems, with detailed quarterly notes about the oil sector on the Ministry of Finance website andaccess to SHT's audited financial statements. After the government committed to disclosing all oiland gas contracts in April 2018, Chad EITI published them online. Following the Government ofChad commitment to contract transparency, on 25 April 2018, the Government adopted a decree,

[325] https://hdr.undp.org/en/content/2019-human-development-index-ranking

on 8 November 2019, making it mandatory for all oil and mining contracts to be published online within 90 days of their signature. The Chadian MSG has already published an online register of all oil licences, which provides access to the various documents relating to each contract.

Oil and gas licenses can be awarded either through competitive bidding or direct negotiations. The State reserves the right to approve or reject applications in its sole and absolute discretion. Mining licenses are awarded on a 'first come first served' basis. Praises and best wishes were showed upon Chad on its pipeline opening ceremony:

> *"Today, we can say with certainty that all oil and gas payments made by companies flow to the government's budget and are effectively overseen."*[326]*; "This is going to be the model for every single project of this type worldwide."*[327] *; and "We know that profound poverty is an unfortunate reality in much of Africa. Its alleviation requires private investment, collaboration and responsible governmental policies. The Chad-Cameroon Project embodies all these elements. It offers great hope to the people of these two countries and we are proud to be involved now and in the future."*[328]

Since production started in 2003, Chad has been a leading producer and exporter of crude oil. Production reached 47,03 million barrels in 2016. Minor mining of mineral commodities such gold and limestone also takes place. Crude oil is transported to the port of Kribi in Cameroon through the Chad-Cameroon pipeline. Ongoing development of new oil and gas fields is taking place in areas adjacent to the country's producing Doba fields in the South. The government has also encouraged new exploration for deposits of non-hydrocarbon minerals since 2015.

Chad has rich deposits of crude oil, estimated in 2017 to amount to 1,5 billion barrels.[329] Abundant crude oil resources are found in several basins in the country's North, West, South-West and South-East. Gold deposits are mainly located in the West, while uranium deposits are predominantly in the North and West.

[326] Kordje B. (2019): Minister of Finance of Chad
[327] Mohamadou Diop (2003): Central Africa Resident Representative, International Finance Corporation, World Bank Group. CRS Interview with Mohamadou Diop, Central Africa Resident Representative, International Finance Corporation, Douala, Cameroon, October 10, 2003.
[328] Tom R. Walters (2003): Esso (ExxonMobil) ChadKomé Groundbreaking Ceremony - October 10, 2003
[329] 2015 Chad EITI Report; and US Energy Information Administration page on Chad

2. Historical background

Chad developed its oil sector under uniquely difficult circumstances: extremely low levels of human and physical capital, civil strife, a virtual absence of basic infrastructure in the oil producing region, and landlocked. Oil was first discovered in Chad in the 1970s but civil war prevented exploration and exploitation. In 1988 the Chadian Government finally granted a 30-year concession to a multi-company consortium, of which Esso eventually took the lead and became the operator.[330]

Construction began in 2000. Key infrastructure was a 1,070 km buried pipeline from the producing region, Chad's southern province of Doba, two thirds through Cameroon, to the Atlantic coast near the city of Kribi. For this pipeline the Doba Consortium had approached the World Bank, which ended up financing the Chadian and Cameroonian stakes in the pipeline, together with the European Investment Bank (EIB). The Doba reservoir was estimated to contain one billion barrels, to be extracted over 25 years. Oil production started in 2004; dictated by the characteristics of the reservoir, production peaked the year after, at 172,000 barrels per day, and then started on a steady decline. But thanks to new fields coming on stream Chad's overall oil production stabilized at 120,000 b/d in 2008 before rising to 145,000 b/d in 2015.

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[330] University of Texas, 2003, Center for Energy Economics, *Chad-Cameroon Oil Pipeline—a Case Study at* http://www.beg.utexas.edu/energyecon/new-era/case_studies/Chad_Cameroon_Pipeline.pdf.

decline. But thanks to new fields coming on stream Chad's overall oil production stabilized at 120,000 b/d in 2008 before rising to 145,000 b/d in 2015.

Just when Chad's oil era began, oil prices went on an upward trend. During 2000-03, the oil price was near US$ 30 p/b, and Chad's budget was expected to benefit from the oil to the tune of US$45 to 50 million per year (about a quarter of donor assistance). But as oil prices rose, oil revenues exceeded those expectations by a wide margin. With a brief interruption following the 2008 world financial crisis, prices kept climbing through 2011 with Doba oil prices reaching around $100 p/b during 2011-14. As a result, Chad's oil revenue peaked in 2011 at US$2 billion, making up 76 percent of government revenue. Then the bust set in, and as prices fell to US$43 in 2015, revenues dropped to some US$200 million in 2015, or 24 percent of government revenue. Still, over the period 2004-15, Chad—with a population of 10 million in 2004—collected cumulatively an impressive US$13 billion in oil revenue.[331]

As part of its involvement, the World Bank helped Chad with a Petroleum Revenue Management System (PRMS) designed to ensure that Chad's oil revenue would benefit development and alleviate poverty.[332] The PRMS included safeguards, notably a mechanism for paying royalties into an offshore account and another for paying income tax into the central bank, plus the earmarking of revenue for investment spending. Moreover, the structure of the oil sector at the outset was rather simple: one consortium with two licenses, one set of oil fields, and one oil fiscal regime. Thanks to these safeguards and the simple structure of the sector, oil revenue collection was relatively transparent, and the integrity challenges were limited. Ten years later, that has radically changed: Chad's oil sector has become complex, and the need has arisen for stronger transparency and integrity arrangements.

Over the past decade Chad's oil sector developed rapidly, with more producers, a new fiscal regime and a number of institutional innovations: More producers appeared on the scene: besides the Doba Consortium there are now the China National Petroleum Company International, producing since 2011, and Glencore, (previously Griffith), producing since 2013. A dozen other companies hold exploration permits; Chad introduced a second fiscal regime: whereas the Consortium and the

[331] Chadian authorities; and IMF Staff estimates.

[332] For an analysis of the PRMS see Dabán and Lacoche, 2007, and also the World Bank, 2007. See further Nachega and Wieczorek, 2007, and for a civil society perspective, Gary and Reisch, 2004.

CNPCI continue to produce under the concessionary regime—also called "royalty/tax"—all licenses issued after the new Hydrocarbon Law of 2007 are of the production sharing contract type.

The creation in 2006 of a national oil company, the SHT, introduced a new key player with tasks and responsibilities to be coordinated with other government agencies. In 2012, the Government switched to revenue-in-kind (RIK). Marketing of government oil had been declared one of the SHT's principal tasks. To supply it with product, the Government asked the companies to pay royalties and taxes in physical barrels of oil. In 2015, RIK accounted for two-thirds of oil revenue, its marketing a major challenge and risk factor. In 2008, at the Government's request, the Doba Consortium started paying quarterly income tax advances based on a concurrent estimate of what will be due. Previously they were based on the past year's declaration. Thanks to this change, the advances are more accurate –higher when prices rise, lower when they drop. But there is now uncertainty on how much will be received from quarter-to-quarter.

The introduction of revenue in kind opened the way to oil-collateralized borrowing in the form of prepayment agreements. In 2013, the Government borrowed US$600 million for budget financing, and in 2014 the SHT borrowed—with a government guarantee—US$1.45 billion for purchasing a 25 percent share in the Doba Consortium. In 2011, a refinery—the N'Djamena Refinery Company (NRC)—started operations. It is owned 60 percent by the CNPCI and 40 percent by the SHT, and supplied with crude produced by the CNPCI. The NRC brought new regulatory and management responsibilities for the Government. The Government has steadily increased its participation in the oil sector, with a potential for greater gains but also increased revenue volatility and risks to the budget. These participations are assigned to the SHT for management. The major acquisition occurred in 2014 with the purchase of the 25 percent in the Doba Consortium from Chevron. Also, in 2014 the Government assumed 10 percent in the CNPCI's two producing fields, this as part of a settlement over environmental damages (on top of US$600 million in cash compensation). In addition, the SHT holds 25 percent in the CNPCI's three not-yet-producing fields, and a 15 percent stake in Glencore (after having sold 10 percent in 2013).

All of these developments added complexity and, thus, for the Government, greater challenges administering and regulating the oil sector. In particular, accounting for past oil revenues is now more complicated as is projecting future revenues. The debt service on the oil collateralized

borrowing is not only onerous but also hard to predict, since it a function of oil prices and production. In general, the organization of a smooth flow of oil sector information throughout the Government has become a more pressing issue, and the Government's oversight and audit responsibilities have multiplied.

In 2014 a new PRMS was adopted[333] which maintained two important transparency institutions of the 1999 original PRMS and added two others: The oil revenue oversight body, the *College de Contrôle et de Surveillance des Recettes Pétrolieres (*or CCSRP), continues to produce annual reports. They cover the use of "direct" oil revenue (royalties plus dividends) for priority spending, and contain detailed information on production, exports, shipments, and prices not published elsewhere. The last report covered 2013.[334]

Another feature carried over into the new PRMS is the offshore account with Citibank in London into which all direct revenues must be paid. It was originally an escrow account, designed to ensure the debt service on the WB and EIB pipeline loans. Those loans were repaid but the offshore account continues. It serves transparency because it is the only bank account into which companies can make royalty payments, a rule that has been extended to the proceeds of the sale of RIK. The alternative could be a multiplicity of accounts which would seriously hamper revenue administration. Besides, only the Treasury has access to this offshore account, another important safeguard. At the same time, the "indirect revenues" (taxes and customs duties) must be paid directly into the accounts of the Treasury.

A 2010 innovation was the introduction of the *model* Production Sharing Contract.[335] This serves to standardize key fiscal parameters across contracts and reduces the scope for negotiations to limited set of parameters. It is a commitment to transparency that facilitates accountability. Also, in 2010, Chad joined the Extractive Industries Transparency Initiative. Chad has produced annual EITI reports covering 2007-13, and was declared EITI compliant in 2014. To remain compliant,

[333] See *Loi No. 002/PR/2014 Portant Gestion des Revenue Pétroliers, 27 Janvier 2014*, at http://itie-tchad.org/?p=347

[334] The report is published on the CCSRP website, http://www.ccsrp-tchad.org/w1/index.php, but also available on the site of Chad's EITI Secretariat, www.itie-tchad.org.

[335] See Ordonnance No. 001/PR/2010 Portant approbation du contrat type de partage de production, at http://itie-tchad.org/?p=351, and Annexes au contrat de partage de production, at http://itie-tchad.org/?p=257.

Chad will have to produce the 2014 report before the end of 2016 and this report should meet the standards of the EITI.[336]

3. Two Oil Fiscal Regimes

Chad's revised Hydrocarbons Law adopted in 2007 added to the concession or tax/royalty regime a second fiscal regime, the Production Sharing Contract (PSC). In practice, all licenses issued since 2007 are of the PSC type. However, holders of previously issued licenses have availed themselves of their fiscal stability clauses and opted to remain with the concessionary regime. Thus, the Doba Consortium and also the first phase of the CNPCI production continue as concessions. In 2010, Chad issued a model PSC contract to complement the Hydrocarbons Law. The two prevailing types of oil fiscal regimes are: the concession (or tax/royalty) regime and the production sharing contract (PSC). Under the concession, the government cedes control of the oil in return for a royalty payment plus corporate income tax. Under the PSC the government contracts with a company to produce the oil in return for a share of the physical production. The two can be structured to be equivalent in terms of tax take and government control. The concessionary regime is popular among industrial countries, the PSC among developing countries. In practice, regimes are often hybrids.

In principle the concessionary and the PSC or contractual regimes can be designed to be equivalent in terms of government take and control.[337] The concessionary regime prevails in industrial countries and is better suited at integrating the oil companies in the general tax system. But developing country governments tend to prefer the contractual regime, which they believe gives them greater control over the natural resource and the companies. In Chad the two regimes generate largely the same revenue flows, the main difference being that under a PSC the Government is entitled to a share of production instead of income tax.

In a concessionary regime the government cedes to a company the ownership rights over a natural resource for a specific period of time. For that right the company pays a royalty, which is

[336] The reports can be found on the Chad EITI website, http://www.itie-tchad.org/, or the EITI's international website, www.eiti.org Besides the standard reconciliation of payment and revenue information—see later—the 2013 report contains a wealth of information on Chad's oil sector, of which this paper has made ample use.

[337] Daniel, Philip, and Michael Keen and Charles McPherson (eds.), 2010, *The Taxation of petroleum and Minerals: Principles, Problems and Practice*, IMF and Routledge, (New York)

essentially a user fee, and which is fixed in relation to production. Royalties are popular because they guarantee the government an early and continuous revenue stream regardless of the profitability of the project, fluctuating in value only with price and volume of production. The flip side is that royalties are regressive and may motivate companies to stop production prematurely on marginal fields. In addition, the company pays a tax on its net profits, usually at a higher rate than the standard corporate income tax, and more or less progressive. In Chad, the income tax is somewhat progressive because the rate ranges from 42.5 to 65 percent depending on the profitability of the project as measured by the R-factor.[338]

In contrast, under a PSC, the government retains the full rights over the natural resource. It appoints a company as a contractor for operations to produce the resource. For that, the company is rewarded with a share of the oil, after having been reimbursed for its expenses. Typical for a PSC is the accounting in barrels, ultimately converted into money at an agreed price per barrel. First, the so called "cost oil" is taken out of total production (after royalties), that is, the number of barrels equivalent to the costs incurred over the period. What remains after cost oil is the "profit oil." This is shared between the government and the company, according to the "profit oil split." The government share is called "tax oil" since it is equivalent to a tax on profits. In Chad the split in favor of the Government ranges from 40 to 60 percent depending on the R factor. However, the cost oil deduction is subject to the "cost oil limit" (70 percent in Chad). This limit acts like a royalty in that it always sets aside at least 30 percent of turnover in profit oil, of which the government gets 40 percent, regardless of profitability (but costs that cannot be deducted are carried forward).

Other payments by the companies are the same for both regimes. Notably companies must make lump sum bonus payments at signature of the license and at the start of production, which can be substantial.[339] They also owe a one percent statistical fee on exports, plus a fee depending on the size of their exploration and exploitation zones. Another significant benefit to the Government is the maximum 25 percent stake it is entitled to. This is a benefit because this participation is risk free: The Government can wait with exercising the option to participate until oil is found and being produced. If it decides to participate, the Government is entitled to a part of the profit oil reserved

[338] The R-factor is the ratio of a company's gross revenues over its gross costs for a particular project. When the ration reaches one, the company's cumulative revenues equal its cumulative costs. In order to make the tax rate progressive, it is tied to the R-factor rises. Both the corporate income tax rate in a concessionary regime and the government's share in profit oil or tax oil in a contractual system tend to go up with the R-factor.

[339] In 2011 Griffiths paid the Chadian Government signature bonuses worth US$93 million, and in 2012 United Hydrocarbon Chad paid a bonus of US$86 million (see EITI reports on Chad covering 2011 and 2012 at http://itie-tchad.org/).

for shareholders, the so-called equity profit oil. It also shares in the costs but on lenient terms. Specifically, in the case of Chad,[340] it must reimburse its share of the exploration costs, but without interest. It must also pay its share of the development, exploitation and abandonment costs, but only from the moment production starts. Moreover, the other partner(s) will advance these costs, at an interest, and reimburse themselves from the cost oil and equity profit oil accruing to the Government (a so called "carried equity participation" with partial carry). In Chad, these stakes have been assigned to the SHT which therefore receives any equity profit oil as income.

When the government owns all subsoil resources—as is true in most countries including in Chad—the overarching objective of any petroleum (and mining) fiscal regime is to maximize the government's so called "tax take",[341] while allowing a sufficient risk-adjusted margin to the companies to pursue their operations.[342] This is easier to achieve if the petroleum fiscal regime is progressive, meaning the tax take increases with the profitability of the project. Chad's 2007 Petroleum Code and the subsequent shift to PSCs were motivated by a desire to raise the tax take and render the regime more progressive. The only way to evaluate the tax take associated with a contract is to model the contract (see later discussion). This was done by Gab-Leyba and Laporte[343] who concluded that Chad's concessionary regime is regressive and its PSC regime progressive. However, only when the Brent oil price goes over US$57 per barrel does the tax take under the PSC start to exceed the one under the concessionary regime.[344]

4. Oil Sector Transparency Arrangements

Many natural resource rich countries achieve development and poverty outcomes that are disappointing given their wealth. This phenomenon is often referred to as the "resource curse," and to counter it transparency is generally considered crucial.[345] The general case for transparency in fiscal policy is that it allows for a better-informed debate, resulting in better quality decisions, a better appreciation of the risks, and more policy credibility. At the international level several

[340] These are the modalities for government participation described in the published PSCs
[341] The technical term is the Average Effective Tax Rate (AETR) which is the proportion of the present value of the income of a project that is taken in tax.
[342] International Monetary Fund, 2010
[343] Gab-Leyba and Laporte (2015)
[344] Both regimes have a regressive component, the royalty, and a progressive one, the income tax rate or profit oil split varying with the R-factor.
[345] International Monetary Fund, 2007

initiatives promote transparency in extractive industries, such as the IMF's Guide on Resource Revenue Transparency, the EITI, and the Natural Resource Charter.[346]

The EITI is a global transparency standard for extractive industries (EI) in which Chad participates (Box 3). Annual country reports reconcile payments from EI companies with revenue information from governments. Chad's 2013 EITI report, issued in January 2016, is available on the internet.[347] It covers the hydrocarbon[348] as well as the mining sector, even though the latter is miniscule (CFA 1.9 million in government revenue). The report's principal conclusion is the absence of any significant discrepancies. In other words, all company payments were identified as having been officially received by the government. However, not all of it was received in the budget. Also, not part of the EITI mandate, and therefore not covered by report, is the question whether the companies are paying what they should according to the contracts, laws and regulations. For that the Government has to organize audits, a subject discussed later in the context of Integrity Arrangements. Nor does the EITI determine whether a country's EI fiscal regime is competitive. As discussed later, under Transparency Arrangements, this can be done by modeling the fiscal regime and comparing it internationally.

5. Contract Modeling: A Powerful Transparency Tool

A potentially very powerful transparency tool for governments is the modeling of oil contracts.[349] EI companies use it extensively to evaluate their projects. Governments, too, can make good use of modeling, particularly to assess the fiscal performance of projects. They would also help civil society understand the contracts once published. A model combines in mathematical form the parameters that together make up the oil fiscal regime—e.g. tax rates, profit oil splits, and amortization schedules—with project specific information—costs and production—with economic assumptions—e.g. prices, inflation, interest and discount rates—and with financing assumptions. Companies would typically be interested in profitability indicators, and governments in measures of "government take".[350] The most stable component of a model is the fiscal regime;

[346] For the IMF Guide see http://www.imf.org/external/np/fad/trans/guide.htm. For the Natural Resource Charter, a product of the Natural Resource Governance Institute, see http://resourcegovernance.org/approach/natural-resource-charter.
[347] See the www.eiti.org and Chad's national EITI website at http://itie-tchad.org/
[348] Hydrocarbons include oil, gas and coal. Chad only produces oil; the associated gas is not yet commercialized
[349] The same is true for the modeling of mining contracts which is a very similar exercise.
[350] An interesting application to Chad was carried out by a nongovernmental organization dedicated to spreading information about the exploitation of natural resources in developing countries, Open Oil. Using a model, it estimated the value of the 10 percent in the Mangara oil field Glencore purchased in 2013 from the SHT at US$172 million, close to the US$150 million the SHT obtained

all other variables are subject to great uncertainty, and, therefore, model results have to be taken as indicative.

In different forms, oil fiscal models can meet different government needs. They can be used over the long, medium and short term, and for individual projects or the whole sector. A long-term projection could forecast the revenues of a single project over its projected life, or forecast in the aggregate the revenues from all existing projects over a certain period. A single project forecast can be used to evaluate the fiscal take of a project proposed by a company. Or the Government can use it to evaluate--based on a hypothetical project--changes to the fiscal regime it is considering, for instance by comparing with regimes in other countries. A life-cycle model will show what type of revenues (e.g. royalty and income tax) will accrue at what stage of the project,useful information for managing popular expectations. A long-term forecast can usefully inform a government's strategic economic planning. Medium-term revenue forecasts are most useful for budget preparation; they should be detailed and updated regularly. Finally, short-term forecasting,on a monthly or quarterly basis, is essential for informing the government's cash management and spending programming.

Models can also be used retrospectively. For instance, a government may want to compare how a particular project has fared relative to what the company expected at the time it submitted its feasibility study.[351] This would shed light on how much better or worse companies did than their own projections on account of unforeseen circumstances. And, finally, a potentially very lucrative application is for a resource revenue administration to calculate precisely how much revenue should have been received from each ongoing project over the past period—given actual production, costs, prices, etc. A comparison of the results with actual collections would help focus the audit efforts.

The IMF has produced and published a simple life-cycle model for analyzing oil and mining projects. Its methodology is called Fiscal Analysis of Resource Industries, and hence the model is called the FARI model. It discounts all cash flows throughout the four distinct life cycles of a project: exploration, development, production, and closure. In 2016, the Fund publicly released

[351] Feasibility studies submitted as part of a license application contain valuable information. Because of their relevance to investors, countries known for their EI sectors like Australia and Canada require of their companies that they be published.

this FARI model, with a description of its methodology and an Excel template, to promote the wider use of modeling.[352] Besides governments, the target audience includes members of the public who take an interest in evaluating natural resource projects. Fund staff uses the FARI model for advising on resource fiscal regimes and for providing technical assistance to governments in modeling.[353]

There is great potential for developing fiscal modeling in Chad. Currently the Study and Forecasting Directorate of Chad's Ministry of Finance uses a rudimentary model for making short to medium-term revenue forecasts. This capacity could be significantly enhanced.[354] The forecasting model should be able to produce more detailed reports, properly reflect both the concessionary and PSC fiscal regimes, and allow risk assessments or at least scenarios. Accurate forecasts of oil revenues are even more important when those revenues are under stress. Cash management in Chad is extremely difficult under the current circumstances, and the Treasury should be optimally informed on how much revenue will arrive and when. For a model to remain relevant and accurate, the staff maintaining it should be informed immediately of any changes to the fiscal regime. Also, any government commitments which may affect oil revenue, such as oil-collateralized debts, should be integrated in the model. Finally, the model's historic data and assumptions should be constantly updated, requiring a free flow of information within the administration.

6. The Context: The African Oil Boom

The new African oil boom – centered on the oil-rich Atlantic waters of the Gulf of Guinea, from Nigeria to Angola, but expanding across the continent – is a moment of great opportunity and great peril for countries beset by wide-scale poverty. On the one hand, tapping oil reserves could unleash enormous revenues for use in improving the lives of the poor; by CRS' estimate, Africa's petroleum producers will earn at least $200 billion over the next decade.[355] On the other hand, the dramatic development failures that have characterized so many oil-dependent countries warn that petrodollars may not help developing countries to reduce poverty, but may in fact exacerbate it.

[352] For a description and template spreadsheets, see http://www.imf.org/external/np/fad/fari/

[353] An example of the use of the FARI model by IMF staff can be found in a published IMF technical assistance report for Mali which evaluates the evolution of the mining fiscal regime in that country. See IMF, 2016 (also in French).

[354] An extensive IMF technical assistance effort in 2010 developed a spreadsheet-based oil revenue forecasting model for Chad, with annual and monthly sections, which, however, was never rendered operational.

[355] Ian Gary and Terry Lynn Karl, Bottom of the Barrel: Africa's Oil Boom and the Poor, Baltimore: Catholic Relief Services 2003.

Oil and gas already comprise Africa's largest export category, three-and-a-half times as important as all non-fuel commodity exports combined.[356] The extractive industries accounted for more than 50 percent of Africa's exports and 65 percent of all foreign direct investment during the 1990s.[357] The dominance of extractive industries in Africa's trade relationships, coupled with thedecline in aid flows, make it all the more important that Africa use its oil in the interest of its people.

7. A Cursed Past: Oil and the Paradox of Plenty

There is little evidence that past oil exports have contributed to the welfare of developing countries. Indeed, 35 years of petroleum exports in Nigeria, for example, have not helped raise living standards; despite its oil wealth, per capita income in Nigeria is less than $1 a day and living standards are below the average in sub-Saharan Africa.[358] Nigeria is perhaps the most prominent example of "the paradox of plenty," whereby countries rich in natural resources suffer from lower living standards, slower growth rates and higher incidence of conflict than their resource-poor counterparts.[359]

The inverse association between equitable growth and oil and mineral abundance has come to be known as the "resource curse."[360] From 1970-1993, resource-poor countries (without petroleum) grew four times more rapidly than resource-rich countries (with petroleum) – despite the fact that they had half of the savings.[361] The greater the dependence on oil and mineral resources, the

[356] U.N. Conference on Trade and Development (UNCTAD), "African Oil Trade & Finance Conference Opens in Marrakech," April 28, 2004 at http://www.unctad.org/Templates/Webflyer.asp?docID=4758&intItemID=1634&lang=1

[357] International Finance Corporation, "Building the Private Sector in Africa to Reduce Poverty and Improve People's Lives" at http://www.ifc.org/ifcext/publications.nsf/Content/BuildingthePrivateSectorinAfrica

[358] World Bank, "Making Petroleum Revenue Management Work for the Poor: Transparency and Good Governance Dominate Discussion on Petroleum Revenue Management," November 4, 2002.

[359] Terry Lynn Karl, The Paradox of Plenty: Oil Booms and Petro-States, Berkeley: University of California Press, 1997; see also Terry Lynn Karl, "The Impact of Oil Booms on Oil-Exporting Countries: Reflections on The Paradox of Plenty," in Fueling the 21st Century: The New Political Economy of Energy, special edition of The Journal of International Affairs, vol. 53, no. 1 (fall 1999). These works should be consulted for a more complete explanation of the oil phenomenon described here. Both statistical work and case studies are clear on this point. See, e.g., Paul Collier and Anke Hoeffler, Greed and Grievance in Civil War, Policy Research Working Paper 2355, Development Research Group, Washington, DC: World Bank, May 2000 (showing that states dependent on the export of oil and minerals face a risk of civil war of 23 percent for any five year period, compared to a risk of 0.5percent for a country with no natural resource exports).

[360] Many economists use this phrase. See, e.g., Gobind Nankani, "Development Problems of Nonfuel Mineral Exporting Countries," Finance and Development 17, January 1980; Alan Gelb, Oil Windfalls: Blessing or Curse, New York: Oxford University Press, 1988; and Richard M. Auty, Sustaining Development in the Mineral Economies: The Resource Curse Thesis, London: Routledge, 1993. For more recent quantitative studies, see Richard M. Auty, Resource Abundance and Economic Development, Helsinki: UNU World Institute for Development Economics Research, 1998; Jeffrey Sachs and Andrew Warner, "Natural Resources and Economic Growth" (revised version), Harvard Institute for International Development Discussion Paper, 1997.

[361] Richard M. Auty (1997). "Natural Resources, the State and Development Strategy," Journal of International Development 9, 1997.

worse the growth performance was[362] – a finding that has been confirmed by economists in the World Bank and International Monetary Fund.[363]

History paints a grim picture of what is likely to accompany rapid growth in petroleum production. Oil booms tend to increase government appetites for public spending, without an accompanying increase in the effectiveness of the spending. The concentration of fiscal resources from an oil boom frequently encourages rent-seeking behavior and fosters excessive and imprudent investment – all of which contribute to the maldistribution of resources, a decline in productivity and massive corruption. The volatility of oil prices makes planning difficult and renders the economy extremely vulnerable to external shocks. Non-oil producing activities tend to suffer when oil sales push up the exchange rate, making other exports non-competitive. Labor-intensive sectors, such as agriculture, are often the most adversely affected by this economic phenomenon, known as the "Dutch Disease." As a form of rent, petrodollars decrease the government's reliance on non-oil revenues, including taxes, and actually weaken one of the links between people and their government that is essential to popular control over major decisions affecting a country and its resources. In such a context, governments tend to rely increasingly on repression through the use of security forces (rather than consent of the governed) to remain in power. Indeed, countries that depend upon oil exports are among the most economically troubled, the most authoritarian, and the most conflict-ridden states in the world today.

8. Addressing the Curse

The growing awareness of the "resource curse" has sparked an ongoing debate about the relationship between extractive industries and poverty, and the proper roles and responsibilities of international institutions, oil companies and civil society in addressing the problem. The World Bank, as a significant source of financing, technical assistance and policy advice for the extractive industries in developing countries, has been at the center of this debate. In 2000, in response to concerns about the environmental, social and economic impacts of oil, mining and gas

[362] A comprehensive study by Harvard economists Jeffrey Sachs and Andres Warner demonstrates that countries whose natural resource exports composed a high percentage of gross domestic product had abnormally slow growth rates between 1971 and 1989 when compared to countries following non-resource-based development models. Drawing on data from 97 developing countries, this research confirms that there is a negative relationship between a country's dependence on natural resource exports and their subsequent growth. Thus, countries that base their development on resources like petroleum grow more slowly than those that follow other development models. See, Natural Resource Abundance and Economic Growth, Development Discussion Paper no. 517, Cambridge: Harvard Institute for International Development, 1995.

[363] Carlos Leite and Jens Weidmann, "Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth," IMF Working Paper WP/99/85.

developments, the World Bank agreed to undertake an assessment of its support for these sectors in light of its poverty alleviation mission. It launched an independent evaluation called the Extractive Industries Review (EIR) – a two-year process of stakeholder consultations and commissioned research aimed at identifying the impact of World Bank Group financing for oil, mining and gas on the alleviation or exacerbation of poverty. The final report of the EIR issued in January 2004 made recommendations about the future involvement of the World Bank Group in the extractive industries. These emphasize good governance and transparency as prerequisites to effective poverty alleviation. The Review's central conclusion suggests that the extractive industries can only be an engine of equitable growth and poverty alleviation if certain basic conditions are in place before oil or mineral wealth is tapped, including: respect for human rights; consent of locally affected communities; adequate government capacity to enforce laws, monitor and regulate the extractive sectors; and demonstrated government and corporate commitment to transparency. This principal finding was derived largely from the Review's observations about the absence of "enabling conditions" in Chad, prior to the initiation of the oil pipeline project.

Heightened attention to the resource curse and greater recognition that the secrecy shrouding the extractive industries fosters corruption have also led to the creation of several initiatives aimed at increasing transparency in the extractive industries. The global civil society campaign, Publish What You Pay, calls for mandatory revenue disclosure by oil and mining companies. The United Kingdom government led Extractive Industries Transparency Initiative (EITI) promotes voluntary disclosure of companies' revenue payments and government receipts. Many oil companies have lent at least rhetorical support to the need for increased transparency in the sector. The British supermajor BP, for example, has said "We support the principle of transparency, while also acknowledging the practical obstacles that stand in its way – including traditions of confidentiality and the reluctance of some to embrace change."[364]

The work of these initiatives to increase transparency represents a first step toward breaking the "resource curse" and ensuring the democratic management of natural resources to the benefit of the poor. But transparency alone is not enough; true accountability for the use of oil wealth requires political will, corporate acceptance, democratic space and unrelenting public scrutiny.

[364] See BP's website at http://www.bp.com/sectiongenericarticle.do?categoryId=2011557&contentId=2016957.

9. Chad: The Experiment in Breaking the Curse

Oil was discovered in Chad over 30 years ago, but years of civil war and the sheer technical challenges of getting oil out of the landlocked country to world markets kept the country's "black gold" in the ground until very recently.[365] In 2000, World Bank support catalyzed the construction of a pipeline designed to transport oil from southern Chad through Cameroon to the Atlantic coast for export. The $4.2 billion Chad-Cameroon Petroleum Development and Pipeline Project represents not only the largest single private investment in sub-Saharan Africa today, but also one of the world's most significant efforts to reverse the "oil curse" and promote poverty reduction through targeted use of oil revenues. The World Bank has exposed itself to considerable "reputation risk" by betting on the ability of this project to harness oil development for poverty alleviation in one of the poorest countries on earth. And many people are watching and waiting – both inside Chad and out.

Sponsored by a consortium of oil companies led by ExxonMobil, with partners Petronas (Malaysia's state oil company) and Chevron, the pipeline has been operational since July 2003.[366] The project is designed to carry oil from over 250 wells drilled in the Doba basin of southern Chad through a 1,050 km. underground pipeline, with a current maximum capacity of 250,000 barrels per day (bpd), to the town of Kribi on the Atlantic coast of Cameroon. A 12-km. offshore pipeline connects to a floating marine terminal where tankers are loaded for the world market. The estimated 1 billion barrels of oil in the three Doba fields under production will be extracted over a period of 25 years, with a planned peak production of 225,000 bpd, earning Chad some $3 billion over the project's lifetime (depending on oil prices).[367] However, these production estimates do not take into consideration oil from new discoveries outside the three Doba fields specifically supported by the project. Such additional oil developments are no longer just a possibility; they are likely to increase both production levels and revenues for Chad by as early as 2006.

The participation of the World Bank and other multilateral financial institutions provided crucial political cover for private sponsors and lenders, without which the project would not have gone

[365] Although exploitable oil reserves have been known to exist in Chad since the 1970s, civil wars and protracted negotiations among oil companies, the governments of Chad and Cameroon, and the World Bank delayed exploitation, but it is now moving ahead at full speed.

[366] Paul F. Hueper, "Tapping into a New Frontier Oil Province" Petroleum Economist, October 22, 1998, p. 5.

[367] Ibid.

ahead.[368] In the words of the World Bank itself, "World Bank Group involvement, as well as the financial investments of Chad and Cameroon in the pipeline companies, provide comfort to these oil companies and lenders that the political risks presented by this cross-border operation and first-time petroleum export venture from Chad can be adequately mitigated over the medium to long term required to support their respective equity and long-term debt investments."[369]

While the bulk of the project financing came from private banks and the project sponsors themselves, public financial institutions bore much of the political weight of the project. World Bank financing supported the government of Chad's shares in two special purpose companies formed through joint ventures with the Consortium – Tchad Oil Transportation Company (TOTCO) and Cameroon Oil Transportation Company (COTCO) – created to build, own and operate the portions of the pipeline in Chad and Cameroon, respectively. In addition, two World Bank loans for Chad were approved to help build the government's capacity to mitigate social and environmental impacts and to manage the oil economy: the "Management of the Petroleum Economy Project" and "Petroleum Sector Management Capacity Building Project."

Prior to the pipeline project's approval on June 6, 2000, local, and international civil society organizations expressed concern that in a context of corruption, political repression, weak legal frameworks and little capacity for fiscal management, the poor would not reap the benefits promised by the project, though they would bear its social and environmental costs. However, the World Bank maintained that oil represented the only viable economic development path for the poor country, and that with Bank assistance Chad would be ready to manage its petro-wealth well by the time oil flowed. While the Bank's own experts argued that in a country like Chad, oil revenues were unlikely to benefit the poor and could actually fuel civil conflict, Bank appraisal documents nevertheless painted a rosy picture of the country, helping the project to proceed. Thus, contrary to the views of other observers, such as human rights analysts at the U.S. State Department, the Bank's Project Appraisal Document in 2000 claimed: "Chad has successfully put in place democratic political institutions."[370]

[368] World Bank, Chad-Cameroon Petroleum Development and Pipeline Project: Project Appraisal Document, April 13, 2000, p. 22 Chad-Cameroon PAD.
[369] Chad-Cameroon PAD, Annex 4, p. 63,
[370]42 Chad-Cameroon PAD, p. 121.

By providing capacity building loans along with support for the investment itself, the World Bank felt assured that the government would be prepared for the coming petroleum era long before the oil began to flow. Largely as a result of civil society pressure, the World Bank conditioned its financial support for the project on the adoption of several measures for which the project is most well-known today: the passage of a revenue management law, stipulating how oil revenues would be spent to benefit the poor; the creation of a joint government-civil society revenue oversight committee; and the establishment of several independent monitoring bodies, to track the project's implementation and its impacts on the local population.[371]

The World Bank has called the oil project in Chad a 'high-risk, high-reward' endeavor. But the real question is whose risk and whose reward? The Consortium and the government will still reap benefits even if little is passed on to the people. The ultimate costs of the project's failure will be borne by the population, who will have to live not only with the environmental and social footprint of oil development, but with the consequences of pouring petro-dollars into the pockets of a government that may not have the interest of its own people in mind.

In the context of the Extractive Industries Review, the World Bank often cited the Chad-Cameroon pipeline to justify its continued engagement in the extractive sectors. At the same time, civil society observers argued that the Chad project exemplified why oil development should not proceed unless minimum governance and human rights conditions are in place. Given the poor track record of oil-producing countries around the globe, the world is looking for a model of how to make petroleum work for the poor. A lot is riding on the Chad-Cameroon project. Not just the reputations of its financial backers, who claimed that their participation would help ensure that the project improved the lives of Chadians, but the future of other emerging petro-states, where the lessons learned from Chad may influence future policy choices.

[371]43 For more about civil society influence on the establishment of the International Advisory Group see, "Chadian NGO Appeal for a Just Exploitation of Chadian Oil," May 17, 2000 at http://www.amisdelaterre/imprimer.php3?id_article=171; "Appeal from 73 NGOs and NGO Umbrella Organizations in 23 Countries Regarding the Establishment of the International Advisory Group for the Chad-Cameroon Oil & Pipeline Export Project," July 10, 2000.

10. Multiple Monitoring Mechanisms[372]

The Chad-Cameroon Pipeline has been described as the most heavily scrutinized project in the history of the World Bank. This description is not simply due to the attention and media coverage the project has attracted internationally. It is also a reflection of the extraordinary measures undertaken to establish multiple monitoring bodies charged with overseeing the project's implementation, ensuring compliance with environmental and social policies, and tracking the achievement of the project's stated poverty alleviation objectives. Although these "watchdogs" could have significant persuasive power, they have not always lived up to their potential. While critical findings and recommendations have, at times, supported the claims made by local organizations and helped prod project sponsors to take action on some of the most pressing problems, they have all too often fallen on deaf ears, making little or no dent in the project's implementation.

Bodies like the International Advisory Group could do much more to advocate for the adoption of their recommendations, publicize their findings, and ensure that their reports get into the hands of those who can use them to press for remedies.

International Advisory Group (IAG)

The IAG is a five-member independent body of experts created by the World Bank in 2001 at the urging of civil society groups to monitor the implementation of the Chad-Cameroon project and advise the project sponsors, host governments and the World Bank regarding problems and issues that arise. The IAG reports directly to the World Bank president and is financed from the central funds of the World Bank Group and by European donors. Since it began working in 2001, the IAG has conducted eight missions to Chad and Cameroon and has published summary reports after each visit. Its most recent report was released on November 18, 2004.[373]

The most prominent example of a "watchdog" recommendation that has gone unheeded is the IAG's repeated calls for urgent measures to accelerate capacity-building efforts. Since its earliest reports, the IAG has critiqued the two-speed nature of the project, whereby

[372] See also Delphine Djiraibe, Samuel Nguiffo and Korinna Horta, "Access to Justice from Local Village to Global Boardroom: An Experience in International Accountability; The World Bank Inspection Panel and the Chad-Cameroon Oil and Pipeline Project," ATPDH, CED, Environmental Defense, September 2004 and "The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability", June 2002.
[373] This and previous IAG reports can be found at www.gic-iag.org.

construction has far outpaced measures to increase the institutional and technical capacity of the Chadian government. However, project construction blazed ahead, finishing a year ahead of schedule, while Chadian institutional and legal systems remain weak and unprepared to manage the growing petroleum sector.

While the IAG has provided a frequently critical voice and valuable perspective on the project, its recommendations have seemed to carry little weight. The fact that many of the same recommendations have been repeated in its reports indicates that they have resulted in little concrete action. In 2003, civil society groups in Chad observed that, "after five statutory missions to Chad, the IAG's mandate does not grant it any greater influence than the ability to make recommendations to the different project actors."

External Compliance Monitoring Group (ECMG)

The ECMG, staffed by a consulting firm called D'Appalonia, is under contract with the International Finance Corporation (the private-sector lending arm of the World Bank Group) to monitor the Consortium's compliance with the environmental management plan. Throughout project implementation, the ECMG conducted quarterly site visits. After project completion (certified in 2004) the ECMG is mandated to conduct yearly visits. Since their first visit to the project site in February 2001, the ECMG has published 10 reports.[374]

Comité Technique Nationale de Suivi et de Contrôle (CTNSC)

The CTNSC is the government body in Chad charged with oversight of the environmental and social impacts of the petroleum sector. Responsibility for ensuring compliance with environmental and social standards ultimately rests with the government of Chad, but the CTNSC has faced capacity constraints, financial and organizational hurdles since its establishment. The CTNSC is currently funded entirely by the World Bank, through capacity building loans. However, with these loans running out and its staff shrinking, the CTNSC's future is uncertain. The government of Chad's failure to budget any resources for the CTNSC in 2004 or 2005 casts doubt on its commitment to the operation of the monitoring agency. Because of weak technical capacity and limited equipment, the CTNSC has relied heavily to date on ExxonMobil facilities and data, and thus has not been able to provide truly independent information on the impacts of oil development.

[374] These and other information about the ECMG can be found on the World Bank's website at: www.worldbank.org/afr/ccproj/project/pro_monitor.htm

The World Bank has envisaged a training program for the CTNSC, whereby its staff would work closely with the ECMG in coming months to learn from them, but the government of Chad has yet to agree upon the financing modalities for this arrangement.

4.2.3 Libya

1. Historical background

Because of its desert condition there was a lot of drilling activity in Libya long before there were any suspicions of there being petroleum. The search for water involved drilling very deep wells. Back as far as 1915 deep water wells drilled by Italians sometimes found natural gas. This was of interest but natural gas was not a prime commodity at that time. In the U.S. the natural gas from oils was burnt off (flared) as a nuisance.

In 1935 a professor from Milan University who was in charge of a water well drilling program made it a point to watch for petroleum. This was probably more out of academic interest than a serious concern for finding a significant economic resource. A couple of years later petroleum was detected in a water well drilled near Tripoli. This find was enough to prompt a geological survey in Tripolitania. One well was drilled searching for petroleum but none was found. Nevertheless in 1940 a program of exploration was initiated but the available equipment was inadequate to deal with the severe conditions of the Saharan Desert. Shortly thereafter war came to Libya and all exploration stopped.

Immediately after World War II the political status of Libya, which had been controlled by Italy, was uncertain. There was no state which could guarantee petroleum-exploration companies the rights to what they might find. Therefore, no exploration was carried out until after Libya became an independent kingdom in 1951. The new kingdom developed mineral rights law through consultation with the international petroleum companies. In 1953 Libya granted prospecting permits to eleven petroleum companies. Geologic surveys were undertaken by those companies. In 1955 a petroleum well was successfully drilled under desert conditions just across the border in Algeria.

The Libyan leaders were determined to keep the market for exploratory permits in Libya rather than granting a concession to one company or a consortium of a few companies. Furthermore, even when one company was given a concession in a particular area it would have to relinquish one quarter of the concession after five years. This was to allow the government to grant that territory to a new company in hopes that a new company might succeed where another had failed.

The conditions were that the oil companies would have to pay a 12.5 percent royalty on their revenues and a 50 percent tax on profits. The royalty and other operating expenses were of course deductible in computing the profits of the company.

Oil companies were highly interested in developing sources of petroleum in Libya because it was located on the Mediterranean Sea. Their sources from Iran were limited by a political crisis there in the years 1951 to 1954. The Suez Crisis of 1956-57 resulted in the closing of the Suez Canal. All petroleum from east of Suez had to be brought around the southern tip of Africa at great additional expense. Additionally, Libya was thought to have a stable, pro-Western government.

By 1957 there were about a dozen companies operating in Libya on about sixty different concessions. The companies operating there included the seven majors and the French parastatal Compagnie França;aise des Pétroles and Oasis, a consortium of three companies new to international petroleum exploration, Amerada Hess, Conoco and Marathon.

In 1957 Esso decided to drill in the area across the border from where the Algerian oil well had been brought in. It drilled three wells and one of them was successful. It was brought in in January of 1958 with a flow of 500 barrels per day. This was not much considering the expenses of drilling.

In 1959 Esso drilled in the Siritica region, which is the north central part of the country. It brought in a well flowing at 17,500 barrels per day. This followed by another well flowing atg 15,000 barrels per day. Later in 1959 other oil wells in Siritica were brought in. Altogether six major oil fields in Libya were discovered in 1959. Esso and Oasis were the leaders in the field.

2. The Pipelines

In 1960 Esso decided that its discoveries and the prospect for more justified its building a pipeline and export terminal. It chose Marsa Brega as the site for the terminal and contracted for the

construction of a 110-mile-long 30 inch in diameter pipeline from its Zelten field. That gave it a capacity for delivering 200 thousand barrels per day for export. The terminal was inaugurated on October 25th of 1961 and the first shipment went to Great Britain. The total shipments of Libyan oil for 1961 was in the neighborhood of seven million barrels.

The Oasis group was not long behind Esso in developing a pipeline and export terminal. By May of 1962 it had an 88-mile pipeline linked to an export terminal about a hundred miles west of the Esso terminal, at a place called Es Sidra. At the end of 1964 a third terminal was opened at a site about twenty miles east of Es Sidra by a subsidiary of Mobil and Amosea oil companies. It received oil from a pipeline about 170 miles long.

As a result of new discoveries Esso and Oasis extended their pipelines. British Petroleum was eager to develop sources of petroleum that were not vulnerable to closures of the Suez Canal. It had eight concessions in Libya but found no oil. It then decided to buy a half share of the concessions owned by Nelson Bunker Hunt. On the Hunt concession British Petroleum brought in a four thousand barrel per day well in November of 1961 and then went on to develop other wells which brought in about 21 thousand barrels per day. The drawback for this field is that it is located more than 300 miles from the coast in eastern Libya. The terminal was built at a natural deep-water harbor near the city of Tobruk at a place called Marsa Hariga. The petroleum from this field was so waxy that it had to be heated to get it to flow in the pipeline. Given the length and other difficulties it was not surprising that it was not until 1967 that the British Petroleum did not commence exporting Libyan oil until 1967.

3. Occidental Petroleum

A distinctive feature of the Libyan concessions was that one quarter of the original concession had to be relinquished after five years and more after eight and ten years. This was to give other companies the chance to try to find oil at sites where the original concessionaires had failed. Concessions on the land that was *handed back* were awarded on a competitive basis. This system allowed the entry of new companies into the Libyan search for oil.

One company new to the field was Occidental Petroleum, a company being created by Armand Hammer. Hammer was from a New York Jewish family with close ties to the Communist Party.

Armand Hammer successfully managed a medical supply and pharmaceutical business as a young man. Later he created a system in which he could safely trade with the Soviet Union in the 1930's. Hammer would send a ship loaded with the commodities the Soviets wanted and they would load the ship with their trade goods. Initially those trade goods were art treasures of Russia. Armand Hammer was adept at dealing financially successfully with politically sensitive situations.

Occidental did acquire a concession, in part because its bid involved a proposal to invest five percent of its profits in an agricultural project in Libya. Soon after the award of its concession in 1966, on land *handed back* by Oasis and Mobil, Occidental had survey teams operating and within six months had drilled its first well. In November of 1966 Occidental had brought in a fifteen thousand barrel per day well and in early 1967 had discovered a new oil field. By the end of April 1967, the Occidental oil well on that field were producing sixty thousand barrels per day. In May of 1967 Occidental brought in a well on a new field that produced forty thousand barrels per day.

In February of 1968, only two years after Occidental had received its concession, it was exporting oil from a terminal at Zueitina on the east coast of the Gulf of Sirte. The terminal was fed by a pipeline 40 inches in diameter and 125 mile long. By 1970 Occidental Petroleum was vying with Esso and Oasis for being the second largest exporter of oil from Libya.

The Italian parastatal *Azienda Generale Italiana Petroli* (AGIP) in 1968, after years of failure, found a new oil field near the Occidental operations. It was going to be able to feed its production into Occidental's pipeline and export from Occidental's terminal. However, in 1969 a group of military officers carried out a *coup de'état*, deposed the king and began restructuring the rules of government. The oil companies in Libya survived but only with diminished opportunities.

Libyan oil reserves, estimated at 47.1 billion barrels,[375] are the largest in Africa and among the largest in the World. A large part of these oil reserves lies in fields that have remained underexplored in recent years. There is also the possibility that new fields will be discovered and technological advances mean that enhanced oil recovery could increase production from existing fields.

[375] Amir Kordvani (2012): Libya: An Overview of The Libyan Oil And Gas Regime (Article 1 of 4) Clyde & Co

As Libya recovers from the conflict in 2011, International oil companies (IOCs) are gradually lifting their force majeure and resuming operations in the country. At present, the oil and gas framework remain unchanged from what was in force under the old regime. However, there are indications that the current legal framework is likely to change when the transitional process comes to an end following the expected enactment of the new constitution.

4. The Analysis

The discovery of large oil reserves in Libya in the 60's and the subsequent large income earned from their management enabled one of the world's poorest countries to become exceptionally rich. The national economy and infrastructure were rapidly transformed as the oil income allowed ambitious economic and industrial projects to be implemented. The objective was to develop a broader and diversified economy, less dependent on oil which was seen not only as a wasting resource but also an uncertain income earner subject to the vagaries of the international market. The legal framework for oil then was covered by the Mineral Law 1953 and Petroleum Law 1955, both drafted soon after Libya achieved its independence in 1951.[376] Under them, several concessions were given to international oil companies, mainly American. Concession 1 was granted to ESSO for exploration in the south-west of Libya near the Algerian border. By April 1961, there were 42 oil companies in Libya working 95 concessions covering most of the prospective areas, the majority Americans with concessions covering 600,000 km^2.

By July 1964, the number of completed wells since exploration started had reached 1,231 of which 45% produced at a total tested rate of approximately 787 barrels a day. The same production profile continued into 1966 with production reaching 1.507 million barrels a day with improved infrastructure, mainly new pipelines and export terminals. Following a new wave of discoveries, the country sought greater control over its own resources. Hence, the government issued Law 3 in 1968 to establish the Libyan General Petroleum Corporation. The Libyan legal system is based on a combination of Civil Law and Islamic legal principles.

The Civil Law was derived from the French. The Libyan legal system was initiated in 1953, as stated in the Civil Code, to include legislative provisions, Islamic principles, custom and the

[376] A, Otman W. (2004) Libyan Petroleum Law: it's Impact on Oil & Gas Development in Libya- Economic and Policy Aspects. *Oil, Gas, and Energy Law Intelligence* 2(2).

principles of natural law and rules of equity. In addition, judicial decisions and the thoughts and doctrines of eminent jurists served as informal law to guide judicial decision making. The Libyan judicial system initially comprised separate Sharia'a and secular courts. However, in 1971, the system was amended to integrate the Islamic and secular principles. The vast oil income and the rapid exploration and advancement of its petroleum industry have had great influence on the Libyan way of life and thinking. There is no doubt that income has transformed economic life, enlarging the market for consumer products and improving the standard of living. It has also provoked thinking and raised questions, for example, the political control of the major industrialized countries on small oil states to make them (oil states) the markets for their (industrialized countries) products. There is no doubt that the West has benefited from the success of the Libyan petroleum industry, but in the process, Libya too improved its industry, commerce and agriculture, and also its legal framework.

The Libyan government is carefully reviewing the new Libyan Petroleum Law in order to tighten up contract terms with regard to in-country procurement of personnel, goods, and services. In recent agreements with IOCs, some countries have required companies to spend some of their operating expenditure (Opex) within the countries. Under the current Iranian buy-back contract, for example, the National Iranian Oil Corporation (NIOC) stipulates that 50% of Opex must be spent within Iran, such as by purchasing goods, manpower or services.

By studying the laws of other petroleum producing nations, Libya can discover useful pointers to include in its own legislation. The new petroleum law is the perfect chance for the Libyan government to develop the proper legal frame for in-country procurement of goods and services. Traditionally, Libya imports most of its equipment, key personnel, components and spare parts for its petroleum industry.

The imports can only be a short-term solution. In the long term, local expertise would have to be developed for greater self-sufficiency. Any country procurement legislation must ensure that there is no leakage. Although it may be difficult initially, this approach will eventually force the Libyan oil industry to develop into a world class provider of services. Eventually, it may even enable Libya to serve the neighboring oil producing countries. If the IOCs feel that this cannot be done in Libya with the usual excuses - lack of infrastructure, unqualified personnel, poor communications,

etc. - then the country should draw up a blueprint to chart the way to eventual success. In Libya, all drilling is on government leases. The depleting resource is extracted from under the ground and under the sea. It is thus the responsibility of the government to ensure that as the resource is lost, it is replaced by other assets to ensure a sustainable income for the people well into the future. This will ensure the country's potential will be enjoyed by all future generations.

4.2.4 Ghana

1. Historic overview of Oil and Gas

The upstream oil and gas activities in Ghana consist of exploration, development and production of oil and gas. These activities are undertaken in five sedimentary basins within Ghana's territorial areas made up of the Tano Basin and Cape Three Points Basin in the Western Region (mostly referred to together as the Western Basin), the Saltpond Basin in the Central Region, the Accra/Keta Basin and the Inland Voltaian Basin.[2] The Western Basin, Saltpond Basin and Accra/Keta Basin are all offshore and have been explored. The Inland Voltaian Basin is onshore and has not been really explored.[377]

The exploration of hydrocarbons in Ghana dates as far back as the late seventeenth century. The first recorded hydrocarbon exploration was undertaken by West Africa Oil and Fuel Company in 1896.[378] From 1905 to 1925, other companies that engaged in upstream activities included Société Française de Pétrole, African and Eastern Trade Corporation and Gulf Oil Company.[379] By independence in 1957, 21 wildcats had been drilled for exploration. Key among these was the first offshore discovery by Signal-Amoco Consortium in the Saltpond Basin, named the Saltpond Field, which started production in 1978. The production at the Saltpond Field peaked at 4,500 barrels of oil per day during its production stages and was shut down in 1985. By the mid-1980s, the total well count in Ghana (onshore and offshore) was 54.[380]

2. Industry and foreign investment overview in Ghana

The establishment of the national oil corporation, the GNPC and the passage of the above legislation have laid the foundation and provided the framework for activities in the industry.

[377] National Energy Policy (February 2010), Ministry of Energy.
[378] www.petrocom.gov.gh/index.php/resource/resource-brief
[379] National Energy Policy (February 2010), Ministry of Energy.
[380] National Energy Policy (February 2010), Ministry of Energy.

Efforts by the GNPC over the years since its establishment has led to an increase in activities in the sector to find more oil. This has resulted in the execution of a number of agreements between the GNPC, the government and international oil companies (IOCs) to fund, acquire, process and interpret data on seismic activities from the offshore basins. As earlier noted, PNDCL 84 provided the initial framework for engagement of international oil companies as it set the terms and conditions that must be in a contract for such an engagement. In furtherance of standardisation of the contract form for the engagement, the country has adopted a model petroleum agreement based on international best practice to attract IOCs. The IOCs currently involved in the upstream oil and gas sector include Kosmos Energy, Hess Corporation, Tullow UK, Norsk Hydro Oil, Heliconia Energy Resources, Anadarko, ENI, Aker Energy, AGM Petroleum and ExxonMobil. These investments have resulted in deep-water offshore exploration activities.

The first significant deep-water oil discovery in Ghana was in 2007 by Tullow Oil, Kosmos Energy, Anadarko Petroleum and EO Group in the offshore Tano/Cape Three Points Basin of the Ghanaian continental shelf, christened the Jubilee Fields. The Jubilee Fields is a unitized field located 65km offshore, south-east of Takoradi in the Western Region of Ghana between the Deepwater Tano and West Cape Three Points blocks. The Deepwater Tano block is currently held by the Jubilee Partners, a consortium of IOCs in the following proportions: Tullow Oil (49.95 per cent), Kosmos Energy (18 per cent), Anadarko (18 per cent), the GNPC (10 per cent) and Sabre Oil and Gas (4.05 per cent). West Cape Three Points is also held by Tullow (22.9 percent), Kosmos (30.88 per cent), Anadarko (30.88 per cent), the GNPC (10 per cent), Sabre Oil and Gas (1.85 per cent), and EO Group (3.5 per cent). The field is operated by Tullow Oil as the mandated operator.[381] The field has proven reserves of approximately 3 billion barrels[382] and is currently estimated to be producing approximately 120,000 barrels of oil per day.[383]

The success of the Jubilee Field has immensely reduced the perceived risk involved in investing in upstream oil and gas activities in Ghana resulting in increased exploration activities in the Basin leading to over 24 other discoveries offshore the Western Basin. The key discoveries include

[381] *Ghana Gazette*, No. 5, 2014.
[382] See www.bloomberg.com/news/2010-12-01/ghana-oil-reserves-to-be-5-billion-barrels-in-5-years-as-fields-develop.html.
[383] See www.bloomberg.com/news/2014-09-05/ghana-to-double-oil-production-by-2017-on-tullow-eni-deposits.html.

Tweneboa-1 (2009), Tweneboa-2 (2010 and Pecan South 1A (2019) among others in the Deepwater Tano Cape Three Points block; and Akoma 1X in Cape Three Points Block 4 (2019).

In May 2013, the plan for the development of the Tweneboa Dzata-1 (2010), Enyenra and Ntomme (Ten) fields, which cover an area of more than 800km², was approved by the government. Production commenced from the ten fields, and the first oil was delivered to the FPSO (floating production storage and offloading vessel) *John Atta Mills* in August 2016.

In 2012, ENI announced the first oil and gas discovery in the Offshore Cape Three Points block, also located in the Tano Basin. Through its Ghanaian subsidiary, ENI operates the Sankofa and Gye-Nyame fields with its partners Vitol Upstream Ghana Limited and GNPC. The project is located approximately 60km offshore west coast of Ghana and is estimated to hold about 41 billion cubic meters of non-associated gas and 500 million barrels of oil. Commercial operations commenced with the flow of the first oil from the Sankofa Gye Nyame oilfields through the FPSO *John Agyekum Kufuor* in July 2017.[384] Gas production commenced in June 2018, and the field is expected to produce 180 million cubic feet of gas per day for 15 years.[385]

On 23 September 2017, the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) gave its judgment in Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire). The litigation was originally commenced by Ghana in Germany at the ITLOS by an application initiating arbitral proceedings under Annex VII of the United Nations Law of the Sea Convention (the Convention) after Côte d'Ivoire began laying claim to some offshore oil concessions and adjoining seabed being developed and exploited within Ghana's territory.[15] Côte d'Ivoire, in February 2015, had filed for preliminary measures urging the tribunal to suspend all activities on the disputed area until the definitive determination of the case and following legal and technical representations by both countries on 29 and 30 March 2015, the ITLOS Special Chamber in Hamburg, Germany ruled in April 2015 that ongoing projects in the disputed fields, including the US$7.5-billion TEN project could proceed while the substantive case was being dealt with, Ghana was ordered not to start new explorations within the disputed area. The Special Chamber finally concluded that there is no tacit agreement between Ghana and Côte d'Ivoire to delimit their territorial sea, exclusive economic

[384] Ibid
[385] See https://www.eni.com/en_IT/operations/upstream/exploration-model/octp-ghana.page.

zone and continental shelf both within and beyond 200 nautical miles. It rejected Ghana's claim that Côte d'Ivoire is stopped from objecting to the 'customary equidistance boundary' and further concluded that there is no relevant circumstance in the present case which would justify an adjustment of the provisional equidistance line. Accordingly, the Special Chamber ruled on the relevant delimitation line for the territorial sea, the exclusive economic zone and the continental shelf within 200 nautical miles.[386]

Following the ITLOS ruling in 2017, Tullow received notification from the government to recommence drilling in the ten fields, and a multi-year incremental drilling programme started in 2018, seeking to ramp up production from the ten fields to utilise the full capacity of the FPSO and sustain this over a number of years. Again, in October 2017 the government approved the Greater Jubilee Full Field Development Plan, allowing Tullow and its joint venture partners to prepare for a multi-year incremental drilling programme that integrates the nearby Mahogany and Teak discoveries in the West Cape Three Points Block with the Jubilee Field.

From 2013 to date, at least 12 exploration licences have been issued to other players in the industry, including Heritage Oil, AGM Petroleum, Britannia-U, Sahara Energy Fields, Camac Energy and Springfield. New discoveries that have been appraised include Wawa (Tullow), Mahogany Deep, Teak and Akasa (Kosmos Energy) Paradise, Hickory North, Almond, Beech, Cob, Pecan PN-1 and Pecan South 1A (Hess Corporation/Aker Energy).

Another investment activity worth mentioning relates to the activities in the gas sector. In 2011, the Ghana Gas Company Limited (GGCL) was established by the government as a private limited liability company with responsibility for building, owning and operating infrastructure required for the gathering, processing, transporting and marketing of natural gas resources in the country. The government has now transferred its shares in GGCL to the GNPC, which makes GGCL a subsidiary of the GNPC. This is in line with the policy of the government to make the GNPC the national aggregator of gas in Ghana for better and efficient management of gas resources. It is estimated that Ghana has approximately 22.65 billion cubic metres of proved reserves of natural gas in its oil fields.[17] To ensure the safe and optimal use of natural gas, associated gas and natural

[386] See https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_merits/C23_Judgment_23.09.2017_corr.pdf.

gas liquids from the oil fields, GGCL entered into an engineering procurement construction and commissioning agreement with SINOPEC in 2012 for the development of the Western Corridor Gas Infrastructure Development Project. The first phase of the project was commissioned in September 2015 and consists of an offshore pipeline, an onshore pipeline, a gas processing plant and a NGLs export system at Atuabo in the Western Region of Ghana. At full capacity, the facility is expected to produce 107 million standard cubic feet of lean gas, 500 tonnes of LPG, 80 tonnes of pentane and 45 tonnes of condensates daily.[18] The project is currently connected to the gas infrastructure to the West Africa Gas Pipeline to enable the reverse flow of gas between the two lines.

In October 2018, the government launched the country's maiden oil and gas licensing bid rounds, with six blocks, all in Tano/Cape Three Points (Western Basin) being placed on offer. The bidding round attracted multinational oil companies such as ExxonMobil, British Petroleum, Eni/Vitol, China National Offshore Oil Corporation, Qatar Petroleum, Aker Energy, Cairn Energy, Global Petroleum Group and first exploration and production. Sixteen oil and gas companies were initially selected in early 2019 to participate in the final stage of the oil and gas licensing round. Three of the oil blocks (2, 3 and 4) were selected to undergo a competitive bidding process while two blocks (5 and 6) were to be undertaken by direct negotiations. Block 1 was, however, reserved for the GNPC. Two companies were disqualified, one for bidding for the block reserved for GNPC and the other for not meeting financial obligations. Also, ExxonMobil and British Petroleum later withdrew from the contest without assigning reasons. The government, on 27 June 2019 announced the winners of blocks 2 and 3 as First Exploration and production or Elandel Energy Ghana Ltd and Eni/Vitol respectively.

3. Treaties

Ghana became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 9 April 1968. It is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was ratified on 13 July 1966 and entered into force on 14 October 1966. Under the Alternative Dispute Resolution Act 2010 (Act 798), a foreign arbitral award is enforceable by the court if it is satisfied, inter alia, that the award was made under the New York Convention or other international convention ratified by Parliament.

In addition, the enforcement of foreign judgments in Ghana is based on the doctrine of reciprocity. On this basis, final judgments from Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, the United Arab Emirates and the United Kingdom are enforceable in Ghana. For countries that do not have reciprocity, a fresh action must be instituted on the basis of the foreign judgement.

Further, Ghana has signed bilateral investment treaties (BITs) with over 25 countries; however, only eight of these BITs have been ratified. Countries with which Ghana has ratified BITs are China, Denmark, Germany, Malaysia, the Netherlands, Serbia, Switzerland and the United Kingdom.[387]

In respect of taxation, Ghana has signed and ratified double taxation agreements with the Netherlands, Mauritius, Czech Republic, Switzerland, Belgium, Denmark, France, Germany, Italy, South Africa and the United Kingdom.[388]

4. Tax

Taxation of activities in the upstream oil and gas sector is regulated under the Petroleum Income Tax Act 1987 (PNDCL 188), and the Income Tax Act, 2015 (Act 896) as amended. Corporate income tax is assessed at 35 percent of the chargeable income or as provided in the taxpayer's petroleum agreement.[389] The prevailing rate in recent petroleum agreements is 35 per cent.

Corporate income tax is calculated net of all expenses that are incurred in the petroleum operations and approved by the Petroleum Commission and the GRA as petroleum costs.[390] The allowable deductions include rental fees, royalties, interest on fees and loans, expense on maintenance, repair or alteration of machinery, debts directly incurred in the conduct of petroleum operations, contributions to pension or provident funds approved by the Petroleum Commission, capital allowance (determined by the law) and losses from the previous year of assessment.[391] Expenses that are not allowed are stated under the Act;[392] these include research and development

[387] See https://www.gipcghana.com/invest-in-ghana/why-ghana/faqs.html?catid=0
[388] Ibid
[389] Section 5 of the First Schedule to Act 896.
[390] Section 67(1) of Act 919.
[391] Ibid
[392] Section 67(2) of Act 919.

expenditure, bonus payments made in respect of the grant of the petroleum licence and expenditure incurred as a consequence of a breach of a petroleum agreement.

Employees of petroleum operators are subject to personal income tax at varying rates depending on their nationality and income.[393] Petroleum agreements may provide some exemptions for foreign employees working in Ghana for periods under 30 days.[394] Other taxes that are typically exempted under petroleum agreements are value added tax (VAT), customs and import duties and taxes associated with importation of equipment for petroleum operations. It should be noted that these tax exemptions are subject to parliamentary approval as provided under the Constitution.[395]

5. Environmental Impact and Decommissioning in Ghana

The Exploration &Production Act and the MPA require strict compliance with the Environmental Protection Agency Act 1994 (Act 490), the Environmental Assessment Regulation 1999 (LI 1652) and best environmental practices in the international oil and gas industry.

Exploration & Production Act

This Act requires a licensee or contractor that operates a petroleum facility to submit a decommissioning plan to the Minister for approval not more than five years and not less than two years before the date on which the petroleum facility is to permanently cease operation or before the expiration of the licence or relevant petroleum agreement. The Act also requires a licensee or contractor to establish a decommissioning fund as prescribed. In the event of abandonment of a well, the contractor is required to submit an immediate notice of intention to abandon the well to the Commission. Thereafter, the contractor must treat and plug the abandoned well with the prior written approval of the Commission and in a manner consistent with international best practices and as approved by the Commission. A contractor or licensee who is under an obligation to implement an approved decommissioning plan is strictly liable for any loss or damage caused in

[393] Section 63 and First Schedule to Act 896.
[394] Article 12.8 of the MPA.
[395] Article 174 of 1992 Constitution.

connection with the decommissioning of the facility or the implementation of the decommissioning plan.

Environmental Protection Agency (EPA) Act 1994 (Act 490)

This Act grants the EPA the mandate to formulate policy on the environment, prescribe standards and guidelines and issue environmental permits and pollution abatement notices. The Act also empowers the EPA to request an environmental impact assessment (EIA) prior to the grant of permits for any activity that may adversely affect the environment, which includes exploration, development and production of oil and gas.

Environmental Assessment Regulations 1999 (LI 1652) as amended (2002)

Under Act 490, all activities that have the potential to adversely affect the environment must be subjected to environmental assessments. These regulations provide the requirement for all the different assessments to be undertaken. These include the following: preliminary environmental assessments; EIAs; environmental impact statements; environmental management plans; among others.

In addition to the LI 1652, the EPA has issued several guidelines to regulate the EIA process. The key guidelines relating to oil and gas activities are the EPA Guidelines for Environmental Assessment and Management in the Offshore Oil and Gas Development (2010), the Dispersant Importation and Use Guidelines and the Oil Waste Management Guidelines and the Dispersant Policy. These guidelines require preliminary environmental assessments for small to medium-impact scale undertakings and EIAs for field development and production activities.

The E&P Act, requires the GNPC and contractors to restore affected areas and to remove items with the potential to damage the environment at the end of the petroleum operation. The activities required to be undertaken include plugging abandoned wells. Contractors are required to submit detailed decommissioning plans as part of a development plan for approval. Under the petroleum agreements, the obligation for decommissioning is placed on the contractor who must submit annual reports to the EPA for reviews and monitoring. Contractors are also required to create a decommissioning fund as prescribed in the development plans to finance the decommissioning process during the life of the oil field.

The role of the Ghana Maritime Authority

The Ghana Maritime Authority (GMA) was established under the Ghana Maritime Authority Act, 2002 (630). It is the core government agency charged with the responsibility of monitoring, regulating and coordinating activities in Ghanaian waters and in the maritime industry. The GMA is responsible for ensuring a safe and secure marine environment and in charge of monitoring economic activities in Ghanaian waters including oil and gas activities. To ensure the safety and protection of vessels, infrastructure and other assets within Ghana's maritime jurisdiction, the GMA is mandated under the Ghana Shipping (Protection of Offshore Operations and Assets) Regulations, 2012 (LI 2010) to issue permits for operation, location and movement of mobile offshore drilling equipment. Other activities that require a GMA permit are the operation of vessels, siting of installations and storage facilities and the laying of pipes, cables, equipment and all structures and devices on the seabed or in an area within Ghana's maritime jurisdiction.

The GMA is also the implementing agency of Ghana's obligations as a member of the International Maritime Organization (IMO). Accordingly, it is responsible for ensuring compliance with the design, construction and equipment requirements of the Code for the Construction and Equipment of Mobile Offshore Drilling Units among other functions.

6. Foreign Investment Considerations in Ghana

Establishment

Under the E&P Act, a contractor in a petroleum agreement is required to be incorporated in Ghana. Therefore, a foreign investor must incorporate a local entity in Ghana to enter into a petroleum agreement. The entity is also required to open a bank account and maintain an office inGhana with a representative who has the authority to bind the contractor. A branch of a foreign entity cannot be a party to a petroleum agreement. Subject to providing all the relevant documentation, a local entity may be incorporated within 10 working days. The entities with foreign ownership are required to register with the Ghana Investment Promotion Centre prior to commencement of operations.

Capital, labour and content restrictions

As discussed above, the Petroleum (Local Content and Local Participation) Regulations (LI 2204) regulates local content in the upstream sector. Significant provisions include the following requirements: minimum of 5 percent indigenous participation (other than GNPC) in petroleum agreements; minimum of 10 per cent Ghanaian ownership in service providers to be increased to 50 per cent in five years and 60–90 percent after 10 years; minimum targets for areas such as front-end engineering design, fabrication and construction, materials and procurement, well drilling services, marine operations and logistics services and transportation, supply and disposal services; and submission of a local content plan showing how priority will be given to local goods and services and use of local professionals and a training plan among others.

LI 2204 places an obligation on contractors to hire more Ghanaians over time and develop plans for attaining almost 100 percent indigenous employment within 10 years of starting petroleum operations. The employment of staff (Ghanaians and expatriates) in the oil and gas sector is also regulated under the Labour Act and the Pensions Act.

Anti-corruption

Since assuming its regulatory role in 2011, the Petroleum Commission prioritized the need to improve the public perception about the upstream sector by increasing consultation and transparency in the sector. In its regulatory role, the Commission monitors compliance with national law on anti-corruption and bribery. Foreign entities are also monitored by other public agencies for compliance with foreign anti-corruption legislation that have extraterritorial effects such as the Foreign Corrupt Practices Act of the US and Bribery Act of the United Kingdom.

Until recently, a key concern was transparency in the process of the award of petroleum rights. To resolve this, the E&P Act and the recently passed LI 2359 provide mandatory rules on competitive tendering and direct negotiations to ensure that all future petroleum rights are awarded in a fair, open and transparent manner. As already discussed above, these tendering processes were followed by the government in the recent licensing round. The E&P Act also provides for the establishment of a public register of all petroleum agreements, which has been set up by the Petroleum Commission. Also, the variation of terms in the various petroleum agreements have raised concerns relating to fairness and transparency.

The introduction of an anti-corruption warranty clause in recently negotiated petroleum agreements is expected to pave the way for even further reforms in transparency in the grant of petroleum rights. The clause requires contracting parties to certify compliance with the anti-corruption laws of Ghana, their countries of incorporation as well as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United States of America Foreign Corrupt Practices Act 1977 and the United Kingdom Bribery Act 2010.

7. Oil for Development in Ghana

A global index assessing 81 countries' oversight of natural resources has found that Ghana performs satisfactorily in many essentials of resource governance.[396] Ghana is one of eight countries in the index for which both mining and oil and gas sectors were assessed, and researchers reported significant variations in governance between the two sectors. Ghana's oil and gas sector scores a satisfactory 67 of 100 points in the 2017 Resource Governance Index, making it the best performing extractives sector in sub-Saharan Africa. In oil and gas, Ghana performs consistently across all three components of resource governance—value realization, revenue management and enabling environment. However, within the revenue management subcomponent, its performance varies considerably, from good sovereign wealth fund governance to poor national budgeting.

The Ghana Stabilization Fund is the index's second-best governed, behind only Colombia's Savings and Stabilization Fund. Ghana's fund was found to be better governed than many with much greater assets, including those of many oil-rich states in the Persian Gulf. Ghana's good performance is a result of clearly defined rules for deposits, withdrawals and investments, audit and parliamentary oversight mechanisms and adherence to these requirements. Despite these positive findings, governance of revenue management in Ghana falls behind that of some other states with emerging hydrocarbons sectors. Uganda, for instance scores more than 10 points higher than Ghana in the national budgeting category.[397]

The country's mining sector performs better than equivalents in many of its African neighbours. However, it is older and longer established than Ghana's hydrocarbons industry. The latter has evolved during an era of more stringent governance and of more modern institutional structures.

[396] Resource Governance Index (RGI)- Accra 28th June, 2017 at www.resourcegovernanceindex.org
[397] Ibid

This has led to an 11-point performance gap between the two sectors' governance scores. Indeed, Ghana's gold mining company, Sankofa Prestea, scores far below its petroleum sector peer and parent company, Ghana National Petroleum Corporation (GNPC).

In 2007 commercially viable quantities of oil and gas were discovered in Ghana. The estimated revenue of the oil reserves is about $1 billion per year, which is similar to the amount of development assistance received by Ghana annually. As is often said, natural resources can be both a curse and a blessing. When managed well, they can boost development and foster economic growth. Oversight bodies such as parliaments, media and civil society organizations (CSOs) have a pivotal role to play in ensuring proper management of natural resources.

Consecutive governments in Ghana have emphasized the importance of transparency and accountability in the management of oil and gas and the revenue these generate. However, these governments were also pushed to quickly develop a legislative and policy framework to be implemented before actual production would start in 2010.

Ghana achieved this remarkable resource governance performance by involving CSOs. CSOs can play an important role in promoting sound management of oil and gas resources and mitigating negative social-economic, political and environmental impacts.[398] They can facilitate involvement of grassroots communities; assess and monitor the impact of extraction; and hold key players (including the government and the private sector) accountable. However, when oil and gas were discovered in 2007 few Ghanaian CSOs had specific experience or expertise in this regard. In part due to the active engagement of Ghanaian CSOs, so far, the oil and gas discoveries seem more of a blessing than a curse.

In order to develop their capacity to engage on oil and gas issues at different levels, CSOs created the Ghana Civil Society Platform on Oil and Gas. The platform comprises about 120 organized groups, individuals and professional bodies (including community-based organizations, faith-based groups, research institutions, gender-based groups, trade unions, etc.) working toward ensuring transparency and accountability in the oil and gas industry in Ghana. The platform

[398] Renée Zandvliet (2017): EuropeAid's 'Civil Society and Local Authorities' unit on visiting the European Union Delegation to the Republic of Ghana and met with several representatives from CSOs.

focuses on strengthening the ability of civil society to have their voices heard on oil and gas legislation, revenue collection and environmental protection.
Depending on their expertise (e.g. budgetary issues, revenue tracking, human rights, environment), member organizations take the lead on specific activities to be carried out, with others lending their support. In addition, some activities are carried out by the platform at national level, particularly with regard to national advocacy, such as the development of policy briefs.

CSOs also sit on and actively contribute to the Public Interest and Accountability Committee which is responsible for monitoring and reporting on oil and gas revenues. The findings of this Committee have made an important contribution to public debates on this issue. Moreover, through consultations, concrete proposals and presentations to the Parliamentary Committee on Energy, CSOs were successful in influencing the drafting of an important renewable energy bill and a petroleum revenue management act. They are also monitoring the implementation of the latter act and raising awareness and holding the government to account for cases of infringement.

The secretariat of the Platform stresses the importance of tax-related issues in relation to oil and gas sector:

> *"The objective of the tax justice campaign in Ghana is that companies demonstrate their corporate social responsibility not through the construction of projects but through the payment of the right taxes at the right time. If as a company you say you are socially responsible, then behave like a socially responsible citizen and pay your taxes. […] We treat it as a corporate social responsibility issue, not as a criminal issue. [If] you are morally upright and you know that the success of your operations is dependent on the road infrastructure, the stable electricity, the quality of the human resources that the government provides, then you'll pay your taxes, you'll not avoid them."*[399]

The DFID-funded Ghana Oil and Gas for Inclusive Growth programme was established to help fill gaps by improving the capacity of government agencies involved in the management of Ghana's nascent oil and gas sector, as well as engaging with a variety of accountability actors involved in improving public scrutiny of the sector. This innovative five-year governance programme is promoting inclusive economic growth in Ghana by improving the management of the country's oil and gas resources. GOGIG is working closely with a range of stakeholders

[399]Manteaw S. (2017): Publish What You Pay. The Integrated Social Development Centre (ISODEC) Campaigns Coordinator on the importance of tax-related issues in relation to the oil and gas sector

including government ministries, civil society organizations and parliamentarians to address and alleviate the remaining gaps in legislation and regulation, as well as supporting efforts to maximize revenue capture from the sector and the overall management of those revenues. In the long run, by strengthening the capacity of the institutions responsible for managing the sector, the programme will help ensure that the potential benefits from extractive industries are maximized for improved human development outcomes across Ghana.

8. The Challenges in Ghana

The discovery of oil and gas reserves in Ghana in 2007 led to a surge of interest and investment in the sector, with commercial production commencing three years later. Although the revenue gained from natural resources can act as a valuable facilitator of development, the oil and gas sector is highly complex. The process of transforming natural resources in the ground into tangible benefits for citizens involves a long sequence of policy decisions, and a swathe of technically complex legislative, regulatory and administrative processes spanning across several years, increasing susceptibility to external shocks and political cycles. In addition to being technically difficult, the management of oil and gas revenues is highly political – where there are large rents up for grabs, there is more than the usual scope for corruption.

Ghana has moved from the discovery of oil to production in a very short space of time - and the institutional framework underpinning the governance of that process has only recently been passed by parliament. Ghana is still looking to further develop key pieces of legislation and policies that are central to the management of the sector and to building vital linkages for delivering inclusive growth, including with the energy sector. Delivering these policies and laws requires significant efforts to further develop the capability of key institutions.

Ghanaian approach

The challenge for GOGIG lies in being able to navigate the complex political environment to build the capacity and will of government institutions with a mandate for managing the sector. Drawing on our successful track-record in managing the Facility for Oil Sector Transparency and Reform in Nigeria programme, we will adopt a flexible, adaptive, political economy driven approach, identifying and leveraging opportunities for reform as they arise.

The programme will combine strategic interventions with government counterparts with a responsive and opportunistic approach towards supporting accountability actors. GOGIG will focus much of its effort on supporting the government to develop its policies, processes and systems for carrying out its mandate. This will be complemented through support to a variety of accountability actors – such as parliament, media and broader civil society – to encourage greater public scrutiny and debate on key issues of concern.

Within this context the GOGIG programme is designed to deliver: Enhanced policy and regulatory coherence across the oil and gas sector by clarifying policy and regulatory frameworks and building capacity within ministerial and regulatory agencies; Improved systems of revenue capture to maximize the direct benefits from the oil and gas sector, by building technical capacity of the authorities involved in collecting royalty payments and tax revenues; and Improved revenue management to avoid adverse macroeconomic consequences associated with natural resources windfall gains among others.

We are working closely with a range of stakeholders: supporting the Ministry of Petroleum and the Petroleum Commission in developing laws, policies and implementation strategies; the Ghana Revenue Authority to build capacity in oil and gas sector monitoring and auditing; and the Ministry of Finance and Bank of Ghana to strengthen petroleum sector revenue management, forecasting and investment. We are also working closely with civil society, the media and parliamentarians, strengthening accountability and increasing public awareness and engagement.

9. Outcomes in Ghana

The GOGIG programme is ambitious in objectives and complex in delivery. The challenges that Ghana faces from oil and gas are essentially challenges of good governance. This programme will help to address the missing pieces in the legislative framework and strengthen the capacity of government agencies in exercising their mandate to manage the sector. By strengthening regulation and improving revenue collection and management, the programme will maximize the potential for more inclusive economic growth, ultimately promoting improved human development outcomes. More broadly, by drawing on insights from similar approaches, this project will provide a body of evidence of what works and what doesn't in different socio-political contexts, supporting the development of a scalable blueprint for sustainable reform in the extractives sector.

After Ghana discovered oil and gas in 2007, the government and civil society aspired to avoid the "resource curse". This is when countries have an abundance of non-renewable natural resources but no economic growth. Nigeria, Sudan, Angola, Cameroon, Equatorial Guinea and Chad are among the oil producers that have failed[400] to channel their resources into the material improvement of their countries and people. To avoid a similar fate, Ghana enacted a Petroleum Revenue Management Act in 2011. The law created the Public Interest and Accountability Committee, with a mandate to ensure accountability and transparency in the management and use of oil and gas revenue.

4.3 Conclusion

The discovery of oil in commercial quantities in Uganda in 2006 has raised the prospect of oil production in the near term. The completion of field appraisals and development of necessary infrastructure will determine the exact volume, costs and timing of production. In January 2008, the National Oil and Gas Policy was approved, which articulates the policy and operational framework for prudent management of oil and gas resources. Specifically, this policy provides for the establishment of a legal and institutional framework which will govern the assessment, collection, use and accountability of oil and gas revenues. In this regard, the Oil and Gas Revenue Management Policy details the framework under which the anticipated oil and gas revenues will be managed.

Forecasts of oil revenue have varied significantly, depending on the information available at the time they were produced, and the assumptions made. The research compares assumptions made in forecasts by different institutions including the World Bank. All authors point to three major sensitivities: international crude oil prices; the estimated size of recoverable reserves; and delays in the execution of projects. A lower bound price scenario can be taken with a constant price of US$77 per barrel and a 2 percent growth rate while recoverable reserves is focused at is 2,181m barrels of total recoverable reserves by 2027.

The study has also given comparative analysis with the jurisdictions of Norway, Chad, Libya and Ghana. To put the income into perspective, there have been periods when Norway—a country with

[400] See failed states at:
https://www.ifpri.org/publication/natural-resource-curse-africa-dutch-disease-and-institutional-explanations

a population of only five million—was one of the world's top three oil exporters. As of 2016, Norway had one of the lowest unemployment rates in Europe, the highest Human Development Index value in the world and a sovereign wealth fund worth USD 840 billion. Many skilled jobs for locals had been created in the oil and gas industry. It is therefore hopeful that Uganda can learn lessons to transform its economy from Norway and others.

CHAPTER FIVE

RESEARCH FINDINGS, ANALYSIS AND DISCUSSION

5.1 Introduction

This chapter presents the research findings in line with the objectives. An analysis and discussions of these findings have been done. The objectives covered the efficacy of resource governance in oil and gas sector in Uganda, Oil and gas tax governance system put in place for the growth of fiscal development in Uganda and the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda.

5.2 Objective One: The efficacy of resource governance in oil and gas sector in Uganda

The research found that there are variations in the quality of resource governance for a number of countries, including Uganda, as measured by the resource governance index (RGI) and composed by the Natural Resource Governance Institute (NRGI). The NRGI measures how well countries govern their extractive resources. It should be noted that the quality of a country's resource governance should not be seen in binary terms, i.e. good or bad governance. Instead there is a lot of variation over time within the country (meaning that governance regimes are not fixed and can thus be strengthened or can become less effective over time) and between countries.

In particular, with respect to oil and gas governance, Ghana ranked 13 out of 89 countries with a total score of 67 out of 100. Norway was ranked 1 out of 89 countries with a total score of 86 out of 100. These countries are doing extremely well in both an African and a global context. Uganda[401] was ranked 51out of 89 countries with a total score of 44 out of 100 while Chad was ranked 72 out of 89 countries with a total score of 34 out of 100 and Libya was ranked 87th out of 89 countries with a total score of 18 out of 100.[402] The total score is an average of scores taken over three critical governance areas. These areas are value realization score, revenue management score and enabling environment score which can indicate areas that need improvement. According

[401] Data drawn from the 2017 Resource Governance Index, Natural Resource Governance Institute (NRGI). Available at: https://resourcegovernanceindex.org/
[402] Ibid

to the finding, Uganda scored 42/100 in value realization, 42/100 in revenue management and 47/100 in enabling environment. In comparison, Norway scored 77/100 in value realization, 84/100 in revenue management and 97/100 in enabling environment while Ghana scored 65/100 in value realization, 65/100 in revenue management and 70/100 in enabling environment. Similarly, Chad scored 39/100 in value realization, 43/100 in revenue management and 19/100 in enabling environment while Libya scored 27/100 in value realization, 20/100 in revenue management and 6/100 in enabling environment.

The results show that on a global scale, Uganda is below average as far as Resource Governance is concerned. It is also clear that Uganda performed better than some other African countries.

It is clear that African countries have been performing poorly in Resource Governance with the exception of Ghana.

The Uganda RGI result was worsened by the governance gaps in the extractive sector components but improved slightly by enabling environment. Uganda has proven oil reserves of under 2 billion barrels, which attracted interest in exploration during the commodity boom. However, early years of exploitation have been marked by uncertainties related to investment conditions and infrastructure development, and resistance by local communities. Underling the call for improved governance is the fear that Uganda will experience the same "natural resource curse" that has plagued most resource-rich African nations. Rather than spur development, it is believed that countries with an abundance of a natural resource end up performing more poorly than do resource-poor countries because they squander their riches through corruption, violent conflicts, and environmental destruction.[403] The proposed antidote for avoiding this outcome to create strong institutions that will assure transparency and effective economic management.[404]

In Uganda, expectation of national benefits from oil production has sparked interests in the governance of oil wealth to avoid the experiences of other countries where discovery and

[403]Ghazvinian, J. (2007). *Untapped: The scramble for Africa's oil*. Orlando, FL: Harcourt.

[404]Bainomugisha, A., Kivengyere, H., & Tusasirwe, B. (2006). *Escaping the oil curse and making poverty history: A Review of the Oil and Gas Policy and Legal Framework for Uganda* (No. 20). Kampala: ACODE; Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center; Mugyenyi, O., Ustin, B., & Twesigye, B. (2010). Equitable sharing of the treasures of oil and gas in a transparent and environmentally sustainable manner. *A synthesis report of the Proceedings of the Parliamentary Symposium on Oil and Gas Development in Uganda*. (No. 15), Entebbe, UG.

exploitation of oil have attracted woes rather than wealth.[405] This is against the background of growing recognition that the 'oil curse' is not an inevitable occurrence and that its negative effects can be avoided.[406] Indeed, the Ugandan president has promised its citizens that the Ugandan case will be different, and noted in this respect:

> *"… There is a lot of nonsense that the Oil will be a curse. No way! The Oil of Uganda cannot be a curse. Oil becomes a curse when you have got useless leaders, and I can assure you that we don't approach that description even by a thousandth of a mile… The Oil is a blessing for Uganda and money from it will be used for development*."[407]

"In his Address to the Nation on 31st December 2009, President Yoweri Museveni promised to ensure that oil becomes a blessing to Uganda and detailed how the oil resource will be well managed for national development: He is quoted to have noted that:

> *… The development of Oil resources will go hand in hand with the continued efforts to develop other sectors of the economy that is, the diversification of the economy will continue to be among the top priorities of Government in spite of the Oil wealth. The Government recognizes the critical importance of managing Oil resources well; to avoid the mistakes many other countries have faced. … Hence, Government will ensure that these resources are managed in a manner that facilitates sustainable development and avoids distortions such as a sharply appreciated exchange rate, which would destroy other sectors of the economy, by making them uncompetitive in terms of export. In other words, Oil and Gas resources will be managed in a manner that is consistent with the macro framework of the country. Since Oil is a finite resource, Oil revenues will be used to develop durable and competitive competences that will increase productivity in key sectors of the economy."*[408]

Hence, it is evident that the Ugandan political leadership is aware of the growing recognition that the 'oil curse' is attributable not to the discovery of abundant natural resources but to the nature of institutional arrangements that guide the governance of natural resource deposits and revenues.[409]

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[405]Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center.

[406]Anthonsen M., Å. Löfgren and K. Nilsson (2009), 'Natural Resource Dependency and Quality of Government'. *Working Papers in Economics*, No. 415; Mehlum, H., K. Moene and R. Torvik (2006), 'Institutions and the Resource Curse', *The Economic Journal*, 116(508), 1–20; Thuber, M.C., and B.T. Istad (2011), 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise', in D. Victor, D. Hults and M. Thurber (eds.), *Oil and Governance: State-Owned Enterprises and the World Energy Supply* (pp.599–654). Cambridge: Cambridge University Press.

[407]Kiiza, J., L. Bategeka and S. Ssewanyana (2011), 'Righting Resource Curse Wrongs in Uganda: The Case of Oil Discovery and the Management of Popular Expectations', *The Journal of Humanities and Social Sciences*, 10(3), 183–203. p.25.

[408]Veit, P., C. Excell and A. Zomer (2011), 'Avoiding the Resource Curse: Spotlight on Oil in Uganda'. *WRI Working Paper,* p.5.

[409] Okuku, J.A. (2015), 'Politics, the State and Limits of Oil-led Development in Uganda'. Paper presented at Makerere Institute of Social Research (MISR) Seminar, Kampala.

It is important to note, therefore, that there is a correlation between strong and efficient institutions with better oil and gas management systems. This has been shown in case studies documenting the experience of Norway and Ghana.[410] The question to be settled, however, is how the Ugandan model will work to achieve the successes evidenced in the Norwegian and Ghana models.

The oil and gas sector in Uganda is also being developed and governed in accordance with the national development plan that is underscoring programmes such as fiscal expansion for front-loading physical infrastructure investment, industrialization through resource beneficiation, fast-tracking skills development and strengthening governance or enabling business environment.

Within the constitutional context, the primary framework that guides the management of oil resources in Uganda is the national oil and gas policy (NOGP).[411] With the overarching theme of using the resource to eradicate poverty and create lasting value to Ugandans, NOGP recognizes that to attain the ultimate goal it should have as a primary objective the 'development of institutions, including legislation and manpower necessary for effective management and regulation of the sub-sector'.

Prior to the coming in force of the NOGP, Uganda's oil and gas activities were regulated under the Petroleum Exploration and Production Act, 1985, Cap. 150 of the Laws of Uganda, which was implemented by the Petroleum Exploration and Production Department under the Ministry of Energy and Mineral Development (MEMD). This was a single department handling all the oil and gas activities in the country. This 1985 law covered exploration operations but did not have adequate provisions to cover development and production operations. The NOGP recommended the establishment of 1) the Petroleum Authority of Uganda to handle the regulatory functions; 2) the National Oil Company to handle the commercial interest of the state; and, 3) the Directorate of Petroleum to advise on policy issues and resource management.

The Constitution of the Republic of Uganda mirrors the above practices, as it places considerable responsibility on the Parliament to provide the oversight role in the management and exploitation

[410]Mehlum, H., K. Moene and R. Torvik (2006), 'Institutions and the Resource Curse', *The Economic Journal*, 116(508), 1–20.
[411]Ministry of Energy and Mineral Development (MEMD) (2018), *Sector Performance Report*. Kampala: Government of Uganda.

of resources and other operations of the State of Uganda.[412] The Parliament of Uganda is accordingly the apex institution mandated to make laws for the regulation management and exploitation of the minerals and natural resources such as oil and gas in the country and the sharing of royalties arising from petroleum exploitation and other related activities.

However, the legal regime in Uganda is not as strong as that of Liberia or Egypt, where the international agreements or investment contracts are given effect only after parliamentary approval/ratification. In Uganda, the Minister responsible for petroleum (Minister of Energy) negotiates and enters into petroleum agreements (section 9 of the Upstream Act and section 8 of the Midstream Act) and does not require parliamentary approval. Although there is a national resources committee of Parliament, there is no oversight role of Parliament during the negotiation and contracting process. As a result, Parliament has no control of the negotiated contract terms and appears to be merely a bystander or spectator in the process. The Minister is part of the executive, and as such this process is prone to political interference and direction.

The Parliament of Uganda has enacted laws to regulate oil operations in Uganda. However, most of the laws passed by Parliament concentrate powers in the hands of the executive (the Minister of Energy and Minerals Development), and this has implications for ensuring accountability and transparency in the oil sector. This is largely attributable to the governance system that has Cabinet Ministers who are Members of Parliament selected from the ruling party.[413] In such a situation, where the ruling party has an overwhelming majority, Parliament will have no firm basis to develop independent capacities.[414] It is a common practice in the Ugandan Parliament for the ruling party, the National Resistance Movement (NRM), which currently controls 293 out of 400 Members of Parliament, to make critical decisions ahead of parliamentary deliberations in its caucus. In effect Parliament ends up endorsing decisions agreed upon from the party caucus. The Parliament also seems to have ceded some of its oversight responsibilities by allowing the executive to have absolute powers in the governance of the oil sector.

[412] Section 79 of the Constitution provides that subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda'.

[413]World Bank Institute (2012), 'Parliamentary Oversight of the Extractives Industries Sector'. Retrieved from: https://www.agora-parl.org/sites/default/files/parliamentary_oversightand_the_extractive_industries.pdf

[414] Ibid

There is evident political interference in the management of Uganda's oil and gas sector. The President has arguably been adamant about maintaining firm control over the oil industry. He has been quoted to have said, '*In the case of petroleum and gas, I direct that no agreement should ever be signed without my express written approval of that arrangement.*'[415] This poses a major challenge to the oil sector and undermines the authority of the oil governance institutions.[416] Moreover, the powers vested in the Minister of Energy and Mineral Development in Uganda are arguably rather excessive and provide a conducive milieu for possible misuse and abuse.[417] This explains why the Minister of Energy could refuse to have the production-sharing agreements debated on the floor of Parliament on the pretext of protecting proprietary rights.[418]

There has been some undisclosed information on the Government's management of the oil and gas industry in Uganda that undermines the credibility and quality of governance institutions and practices. In Uganda, there is limited access to information on oil and gas activities. A case in point is that the production-sharing agreements (PSAs) remain inaccessible to the public. This maybe due to different statutes/laws giving contradictory positions on the right of citizens to access information.[419] For instance, section 151 of the Petroleum Act on accessing information on petroleum activities by the public is not robust enough. Whereas the provision avers that the Minister may provide information about the petroleum agreement to the public, it does not indicate how much of the information regarding the contents of the agreement can be provided; are they details as to the parties or all the clauses in the agreement in question? This lack of transparency has created negative perceptions and worries as to whether the PSAs were well negotiated for the benefit of the people of Uganda.[420]

There is also concern that the Ministry of Energy and Mineral Development, and more specifically the Directorate of Petroleum, is simply too lean to fully execute its role in the petroleum sector.

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[415]Watkins, E. (2010), Uganda's President Wants Final Approval of All Oil, Gas Deals', *The Oil and Gas Journal*, 108(32),25–27.
[416]Patey, L. (2015), 'Oil in Uganda: Hard Bargaining and Complex Politics in East Africa', *OIES Working Paper* 660.
[417]Golombok, R., and M.L. Jones (2015), *Oil Governance in Uganda and Kenya: A Review of Efforts to Establish Baseline Indicators on the Impact of the Oil Sector in Uganda and Kenya*. Nairobi: UNEP. Hammond, J.L. (2011), 'The Resource Curse and Oil Revenues in Angola and Venezuela', *Science & Society*, 75(3), 348–378; International Alert (2009), *Investing in Peace, Issue No. 2: Harnessing Oil for Peace and Development in Uganda*. Kampala: International Alert; and Veit, P., C. Excell and A. Zomer (2011), 'Avoiding the Resource Curse: Spotlight on Oil in Uganda'. *WRI Working Paper*. Retrieved from the World Resources Institute website: http://www.wri.org/project/equity-poverty-environment.
[418]World Bank Institute (2012), 'Parliamentary Oversight of the Extractives Industries Sector'. Retrieved from: https://www.agora-parl.org/sites/default/files/parliamentary_oversightand_the_extractive_industries.pdf
[419]Veit, P., C. Excell and A. Zomer (2011), 'Avoiding the Resource Curse: Spotlight on Oil in Uganda'. *WRI Working Paper*. Retrieved from the World Resources Institute website: http://www.wri.org/project/equity-poverty-environment.
[420] The Black Monday protestors used these restrictions as one of the justifications for protesting against corruption in government (see www.monitor.co.ug: 3 December 2012: 'Ant i - corruption Activities Call for Black Money Protests').

The effort to reorganize and strengthen the Ministry has been constrained by limited funding. The constrained funding has also affected both the strategic and operational business activities of fully developing the oil and gas sector in the country;[421] Parliament of Uganda, 2016). Government has been slow in developing and skilling human resources for the sector. Not all the staff are well grounded in technical petroleum and ancillary matters such as negotiation, licensing and contract management.[422]

Although Uganda's oil industry is operating outside communities, degradation of the ecological biodiversity of the Lake Albert region is increasingly becoming a reality due to poor environmental governance.[423] Oil companies are basically self-regulating. Uganda's National Environment Management Authority (NEMA) is underfunded, understaffed and lacks political authority. Environmental impact assessments have been conducted, but there are few guidelines on waste management.

In summary, with respect to oil and gas governance, Uganda's efficacy is poor and it scored 44/100 and ranked 51. The ranking scale being under 30/100 is failing, 30-44 is poor, 45-59 is weak, 60-74 is satisfactory and above 74 is good. Therefore, Uganda on this scale is still poor in comparison with Ghana which scored 67/100 and ranked 13 or with Norway which scored 86/100 and ranked number one.

5.3 Objective Two: Oil and gas tax governance system put in place for the growth of fiscal development in Uganda

The study found that the legal framework for Uganda's oil revenue administration is derived from the PSAs,[424] the revenue laws,[425] the Upstream law,[426] the Midstream law,[427] the Public Finance Management Act, 2015,[428] the National Oil and Gas Policy and, the Oil and Gas Revenue

[421]Ministry of Energy and Mineral Development (MEMD) (2017), *Ministerial Policy Statements*. Retrieved from: www.energyandminerals.go.ug.
[422]Kashambuzi, R. (2010), *The Story of Petroleum Exploration in Uganda*. Kampala: Impro Publications Ltd.
[423]Patey, L. (2015), 'Oil in Uganda: Hard Bargaining and Complex Politics in East Africa', *OIES Working Paper* 660. Retrieved from the Oxford Institute for Energy Studies website: https://doi.org/10.26889/9781784670405.
[424] 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.
[425] These include the Income Tax Act, Stamp Act, Customs Management Act, VAT Act, Traffic and Road Safety Act
[426] Petroleum (Exploration, Development and Production) Act, 2013
[427] Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013
[428] The Public Finance Management Act, 2015

Management Policy. These laws define the scope of oil revenues[429] and the manner of how the revenue will be collected, reported and accounted for.

The Uganda Revenue Authority (URA) and the Directorate of Petroleum 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 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 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 is 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 these institutions are mandated with the collection and prudent management of the oil revenues.

As Uganda embarks on its defining journey to develop the necessary infrastructure for crude oil production, the importance of taxation regimes in attracting and retaining investment for growth cannot be overstated. Fiscal and taxation terms can equally be used to encourage continuing exploration activities to maximize the country's oil and gas potential. Designing and implementing sound fiscal and taxation systems for the upstream oil and gas sector is very important as it influences the investor's decisions on exploration activities, scale of investment, rate of production, scope of enhanced recovery operations as well as the timing of final abandonment. Fiscal and taxation terms also determine how big a petroleum discovery must be to justify commercial development.

Overview of fiscal instruments

The oil sector is characterized by substantial economic rents, perverse price uncertainty, information asymmetry, high sunk costs with long production periods and extensive involvement of international oil companies.[430] Gudmestad *et. al*.[431] postulated that oil and gas resources provide

[429] 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).

[430] W. B. Kazi & B. Beyeza (2017): Analysis of the Oil Fiscal Regime of Uganda, 77 Bull. Intl. Taxn (2017) Bulletin for International Taxation IBFD (accessed on 8 October 2017)

[431] Gudmestad O. T., A. B. Zolotukhin A. B., and E. T. Jarlsby E. T. (2010): A Review of "Petroleum Resources with Emphasis on Offshore Fields" *Billerica, MA: WIT Press, 2010, 269 pages. ISBN 978-1-84564-478-9*

an extraordinary rate of resource rent. For these reasons, a special tax regime rooted in the rent theory was needed for the oil sector taking into account these peculiarities.[432]

The tax system for Uganda's upstream oil are royalties, cost recovery, production sharing, corporate tax, ring-fencing, Capital Gains Tax (CGT), windfall profits tax, Non-tax revenues and indirect taxes. The researcher concentrated majorly on upstream taxes and not the indirect taxes, which are more associated with the midstream and downstream oil operations. The tax regime delivers 67.5% of "profit oil" to government and 32.5% to oil companies. Uganda's oil fiscal regime emphasizes fiscal responsibility and sustainability.[433] The African Development Bank[434] states that proxies for profit, the internal rate of return and government's take determine which oil fiscal regime a country should adopt. Sunley et al[435] pointed out that evidence suggests oil fiscal terms endogenously respond to global oil prices. The following is an overview of fiscal instruments.

Public Finance Management Bill

The Ugandan parliament is presently creating legislation that will have a major impact on how the country manages its oil revenues. The most important of these governance laws is the Public Finance Management Bill. This law was in large part motivated by Denmark, Ireland, Norway, and the United Kingdom's decision to suspend financial aid to Uganda in reaction to the report of embezzlement of $12.6 million in donor funds from the Office of the Prime Minister.[436] To reestablish relations, the Public Finance Management Bill creates a framework for managing oil revenues and consolidating previous public finance management legislation. It also strives to improve budget administration, clarify the role of parliament, and provide for emergency responses to oil revenue fluctuations. The Public Finance Management Bill represents a positive start in managing the future oil economy, but concerns have been raised about key sections. First, the bill grants full power to the Minister of Energy and Mineral Development to license and create oil regulations. Given the broad impact of oil production, it is felt that, where appropriate, views

[432]Mazee,M. (2010): Petroleum Fiscal Systems and Contracts, Diplomica Verlag.
https://en.wikipedia.org/wiki/International_Standard_Book_Number.

[433]Kazi W. B. & Sarker T. K. (2012): Fiscal Sustainability and the Natural Resource Curse in Resource-rich African Countries: A Case Study of Uganda, 66 Bulletin International Taxation 8 Journals IBFD.

[434] African Development Bank, and Bill and Melinda Gates Foundation, 2015, Timing and magnitude of new natural resource revenues in Africa, published in Joint Flagship Paper Series Report: Delivering on the promise: Leveraging natural resources to accelerate human development in Africa

[435] Sunley, Baunsgaard, T. & Simard D. (2012): Background paper prepared for the IMF conference on fiscal policy formulation and implementation in oil producing countries, June 5-6, 2002.

[436] Mulondo, M. (2012). Uganda: Key reforms in public financial management. *New Vision*. Retrieved from http://allafrica.com.

of other ministries should be taken into account. Second, opponents perceive parliamentary powers as being diminished in favor of the executive branch with respect to financial controls and management of petroleum revenues.[437] Third, several clauses appear to hamstring parliament's ability to control matters of finance and provide oversight of oil revenues.[438] Finally, responsibilities are left unclear among the many agencies that will be involved in handling oil revenues. Should problems arise; the vague regulations will make it very difficult to identify the source of the problem and ways to correct it.[439]

A key element of the Public Finance Management Bill is the establishment of an investment fund as a separate government account for the deposit of oil revenues. A well-managed fund can serve as an effective public investment strategy for averting shocks to the economy resulting from the sudden influx or drop in oil revenues. These funds could then be used to make large scale investments in projects that will enhance economic development and reduce poverty. Several studies have focused on developing a specific investment strategy for using oil dollars to transform Uganda.[440] The immediate governance problem is the potential for misuse of such funds through nepotism and corruption. This problem is best countered by creating a transparent process for determining how such money is to be spent or saved each year. The resource rich nations of Botswana, Ghana, Chad, Norway, Timor-Leste, and the United Kingdom are held up as models for establishing fiscal rules on investment funds.[441]

Tax governance system put in place for the growth of fiscal development

Significant amounts of revenues and taxes are generated at all stages of the petroleum value-chain and these include signature bonuses, royalties, exploration fees, development fees, rents, fees on

[437] Civil Society Coalition on Oil and Gas (CSCO). (2012). Uganda: CSCO memorandum on the Public Finance Bill. *The Independent*. Retrieved from http://www.independent.co.ug.

[438] Kaija, W. (2013). MPs reject amendments in Public Finance Bill. *Uganda Radio Network.* Retrieved from http://ugandaradionetwork.com; and Walubiri, M., & Mulondo, M. (2014, July 17). NRM, opposition spar over Public Finance Bill. *New Vision*. Retrieved from http://www.newvision.co.ug.

[439] Suruma, E. (2014). *Will parliament lose influence to the executive in the budgeting process under the new Public Finance Bill?* (No.14). Kampala: Parliament Watch Uganda.

[440] Collier, P. (2011). *Managing Uganda's oil discovery*. Oxford: Oxford University, Centre for the Study of African Economies; Dorosh, P., & Thurlow, J. (2009). *Agglomeration, migration, and regional growth. A CGE analysis for Uganda* (Paper 848). Washington, DC: International Food Policy Research Institute; Mawejje, J., & Bategeka, L. (2013). *Accelerating growth and maintaining intergenerational equity using oil resources in Uganda* (No. 111). Kampala: Makerere University, Economic Policy Research Centre; Wiebelt, M., Pauw, K., Matovu, J., Twimukye, E., & Benson, T. (2011). *Managing future oil revenue in Uganda for agricultural development and poverty reduction* (No. 01122). Washington, DC: International Food Policy Research Institute; and Wiebelt, M., Schweickert, R., Breisinger, C., & Böhme, M. (2011). Oil revenues for public investment in Africa: Targeting urban or rural areas? *Review of World Economics, 147*(4), 745-770. doi: 10.1007/s10290-011-0101-2.

[441] Uganda economy. (2014, January 2). Uganda economy: Preparing for an oil windfall. EIU *ViewsWire*. New York: Economist Intelligence Unit.

permits, Capital Gains Tax (CGT) on transfer of interests and assets, government's profit share on production, and revenues and taxes at the refining, gas processing and conversion, transportation and storage of petroleum and its associated products, bi-products and wastes. Additional taxes to these revenue streams include income tax, With Holding Tax (WHT), Pay as you earn (PAYE), Value Added Tax (VAT), Import Duty, Stamp Duty, Service Tax, among others. This study focuses on those taxes that are unique to the petroleum industry to understand how they are assessed, determined and collected and whether or not there are leakages that do occur in order to make policy recommendations for government.

Bonus payments

Bonuses are generally made upon the signing of oil and gas contracts hence the term signature bonuses. Bonus payments are typically cash based but can sometimes consist of equipment and technology. Another form of bonus dubbed the production bonus is paid by IOCs to the government when production commences or reaches a particular agreed milestone. The signature bonus system is common in many oil-producing countries. It is a payment made up-front to the host country by Oil Companies for the right to develop an exploration block commercially before work begins. It is important to note that paying a signature bonus for a licence does not necessarily guarantee availability of commercially viable oil reserves or future revenues from the secured license. Signature bonuses are a widely recognized and legally accepted system. It is claimed that they are paid to meet administrative costs. Whether or not it is just or unjust is a matter for debate.

In Uganda, the earlier oil companies that sought oil exploration and production licenses in the Albertine Graben such as Hardman Resources Ltd, Energy Africa Ltd, etc. were not subjected to pay any signature bonuses. However, later on, companies like Tullow Operations Uganda Ltd and Heritage Oil & Gas Limited were required to pay signature bonuses for the exploration areas/blocks (EA) EA1, EA2 and EA3, respectively. Neptune Resources Ltd and Dominion acquired exploration areas EA5 and EA4B, respectively. The total amount of signature bonuses received by government of Uganda was reported to be about US$600,000[442] covering 5 exploration areas as shown in Map 1 below. The amount of signature bonuses companies paid for each exploration area is not clear. Also, how the signature bonuses were determined or were supposed

[442] Budget Speech of the Minister of Finance, Planning and Economic Development at the reading of the Budget for Financial Year 2012/13 in Kampala, Uganda.

to be determined is not clear. Signature bonuses to the tune of US$4million have been paid to the Democratic Republic of Congo by a company for a single exploration block.[443] Whether the signature bonuses received by DRC and Uganda over a single block were fair and just is arguable.

Royalties

Uganda's upstream oil and gas fiscal regime includes royalties.[444] Royalties are also known as severance or production taxes. They are broadly categorized into two types, namely: specific or ad valorem and are levied on the extraction of natural resources. Specific royalties are computed as a fixed value amount on the quantity of the resource extracted, while ad valorem are charged as a percentage of the monetary value of the resource. Specific royalties are easy to administer, provide early revenues and are not affected by fluctuations in commodity prices. Government revenues, however, remain stagnant if resource prices increase and do not keep up with inflation. Ad valorem royalties address some of these concerns through valuation based on the prevailing commodity prices.

Royalties are typically taken right off the top of oil and gas petroleum production but there can be variations that take into account defined costs incurred in production to arrive at the net base on which royalties are computed.[445] Royalties in their traditional form can be regressive and can lead to premature closure of operations if the prevailing prices are insufficient to cover the marginal costs plus the royalty. To alleviate this, some countries have introduced a profit element in their royalty regimes via the sliding scale system or deducting specified costs from the production base on which royalties are computed.

Under the sliding scale system which incorporates both the incremental and slab schemes, royalties rise with the level of production. Both schemes define the production threshold levels and the applicable royalties. The difference between the two is that under the incremental scheme, the

[443] Divine Inspiration Group spent more than US$4 million in signing bonuses and fees for block 1 north-eastern DRC in 2008. Divine Inspiration Group had partnered with Tullow PLC (a company also operating in Uganda) to acquire Block 1 & 2 in north-eastern DRC. However, this was not ratified by the DRC government which later gave the two blocks to two not well-known oil companies (i.e. Caprikat Ltd. and Foxwhelp Ltd) after they paid US$6 million in signature bonuses for the blocks. Both Caprikat Ltd. and Foxwhelp Ltd are registered in the British Virgin Islands and owned by South African President Jacob Zuma's nephew. This resulted in contestation, but DRC denied any wrong doing.

[444] Denis Y. Kakembo (2018): Uganda's Upstream Oil and Gas Fiscal Regime: A comprehensive Coverage. Cristal Advocates, May 2018.

[445]Ibid

higher level of royalty is payable on incremental production while under the slab scheme, the higher level of royalty is payable on the entire production not just on the incremental production. The deduction method provides that some costs incurred in production can be removed from the gross production in arriving at the net production base on which royalties are computed.

Royalties are usage payments made by an individual or private sector firm/ company to an asset/patent/intellectual property/ resource holder for the right to continually use the asset/ patent/ intellectual property/ resource. Royalties are typically charged as a percentage of gross or net revenues derived from the use of an asset/ patent/ intellectual property/ resource.

Non-renewable resource royalties are payments usually made on hard metal minerals and petroleum. The terms of payments are defined under a license agreement that is regulated by government where the government is the resource owner. They usually range between 8 - 18% of gross revenue earned from the daily exploitation of a given resource and is paid on a monthly basis. Rarely does it exceed 18%. Royalty is usually a negotiated settlement between the licensee and licensor. Uganda's royalty share is 18%.[446]

Resource Rent Tax

This is also known as Additional Profits Tax (APT).[447] APT provides the government with a greater share of natural resource wealth and it distorts investment decisions less. APT arises if the accumulated net cash flow from the oil and gas project is positive. Resource Rent Tax is categorized into two, namely the R- factor and the rate of return scheme. R factor based APT links taxation to the investment payback ratio also known as the R-factor. R-factor is the ratio of the IOC's cumulative receipts over the cumulative costs including the upfront investment. APT in this case applies when the R-factor exceeds one.

Rate of return APT applies after a target rate of return on the investment is realized. The cumulative positive net cash flow is determined by reference to a discount rate reflecting the opportunity cost of capital in the country's upstream oil and gas sector. When the project cash flows turn positive, the target rate of return is considered realized and APT applies on the profits above this threshold.

[446] IMF Uganda Country Report No. 17/367, December 2017.
[447] Denis Y. Kakembo (2018): Uganda's Upstream Oil and Gas Fiscal Regime: A comprehensive Coverage. Cristal Advocates, May 2018. Uganda's upstream oil and gas fiscal regime does not provide for resource rent tax.

Though APT is lauded as a progressive fiscal tool by investors, government revenue stream becomes back-loaded. The government may not receive any revenues at all for less profitable projects that do not achieve the targeted rate of return. Countries rarely rely solely on APT. It is usually supplemented with royalties and standard corporation taxes that provide some early revenues. The practice in most countries is to target APT for only very profitable projects.

State participation

Governments may participate directly in upstream oil and gas projects by taking up an equity stake giving an opportunity to share in the upside of the project as well as exercising greater control.[448] Equity participation can potentially be costly to the government because it has to bear its share of the capital and operational costs related to the project. There are also likely conflicts of interest that may arise given the government's role as regulator which may be inconsistent with its commercial objectives as a shareholder.

Auctions

Countries employ different methods of granting petroleum rights. These include informal processes such as first come- first serve or auctions.[449] Auction based processes involvecompanies submitting their exploration and development plans where the highest paying or scoringbidder based on the criteria set wins the oil and gas rights. Proponents of auctions as a means of granting oil and gas rights contend petroleum blocks are assigned to the party that is best able to use them. Auctions are popular with governments because they generate upfront revenues.

Production Share

PSAs are contractual in nature with the government retaining resource ownership and the approvals of the oil company budgets, work programmes, expenditure, procurement and employment, while the oil company provides finance, equipment and technology required for the

[448] Uganda's upstream oil and gas fiscal regime considers state participation.

[449] Uganda's upstream oil and gas fiscal regime incorporates the use of auctions and the country had its first competitive licensing round about 2016.

exploitation of the oil resource17. Thus, the oil produced is shared between government and the company at negotiated production sharing percentages.[450]

Under production sharing, the state as owner of the petroleum resources engages an IOC to find and extract the resource for a share in production. The investor is allowed to recover the exploration, development and production costs incurred in their operations before sharing the remaining production with the government. This however only happens in the event that discovery, development and production occur via what is known as cost oil or cost recovery.[451]

It is common for PSAs to limit the amount of production available each accounting year for cost oil purposes and this is known as the cost recovery limit. If the operating and capital depreciation costs are more than the allowable cost oil, the balance is carried forward and recovered in subsequent periods.

Like Royalty, a production share is a negotiated settlement between government and the oil companies. Production shares stipulate how crude oil produced and revenues generated will be shared between government and oil companies. It can either be a share in the crude oil itself or the profits made from the sale of crude oil. The decision to take profit oil or money will vary from time-to-time as the government chooses. In the case of Uganda, draft Production Sharing Agreements (PSAs) that have been reviewed revealed a share of 15% take for the country that would gradually increase over the years of production until a given ceiling.[452] This production share is made after company deductions of agreed percentage investment discounts and operation costs.

The existing PSAs were signed before the bills were drafted or enacted and therefore, they have provisions that must inform the petroleum bills. Whether or not they have informed the law-making process remains to be verified, because the PSAs have remained confidential – save for restricted access to Members of Parliament. Government needs to be very vigilant in monitoring and auditing of the investment discounts and operational costs deductions, because it is through such deductions that revenue and tax leakages do occur, particularly through double- or multiple-investment discounting and inflated operational costs reporting. The other component that requires

[450]Kazi W. B. & Beyeza B, Analysis of the Oil Fiscal Regime of Uganda, 77 Bull. Intl. Tax (2017) Bulletin for International Taxation IBFD

[451] Uganda's upstream oil and gas fiscal regimes provides for production sharing and cost recovery.

[452] It is important to note that this does not necessarily guarantee increased revenues for government over the years, because oil production declines over the years.

rigorous monitoring and auditing in respect to operational costs is the problem of transfer pricing related to inputs/ technology/ equipment the company purchases from it national and international subsidiary companies.

Production Sharing agreements usually have stabilization clauses that tend to limit the country's ability to introduce new laws that might reduce the profitability and increase the taxes of the companies or increase the costs of the companies social and environmental obligations. These stabilization clauses are increasingly becoming unpopular, because of their associated stifling of the introduction of new social, economic and environmental concepts, scientific knowledge and/or technologies into the industry. There are proposals to annul such clauses.

It is worth noting that traditionally all PSAs contain a standard clause which provides that all taxes and duties shall be paid in accordance with the laws of the host country (in this case Uganda). This is reiterated in Section 89B of the International Trade Agreement (ITA) which provides that the income earned by a contractor shall be taxed in accordance with the taxing provisions of the ITA. This seems to oppose an earlier OECD convention provision that gave the right to tax to the country from which the investment capital originated. Due to the undisclosed nature of the PSAs, there has been a lot of rumour and speculation in the public domain on how government would benefit from the oil industry. The rumours and speculations can best be settled by government making clarifications.

Export Taxes

Export taxes are not that prevalent anymore. Levies may be imposed on natural resources exports to restrict global supply with a view to controlling world prices. In other instances, they are imposed to encourage the domestic processing and value addition activities of the natural resources in the country of extraction. There are no restrictions imposed on the export of hydrocarbons in Uganda but there are domestic market obligations that must be satisfied. IOCs are obliged under the domestic market requirements to supply a designated amount of crude oil prior to exportation.

Corporation Income Taxes

Most countries include upstream oil and gas projects within their standard corporate tax regime though a higher tax rate may be applied to extract more resource wealth.[453] This approach may not require the introduction of a separate tax regime given the stakeholders are already familiar with the legal and operational framework of the corporation tax regime. In its pure form, standard corporation tax typically applies to the consolidated operations of an organization.

In upstream oil and gas regimes, the subject of taxation is commonly the operation of individual projects via the ring-fencing arrangement. This means that an IOC operating one project while developing another one cannot for tax reporting purposes consolidate revenues and expenses from the different projects. Ring-fencing is introduced to protect the tax base, which could otherwise be eroded through unremitting deductions.

Import duties

Customs duties are imposed on most goods imported into a country. Though they are usually levied to protect domestic industries, they are one of the most important source of government revenue but can significantly increase the cost of imported raw materials, components and capital goods. Much of the specialized equipment and consumables used in the upstream oil and gas sector in developing countries is imported. Uganda is part of the East African Community Customs Union where inputs for upstream oil and gas projects are exempted from import duties.

Withholding taxes

Another means of extracting economic rent is the application of withholding taxes on interest, dividends, natural resource payments, royalty payments and specified service payments that are paid to non-resident persons who have sourced income from the resource rich country. Uganda applies withholding taxes in its mix of the upstream petroleum fiscal tools.

Value Added Tax

VAT[454] applies on most items and is principally borne by the final consumer. VAT registered persons can claim VAT incurred on their inputs for business operations. VAT would thus have

[453] Uganda applies the standard corporate taxation though with modifications for its upstream oil and gas sector and ring-fencing conditions apply.
[454] See: The Value Added Tax (Amendment) Act, 2019

little impact on upstream oil and gas projects if the IOCs are registered for VAT usually pegged to production. Petroleum projects however have long lead times between investment and production implying IOCs would have to wait for a number of years to register for VAT when they start production. The VAT cost incurred during the investment phase is significant and can adversely affect project viability and bankability.

Even if special consideration is made for projects at investment stage to register for VAT, there are common delays with processing the VAT refunds in many of the developing countries. It is therefore usually the norm that exploration and development activities in the upstream petroleum sector are relieved from VAT via the exemption and zero-rating mechanisms and Uganda has a deemed VAT paid system that is somewhat similar to the zero-rating system.

Fiscal stabilization clauses

Investment in the petroleum industry is long term, large scale and upfront, which raises concerns for investors with regard to fiscal changes that might dilute the value of their investments. One safeguard mechanism is the inclusion of stabilization clauses in project agreements. Stabilization clauses can restrain a government from unilaterally reviewing the terms of the agreements. They aim at ensuring that the fiscal terms of the agreement executed are not altered to the disadvantage of the investor during the duration of the project.

While stabilization clauses can seem attractive to the government in the short run as an inexpensive way of minimizing investor risk, they may have costs in the long run through limiting government's ability to modify tax and legislative policy. It is generally understood that Ugandan signed PSAs contain stabilization clauses.

Capital Gains Tax

Capital Gains tax (CGT) is generally imposed on profits realized on the sale of non-depreciable and non-inventory assets that are purchased at a cost amount lower than the amount realized on sale. Some countries do not tax capital gains at all or tax a limited range of gains. Some countries provide exemption from CGT provided the gains arising from the disposal are reinvested in the country. Farm down transactions in the petroleum sector are usually targeted for capital gains tax in most developing countries including Uganda. Gains arising on the disposal of business assets are taxed under the corporate income tax regime in Uganda.

Capital Gains Tax is that tax charged on the transfer (sale) of interests and assets from one company to another. In the petroleum industry it usually ranges between 30 – 35% of the transferprice. It is a normal and acceptable practice in the petroleum industry and it is covered by Uganda'sIncome Tax Act. The Income Tax Act allows a gain on disposal of a capital asset to be taxed anda loss to be considered as allowable deduction. However, the loss on disposal of a capital asset is treated as income to the transferee and will therefore be charged as income tax at the transferee side. This has created a wider scope of collections as well as contestation between the governmentand oil companies as recently witnessed10. The Income Tax (Amendment) Act 2010 sought to enlarge the scope of taxable revenue from petroleum operations to include Capital Gains Tax thatwas previous not charged on corporations, because the practice of transfer of interests and assets was not common in Uganda.

Capital Gains Tax (CGT) is imposed on a gain made on the assignment or transfer of an interest in an oil license from one contractor to another. The determination of a gain on disposal of an interest in an oil license is governed by the provisions of the ITA.

Taxable gains arise on disposal of business assets such as company shares or commercial property and an interest in an oil license either directly or indirectly.[455] An indirect transfer takes the form of the sale of shares in a company whose assets are principally immovable property located in Uganda. It often involves non-resident shareholders selling their interests to a resident company. Because of the difficulty of collecting taxes from non-residents, the CGT is paid by the resident oil company acting as an agent of the non-resident company. For example, the CGT of USD 449m on the Heritage's transfer of its assets to Tullow was paid by Tullow acting as agent of Heritage.[456]

It should be noted that CGT is not a reliable revenue source because it arises only when a business asset is transferred or assigned. Besides, it is difficult to determine the cost base of an oil interest in case the interest in question is being transferred to a third owner. For instance, one of the issues contested when Tullow disposed of the interest it had acquired from Heritage to Total Exploration and Production and CNOOC was the determination of the cost base. In practice, the cost base is the base price paid for the interest plus incidental costs of the disposal. The incidental costs include

[455]"Business asset" means an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or Company. For capital gains purposes business asset excludes trading stock and a depreciable asset.

[456]Kazi W.K. & Beyeza B. (2018): Getting a Good Deal? An Analysis of Uganda's Oil Fiscal Regime. Centre for Research on Peace and Development (CRPD) Working Paper No. 64, December 2018.

contingent, guarantee and commitment fees, stamp duty on acquisition, legal fees and signature bonuses. Should the costs not yet recovered by the transferor under the cost recovery clauses be part of the cost base of the asset? These are pertinent issues that must be clearly addressed if government is to get its fair share of revenue on any transfer of an oil interest.

As a result of the CGT disputes, the current PSAs clearly provide that a transfer of an oil interest shall attract CGT in accordance with the ITA, and that tax disputes in relation to the PSAs shall be handled in accordance with the dispute resolution mechanisms stipulated under the Laws of Uganda.[457] Global Witness[458] maintains that the Uganda-Heritage arbitration in London over the CGT assessment relating to the 2010 farm down to Tullow was far from settled.

Annual fees

Most countries require petroleum companies to pay annual rental fees for the acreage held where petroleum activities are undertaken.[459] There can be additional impositions such as training fees to facilitate the transfer of knowledge to local residents.

Stamp duty

Stamp duty[460] is charged on the legal recognition of certain legal documents. In the context of the upstream petroleum industry, the chargeable instruments to which stamp duty could apply can include assignment deeds or other related instruments that confer rights.

Local government taxes

These represent taxes assessed and levied by local authorities to fund a wide range of local authority services. Local governments of areas where the oil and gas projects are located can impose these provincial levies. Uganda's upstream oil and gas fiscal regime envisions the imposition of local government taxes though under different legislation regulating the operations of Local Governments.

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[457] See 2012 PSAs

[458] Global Witness (2014):A good deal better? Uganda's Secret oil contracts explained, September 2014. *Available at:* https://www.globalwitness.org/documents/.../report_a_good_deal_better_low_res.pdf. *(accessed on 15 September 2019).*

[459] Uganda's upstream oil and gas fiscal regime provides for annual fees.

[460] Uganda's upstream petroleum fiscal regime provides for stamp duty.

Environmental taxes

Environmental taxes are aimed at curbing or reducing the extent and amount of the use or consumption of harmful substances or activities, or depletion of a resource. Uganda's upstream oil and gas legislation regulates the environmental considerations of the upstream oil and gas sector.

Local content

Local content generally means the added value brought to a host nation through the activities of the oil and gas industry. Oil companies may therefore be obliged to employ local staff, invest in supplier development, as well as procuring goods and services locally. Local content is catered for in Uganda's upstream petroleum legislation and the underlying regulations.

Oil-related Nontax revenues (NTRs)

Non-Tax Revenues (NTRs) are an important source of revenue for government during the pre-production phase of oil. These NTRs include bonuses, annual surface rentals, training and development fees, proceeds from sale of oil data and sale of oil refinery feasibility study report. The NTRs are assessed and collected by Directorate of Petroleum of the Energy Ministry.

The 2012 PSAs provide for the collection of USD300,000 in signature bonuses and USD2,000,000 as discovery bonus. The annual surface rental of USD7.50 per square kilometre for an area under an exploration licence is collectable; while it is USD500 per square kilometre for an area under a production licence. The company exploring oil is required to pay USD37,500 half yearly and on grant of a production licence USD200, 000 annually to cater for oil related training and development of Ugandans.[461] Stamp duty is also collectable on the registration of oil contracts and performance security (e.g. insurance bonds and bank guarantees) and on transfers of oil interests at the rate of between 0.5 -1.5%. NTRs motivate oil companies to rapidly explore and develop oil in a licensed block and they are easy for government to administer and for companiesto comply with.[462]

[461] The government personnel that have so far benefited from this training are officials of BoU, URA, Energy Ministry, Finance Ministry and officials of any other government agency concerned with oil exploitation.
[462]Kazi W. K.& Beyeza B. (2017): Analysis of the Oil Fiscal Regime of Uganda, 77 Bull. Intl. Tax (2017) Bulletin for International Taxation IBFD.

5.4 Objective Three: The measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda

The Dutch Disease, the apparent causal link between the increase in the economic development of a particular sector and the decline in other sectors has hampered growth in numerous resource-rich African countries (its insidious effects on Nigeria's economy and particularly on its agriculture sector during the 1970s form the archetype of natural resources precluding developmental gains). The disease plays out as follows. Divide the economy into the oil sector, the non-oil sector (which is tradable), and the non-oil, non-tradable sector. Increased foreign exchange earnings lead to an increase in overall spending, which in turn appreciates the real exchange rate. This adversely affects the price of tradable relative to non-tradable. The currency appreciation leads to an increase in imports of the tradable, and the higher demand for non-tradable leads to higher prices in this sector. With a reduction in non-oil exports, capital and labour move to the more attractive non-tradable sector. Eventually, the tradable sector shrinks due to reduced demand and the movement of factors of production to the non-tradable sector, making the economy more reliant on oil revenue and reducing international competitiveness.

Studies attempting to estimate Uganda's exposure to Dutch disease suggest that its negative effects are likely to be modest given the expected size of the boom.[463] One way to mitigate any potential impact of the above scenario is to spend at a sustainable level defined by the fiscal rules. Uganda's fiscal planning in the past has demonstrated commitment to adopt sound and predictable planning methods. The government should take a similarly progressive stance on commitment mechanisms for the Petroleum Fund, and possibly enshrine a fiscal rule in the PFM Act. Another mechanism to shield the economy from Dutch disease is to sterilize the effect of changes in exchange rates through investment abroad, as planned with the PRIR. Withholding oil revenue from the domestic economy can preclude and tame the effects of exchange rate appreciation. As the government's investment absorption capacity is in doubt, this method can halt large cash inflows and the subsequent currency appreciation.

Progress in bringing the oil recovery project to fruition in Uganda has placed increased attention on the need for a strong governance system to ensure that oil wealth will be used for the long-term

[463] Lassourd, T., and A. Bauer (2014). 'Fiscal Rule Options for Petroleum Revenue Management in Uganda'. Policy Paper. Revenue Watch Institute.

betterment of the country.[464] Underling the call for improved governance is the fear that Uganda will experience the same "natural resource curse" that has plagued most resource-rich African nations. Rather than spur development, it is believed that countries with an abundance of a natural resource end up performing more poorly than do resource-poor countries because they squander their riches through corruption, violent conflicts, and environmental destruction.[465] The proposed antidote for avoiding this outcome to create strong institutions that will assure transparency and effective economic management.[466]

Several governance issues related to avoiding the resource curse are before the Uganda parliament and will undoubtedly become election issues in 2021 as potential candidates vie for political advantage. The important of these governance issues are the need to: (1) Assure the proper fiscal management of oil royalties through transparency and accountability; (2) reimburse kingdoms, local governments, and citizens impacted by oil development; and (3) effectively manage the natural and ecological resources that will be impacted by the recovery and processing of oil.

5.5 Conclusion

The study answered key research questions which it was investigating. They included the efficacy of resource governance in oil and gas sector in Uganda, the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda and the measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda. The study found that with respect to oil and gas governance, Uganda's efficacy is poor and it is ranked 51 out of 59 countries according to Resource Governance Institute (RGI) index. Uganda on this scale is still poor in comparison with best performers like Norway which is number one or Ghana which is number 13. Uganda therefore needs to improve even before starts flowing out of the ground.

The research found that there are many tax governance systems in place in Uganda for the growth of fiscal development. These include royalties, cost recovery, production sharing, corporate tax,

[464] Kamugisha, D., Muhereza, E., & Elima, D. (2008). *Promoting the application of access rights in Uganda's oil sub-sector* (No. 4). Kampala: Africa Institute for Energy Governance.
[465] Ghazvinian, J. (2007). *Untapped: The scramble for Africa's oil*. Orlando, FL: Harcourt
[466] Bainomugisha, A., Kivengyere, H., & Tusasirwe, B. (2006). *Escaping the oil curse and making poverty history: A Review of the Oil and Gas Policy and Legal Framework for Uganda* (No. 20). Kampala: ACODE; Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center; Mugyenyi, O., Ustin, B., & Twesigye, B. (2010, June 17-19). Equitable sharing of the treasures of oil and gas in a transparent and environmentally sustainable manner. *A synthesis report of the Proceedings of the Parliamentary Symposium on Oil and Gas Development in Uganda*. (No. 15), Entebbe, UG.

ring-fencing, Capital Gains Tax (CGT), windfall profits tax, Non-tax revenues and indirect taxes among others. The Public Finance Management Bill represents a positive start in managing the future oil economy, although concerns have been raised about key sections of the bill. A key element of the Public Finance Management Bill is the establishment of an investment fund as a separate government account for the deposit of oil revenues. A well-managed fund can serve as an effective public investment strategy for averting shocks to the economy resulting from the sudden influx or drop in oil revenues.

The comparative analysis of this study was to give Uganda measures to drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda. One lesson to draw in order to mitigate any potential impact of the Dutch disease is to spend at a sustainable level defined by the fiscal rules. Uganda's fiscal planning in the past has demonstrated commitment to adopt sound and predictable planning methods. The government should take a similarly progressive stance on commitment mechanisms for the Petroleum Fund, and possibly enshrine a fiscal rule in the PFM Act.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter gives the summary of findings, general conclusion and recommendation from the study. It also provides areas for further reading.

6.2 Summary of findings

The research found the followings in line with the objectives that had been set:

1. ***The efficacy of the efficacy of the resource governance in oil and gas sector in Uganda***

The research found that there are variations in the quality of resource governance for a number of countries, including Uganda, as measured by the resource governance index (RGI) and composed by the Natural Resource Governance Institute (NRGI). The quality of a country's resource governance has a lot of variation over time within the country (meaning that governance regimes are not fixed and can thus be strengthened or can become less effective over time) and between countries.

With respect to oil and gas governance, Ghana ranked 13 out of 89 countries with a total score of 67 out of 100. Norway was ranked 1 out of 89 countries with a total score of 86 out of 100. These countries are doing extremely well in both an African and a global context. Uganda[467] was ranked 51out of 89 countries with a total score of 44 out of 100 while Chad was ranked 72 out of 89 countries with a total score of 34 out of 100 and Libya was ranked 87 out of 89 countries with a total score of 18 out of 100. The total score is an average of scores taken over three critical governance areas of value realization score, revenue management score and enabling environment score which can indicate areas that need improvement. Hence, with respect to oil and gas

[467] Data drawn from the 2017 Resource Governance Index, Natural Resource Governance Institute (NRGI). Available at: https://resourcegovernanceindex.org/

governance, Uganda's efficacy is poor and it scored 44/100 and was ranked 51 out of 89 countries surveyed. Uganda needs improvement in the area of resource governance.

2. Oil and gas tax governance system put in place for the growth of fiscal development in Uganda

The research found that the legal framework for Uganda's oil revenue administration is derived from the PSAs, the revenue laws, the Upstream law, the Midstream law, the Public Finance Management Act, 2015, the National Oil and Gas Policy and, the Oil and Gas Revenue Management Policy. These laws define the scope of oil revenues and the manner of how the revenue will be collected, reported and accounted for.

The tax system put in place for Uganda's upstream oil are royalties, cost recovery, production sharing, corporate tax, ring-fencing, capital gains Tax (CGT), windfall profits tax, non-tax revenues and indirect taxes. The tax regime delivers 67.5% of "profit oil" to government and 32.5% to oil companies. Significant amounts of revenues and taxes are generated at all stages of the petroleum value-chain and these include: signature bonuses, royalties, exploration fees, development fees, rents, fees on permits, capital gains Tax (CGT) on transfer of interests and assets, government's profit share on production, and revenues and taxes at the refining, gas processing and conversion, transportation and storage of petroleum and its associated products, bi-products and wastes. Additional taxes to these revenue streams include: income tax, With Holding Tax (WHT), Pay as you earn (PAYE), Value Added Tax (VAT), Import Duty, Stamp Duty, Service Tax, among others.

3. The measures drawn from other jurisdictions to avoid the Dutch disease in oil and gas sector in Uganda

Some resource rich countries have avoided the Dutch disease and used the oil and gas revenues to sustainably develop their countries. Studies attempting to estimate Uganda's exposure to Dutch disease suggest that its negative effects are likely to be modest given the expected size of the boom.[468] One way to mitigate any potential impact of the Dutch disease scenario is to spend at a sustainable level defined by the fiscal rules. Uganda's fiscal planning in the past has demonstrated

[468] Lassourd, T., and A. Bauer (2014). 'Fiscal Rule Options for Petroleum Revenue Management in Uganda'. Policy Paper. Revenue Watch Institute.

commitment to adopt sound and predictable planning methods. The government should take a similarly progressive stance on commitment mechanisms for the Petroleum Reserve Fund, and possibly enshrine a fiscal rule in the PFM Act. Another mechanism to shield the economy from Dutch disease is to sterilize the effect of changes in exchange rates through investment abroad, as planned with the PRIR. Withholding oil revenue from the domestic economy can preclude and tame the effects of exchange rate appreciation. As the government's investment absorption capacity is in doubt, this method can halt large cash inflows and the subsequent currency appreciation.

Progress in bringing the oil recovery project to fruition in Uganda has placed increased attention on the need for a strong governance system to ensure that oil wealth will be used for the long-term betterment of the country.[469] Underling the call for improved governance is the fear that Uganda will experience the same "natural resource curse" that has plagued most resource-rich African nations. Rather than spur development, it is believed that countries with an abundance of a natural resource end up performing more poorly than do resource-poor countries because they squander their riches through corruption, violent conflicts, and environmental destruction.[470] The proposed antidote for avoiding this outcome to create strong institutions that will assure transparency and effective economic management.[471] And this is one of the lessons drawn from other jurisdictions.

6.3 General Conclusion

Oil production will generate significant additional revenues for Uganda. However, the emergence of a natural resource windfall is usually accompanied by several challenges. These challenges are mainly of a macroeconomic and governance nature. The impact of these additional revenues on Uganda's competitiveness and economic transformation will critically depend on the prudent management of these oil resources. Uganda's governance of the oil and gas sector is still poor despite the substantial tax system in place.

[469] Kamugisha, D., Muhereza, E., & Elima, D. (2008). *Promoting the application of access rights in Uganda's oil sub-sector* (No. 4). Kampala: Africa Institute for Energy Governance.

[470] Ghazvinian, J. (2007). *Untapped: The scramble for Africa's oil*. Orlando, FL: Harcourt

[471] Bainomugisha, A., Kivengyere, H., & Tusasirwe, B. (2006). *Escaping the oil curse and making poverty history: A Review of the Oil and Gas Policy and Legal Framework for Uganda* (No. 20). Kampala: ACODE; Kiiza, J., Bategeka, L., & Ssewanyana, S. (2011). *Righting resource-curse wrongs in Uganda: The case of oil discovery and the management of popular expectations* (No. 78). Kampala: Makerere University, Economic Policy Research Center; Mugyenyi, O., Ustin, B., & Twesigye, B. (2010, June 17-19). Equitable sharing of the treasures of oil and gas in a transparent and environmentally sustainable manner. *A synthesis report of the Proceedings of the Parliamentary Symposium on Oil and Gas Development in Uganda*. (No. 15), Entebbe, UG.

Uganda needs to learn and operationalize the lessons drawn from other jurisdictions that are rated well in oil and gas governance by the Natural Resource Governance Institute (NRGI). The Norwegian model of resource governance is based on a clear and relatively simple legal and institutional framework that allows the country to maximize the value of its oil revenues. However, these rules have gradually evolved since their inception in the early 1970s, after a period of relatively low exploration prospects in the North Sea. Currently, Norway stands out as an example of transparency, good governance, and planning, but is not exempt from challenges.

Oil is a finite resource. However, using oil revenue to generate domestic capacities and enhance human competences in Uganda will help provide an infinite stream of benefits. Oil production and trade must be understood well by Ugandans through a local content policy. The science and economics of oil should not be left to expatriates alone. Related to this is the importance of using some of the oil proceeds to construct economic infrastructure—both to enhance the productivity of oil exploration and to help diversify the economy.

Finally, the Ugandan government should commit to making realistic and relatively conservative projections of future oil prices in order to mitigate unaffordable expenditure commitments in the event of oil revenues fall short of the forecasted levels. Related to this, the streamlining of the collection of oil revenues is key to ensuring transparency and accountability. Particularly, the petroleum reserve fund should support fiscal policy and support a policy of inter-generational equity. As such, the reserve fund should be separated from the reserve bank's exchange reserves.

6.4 Recommendations

Based on the findings, the following recommendations were made.

1. The Uganda government should involve CSOs in Oil and Gas governance in order to engage on oil and gas issues at different levels where the CSOs can the Civil Society Platform on Oil and Gas. The platform should comprise organized groups, individuals and professional bodies (including community-based organizations, faith-based groups, research institutions, gender-based groups, trade unions, etc.) working toward ensuring transparency and accountability in the oil and gas industry.

2. The government of Uganda should form an Oil and Gas for Inclusive Growth programme to help fill gaps by improving the capacity of government agencies involved in the management of Uganda's nascent oil and gas sector, as well as engaging with a variety of accountability actors involved in improving public scrutiny of the sector.

3. The government of Uganda should create an all-inclusive pensions fund upon attaining a specified age. This should be allocated from the reserve fund which is earmarked for national development. It is also separate from the National Social Security Fund (NSSF) which is an individual worker's savings.

4. The government of Uganda should enforce technology transfer in all sectors of the oil and gas industry. Technology transfer can become a resounding success and the cooperation in research and development will achieve much for Uganda's oil industry just like it was in Norway which has now become a leading oil technology nation by forcing the oil companies to transfer their know-how coupled with cooperation in the development of new technology.

5. The government, and later the oil operating companies, should publish all conventions and contracts regarding hydrocarbon exploration and production in Uganda. The government should renounce confidentiality clauses in contracts and provide key information regarding the determinants of oil revenue directly to the Natural Resource Committee of Parliament, including: volume of crude produced and sold, information on the price discount for crude, production and transportation costs of crude, payment of dividends and royalties, debt service payments,exchange rate for transactions and taxes and customs duties linked to petroleum exploitation.

6. Government should make public annual audits conducted by reputable international firms (e.g., PwC, Ernst & Young, KMPG) relating to NOC and other companies' activities in Uganda. Government should publish all relevant audits relating to the generation, management and allocation of oil revenues. This would include cost audits of oil companies; audits of budget execution by priority sector ministries; audits of the management of the Future Generations Fund or reserve fund, and other relevant audits.

7. The government should publish maps of planned oil well sites and feeder pipelines in areas of new oil development and make these available to local communities and civil society organizations in Uganda. The oil companies should include in the publication oil field-specific and cumulative environmental and social impact assessments. With the development of NOC satellite fields and ongoing exploration with the impact areas of the pipeline project clearly indicated.

8. Government should design and implement a continual government training program on oil revenue management including technical expertise to verify production figures and revenue payments from oil companies. In this respect the government should uplift Kigumba Petroleum Institute also known as Uganda Petroleum Institute (UPIK) from its current status of offering only Diploma Programmes to the status of a Petroleum University which is fully accredited by National Council of Higher Education (NCHE). Hence, the government should commit to greater stability of staff in government ministries, in an effort to retain institutional memory and skills acquired through training programs.

9. Government should institutionalize an inter-ministerial monthly meeting of government officials from the Ministry of Petroleum, Ministry of Finance and the PAU, among others, to share information on oil production and revenue generation. These meetings should serve to facilitate communication between actors already engaged in the petroleum sector and do not require the creation of any new structures or offices.

10. The government should ensure that as the resource is depleted, it is replaced by other assets to ensure a sustainable income for the people well into the future. This will ensure the country's potential will be enjoyed by all future generations.

11. Civil Society Organizations should proactively seek out information from the PAU or relevant offices and convey this information to key networks in the regions. The PAU will be unable to fulfill its oversight role without active collaboration with civil society, from the capital to the village level.

12. Civil Society Organizations should provide a simplified breakdown of the national budget, showing planned oil expenditures per sector, to enable local residents to alert oversight bodies to any discrepancies between planned and actual project implementation. They should develop a coordinated monitoring and alert system to track the use of oil revenues. Civil society groups should identify existing structures or networks at the regional and local levels that can help disseminate and collect information about project execution to and from the population at large.

13. The Civil Society should regularly convey findings to international allies and media outlets as well as to Ugandans at large through popular education programs. They should also devote resources to monitoring the status of human rights in Uganda by conducting day-to-day surveillance.

14. Government should ensure improvement in natural resource governance which is very poor. These improvements should be in the areas of value realization, revenue management and

enabling environment. Corruption in revenue management should be eliminated and transparency encouraged. Improved governance shall make Uganda avoid experience of the same "natural resource curse" that has plagued most resource-rich African nations.

15. Uganda government should strictly govern the oil and gas sector under the modernized regulatory and fiscal framework of the National Oil and Gas policy (NOGP) published in 2008.

16. The government should ensure that the tax provisions applicable to resource companies are provided for in the relevant tax legislation rather than in mining and petroleum agreements. While the latest model PSA cross-refers to the tax provisions in the ITA, some negotiated mining agreements include tax provisions. There is a risk to the government if tax provisions are negotiated on a case-by-case basis as the licensee (or contractor) is likely to have better information about the value of the resource or may be more skilled at negotiation or can be a source of corruption. Tax provisions in a mining or petroleum agreement cannot override the tax law. If there is a conflict between the agreement and the tax law, the tax law will prevail.

17. The government should set crude oil royalty either at a fixed rate of 8 to 12 percent or by sliding the scale of daily rate of production (in barrels of oil) and ensure the provisions of the PFMA on royalty sharing can be implemented simply under the chosen royalty scheme. The government should Continue with a cost recovery limit, probably at 70 percent (depending on the royalty scheme chosen) and Introduce a 15 percent one-time uplift for development costs during the first five years of development expenditure. The government should calculate income tax on petroleum companies from gross income consisting of both cost and profit oil, applying allowable deductions.

18. The government should ensure separation of powers between a petroleum authority, national oil company and Ministry of Energy and Mineral Development.

6.5 Areas for further Research

Future research should be done in the following areas;

1. The impact of Pay Structures on the employee motivation at the Public
2. The management practices factors affecting job satisfaction of Public Servants.
3. Influence of Performance Management on Job Satisfaction of Employees at Public Service.

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