

**MULTI-STAKEHOLDER ENGAGEMENT FRAMEWORK FOR EXTRACTIVE
INDUSTRIES IN THE OIL AND GAS SECTOR: THE LEGAL REGIME IN UGANDA**

BY

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J18M23/102

**A RESEARCH DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN
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AUGUST, 2020

DECLARATION

I, **Mary Kisakye Kaitesi**, hereby declare that this dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfillment of any academic award

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Signed: -----

Name: Dr. Anthony C.K. Kakooza

University Supervisor

Date: -----

DEDICATION

I dedicate my dissertation work to my husband and children. Their love, support and encouragement has enabled me to complete this academic path. They have been my best cheerleaders.

ACKNOWLEDGEMENTS

This work would not have been possible without the assistance and encouragement of many people. Although it is not possible to mention all of them here by name, I would like particularly to thank and acknowledge the following:

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STATUTORY INSTRUMENTS

Uganda Revenue Authority (URA)

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Oil and Gas Policy, 2008

National Trade Policy – August 2007

The Uganda National Land Policy- February 2013

National Oil and Gas Policy for Uganda – April 2014

National Content Policy for the Petroleum Subsector in Uganda- February 2017

TABLE OF STATUTES

Access to Information Act, No 6 of 2005

Customs Tariff Act Cap 337

East Africa Customs and Transfer Tax Management Act 1970 (Revision) Cap27

External Trade Act 1953 Cap88

Income Tax Act, 1997

Investment Code Act (1991) (Cap 92)

Investment Code Act (1991) (Cap 92)

Public Finance Bill, 2012

Public Private Partnership Act, 2015

Tax Procedures Code Act (2014)

The Citizenship and Immigration Control Act, 1999

The Constitution of Republic of Uganda 1995

The Model Production Sharing Agreement, 2016

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

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013

The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Bill, No. 2 of 2012

The Public Procurement and Disposal of Assets Act, 2013

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Value Added Tax Act, 1996

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Commissioner-General and Uganda Revenue Authority v. Meera Investments S.C.C.A No. 3 of 2009

Kagoro Robert and Sempa Matovu v. Uganda Revenue Authority (High Court in Misc. Cause No 376/08)

Meera Investments Ltd v. Commissioner-General of Uganda Revenue Authority (HCT-00-CC-MA-0218-2006)

Meera Investments Ltd v. Commissioner-General, Uganda Revenue Authority (Court of Appeal CIVIL APPEAL No.15 of 2007)

Meera Investments Ltd v. The Commissioner-General Uganda Revenue Authority - Court of Appeal Civil Appl. No. 3 of 2007

Tullow Uganda Limited v. Heritage Oil and Gas & Heritage Oil Plc [2013] EWHC 1656

Heritage Oil & Gas Ltd v. Uganda Revenue Authority, Tax Appeals Tribunal (the Tribunal)
Miscellaneous Application No.6 of 2011

Heritage Oil & Gas Ltd v. Uganda Revenue Authority: Civil Appeal No 14 of 2011

Heritage Oil & Gas Ltd v. Uganda Revenue Authority, Tax Appeals Tribunal (the Tribunal)
Miscellaneous Application No.6 of 2011

Charles Mwanguhya Mpigi & Izama Angelo vs Attorney General, Miscellaneous Cause 751/2009

Nigeria

Social and Economic Rights Action Centre (SERAC) and Anor vs. Nigeria (SERAC Case)

Government Publications

Taxation Handbook: A guide to Taxation in Uganda (2nd Edition)

Uganda Vision 2040

NRM Manifesto: 2016- 2021

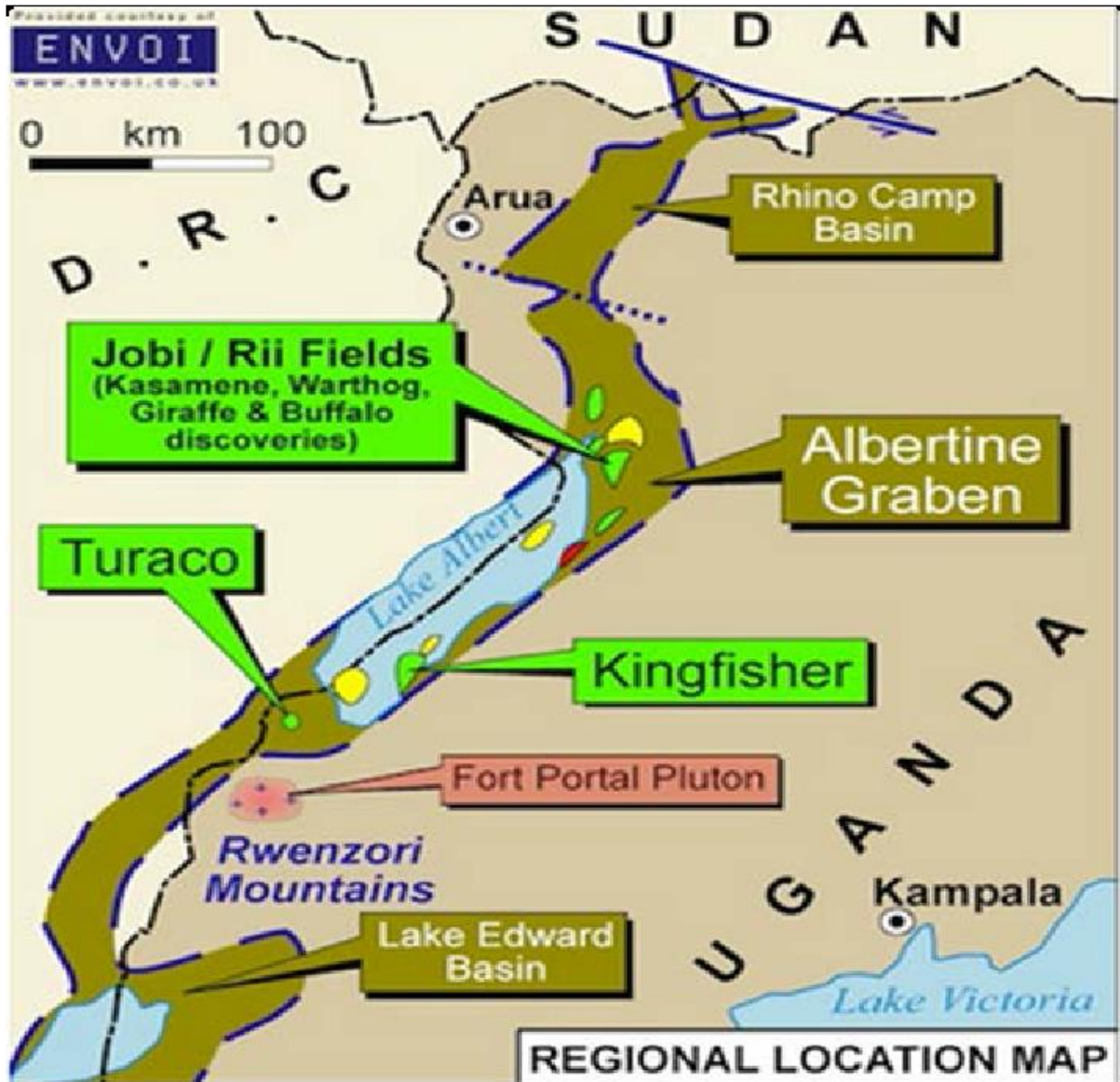
National Population and Housing Census 2014

National Oil and Gas Policy for Uganda 2008

NEMA, Environmental Sensitivity Atlas for the Albertine Graben 2009

LIST OF CHARTS

Map of Uganda showing the Albertine Graben Region



LIST OF ACRONYMS

AG	Attorney General
CDAs	Community Development Agreements
CSOs	Civil Society Organizations
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EIR	Extractive Industries Review
EITI	Extractive Industries Transparency Initiative
ESG	Environmental, Social, and Governance
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
FDI	Foreign Direct Investment
HIV/AIDS	Human immunodeficiency virus and acquired immune deficiency syndrome
ICP	Informed Consultation and Participation
IFIs	International Financial Institutions
IGG	Inspectorates of Government
IOCs	International Oil Companies
M&E	Monitoring and Evaluation
MBA	Masters of Business Administration
MEMD	Ministry of Energy and Mineral Development
MFNP	Murchison Falls National Park

MoLUD	Ministry of Lands and Urban Development
MPSA	Model Production Sharing Agreement
MSEPs	Multi-Stakeholder Engagement Processes
NDRN	Niger Delta Region of Nigeria
NGOs	Non-Governmental Organizations
NOGP	National Oil and Gas Policy
OECD	Organization for Economic Co-operation and Development
OfD	Oil for Development
OPECs	Organization of the Petroleum Exporting Countries
PAC	Partnership Africa Canada's
R&D	Research and Development
RTI	Right to Information
SEA	Strategic Environmental Assessment
SERAC	Social and Economic Rights Action Centre
SMEs	Small and Medium Enterprises
TPCA	Tax Procedures Code Act
UCU	Uganda Christian University
UN	United Nations
UNDP	United Nations Development Programme
UWA	Uganda Wildlife Authority
WBG's	World Bank Group's

ABSTRACT

Stakeholder engagement is an important element of any planned intervention as it goes a long way in shaping decisions related to such interventions. It is a continuous process that needs to be understood as running throughout the lifecycle of the intervention and beyond.¹

Several international organizations have urged companies in the extractives industry to engage with local stakeholders in the industry, and for this reason, they issue “best practices” guidelines for doing so.²

Firms engaged in extraction of natural resources believe that such engagement reduces their operational risks³ because the local stakeholders have a significant effect on the operations and activities of the OPCs.

Therefore, development of a stakeholder engagement plan through stakeholder analysis is important for policy formulation. It paves way for engagement of all the parties involved in research and policy development and this is why it is vital to have a robust legal framework on multi-stakeholder engagements.

Due to the widening gap between the legal regimes of multi-stakeholder engagement framework for extractive industries in the oil and gas sector and realization of the objectives of this framework, this study is designed to analyze the legal framework on multi-stakeholder engagement in extractive industries focusing on the legal regimes in Uganda’s oil and gas sector.

The study went further to propose a legal strategy which prioritizes stakeholder engagements with the most severely affected rather than the most influential stakeholders in the oil and gas sector.

The study also reviewed and comparatively study multi-stakeholder engagement frameworks in other countries and how the legal regimes have been designed to facilitate investment in the extractives industries in the oil and gas sector through enabling stakeholder engagements.

Conclusively the researcher put forward recommendations regarding how the gaps in the legal frameworks on multi-stakeholder engagements in the extractives industries should integrate or regulate the identifiable influences of other stakeholders in Uganda’s oil and gas industry.

¹ ERM/ATACAMA Consulting JST/MOWT (2015): Stakeholder Engagement.

² Coleman, E, Manyindo, J, Parker, R and Schultz, B, 2019. An impact assessment of stakeholder engagement interventions in Ugandan oil extractives, 3ie Grantee Final Report. New Delhi: International Initiative for Impact Evaluation (3ie)

³ Coleman, E, Manyindo, J, Parker, R and Schultz, B, 2019. An impact assessment of stakeholder engagement interventions in Ugandan oil extractives, 3ie Grantee Final Report. New Delhi: International Initiative for Impact Evaluation (3ie)

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Stakeholder engagement is an important element of any planned intervention as it goes a long way in shaping decisions related to such interventions. It is a continuous process that needs to be understood as running throughout the lifecycle of the intervention and beyond.⁴ Multi-Stakeholder Initiatives on the other hand are voluntary partnerships between governments, civil society, and the private sector that have emerged over the last 15 years to address development challenges collaboratively, entrench democratic practices, and strengthen regulatory frameworks.⁵

Multi-Stakeholder Engagement Processes (MSEPs) are (structured) processes that are used to ensure participation on a specific issue and are based on a set of principles, sometimes inspired by the rights-based approach to development. They aim to ensure participatory equity, accountability and transparency, and to develop partnerships and networks amongst different stakeholders.⁶ MSEPs can create the conditions for confidence building and trust between different actors and serve as a mechanism for providing mutually acceptable solutions and win-win situations. The inclusive and participatory nature of the processes promotes a greater sense of ownership over its outcomes, and consequently, strengthens its sustainability. MSEPs also stimulate transparent and inclusive decision-making, strengthened stakeholder networks, accountability, and a sense of empowerment, thereby contributing to improved governance.⁷

Extractive industries (oil, gas, and mining) have the potential to generate significant wealth for developing countries and to serve as important catalysts for growth. They generate large revenues-through royalties, taxation, and exports-and create employment. In some cases, however, resource wealth is associated with political turmoil, deteriorating standards of living, civil conflict, and elite

⁴ ERM/ATACAMA Consulting JST/MOWT (2015): Stakeholder Engagement.

⁵ Gruzd, Steven.; Yarik Turianskyi, Neuma Grobbelaar, Yemile Mizrahi, (2018): Multi-Stakeholder Initiatives: Lessons Learned' (2018). Submitted to: USAID/DCHA/DRG: Accessed from <https://eiti.org/document/multistakeholder-initiatives-lessons-learned> on 24th March 2019. Research on the EITI: Published Date: October, 2018.

⁶ UNDP (2018): Accessed from 31st January 2019 from www.undp.org/.../multi-stakeholder-engagement-processes/Engagement-Processes-cp.

⁷ United Nations Development Programme (2006): Multi-Stakeholder Engagement Processes: A UNDP Capacity Development Resource. Capacity Development Group; Bureau for Development Policy: Conference Paper #7; Working Draft, November 2006.

capture.⁸ The management's response to the Extractive Industries Review (EIR) and accompanying evaluations signaled a critical turning point in the World Bank Group's (WBG's) engagement in the sector, which had hitherto focused primarily on exploration and development activities, sector policy reform, and commercialization of state-owned enterprises. This publication presents four of the finalist case studies, selected on the basis of project: 1) scalability; 2) replicability; 3) innovation; and 4) level of multi-stakeholder collaboration. In an effort to better document and showcase the variety of ways in which country teams are working with different actors on the often sensitive topic of good governance in the oil, gas, and mining sectors, the World Bank Institute and the World Bank Oil, Gas and Mining Unit initiated an internal case story competition in 2011.⁹

Internationally, by 2011, Guidelines were updated to include new guidance on stakeholder engagement. In the Guidelines' General Policies, it is stated that multinational enterprises should: Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.¹⁰

In the Commentary on the General Policies, it is further clarified that: Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, though, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterized by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.¹¹ These new policies on stakeholder engagement are relevant to and inter-connected with other new provisions in the updated Guidelines, notably on human rights, risk-based due diligence and the avoidance of adverse impacts.¹²

⁸ Sheldon, C G; Casis, A.Z; Caspary, G; Seiler, V; & Fernando M, R. (2013): Innovative approaches for multi-stakeholder engagement in the extractive industries (English). Extractive industries for development series: no. 29. Washington DC World Bank. <http://documents.worldbank.org/curated/en/505541468340258421/Innovative-approaches-for-multi-stakeholder-engagement-in-the-extractive-industries>

⁹ Ibid.

¹⁰ OECD Guidelines, Chapter II, paragraph 14.

¹¹ OECD Guidelines, Chapter II, Commentary, paragraph 25.

¹² Ibid

“Local communities” are the specific focus of these provisions on stakeholder engagement, as groups that are potentially affected by a company’s operations. Workers can also be affected stakeholders. Engagement with workers is the subject of specific guidance under chapter V of the OECD Guidelines. As the commentary to that chapter underlines, “the International Labour Organisation (ILO) is the competent body to set and deal with international labour standards and to promote fundamental rights at work, as recognized in its 1998 Declaration on Fundamental Principles and Rights at Work”.

Recognizing this primary role of the ILO with regard to workers, and the focus of paragraph II.14 on engagement with local communities, this discussion paper takes as its starting point the assumption that new OECD guidance on stakeholder engagement should focus on potentially affected communities. At the same time, it acknowledges that a considerable proportion of workers at extractive company operations may also be members of local communities. It proposes that this overlap, and the multiple rights and interests that workers from local communities have at stake, should be explicitly recognized in OECD guidance.

It also should be highlighted that there are separate provisions in the OECD Guidelines related to an enterprise’s interactions with other groups such as shareholders, subsidiaries and related entities, business partners, suppliers and sub-contractors. It is understood that these groups are not the ‘stakeholders’ intended under the terms of Chapter II.14 of the Guidelines regarding stakeholder engagement. This created the debate about multi stakeholder engagement in the extractives industry and legal frameworks therefore.

1.2 Background

International and regional instruments that bear on the right to participation shows that other countries have realized the nexus between the right to participation, development and other human rights and have taken steps by signing international instruments that promote the right to participation.¹³ Finnemore and Sikkink¹⁴ argue that there are three stages of norm development. In the first stage, there is a creation of general awareness of the norm. After the first stage and before the second stage is the “tipping point” where the norm is accepted by a number of states. In

¹³ John H. Knox, “United Nations mandate on Human Rights and the Environment: Mapping Report” (2014) A/HRC/25/53.

¹⁴ Finnemore, M & Kathryn Sikkink (1998): “International Norm Dynamics and Political Change” (1998) 52 Int’l Organization 887.

the second stage, a “critical mass of states” accepts the norms and in the third stage, the norm is internalized as domestic law.¹⁵

On this basis, it can be argued that the right to participation of host and impacted communities in resource management is at the second stage of the norm development cycle, yet to be internalized by countries like Nigeria but widely accepted by a large number of States as in the African Commission’s decision in *Social and Economic Rights Action Centre (SERAC) and Anor. v Nigeria (SERAC Case)*,¹⁶ the status of the right to participation has become an issue that the Nigerian government must take seriously in terms of its legal obligation. The African Commission’s decision in the SERAC Case projects that it is necessary for States to protect the participatory right of host and impacted communities among other social and economic rights.

Certain international legal norms bear on the right to participation of host and impacted communities and this demonstrates the international community’s realization of the importance of participatory rights to development and their commitment to enforce this right.¹⁷

Authors note that extractive industries (oil, gas, and mining) have the potential to generate significant wealth for developing countries and to serve as important catalysts for growth.¹⁸ They further note that these industries generate large revenues-through royalties, taxation, and exports-and create employment. In some cases, however, resource wealth is associated with political turmoil, deteriorating standards of living, civil conflict, and elite capture.

This study thus outlines how the extractive industries, particularly oil and gas, require an ‘all of government’ approach as well as multi-stakeholder dialogue and partnerships between government, International Oil Companies (IOCs), local communities, SMEs and civil society organizations. Effective management and regulation of oil and gas requires many different line agencies of government to work together and in partnership with corporate and other stakeholders to achieve

¹⁵ Ibid.

¹⁶ Olufunmilola A, ‘Legal and Institutional Framework For Multi-Stakeholder Participation In Oil And Gas Management In Nigeria: Perspectives On Multi-Stakeholder Dialogue Approach. (Masters of Laws Thesis; University of Saskatchewan: 2016).

¹⁷ Anthea E. R., “Traditional and Modern Approaches to Customary International Law: A Reconciliation” (2001): American J. of Int’l L 757; see also Earnest A. Young, “Sorting out the Debate over Customary International Law” (2002) 42 Va. J. Int’l L. 365.

¹⁸ Sheldon, C., Gilbert; Casis, A Z; Caspary, G, Seiler, V; Fernando M. Ruiz (2013): Innovative approaches for multi-stakeholder engagement in the extractive industries. Extractive industries for development Series; no. 29 Washington DC: World Bank (2013): Accessed from <http://documents.worldbank.org/curated/en/505541468340258421/Innovative-approaches-for-multi-stakeholder-engagement-in-the-extractive-industries> on 11th February 2019.

sustainable development. This is borne out of the inopportune truth that, in some countries, there is a lack of trust between different stakeholder interests, and probes how multi-stakeholder engagement can mitigate negative impacts of oil and gas resource development and enhance its potential positive contributions, particularly at the local level and where the governance context is weak.¹⁹

Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts.²⁰ Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the project's risks and adverse impacts, and the project's phase of development.²¹

The purpose of stakeholder engagement is to establish and maintain a constructive relationship with a variety of external stakeholders over the life of the project and is an integral part of an effective and adaptive Environmental and Social Management System (ESMS). Depending on the nature, risks and impacts of a project and the presence, or not, of Affected Communities the level of required stakeholder engagement can range from the implementation of a basic channel to receive external communications from the public to a comprehensive consultation process involving the active and Informed Consultation and Participation (ICP) of Affected Communities.²²

It can be noted that the only commendable form of stakeholder engagement is in environment sector, where CSOs requested government to establish a multi-stakeholder committee comprised of

¹⁹ McPhail Kathryn (2017): 'Enhancing sustainable development from oil, gas, and mining: From an 'all of government' approach to Partnerships for Development. WIDER Working Paper 120 (2017) prepared within the UNU-WIDER project on 'Extractives for development (E4D)', which is part of a larger project on 'Macro-economic management (M-EM)'.

²⁰ IFC (2010): "Mainstreaming Gender into Extractive Industries Projects." Extractive Industries and Development Guidance Note 9, IFC, Washington, DC

http://www1.ifc.org/wps/wcm/connect/Topics_ext_content/ifc_external_corporate_site/IFC%20Sustainability/Publications/Publications_Handbook_MainstreamingGenderintoExtractiveIndustries_WCI_1319577108523?id=5a38c40048d2e9b6b6d7bf4b02f32852&WCM_Page.ResetAll=TRUE&CACHE=NONE&CONTENTCACHE=NONE&CONNECTORCACHE=NONE&SRV=Page.

²¹ IFC, 'Requirements regarding engagement of workers and related grievance redress procedures are found in Performance Standard 2 (2012).

²² Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets.

actors from government, the private sector, religious and cultural groups, CSOs, academia and others to act as an independent multidisciplinary oversight body to promote compliance with environmental conservation tools such as Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA), Environmental and Social Impact Assessment (ESIA).²³ However, little has been researched about the analysis of multi-stakeholder engagement framework for extractive industries in the oil and gas sector focusing on the legal regime in Uganda.

Based on preliminary evaluation, Murchison Falls National Park (MFNP) is believed to constitute a critical habitat as defined by the guidance notes to IFC's Performance Standards.²⁴ There are several potential triggers for this, the most prominent being the presence of what may be the World's last remaining naturally breeding populations of the Endangered Rothschild's giraffe. The key stakeholders to consult within the MFPA include the Uganda Wildlife Authority (UWA), Ministry of Tourism, Wildlife and Heritage, tourism operators, District Governments, Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) working on environmental and conservations issues, and villages within the area.²⁵

Research indicates that until 2014, there had not been as much emphasis at the sub-national (village, sub-county and district) levels to explore how oil extraction in Uganda's Albertine Rift region may impact (positively and/or negatively) local communities.²⁶ Stakeholder engagement at the sub-national level has increased given displacement and compensation issues related to the proposed refinery and potential for environmental and livelihood impacts in the oil-bearing regions.

²³ Oil in Uganda correspondent, 'NEMA reviews environmental concerns over Tilenga project (2018). Thursday, 25th October 2018. Accessed from <<https://www.oilinuganda.org/categories/features/governance>> on 31st January 2019.

²⁴ International Finance Corporation. 'Guidance Note1; Assessment and Management of Environmental and Social Risks and Impacts (2012): January 1, 2012. 1. Downloaded 29th January 2019 from https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps1.

²⁵ Sebikari, G. (2014): Presentation on "Progress of Petroleum Exploration and Development in Uganda", Dialogue With Civil Society Organisations, "Enhancing Environment Compliance in Uganda's Oil and Gas Sector" (2014)' Petroleum Exploration and Production Development: Kampala, Uganda. Accessed from: <http://www.cscog.ug/files/downloads/PEPD%20to%20CSCO%20Hoima%20july%202014.pdf>.

²⁶ Van Alstine, J., Manyindo, J., Smith, L., Dixon, J., Amaniga Ruhanga, I.(2014): 'Resource governance dynamics: The challenge of 'new oil' in Uganda (2014). Resources Policy 40, 48-58.

The starting point for this project is that *evidence-based engagement at the sub-national level* is necessary to drive pro-poor societal change.²⁷

The local communities in the Project Area are characterised by high levels of poverty with inadequate access to basic services and infrastructure, low levels of education and low incomes. Communities depend heavily on natural resources (land for cultivation and grazing livestock, and Lake Albert for fishing, amongst other resource use) and are therefore very sensitive to changes in land use and impacts related to Lake Albert.²⁸ Disputes about land ownership and contested boundaries are common in the local area. Land speculation is a growing problem and those who have little knowledge about land rights or the land acquisition process risk being exploited. Land studies²⁹ and Project related land acquisition has the potential to exacerbate these issues. A number of vulnerable groups have been identified in the Project Area including: Women: decision-making is still very much male-dominated, men control household finances and access to land, and domestic violence is reported to be widespread. Elderly: Older people may be considered vulnerable if they can no longer engage in productive activities and do not have family to support them. Youth: Unmarried youth who do not yet have access to land and face limited alternative employment options may be perceived as poor and have a low social status.

1.3 Problem Statement

The research problem is borne out of an empirical gap between legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector and realization of the objectives of this framework. It is not known whether the current legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector, is adequate to ensure sustainable returns from this sector.

Given the existence of various laws and policies that indirectly affect Multi-Stakeholder engagement framework for extractives industry, it is expected that all Ugandans and key stakeholders in the extractive industry would participate, advocate, gain and see a sustainable oil and gas industry. Therefore, the legal regime in Uganda provides less benefit towards Multi-

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ministry of Lands and Urban Development, 'Understanding Land Acquisition Challenges That Have Necessitated The Constitutional (Amendment) Bill, 2017).

Stakeholder engagement framework for extractives industry and the stakeholders have not adequately benefitted from this initiative. More so, the engagement mechanisms have been very selective and it is unknown whether the legal framework for Uganda can help enhance a sustainable multi-stakeholder engagement strategy in the extractives industry.

There is a gap in the law in the current studies on oil and gas, which is why the current study is proposed to analyse the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector in order to propose a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector. This may be based on regional and global best practices in various oil-producing nations.

1.4 Purpose of the Study

The purpose is to analyse the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector. This is aimed at proposing a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector. This may be based on regional and global best practices in various oil-producing nations.

1.5 Objectives

1. To identify the key stakeholders engaged in the extractive industries particularly the oil and gas sector
2. To explore the existing legal and policy framework (local and international) for multi-stakeholder engagement in oil and gas sector
3. To propose a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector.

1.6 Research Questions

1. Is the existing legal and policy framework (local and international) for multi-stakeholder engagement in oil and gas sector effective? If so, is it being implemented and what lessons can Uganda learn from other countries?

2. What can be a legal strategy which prioritizes stakeholder's engagement with most severely affected rather than most influential stakeholders in the oil and gas sector?

1.7 Justification

The researcher explored the potential, practicality and challenges of incorporating multi-stakeholder engagement into the legal and policy frameworks of oil and gas management through the various ministries. The enactment of several statutes relating to oil and gas management and creation of government departments to promote development of the communities demonstrate the government's willingness to address development challenges in the oil-rich regions and the setbacks of the oil and gas industry. As an alternative to the ineffectiveness of the existing legal regime, the host and impacted communities sometimes enter into agreements with oil and gas companies; however, these agreements, which are limited in scope, do not address the factors impeding multi-stakeholder engagement of the host and impacted communities in Uganda. This reveals the necessity for a different approach that promotes multi-stakeholder engagement in oil and gas sector in Uganda.

The researcher feels the need to analyse the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector. This is aimed at proposing a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector.

1.8 Significance of the Study

The process of mineral policy development involves certain steps which are required to address the primary concerns of a country. Laws and policies in a country should be able to address the fundamental issues which are specific to different economic sectors. There are three basic steps of policy-making and development.³⁰ These are information gathering, information analysis and strategic development. Since inception, the process of development of mineral policy had not gained momentum. Uganda's current legal framework for the mining sector consists of different legal and policy documents.

³⁰ Mtegha, H. (2005): Towards a Minerals Policy for the Southern African Development Community (SADC), Johannesburg: University of Witwatersrand.

For a fair, transparent, equitable and effective legal and policy framework being the dire need of Uganda, the stakeholders along the operations in Uganda's oil industry, as well as their strategic role in oil and gas value chain, have to be identified. This will ensure that the smooth formulation of the effective and balanced laws and policies, their implementation and avoidance of a reactive approach towards extractive industry is achieved.

Significantly, it may help inform support partners on areas of collaboration among stakeholders in the development discourse. This may fore-stall duplication of interventions in host communities and government agencies to offer an opportunity to bring about equity and meaningfully social and economic development of beneficiaries within the study area, given the exploration of oil and gas in Albertine region.

The study may also create a monograph which could be replicated in other sectors. Law analysts and policy makers may obtain knowledge of multi-stakeholder engagement; they may therefore obtain guidance from this study in designing appropriate policies that may regulate the sector. Future scholars may use the results of this study as a source of reference. It may also benefit consultants who endeavor to provide assistance to successful strategic stakeholder involvement.

The findings of the study may be of value to the stakeholder theory as the call for legal and policy makers as to recognize the importance of other stakeholders in the organizations operations may enable the study to conceptualize and empirically operationalize the role of stakeholders in the process of the organization realizing its objectives. Particular attention is to be paid to the different types of stakeholders and their expectation from the organization.

1.9 The Scope of the Study

1.9.1 Time Scope

The study covered a period from 2006 when oil was discovered in Uganda to date. The study mainly used desk research for data collection. This helped to capture trend analysis of legal incidences surrounding the area of study.

1.9.2 Geographical Scope

The study is based in Uganda as a case study including tax base erosion indicators, legal framework, and institutional framework. It mainly consulted the Tax experts and legal experts on extractives industry especially oil and gas.

1.9.3 Subject Scope

The study focused on Stakeholder engagement as an important element of any planned intervention since it goes a long way in shaping decisions related to such interventions. It is a continuous process that needs to be understood as running throughout the lifecycle of the intervention and beyond. Multi-Stakeholder Initiatives on the other hand are voluntary partnerships between governments, civil society, and the private sector that have emerged over the last 15 years to address development challenges collaboratively, entrench democratic practices, and strengthen regulatory frameworks. Finally, the study aims to examine participatory equity, accountability and transparency, and to develop partnerships and networks amongst different stakeholders, examines the prevention of tax base erosion in the extractive industry in Uganda.

1.10 Theoretical Framework/Legal Theory

There is an abundance of literature on theories of change that can help inform advocacy and policy change efforts, though multi-stakeholder initiatives tend to involve complex combinations of different types of theories of change operating at different levels of analysis. For example, some author³¹ identified five global theories of change – 1) punctuated equilibrium (large leaps) theory, 2) agenda-setting (policy window) theory, 3) coalition theory, 4) power politics theory, and 5) regime theory. These are arguably based on different and exclusive worldviews.³²

However, donors, civil society organizations, and other stakeholders want to know what effect multi-stakeholder engagement have; relative to other actors, advocacy efforts, and events on desired outcomes in Uganda. This challenge is referred to in legal impact circles as the *'but for'* question.

³¹ Green D, (2019): "Where have we got to on Theories of Change? Passing fad or paradigm shift?" blog post April 16, 2015. Accessed from <http://oxfamblogs.org/fp2p/where-have-we-got-to-on-theories-of-change-passing-fad-orparadigm-shift/> : on 22nd March 2019

³² Stachowiak, S, (2013): 'Pathways for change: 10 theories to inform advocacy and policy change efforts. Organizational Research Services' Center for Evaluation Innovation (2013): Accessed from http://orsimpact.com/wp-content/uploads/2013/11/Center_Pathways_FINAL.pdf> on 22nd March 2019

Once sufficient evidence has been gathered, multi-stakeholder engagement should be well positioned to make a compelling case for how their activities contribute to outcomes.³³

There also appears to be at least some tension between the concern that multi-stakeholder engagements are displacing domestic accountability mechanisms and the desire – expressed by several country-level stakeholders—to establish national Multi-stakeholder group as independent legal entities.³⁴

Advocates³⁵ suggest that there are several potential benefits to establishing advocates as independent legal entities. First, legal status would give the work of stakeholders the force of hard law and protect against changing political priorities in the extractives industry. Second, legal status might improve ability to protect reforms in laws and policies from retaliation by powerful interests. These issues are controversial, contentious, and sometimes even dangerous, says one country-level representative of Inspectorates of Government (IGG).

On the other hand, multi-stakeholder group might be able to attract interest from actors who would otherwise be skeptical of operations in the extractives industry. Adequate funding at the national level has been identified as a key factor for successful outcomes by a variety of stakeholders, particularly from within IGG. Finally, independent status would also protect institutional knowledge because national Multi-stakeholder groups would control their own materials.³⁶

The Stanford Research institute's stakeholder theory and concepts in 1963 (Freeman, 1984) defined the Stakeholder Theory as: "*...those groups without whose support the organisation would cease to exist.*"³⁷ Freeman³⁸ later argued that the identification of stakeholders should be limited to the stakeholders that are directly affected by IOC or Government's behaviour and includes the

³³ Brockmyer, B & Fox, J, (2019): Assessing the Evidence: The Effectiveness and Impact of Public Governance-Oriented Multi-Stakeholder Initiatives' (2015): The Transparency and Accountability Initiative. Accessed from: www.transparency-initiative.org on 23rd March 2019

³⁴ Ibid.

³⁵ Mejía Acosta, A. (2013): 'The impact and effectiveness of accountability and transparency Initiatives: The governance of natural resources (2013). Development Policy Review, 31, 89–105.

³⁶ Khadiagala, G. M. (2014): Global and regional mechanisms for governing the resource curse in Africa'' (Resource Insight No. 12) (2014). Johannesburg: Southern Africa Resource Watch. Accessed from http://www.sarwatch.org/sites/sarwatch.org/files/Publications_docs/resource_insight_12_final_ver3abstract.pdf. on 2nd April 2019.

³⁷ Freeman, R. E, Strategic Management: A Stakeholder Approach' (Boston: Pitman, 1984).

³⁸ Ibid.

following groups: contractors, workers, competitors, creditors, governmental agencies, professional groups and local communities. It is possible to do a more thorough identification of stakeholders.³⁹ Freeman et al. stresses that a stakeholder framework needs to identify specific groups, and implement special procedures to manage these stakeholders. This method is known as mapping and was introduced by Freeman et al.⁴⁰

In terms of theoretical scope, the key areas of focus are: identification of the key stakeholders engaged in the extractive industries particularly the oil and gas sector; an exploration of the existing legal and policy framework (local and international) for multi-stakeholder engagement in oil and gas sector; finally it will propose a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector.

1.11 Chapter Synopsis

The study was organized into six (6) main chapters. Chapter one dealt with the introductory part of the study. It explained background information of the research topic, statement of the research problem, general and specific objectives, research questions, limitations, highlighting the significance and scope of the study gave brief description of the study methodology and pointing out how the entire study was organised. Chapter two reviewed literature on the subject matter. Chapter three presented the research methodology. Chapter four dealt with data analysis and discussion. It mainly discussed International Legal Framework. Finally, chapter five discussed National Legal Framework while Chapter Six gives conclusion and recommendations.

³⁹ Ibid.

⁴⁰ Freeman, R. E., Harrison, J. S., & Wicks, A. C (2007): *Managing for Stakeholders Survival, Reputation, and Success*. New haven: (Yale University Press, 2007).

CHAPTER TWO

LITERATURE REVIEW

2.1 Key Stakeholders Engaged in the Extractive Industry (oil and gas sector)

The concept of stakeholder has received commendable attention from researchers and scholars within the management field of study.⁴¹ Freeman's seminal work⁴² on the stakeholder concept has contributed to the widespread use of the theme in management literature.⁴³ This reflects the acceptance and acknowledgement among researchers and scholars of the significant position of stakeholders as "any group or individual who can affect or is affected by the achievement of the organization's objectives."⁴⁴ Understanding the community group as a key stakeholder within the NOGI is paramount to the success of the industry. This is because the community has a significant effect on the operations and activities of the OPCs. Likewise, researchers and scholars alike have argued that acknowledging and accommodating stakeholder interest in managerial decisions is a prerequisite to achieving success.⁴⁵ This suggests that the operations and activities of the OPCs should take into consideration various stakeholders such as the community needs. Hence, the need to explore and understand the combination of the interest of the various communities' sub-groups in the oil and gas industry.

Scholars also argued that only humans who are capable of interacting with one another should be referred to as a potential stakeholder.⁴⁶ This perspective is deemed important in the context of this study because of their emphasis on interaction among stakeholders, although the natural environment could be viewed as a potential stakeholder represented by those people within it. The

⁴¹ Clarkson, M. E. (1995). A stakeholder framework for analysing and evaluating corporate social performance: *Academy of Management Review*, 20(1), 92-117.

⁴² Freeman, R. E., & Gilbert, D. R. (1987): *Managing stakeholder relationships'* (1987). *Business and Society: Dimensions of Conflict and Cooperation*, 397, 423.

⁴³ Reed, M. S., Graves, A., Dandy, N., Posthumus, H., Hubacek, K., Morris, J., Stringer, L. C (2009): 'Who's in and why? A typology of stakeholder analysis methods for natural resource management, (2009): *Journal of Environmental Management*, 90(5), 1933-1949. <https://doi.org/10.1016/j.jenvman.2009.01.001> on 22nd April 2019; see also Rowley, T. J. Moving beyond dyadic ties: A network theory of stakeholder influences (1997). *Academy of Management Review*, 22(4), 887-910.

⁴⁴ Opcit Freeman 1984, p. 64

⁴⁵ Freeman, R. E., & Evan, W. M. (2018): *Corporate governance: A stakeholder interpretation* (1990). *Journal of Behavioral Economics*, 19(4), 337-359. Accessed from [https://doi.org/10.1016/0090-5720\(90\)90022-Y](https://doi.org/10.1016/0090-5720(90)90022-Y) on 21st April 2019; see also Olander, S., & Landin, A. 'Evaluation of stakeholder influence in the implementation of construction projects' (2005). *International Journal of Project Management*, 23(4), 321-328. <https://doi.org/10.1016/j.ijproman.2005.02.002>: on 22nd April 2019.

⁴⁶ Phillips, R. A., & Reichart, J. (2000): *The environment as a stakeholder? A fairness-based approach* (2000): *Journal of Business Ethics*, 23(2), 185-197. <https://doi.org/10.1023/A:1006041929249>.

emergence of stakeholder by proxy, which is referred to as “the state, quality or fact of being near or next gives space, time or order” to an organisation.⁴⁷ This further suggests that a lack of interaction among stakeholders will result in misunderstandings and the inability of an organisation to carry out its activities and operations effectively.⁴⁸ It could also be argued that this perspective on the definition of who a stakeholder is emphasises the importance of the role of humans, and their interactions, in the fulfillment (or otherwise) of an organisation’s objectives. Some scholars define a stakeholder as an individual or group whose support is crucial to the existence of an organisation.⁴⁹ Freeman et al⁵⁰ stated that any organisation that falls within this category should be viewed as dependent on identified individuals or groups for its survival.

Contrary to the above position, Reed⁵¹ argued that individuals or groups depend on the organisation for their survival. However, the importance of these views to this study is the consistent emphasis on a dependency “relationship” among stakeholders. This further suggests the requirement for a definition to encompass a need for an organisation and its stakeholders to rely on one another for continual of both survivals. In addition, this standpoint raises the issue of reciprocity among stakeholders, which involves stakeholders actively coming together in knowledge sharing and value creation activities⁵².

While the stakeholder concept was first introduced in the 1960s⁵³, it was not until the mid-1980s that the concept started to gain widespread acceptance in the United States, with the publication of Freeman's book, *Strategic Management: A Stakeholder Approach*.⁵⁴ Since then, numerous conceptual, theoretical, and empirical studies have been conducted with the stakeholder concept as a central theme. While this body of literature is indeed impressive, far less has been done to integrate and implement this knowledge into conceptual and process models that can facilitate the actual practice of stakeholder management within contemporary organizations.

⁴⁷ See Soukhanov, A. H. (1993): *Websters II new riverside university dictionary* (Houghton-Mifflin Company, 1984): p. 948

⁴⁸ Näsi, J. (1995): ‘Understanding stakeholder thinking’ (LSR-Publications, 1995).

⁴⁹ Bowie, N. (1988): *The moral obligations of multinational corporations*. *Problems of International Justice*, 97, 113

⁵⁰ Freeman et al (2007): *Managing for Stakeholders Survival, Reputation, and Success*. New haven: (Yale University Press, 2007).

⁵¹ Reed, M. S. et al (2009): ‘Who's in and why? : A typology of stakeholder analysis methods for natural resource management’ (2009). *Journal of Environmental Management*, 90(5), p. 1933-1949.

⁵² Harrison, J. S., Bosse, D. A., & Phillips, R. A. (2010): ‘Managing for stakeholders, stakeholder utility functions, and competitive advantage’ (2010). *Strategic Management Journal*, 31(1), 58-74. <https://doi.org/10.1002/smj.801>.

⁵³ Stoney, C., and Winstanley, D (2001): *Stake-holding Confusion or utopia? Mapping the conceptual terrain.*” (2001). *Journal of Management Studies* 38: 603– 26.

⁵⁴ See Freeman, R. E. (1993): *Strategic Management: A Stakeholder Approach*. (Marshfield, Pitman, 1984).

Literature shows that in 1970s firms began experiencing increased levels of change in their external operating environment. Corporations began responding to a more dynamic and uncertain external environment (often characterized as turbulent) by setting up formal environmental scanning systems.⁵⁵ These systems were designed to act as “early warning systems” that would detect changes, events, and emerging issues early on in their development so that organizations could prepare effective and timely responses. Most of the changes detected by these systems were precisely those that underpinned Freeman's call for managers to revise their conceptual maps and use the stakeholder framework to help interpret external events. Some of the external changes Freeman noted in this seminal work were as follows: the emergence of consumer, environmental, and other activist groups; an increase in the scope of government (role as a watchdog), a global marketplace and increased foreign competition; an increasingly hostile media and a loss of confidence in business.⁵⁶ These and other more recent trends, like improved communication and the emergence of the Internet, have only reinforced these developments and the need to manage organizations with an open systems perspective by utilizing stakeholder engagement techniques.

While the extant literature on stakeholder management discusses separately many of the elements of the stakeholder approach, surprisingly little effort has been made to construct a comprehensive stakeholder management process model that can facilitate the actual practice of stakeholder management within contemporary organizations.⁵⁷ Thus, the synthesis of a wide array of stakeholder management theory, buttressed with examples of stakeholder initiatives taken by several visible organizations and integrated into a comprehensive stakeholder management process model, is considered to be a major contribution of this paper to the literature.⁵⁸ This model and approach can greatly facilitate the task of introducing a stakeholder perspective into an ongoing organization.

In stakeholder literature there are several narrow definitions that claim that managers simply cannot attend to all actual or potential claims. Further, the definitions have shown suggest that there are many different priorities for the managers take into consideration. Mitchell et al suggests that the

⁵⁵ Preble, J. F (1978): “Corporate use of environmental scanning.” Michigan Business Review 30: p. 12– 7.

⁵⁶ Ibid p. 246

⁵⁷ Preble, John F. (2005): Toward a Comprehensive Model of Stakeholder Management (2005). Business and society review, Volume 110,(4): 407-431. Accessed from

<https://onlinelibrary.wiley.com/doi/full/10.1111/j.0045-3609.2005.00023>. on 19th April 2019

⁵⁸ Ibid.

question of stakeholder salience is – *The degree to which managers give priority to the competing stakeholder claims* – and is beyond the question of stakeholder identification, because the dynamics inherent in the relationships include complex considerations which is not easily explained by the stakeholder framework.⁵⁹

Stakeholder analysis is an important part of developing a stakeholder engagement plan for policy formulation. It helps to pave way for engagement of all the parties, who are involved in research and developing the policy. By identifying the stakeholders, it is easy to reach the aim and the goal of the policy by giving a specific direction.⁶⁰ For analysis of stakeholders, the impact analysis matrix is drawn. In impact analysis, all potential stakeholders are listed with their impact on different spheres being marked.⁶¹

In a Chilean study stakeholders' engagement among mining IOCs occupy positions of particular importance in developing countries as generators of economic growth and associated social wellbeing.⁶² Their study further examined mining company engagement with universities in the Chilean context, a country with vast mineral resources and mining activity, particularly in the Antofagasta Region. Other authors noted that Chile is a rich setting for this study as Chile contains both national and transnational mining IOCs who engage with local, national and international universities.⁶³

Other authors⁶⁴ use these different attributes in the identification of stakeholders. Accordingly, the stakeholders with only one of the attributes (power, legitimacy or urgency) will have a low stakeholder salience. In this group there are three different types of stakeholders: the *dormant, discretionary and demanding* stakeholders. The relevant attribute to dormant is power. They possess power to influence their will to the business. The discretionary stakeholders possess the attribute of legitimacy (how legitimate is their relationship a firm?). They have no power to

⁵⁹ Mitchell K. R., Agle B. R. & Wood D. J (2007): 'Toward a theory of stakeholder identification and salience: Defining the principle of whom and what really counts (2007).

⁶⁰ ODI (2014): Planning Tools (2014.). Accessed from <http://www.odi.org/publications/5257-stakeholder-analysis> on 28th January 2019.

⁶¹ Ibid.

⁶² Hilson, G, Corporate Social Responsibility in the extractive industries: Experiences from developing countries; (2012). Resources Policy, 37(2), 131-137.

⁶³ Wirth, H., Kulczycka, J., Hausner, J., & Koński, M. Corporate Social Responsibility: Communication about social and environmental disclosure by large and small copper mining companies (2016). Resources Policy, 49, 53-60.

⁶⁴ Ibid at 39

influence the business and can't claim anything. There is no pressure on the management to engage in a relationship with this kind of stakeholder.⁶⁵

A similar study⁶⁶ in Uganda was done in the MBA field which focused on assessing the influence of stakeholder involvement on service delivery in the oil sector in Buliisa District, western Uganda. The study sought to establish the extent to which stakeholder involvement in the oil exploration design/planning, implementation, M&E processes has influenced service delivery in Buliisa. The study findings revealed that there is a positive relationship between stakeholder involvements in the oil exploration design/planning, implementation and M&E processes and service delivery in Buliisa. It was concluded that, stakeholder involvement in planning, implementation and M&E processes enhances service delivery. He recommended proactive engagement of stakeholders to understand their expectations and incorporate them in plans, managing clear communication strategies to develop trust and, implement an efficient and easily accessible mechanism for claims and complaints.⁶⁷

A range of variables can determine a stakeholder's vulnerability and affect or restrict their ability to actively participate in engagement activities, including age, gender, ethnicity, social status, livelihood and occupation (i.e. insecure, temporary, low wage employment), level of education, health status (including physical or mental disability), physical isolation (distance, lack of access to transportation), land rights and ownership and level of Marginalisation. Vulnerable groups were identified in consultation with local stakeholders including local authorities, health service providers, NGO/ CBOs, government agencies and community members themselves. Potentially vulnerable or disadvantaged individuals and groups identified in the affected communities, include: Women, especially widows and female headed households; Children and youth (especially orphans); Elderly; Disabled or chronically ill; Low income households (with incomes below the subsistence level⁴); Minority ethnic groups and tribes, including Balaalo cattle herders; Immigrants and refugees; Sex workers; and People living with HIV/AIDS.⁶⁸

⁶⁵ Mitchell Agle & Wood (2007) op cit

⁶⁶ Kajoba S, 'Stakeholder Involvement and Service Delivery In The Oil Industry In Uganda: A Case Study Of Oil Exploration In Buliisa District' (Executive MBA Thesis, Uganda Technology And Management University, 2016)

⁶⁷ Ibid.

⁶⁸ Tilenga Project – Stakeholder Engagement Plan (April 2018)

On the other hand, stakeholder identification aims to establish which organizations and individuals, including vulnerable groups, may be directly or indirectly affected (positively or negatively) by the Project or has an interest in it.⁶⁹ This Ugandan study proved that multi-stakeholder identification was an on-going process that was regularly reviewed and updated throughout the ESIA process.

A key gap identified in the above theme is that governments have an important regulatory function. National legal regimes regulate both industry and natural resource development, and establish entry points for multi-stakeholder engagement at national and local levels. Environmental impact assessment (EIA) regulations provide an important foundation and driver for public consultation, but in many cases the implementation and enforcement of these regulations are inadequate, with very little guidance or specific requirements relating to how consultation should take place.

2.2 Key areas for Stakeholder Engagement in Oil and Gas

Scholars⁷⁰ have argued that managing stakeholders effectively begins with the stakeholder identification process. Therefore, stakeholder identification is a fundamental task for an organization or country's success.⁷¹ Hence, stakeholder identification underpins successful stakeholder.⁷² Others⁷³ proposed that stakeholder identification should answer the question of "who are they? Finally, Yang defines stakeholder identification as the "development of a list of stakeholders".⁷⁴

The starting point noted by authors for existing guidance on stakeholder engagement is Partnership Africa Canada's (PAC) literature review, conducted in 2012.⁷⁵ The PAC review highlights a number of stakeholder engagement guides, and provides a bibliography with other articles and

⁶⁹ Tilenga Project ESIA, 'Appendix G: Stakeholder Engagement Plan (May 2018). Prepared for: Total E&P Uganda and Tullow Uganda Operations

⁷⁰ Manowong, E., & Ogunlana, S. (2010): Strategies and tactics for managing construction stakeholders. *Construction Stakeholder Management*, 121-137.

⁷¹ Ballejos, L. C., & Montagna, J. M. (2008): Method for stakeholder identification in inter organizational environments' (2008). *Requirements Engineering*, 13(4), 281-297 Accessed from <https://doi.org/10.1007/s00766-008-0069-1> on 23rd April 2019; see also Friedman, A. L., & Miles, S. 'Stakeholders: Theory and practice' (Oxford University Press, 2006).

⁷² Chapleo, C., & Simms, C. 'Stakeholder analysis in higher education: A case study of the University of Portsmouth' (2010). *Perspectives*, 14(1), 12-20. Accessed from <<https://doi.org/10.1080/13603100903458034>> on 23rd April 2019

⁷³ Frooman, J. 'Stakeholder influence strategies' (1999): *Academy of Management Review*, 191-205.

⁷⁴ Yang, R. J. (2014): An investigation of stakeholder analysis in urban development projects: Empirical or rationalistic perspectives. *International Journal of Project Management*, 32(5), 838-849.

<https://doi.org/10.1016/j.ijproman.2013.10.011>.

⁷⁵ Partnership Africa Canada, 'Stakeholder Engagement and Due Diligence' (DAF/INV/NCP/RD (2012)11)

resources in the “Works Reviewed” section. The list of guides upon which PAC bases its best practices for stakeholder engagement includes: Good Practice Principles for Stakeholder Engagement,⁷⁶ Stakeholder Engagement: A Toolkit,⁷⁷ and Corporate Social Responsibility⁷⁸ among others. From its review of this guidance, PAC summarizes the best practices for stakeholder engagement, based on which it suggests an iterative cycle with four phases, with each phase containing different actions.⁷⁹

Extractive sector IOCs are also advised to ensure that stakeholders engage. In addition to the guidance identified in the PAC literature review, guidance on stakeholder engagement continues to be developed by various organizations. Some of this guidance is focused directly on the extractive industry. Moreover, individual extractive industry IOCs are beginning to develop their own guidance for their projects and operations. This company-level guidance is not analyzed in this study, but it is another source of practical tools and examples of best practices.⁸⁰

Some of the literature underscored the importance of assessing land titling programmes against longer-term histories of land reform and distribution, including understanding how empowerment is associated with conflict and distributional disputes over land.⁸¹

Finally, there is a need for more analysis on the specificities of how processes of legal empowerment of stakeholders, including through justice reform, evolve in practice to test more closely how the law and access to dispute resolution mechanisms can create space for contesting property relations⁸². This requires that land reform and laws which address property rights be considered in light of their distributional and empowering impact, as they will not be politically neutral. Legal empowerment per se (as access to justice) is only part of the story for example, effective property rights for women depend also on the interaction between legal knowledge, titling

⁷⁶ World Bank Group (May 2007): Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets. International Finance Corporation (IFC): Washington DC

⁷⁷ REVIT (2007)

⁷⁸ International Institute for Sustainable Development (2007): Corporate Social Responsibility: An Implementation Guide for Business. Winnipeg, Manitoba Canada R3B 0Y4

⁷⁹ PAC Report, ‘Stakeholder Engagement Best Practices’ (2011) on p. 15. PAC Report, p. 15-16.

⁸⁰ SHIFT Discussion Paper: Stakeholder Engagement and the Extractive Industry under the OECD Guidelines for Multinational Enterprises, (June 2013).

⁸¹ Wily, L.A. ‘The Law is to Blame’: The Vulnerable Status of Common Property Rights in Sub-Saharan Africa (2011). *Development and Change*, 42 (3), p. 733-757.

⁸² Cousins, B. ‘Capitalism obscured: The limits of law and rights-based approaches to poverty reduction and development’ (2009). *Journal of Peasant Studies*, 36 (4), p. 893-908.

procedures and social norms that enable equitable laws to be bypassed.⁸³ Thus, legal empowerment as a process is relevant to create the enabling conditions for implementation of the law.

Even though it can be assumed that most stakeholders have reading and writing skills, their level of skills differ. Therefore, communication needs to be adapted to that. Personal interaction and space for discussion and explanation is essential in the first place, and follow-up information materials should include plenty of illustration to make sure, that nobody feels excluded or marginalised because of the format chosen.⁸⁴ The format of communication for communities is one of the flexible (i.e. posters and flyers, newspaper announcements of meetings or an oral information via a car announcing with loudspeakers) to include in the plan, since little knowledge about the role they are going to take is available. Therefore, the content of communication needs to be defined well in order to be able to provide it in whatever format rapidly.⁸⁵

Finally, meetings will be central to the progress of the project.⁸⁶ After an initial kick-off meeting, regular meetings and constructive technical visits (i.e. in form of workshops) to smallholder farms most affected can be planned, to give hands-on ideas on how to start with the improvements.

A recent Norwegian study⁸⁷ focused on oil and gas in northern Norway areas, has received more and more attention in the last years. Increasing demands and tail end production at known and developed fields is the trigger for this focus. And the fact that it is estimated that 25% of the world's remaining resources are located in the north, makes the areas very attractive for oil and gas IOCs. At the same time, northern areas are often linked with a harsh and vulnerable climate. And to safely operate in such areas, alongside of fisheries, often bring barriers.

The authors⁸⁸ noted importance of stakeholder dialogue often proves crucial for the success of an establishment like an oil and gas operation in such areas. They also used Stakeholder theory, Communication theory and CSR theory, to analyze the dialogue and identify the stakeholders BP,

⁸³ Friedemann-Sánchez, G (2001): Legal Literacy and Immovable Property: Laws, Norms and Practices in Colombia' (2001) *Development and Change*, 43(6): 1361-1384.

⁸⁴ Reed, M. S. (2008). Stakeholder Participation for Environmental Management A Literature Review. *Biological Conservation*, 141, 2417-2431.

⁸⁵ Ibid.

⁸⁶ Romero, M., Orth A., & Lara P. 'Options And Pathways For Stakeholder-Engagement In The Palm Oil Sector In The District Of Chires, Puriscal, Costa Rica' (2015). ELD-MOOC 2015.

⁸⁷ Moe, F & Rasch, S. S (2012): Analyzing Stakeholder Relations "A case study of the stakeholder dialogue in the Skarv development: Stakeholder Identification and Dialogue (2011); EN310E 003. Bodø Graduate School of Business.

⁸⁸ Ibid.

operator at Skarv fields, must consider in a development like Skarv. Our findings suggest that the implementation of some elements of the Communicative Arena can strengthen the dialogue between stakeholders and provide a sustainable development in the dialogue. Regarding stakeholder identification, our findings suggest the usage of the Stakeholder Salience model to identify and classify the stakeholders, because it provides a thorough examination of every stakeholder.

Conventional approaches to natural resource management usually focus on advices from experts, without including the local stakeholders.⁸⁹ This has changed in recent years, and there are high demands regarding oil and gas exploration and production. Oels (2006) states that it is costly to maintain a good dialogue with the stakeholders, but it is even more costs linked to not having a good dialogue. In addition, it will be a less sustainable solution. Stakeholder dialogue for management leads to growth in social learning and growth of social capital⁹⁰.

For a multi-stakeholder approach to be applied effectively, requires: an ability and a willingness amongst the different stakeholders to engage with each other, and to communicate and collaborate effectively; a conducive policy and legislative framework; a certain level of skills, capacities and knowledge of all major stakeholder groups and an outcome-oriented process, ensuring that there will be resources and commitment to follow-up on ensuing actions.⁹¹

UNDP argue that in the ideal scenario, this benefits all three categories of stakeholders involved: those who make the decisions, those who implement them, and those who are affected by them. But this requires that all parties have the relevant capacities, knowledge and experience, as well as valid perspectives, to engage effectively. In addition, evidence from case experiences suggests that MSEPs also require strong leadership and motivation to engage in a MSEP, a facilitating environment with conducive, formal and informal institutions, and balanced power relations between stakeholders.⁹²

⁸⁹ Oels, 2006

⁹⁰ ibid

⁹¹ Hemmati, M. (ed); 'Multi-Stakeholder Processes: Beyond Deadlock and Conflict (London: Earth scan, 2002). Accessed from <http://www.minuhemmati.net/eng/mssp/mssp_book.htm> on 30th January 2019

⁹² UNDP 2006

There are also natural resources and other governance issues that need to be addressed at the international, rather than the local or national, level. There are many reasons that have contributed to this including the changing role of the nation state, globalization, the information age, and the recognition that stakeholders play an increasing role in implementing what has been agreed at the international level.⁹³

Global governance, once viewed primarily as concerned with intergovernmental relationships, now involves not just governments and inter-governmental institutions, but also NGOs, citizen's movements, transnational corporations, academia, and the mass media.⁹⁴ The emergence of a global civil society, with many movements focused on different issues, reflects a large increase in the capacity and will of people to take control of their own lives. The example of the World Commission on Dams is an oft-cited case of an international policy dialogue and consultation process that led to an innovative framework for the construction of large dams.⁹⁵

2.3 Existing Legal and Policy Framework (Local and International) For Multi-Stakeholder Engagement in Oil and Gas Sector

2.3.1 Legislation

The Constitution of Republic of Uganda 1995

The Constitution is the cardinal law of the Republic of Uganda and various arms of government draw their powers from it. The 1995 Constitution established Uganda as a Republic and clearly provides for the doctrine of separation of powers that is the executive, legislative, and judicial arms of government which are independent in nature for which the rationale was to promote rule of law. The roles and powers of each of the Government arm are enshrined and spelt out in the Uganda Constitution of 1995.

Stakeholder involvement in the oil and gas exploration has been a key issue since the discovery of oil. The 1995 Constitution of the Republic of Uganda provides for the right to participate in the

⁹³ Dodds, F. The Context: Multi-Stakeholder Processes and Global Governance. In: Hemmati, M. 'Multi-Stakeholder Processes: Beyond Deadlock and Conflict. (London: Earth scan, 2002).

⁹⁴ Hemmati, M and Whitfield, R. Stakeholder Forum for our Common Future: Capacity Building for Sustainable Development Partnerships. A template for Stakeholders, Governments and Agencies (2002)

⁹⁵ World Commission on Dams Accessed from <www.dams.org> accessed 30th January 2019

conduct of Public affairs and states that “every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representative in accordance with the law”⁹⁶. However under Article 244⁹⁷ vests control of all minerals including petroleum in, on or under any land or water in the hands of the government on behalf of the people of the Republic of Uganda. The article further limits the exploration of such resources to only licensed entities or individuals. This provision is based on the public trust doctrine that requires the government to be accountable to its people by ensuring they are involved in the management of the natural resources⁹⁸. However this provision needs a constitutional amendment to eliminate any doubts among the citizens towards the government control and management of the benefits that accrue from petroleum by vesting all the minerals and petroleum in the “State” which embraces all state institutions and which is beyond the limited interpretation of “government”, which in Uganda symbolizes the Office of the President, and this could create a more accountable environment for other stakeholders’ participation in the formulation of the required policy and regulatory framework⁹⁹.

Public Private Partnership Act, 2015

The Public Private Partnerships Act of 2015 filled the gap that was in the regulatory framework in the development and implementation of public private partnerships in Uganda.¹⁰⁰ The act eased stakeholders’ participation in Public Private Partnerships arrangements that initially were majorly guided by the 2020 National Public Private Partnerships framework policy. The mandate of the Act is to regulate implementation, maintenance, management, procurement, operation and monitoring of Public Private Partnerships from project inception till the end. It further guides stakeholders on engagements in other projects like transportation, oil and gas infrastructure among others.

The Public Procurement and Disposal of Assets Act, 2013

⁹⁶ Article 38

⁹⁷ 1995 Constitution of the Republic of Uganda

⁹⁸ International alert 2011

⁹⁹ Global Forum: What is a State: <https://www.globalpolicy.org/nations-a-states/what-is-a-state.html> (accessed on June 25th, 2015).

¹⁰⁰ Hogan Lovells; The Impact of Uganda’s Public Private Partnerships Act, 2015

The Act establishes the Public Procurement and Disposal Authority which is responsible for carrying out procurement audits to ensure that international Oil Companies are in compliance with the procurement prerequisites in bid to promote national content¹⁰¹.

The Act puts forth guidelines for all procurement to be made in regard to a public facility which increases transparency among the stakeholders thus leading to the development of the oil and gas industry in particular. The Act in regard to promotion of National content provides for preference of domestically manufactured goods and Ugandan contractors and consultants, this gives them a competitive advantage when competing for public procurement contracts, to foreign manufactured goods, foreign contractors or foreign consultants.

However public contracts especially those in the oil and gas sector require large sums of capital investment which limits participation of local companies or individuals who sometimes cannot meet required bid securities as required by the Act.

The Petroleum (Exploration, Development and Production) Acts, 2013

The Petroleum (Exploration, Development and Production) Act, 2013 gives effect to Article 244 of the 1995 Constitution of Uganda which gives the government control over all petroleum and mineral resources in the country. The Act further establishes the Uganda Petroleum Authority and provides for the establishment of the National Oil Company hence structures for regulating the exploration, development and production of oil and gas in Uganda. The Act regulates the licensing and participation of commercial entities in the oil and gas sector which promotes transparency and competitiveness of the licensing process which has strengthened stakeholder engagement in the sector thus promoting the development of Uganda's petroleum potential.

The Act requires efficiency and safety of petroleum activities providing for cessation of petroleum activities and decommissioning of petroleum infrastructure in best way possible to protect the environment and other stakeholders like the environment and local communities. Even though the Act provides for decommissioning of petroleum infrastructure, there are no gazetted places for dumping oil and gas waste which still possess a risk for the environment and the local communities in the oil region.

¹⁰¹ The Ministry of energy and Mineral development; Implementation of National content in the oil and gas sector.

Investment Code Act 2019

The Act establishes the Investment Authority which has the powers to monitor the processing of investment approvals (permits or licenses). The objectives of the Act include registration of investors, issuing investment licenses and incentives, to make the Investment Authority a one stop centre for promotion, co-ordination, facilitation, monitoring and evaluation of investors and investments objectives of the Act¹⁰². The Act provides for a conducive investment environment and has widened the scope of investment locally by defining a domestic investor to mean any East African citizen¹⁰³ this will lead to increased stakeholder involvement in sectors like the oil and gas industry in Uganda.

Tax Procedures Code Act 2014.

The Tax Procedures Code Act 2014 is a code that regulates the procedures for administration of different tax laws like the; Tax Procedures Code Act, Income Tax Act, The Value Added Tax Act, Gaming Pool Betting (control and Taxation) Act and any other Act imposing a tax. The major rationale for the Act is to provide a code to regulate the procedures for tax administration in Uganda. It also harmonises and consolidates the already existing tax laws.

The Act requires registration of taxes and puts forward measures for enforcement of tax collections and this has enabled tax collecting bodies like the Uganda Revenue Authority to manage the revenues collected to best interest of the country.

In relation to the topic under study, the Act has played a major role in setting forth the procedures that have guided stakeholders like the IOCs which have gone ahead to invest in capital intensive projects like the East African Oil and gas Pipe line project that is being funded by Total E&P.

The Act consolidates all other tax administration laws and this has in a way improved efficiency in the tax collection in the oil and gas sector thus leading to increased revenue collected.

The Model Production Sharing Agreement, 2016

¹⁰² The Investment Code Act, 2019

¹⁰³ Section 15; Investment Code Act, 2019

Production Sharing Agreement is defined as a “contractual arrangement between the International Oil Company (IOC) and a state party usually the National oil Company (NOC) that authorizes the IOC to undertake petroleum operations within a certain area in accordance with the Petroleum/Product Sharing agreement¹⁰⁴.

The Petroleum (Exploration, Development and Production) Act 2013 under Section 6 gives power to the Government to enter into agreements relating to petroleum activities consistent with this Act with any person with respect to the granting or renewing a license, the conduct by a person, of petroleum activities on behalf of any person to whom a license is granted.¹⁰⁵

The Act further states that;

“The Minister shall develop or cause to be developed a model Production Sharing Agreement or any other model agreement as may be entered into by Government under this section which shall be submitted to Cabinet for approval.”¹⁰⁶

Under section 6(3), The Minister shall lay before Parliament the model Production Sharing Agreement or any other model agreement approved by Cabinet under section 6(2) and it shall be this model agreement approved by Cabinet that shall guide negotiations of any future agreements under this section.¹⁰⁷

In 1999 Uganda developed a Production Sharing Agreement to enable exploration and exploitation of her oil and gas deposit. In 2012, the terms of 1999 agreement were revised to reflect certain concerns aired by both the Government of Uganda (GoU) and the IOCs. Prominent was that exploration was to start within two calendar months from the previous four. Calculation of the shares was to be done on incremental basis and not on total daily production as was previously done. The Uganda’s model 2016 PSA is an improvement of the previous two PSAs and is called a model PSA because it provides a general framework contract for any IOC that intends to enter the oil sector thus increasing stakeholder participation in Uganda’s oil and gas sector.

¹⁰⁴ Benard Taverne, ‘Production Sharing Agreement in Principle and Practice’, in M.R David (ed.), Upstream Oil and Gas Agreements (Sweet and Maxwell, 1996) p.44

¹⁰⁵ Section 6(1)

¹⁰⁶ Section 6(2)

¹⁰⁷ Section 6(4)

The 2016 model has been put to its first work when Uganda granted the Australian oil and gas exploration firm Armour Energy Limited a license for petroleum exploration, development and production over the Kanywataba Contract Area found in Ntoroko, western Uganda. This Production Sharing Agreement was signed in line with s.58 of the Petroleum (Exploration, Development and Production) Act 2013.¹⁰⁸

2.3.2 Policies

Oil and Gas Policy, 2008

In 2008, The National Oil and Gas Policy for Uganda (NOGP), was approved and is the key document guiding the development of the country's oil and gas sector. The NOGP guides all stakeholders on the development of Uganda's oil and sector and comprehensively address issues of exploration, development, production and utilization and commercialization of Uganda's petroleum resources¹⁰⁹. The rationale for the NOGP is to "Use the Uganda's Oil and gas resources to contribute to early achievement of Poverty eradication and create lasting value to society¹¹⁰".

The policy has then objectives for exploring, developing and utilizing the country's petroleum resources and the tenth (10th) objective of the policy is "*to ensure mutually beneficial relationships between all stakeholders in the development of a desirable oil and gas sector for the country*"

In order to ensure the effective exploration and development of the oil and gas sector, the role of stakeholders has to be recognized and the enactment of such a policy paves way for stakeholder participation in the sector thus its development. However, there's still more efforts needed to engage other key stakeholders like the media in order to increase awareness among the public about the progress of the implementation process of the National Oil and Gas Policy.

National Trade Policy – August 2007

¹⁰⁸ Baz Waiswa, 'Here are PSA Conditions Under Which Armour Energy Will Operate In Uganda' (Oil and Gas, 14 September 2017) <www.earthfinds.co.ug/index.php/oil-and-gas/item/1092-here-arethe-psa-conditions-under-which-armour-energy-will-operate> accessed 21/07/2018

¹⁰⁹ Progress of the Implementation of the National Oil and Gas Policy for Uganda; 2017

¹¹⁰ ibid

Uganda's National Trade Policy was formulated within the framework of other National Development Policies and Strategies, particularly the Poverty Reduction Strategy Paper – the PEAP 2004/5-2007/8. Trade policy is one of the instruments that can be used to generate and distribute incomes, and therefore can significantly contribute to poverty reduction which is in line with the major goal for the National Oil and Gas policy of 2008. The major objective for the policy is “to develop and nurture private sector competitiveness, and to support the productive sectors of the economy to trade at both domestic and international levels, with the ultimate objective of creating wealth, employment, enhancing social welfare and transforming Uganda from a poor peasant society into a modern and prosperous society.”¹¹¹ The policy creates a conducive environment for multi-stakeholder engagement which will eventually favour the development of the oil and gas sector in Uganda.

2.4 Comparative Analysis

In the Arctic region, there are various contrasting views towards developing these resources because of their anticipated impact upon ecosystem, the environment, local communities, and industries such as fishery. As a result, oil and gas companies are facing significant resistance and increasing demand for providing detailed information concerning the social, economic and environmental impacts of their activities.¹¹² In response there has been increased attention to stakeholder dialogue and the concept is becoming a central aspect of corporate strategy. Historically, this approach had particular focus on identification and management of stakeholder relations.¹¹³ Furthermore, it has been argued that by adopting a stakeholder approach this can result in competitive advantages in the form of trust and reputation.¹¹⁴ Active involvement of the stakeholders in corporate planning and decision making process increases the possibility of successful business operations.¹¹⁵

¹¹¹ The National Trade Policy; 2007

¹¹² Makki Muhammad. “Evaluating Arctic Dialogue: A Case Study of Stakeholder Relations for Sustainable Oil and Gas Development” (2012). *Journal of Sustainable Development* Vol. 5, No. 3; March 2012. Accessed from www.ccsenet.org/jsd on 18th April 2019

¹¹³ Donaldson, T., & Preston, L. E (1995): *The Stakeholder Theory of the Corporation: Concept, evidence, and Implications* (1995). *Academy of Management Review*, 20 (1), 65-91. Accessed from <http://dx.doi.org/10.2307/258887> on 18th April 2019

¹¹⁴ Rodriguez, M. A., Ricart, J. E., & Sanchez, P. ‘Sustainable Development and the Sustainability of Competitive Advantage: A dynamic and sustainable view of the firm’ (2002). *Creativity and Innovation Management*, 11 (3), 135-146. <http://dx.doi.org/10.1111/14678691.00246>

¹¹⁵ Seeger, M. W. ‘Ethics and Organizational Communication’. (New Jersey: Hampton Press Inc, 1997)

Much depends on government action at the subnational level. In Peru, for example, the regional government stepped in to address a conflict between Anglo American and a local community. This involved establishing a *Mesa de Dialogo* (or ‘dialogue table’) to allow multiple stakeholders to talk through their concerns.¹¹⁶

In Kazakhstan, social legislation has strengthened local government’s role and improved requirements for public consultation by companies. Nonetheless, respondents believe that more could be done to legislate for better consultation processes and information-sharing.¹¹⁷ For example, in 2000 Kazakhstan ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998),¹¹⁸ yet several respondents from different stakeholder groups in Kazakhstan noted that implementation of the principles of this convention should be strengthened. A representative of a Ministry in Kazakhstan, who was interviewed for this project, also emphasised the importance of the role of local governments in consultation processes: “*Local governments need to be informed and they need to make sure people understand and can react.*” A civil society respondent from Kazakhstan emphasised that if local and national government agencies are not supportive of company consultation processes, they will stall and communities will not be empowered enough to engage meaningfully.¹¹⁹

Other literature raises some key challenges that concern the successful implementation of multi-stakeholder engagement in the mining sector, including the implications of unequal bargaining and power relationships between communities and companies, inequity in the distribution of benefits generated by multi-stakeholder engagement, and the enforceability of agreements.¹²⁰ Focusing more specifically on the African context, authors further highlights the differing approaches to multi-stakeholder engagement that various African countries such as Nigeria, Ghana, Angola among others have adopted, arguing that a number of factors determine the success or failure of an

¹¹⁶ Wilson, E (2015) Energy and minerals in Greenland: governance, corporate responsibility and social resilience. International Institute for Environment and Development, London; Accessed from <http://pubs.iied.org/16561IIED.html> on 19th April 2019

¹¹⁷ Elliot, H Presentation on behalf of Anglo American at Conference on Alternative Strategies for Mining-based Economies: Mining and Development in the Andean Region. (4 March 2013), London: Conference hosted by the Institute for the Study of the Americas. Accessed from www.youtube.com/watch?v=vLCrktSG-o on 19th April 2019

¹¹⁸ See www.unece.org/env/pp/welcome.html on 19th April 2019

¹¹⁹ Ibid.

¹²⁰ O’Faircheallaigh, Ciaran (2014): ‘Social Equity and Large Mining Projects: Voluntary Industry Initiatives, Public Regulation and Community Development Agreements’ (2014): Journal of Business Ethics. 132. 10.1007/s10551-014-2308-3.

agreement, including: the definition of 'community', the conditions under which the engagement of communities is created, the enforceability of the agreement, the success of compliance monitoring, the institutional framework for the implementation of multi-stakeholder engagement and the shortcomings of various political regimes.¹²¹

The Nigerian oil and gas industry is the most developed sector within the Nigerian economy; contributing an estimated 80% of government revenue, about 95% of total foreign exchange earnings, more than 40% of the nation's GDP, employing about 10% of the working population, and being the principal source of foreign direct investment (FDI).¹²² Most operations and activities within the industry take place within the Niger Delta Region of Nigeria (NDRN). The region has experienced underdevelopment, local unrest and conflicts due to misalignment of priorities among the following main stakeholders; oil producing companies (both local and International), communities within the NDRN, and the government (i.e. various government agencies, the local government, state government and federal government).¹²³ The impact and influence of the various communities within the NDRN on the NOGI has increasingly become of concern over the last three decades.¹²⁴ This concern suggests the identification among researchers and practitioners of the community as an emerging key stakeholder.¹²⁵ From the Nigerian experience, the impact of the community and other citizens as a stakeholder on the oil and gas sector cannot be over emphasised due to the latter's unique activities and operations within the Niger Delta.

2.4.1. A comparative Analysis with Ecuador

Sustainable management of the oil and gas sector is one of the greatest yet elusive ideals facing petroleum-rich countries. Flattered by Petro-dollars, many oil-rich economies have plundered their opportunities and wasted valuable time by relegating other equally important sectors and sometimes

¹²¹ Nwapi, Chilenye. Legal and institutional frameworks for community development agreements in the mining sector in Africa (2017): *The Extractive Industries and Society*, 4. 202-215. [10.1016/j.exis.2016.11.010](https://doi.org/10.1016/j.exis.2016.11.010)

¹²² Oluyomi A. Osobajo & David Moore (2017): 'Who is Who? Identifying the Different Sub-groups of Secondary Stakeholders within a Community: A Case Study of the Niger Delta Region of Nigeria Communities (2017); *International Business Research*; Vol. 10, No. 9; 2017 ISSN 1913-9004 E-ISSN 1913-9012

¹²³ Omofonmwan, S. I., & Odi, L. O. (2009): Oil exploitation and conflict in the Niger-delta region of Nigeria (2009). *J Hum Ecol*, 26(1), 25-30; see also Obi, C. I (2009): Oil extraction, dispossession, resistance, and conflict in Nigeria's oil-rich Niger delta (2010). *Canadian Journal of Development Studies/Revue Canadienne d'Études Du Développement*, 30(1-2), 219-236.

¹²⁴ Frynas, J. G. 'Beyond corporate social responsibility. Oil Multinationals and Social Challenges' (2009): Accessed from <<https://doi.org/10.1017/CBO9780511581540>> on 21st April 2019

¹²⁵ Eweje, G. 'Strategic partnerships between MNEs and civil society: The post-WSSD perspectives' (2007). *Sustainable Development*, 15(1), 15-27. <https://doi.org/10.1002/sd.295> on 21st April 2019

spending oil revenues unproductively. Avoiding this misleading approach to petroleum-wealth management is critical for sustainable exploitation of the high-value resource. This is based upon the awareness that petroleum is exhaustible and should provide the means toward socioeconomic and infrastructural transformation of the economy. Ecuador learnt this lesson a little late, but has made commendable strides since 2007. Uganda needs to learn from such earlier entrants in the sector. This comparative analysis section draws lessons from the more experienced oil-and-gas-producing Ecuador, for Uganda's nascent oil and gas sector, to argue a case for sustainable petroleum-exploitation.

The analysis lays emphasis on the institutional re-design and development in post-2006 Ecuador and links with analyses that stress the institutional dimension of governing the oil and gas sector for the transformation of petroleum economies. Since institutions shape the strategic choices made by oil-rich states on the management of oil revenues and technologies, an analysis of institutional experiences is useful for assessing the implications of these choices for environmental sustainability, strategic investments, diversification of energy sectors and the economy, and exit strategies.

Despite the numerous undesirable experiences of different Petro-states, few attempts have been made to draw lessons from global south oil producing countries to inform sectoral developments in nascent oil economies. Specifically, south-south knowledge exchange, drawing of lessons and experiences remains limited to analogous reflections on the institutional limitations in these global south polities to utilise their God-given wealth to transform their economies.¹²⁶ As a result, comparisons between younger and older Petro-economies that would provide policy-relevant learning-points for nascent oil economies remain less well articulated.

Contemporary exploitation of petroleum wealth requires several considerations in the country's governance frameworks: (i) policy and legal provisions on management of transnational workforces and their changing cultures and attitudes in a global oil and gas industry;¹²⁷ (ii) demands for local

¹²⁶ Mahyash Saed Quresh, 2008, 'Africa's Oil Abundance and External Competitiveness: Do Institutions Matter?', International Monetary Fund (IMF) Working Paper No. 08/172, Washington DC: IMF.

¹²⁷ Kathryn Mearns and Steen Yule, 2009: 'The role of national culture in determining safety performance: Challenges for the global

content and national participation in the industry; (iii) energy and economic (productive) diversification given the volatility of the oil industry; (iii) ensuring that newly-discovered resources, such as in Uganda and Ghana, are produced in an economically and environmentally sound manner that allows the economy to meet its development needs while also offsetting natural field decline in a world of environmental and climate-change concerns. Other concerns include (iv) ensuring constructive engagements between producing countries, consuming nations, and energy companies to ensure mutual benefits between oil companies and endowed countries; (v) bridging distances between production sources and markets; (vi) ensuring reliable technological changes; and (vii) responding to the fluctuating oil and gas prices.¹²⁸

Ecuador learnt vital lessons a little late but has made commendable strides since 2006 and has transformed its economy. Uganda can learn from earlier entrants in the sector, their practices, and experiences in order to exploit a good-starter advantage.¹²⁹ Ecuador of late realised the challenge of sustainability in its petroleum sector, and since 2006, undertook institutional reforms aimed at making the sector more productive. The sector has been turned into an engine for the broader socioeconomic transformation of society in order to ensure sustainable returns from petroleum wealth. This indicates that sustainability demands deliberate emphasis on *governance efficacy* in the oil and gas sector, which entails efficient management of industry processes, cautiously meeting present-day needs while investing for future generations, and devising an exit strategy from the industry. An exit strategy works best when it is planned and executed from the start of the industry.

Ecuador is trying to meet this triple challenge using four governance strategies: (i) institutional design and planning for oil-sector efficiency; (ii) balancing oil-sector developments with protection and conservation of natural and social environs; (iii) national and regional diversification of the economy and energy sector; and (iv) strategic investment of Petro-revenues. When these strategies are factored in a country's *governance frameworks* for the petroleum sector—policies, laws, regulations and guidelines, contracts and agreements, institutional cultures and practices¹³⁰—and

oil and gas industry', *Safety Science*, 47:777–785

¹²⁸ Harry J. Longwell, 2002. 'The Future of the Oil and Gas Industry: Past Approaches, New Challenges', *World Energy*, 5 (3):100-104

¹²⁹ Discussion with Norwegian expert, during the Oil for Development (OfD) Civil Society Dialogue, Hotel Africana, Kampala, 21 March 2017

¹³⁰ Mahyash Saed Quresh, 2008, 'Africa's Oil Abundance and External Competitiveness: Do Institutions Matter?', IMF Working Paper No. 08/172, Washington DC: IMF.

infrastructure developments, essential predictability of behaviour and accountability of key stakeholders in the sector are guaranteed.

Ecuador has realised greater benefits from its oil and gas sector since 2006 than during its past decades of petroleum exploitation. Its emphasis on institutional and structural reforms, local content and national participation, diversification of the economy and energy sector, utilisation of oil revenues to build infrastructure and provide political goods, and identification of strategic areas of investment for future generations are the key strategic choices which the country made since 2006. While the country may have received considerable Chinese funding in exchange for oil and gas products to achieve these development ends,¹³¹ pre-2006 exploitation had the impact of making the country dependent on the sector and inefficient in other sectors. Uganda has made attempts to craft similar institutional forms, possibly displaying earlier learning than Ecuador did, thanks to the combination of political and bureaucratic goodwill and Norwegian support.

The lesson is clear: governments of oil-and-gas-rich countries, and the societies over which they rule, ought to not wait for negative impacts of the petroleum sector on the economy, environment, and socio-political configurations of their country. Instead, acting proactively, governments can learn important lessons on institutional design, zero-flaring of Attorney General (AG) and related environmental cushions, strategic investment of petroleum revenues, energy and economic diversification, and promotion of meaningful local content and national participation in order to ensure efficiency and sustainability.

This paper forecasts the sustainability challenge in Uganda's oil and gas sector by drawing lessons from the Ecuadorian experience. It reveals that Ecuador in the recent past realised the challenge of sustainability in its petroleum sector, and since 2006, undertook governance and institutional reforms aimed at making the sector more productive as an engine for the broader socioeconomic transformation of society. This indicates that sustainability demands deliberate emphasis on *governance efficacy* in the oil and gas sector. This *efficacy* entails efficient management of industry processes, cautiously meeting present-day needs while investing for future generations, and devising an exit strategy from the industry, which would best work when well planned and

¹³¹ This unverified concern was revealed to the author through interactions with ordinary Ecuadorians in Quito, November 2016.

executed from the start of the industry. This triple challenge can be addressed using four governance strategies: (i) institutional design and planning for oil-sector efficiency; (ii) balancing oil-sector developments with protection and conservation of natural and social environs; (iii) national and regional diversification of the economy and energy sector; and (iv) strategic investment of Petro-revenues.¹³² When these strategies are factored in a country's *governance frameworks* for the petroleum sector—policies, laws, regulations and guidelines, contracts and agreements, institutional cultures and practices¹³³—and infrastructure developments, essential predictability of behaviour and accountability of key stakeholders in the sector are guaranteed.

In this study, “petroleum”, is interchangeable with “oil” and “oil and gas” unless a narrow use for “oil” is specified. Equally, *oil and gas wealth* is interchangeable with *petroleum-wealth* and *oil wealth*. Efficiency implies “success in producing as large as possible an output from a given set of inputs.”¹³⁴ The concept of efficiency as used here implies end-in-mind investment of oil and gas revenues in order to meet those ends that satisfy the country's development needs. It is about investing resources in ventures that bring medium- and long-term returns, like economic, industrial, and social services infrastructure; technology acquisition/transfers and adaptation; inventions, innovations, and technology development and transformation. Investing in productive ventures specifically defined by relevant agencies is contrasted with luxurious and wasteful expenditure of petroleum revenues, investment in non-productive ventures (like housing and automobile purchases). This is not uncommon in countries flattered by Petro-dollars which waste valuable time and oil revenues by spending unproductively, and expand unreasonably in relative sizes beyond the rate of economic expansion, such that “the more oil a country produces, the larger [is] its government.”¹³⁵ The resulting *Dutch Disease* is characterised by overvalued national currency,¹³⁶ expansion of government, “low rates of growth of the manufacturing industry, artificially high real

¹³² These strategies are not drawn from any authority or piece of research work but reflect the author's analysis based on the findings of desk and field research.

¹³³ Mahyash Saed Quresh, 2008, 'Africa's Oil Abundance and External Competitiveness: Do Institutions Matter?', International Monetary Fund (IMF) Working Paper No. 08/172, Washington DC: IMF.

¹³⁴ MJ Farrell, 1957. 'The Measurement of Productive Efficiency', *The Journal of the Royal Statistical Society*, 120 (3):253-290 (at p. 254).

¹³⁵ Ross, *The Oil Curse*, p. 27-

¹³⁶ Michael Bruno and Jeffrey Sachs, 1989, *Energy and Resource Allocation: A Dynamic Model of the Dutch Disease*. NBER Working Paper No. 852: Cambridge MA: NBER

(from <http://www.earthinstitute.columbia.edu/sitefiles/file/about/director/documents/w0852.pdf>, 16 January 2017)

wages, and unemployment.”¹³⁷ These afflictions stifle responses to immediate needs and strategic development interests, suffocate manufacturing sectors, attract inflation, consumerism and extravagance, catalyse the informal economy, lead to reduced non-oil revenue sources, and engender socio-political problems. This “*Oil-Sector Paradox*” or the “*paradox of plenty*”, underscores the irony that resource-rich economies are miserable despite their endowments.¹³⁸

Finally, as the oil and gas industry evolve, it is confronted with demands for environmental protection and conservation. Ecuador, for instance, now faces debates about the fate of Yasuni National Park, a highly bio diverse area, and how exploitation of oil in that part of the Amazon region threatens not only non-human biodiversity but also indigenous communities.¹³⁹ Uganda faces similar challenges in the Murchison Falls National Park and other areas.¹⁴⁰ How Ecuador is faring in this regard is a useful learning-point for Uganda given the combined—but apparently fruitless—civil society, academia and other efforts to save Yasuni. Therefore, Uganda needs to work toward the co-existence of petroleum and tourism/environmental conservation sectors.

2.5 Proposed Legal Strategy to Stakeholder Engagement with Most Severely Affected rather Than Most Influential Stakeholders in the oil and gas sector

Some authors in USA have recommend that strategic engagement and dialogue within the Americas among those who share the wealth of unconventional oil and gas resources will prove to be beneficial for the region and hemisphere at different levels.¹⁴¹ She further noted that the so-called energy diplomacy can have a direct impact on the establishment of solid dialogue and diplomatic relations that leverage good policy, regulatory frameworks, and industry best practices

¹³⁷ Luiz Carlos Bresser-Pereira, 2008. ‘The Dutch disease and its neutralization: a Ricardian approach’, *Brazilian Journal of Political Economy*, 28 (1) (109): 47-71

¹³⁸ Terry Lynn Karl, 1997. *The Paradox of Plenty: Oil Booms and Petro-States*, Berkeley and Los Angeles: University of California Press; Matthias Basedau and Wolfram Lacher, 2006. ‘A Paradox of Plenty? Rent Distribution and Political Stability in Oil States’, Hamburg: German Institute of Global and Area Studies, GIGA-WP-21/2006. Michael Watts, 2001, ‘Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity.’, in Nancy Lee Peluso & Michael Watts, eds., *Violent Environments*, Ithaca and London: Cornell University Press, 2001, pp. 189-212

¹³⁹ Roldan Muradian, 2014. ‘The demise of a new conservation and development policy? Exploring the tensions of the Yasuni’ ITT initiative’, *The Extractives Industries and Society*, 1 (2):284–291

¹⁴⁰ Uganda Safari Portal (USP), 2014 (26 June) ‘Oil Vs. Tourism Development in Murchison Falls National Park’. [from <https://ugandasafariportal.wordpress.com/2014/06/26/oil-vs-tourism-development-in-murchison-falls-national-park/>, 31 Jan. 17)

¹⁴¹ Mooney L Beyond the Fracking Wars: Reaching Consensus with Multi-Stakeholder Frameworks (2013). *International Law News*, Volume 44, Number 2, 2015. © 2015 by the American Bar Association. From <https://www.partnersglobal.org/beyond-the-fracking-wars-reaching-consensus-with-multi-stakeholder-frameworks/> on 29th January 2019

supporting energy independency and/or efficiency (depending on a country's needs).¹⁴² When it comes to preventing and/ or mitigating the Environmental, Social, and Governance (ESG) impacts of hydraulic fracking, one company's best sustainability practices or even research initiatives trying to understand the true environmental impact of this activity are not enough. Thus it is noted that a multi-stakeholder approach, one that brings together governments, the oil and gas industry, research and academic institutions, industry associations, investors, shareholders, and even NGOs, can be the catalyst for leveraging best sustainability practices, investing in serious academic research that identifies the true impact (even the negatives) of hydraulic fracking, and providing standards for prevention, mitigation, and further technological and research development. This, in turn, will leverage international and regional standards that governments, the private sector, and even NGOs can agree upon to integrate as important for their own operations and activities. At the same time, it will serve to create the conditions for operating within a governance and rule-of-law framework.

Authors note that the absence of a broadly accepted legal and policy framework for consultation about resource extraction projects at the national or sub-national levels can make it more difficult for an enterprise's own stakeholder engagement processes to succeed.¹⁴³ Conversely, where there are well-established procedures and guidelines for consultation and stakeholder engagement, there are improved chances that workers, communities and indigenous peoples are active partners and supporters of projects. While the discussion paper does not go into this aspect in more detail, nothing prevents the proposed OECD guidance from addressing this issue, should the OECD consider that to be helpful.

Early due diligence and risk assessment on an operation's country and local context is needed to begin to adapt stakeholder engagement to local needs.¹⁴⁴ This can involve integrating national and local personnel into the project team from the start, as well as engaging social and anthropological expertise. Most importantly, it is necessary to speak to the affected stakeholders and their representatives.¹⁴⁵ They are a critical source of information about the local context, as well as about any legacy issues and future expectations for the project. As is emphasized in some of the existing guidance, it is a good practice to obtain an agreement on the process of engagement with

¹⁴² Citing Ibid.

¹⁴³ ILO's CEACR or the Inter-American Court of Human Rights (2007).

¹⁴⁴ SHIFT (2013): op cit at footnote 52.

¹⁴⁵ Ibid.

affected stakeholders from the outset of a project. This may be a requirement when engaging with indigenous peoples within the context of free, prior and informed consent. Preliminary “engagement about engagement” is a key strategy for respecting local customs, building trust and enabling meaningful input into a project.

2.6 Literature Gaps and Conclusion

The literature review combined three tracks of literature searches:

1. Bibliographic database search of academic databases and journals, using consistent search strings that have been tested beforehand and a set of inclusion criteria, and conducting forward and backward searches on key references. Three main databases were used for the search: Scopus, Google Scholar and Web of Science. These were complemented by searches of key institutional databases, particularly UNDP, World Bank website.

2. Hand-searching specific websites for relevant studies using similar search terms as for the bibliographic databases.

A common gap is that traditional international legal research tools are inadequate to meet fully the needs of today's researcher, largely due to the format and content gaps in international legal literature on stakeholder engagement in oil and gas sector. In addition, inadequacies exist in international legal reference tools, statistical sources, and citation analyses.

Overall, the literature above present ambivalent evidence regarding the nature of the relationship between legally ensures multi-stakeholder engagement in oil and gas sector (including through improved access to justice and rule of law) and improved social and political voice. It was also was found that stakeholder theories on this causal relationship between legal security of multi-stakeholder engagement and social and political empowerment are mostly not explicitly developed as such in the literature, nor is there much empirical work that sets out to demonstrate the validity or otherwise of this causal connection. The evidence base therefore does not constitute a clear body of research that confirms or rejects the validity of the underlying assumptions posited in theory of change in question.

This reflects first that much of the empirical research is not directed at answering the research questions as posed in this exercise, namely the primacy of multi-stakeholder engagement over other rights, and that legal security and formalisation of these enables political and social empowerment.

This arises partly because of the nature of the evidence base that featured in the literature as well as the complexity of the issues surrounding the underlying premise of the research question. A consideration of the relationship between improved legal regimes in existence of, and access to, individual multi-stakeholder engagement and social and political empowerment of communities around oil and gas graben needs to take account of the political and social relations in which property regimes are embedded.

It was also noted that there is good reason not to ignore the more theoretical literature that engages with both the analytical and normative components of the causal chain that is presumed in the theory of change linking legal security of multi-stakeholder engagement with social and political empowerment. The review found that much of the empirical literature engages with these analytical questions in such a way that findings are less about proving or disproving the causal chain but rather present more nuanced analyses about the causal relationships that are being studied.

Given the gaps in the literature, more research could usefully be undertaken on the following: The impact of improved legal security of individual multi-stakeholder engagement on social and political voice. Secondly, testing how, and if, legal mobilisation trends and litigation strategies for the poor see other rights (such as rights to environmental protection, land rights, revenue sharing, compensation, health and education) as equally, or more, important than securing individual multi-stakeholder engagement or indeed communal multi-stakeholder engagement in terms of social and political voice (human rights approach). Finally, the direct consequences of legal security and access/control of property for stakeholders on political voice have been presented. The research has tended to focus on local governance dynamics but there is insufficient empirical research, from a governance perspective, of the particular impact of enhanced access to property and political empowerment of stakeholders at different levels of the political system.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Legal Context and Research Setting

3.1.1 Study Design

Research design is the conceptual structure with which research is conducted.¹⁴⁶ It reflects the arrangement of condition and analysis of data in the manner the researcher proposes with; time and resource economy.¹⁴⁷

The type of research question for this study was best addressed using a qualitative design.¹⁴⁸ Authors argue that a qualitative methodology is appropriate when a study aims to research a little known phenomenon.¹⁴⁹ In particular, a qualitative approach enables investigation of complex social phenomenon where the focus is on understanding ‘how’ and ‘why’.¹⁵⁰ Thus, this research study adopted a qualitative methodology, which allowed the researcher to be alert to different perspectives.¹⁵¹

Qualitative approaches involve an in-depth probe and application of subjectively-interpreted data.¹⁵² Qualitative researchers aim to gather an in-depth understanding of human behavior and the reasons that govern such behavior. The research design enabled the legal researcher to take the theoretical framework as a starting point and focus of the research objectives.¹⁵³ This legal research took place in a law library to locate authoritative decisions, applicable legislation and any secondary discussion, reads and analyse the materials, formulate conclusions write up the study

¹⁴⁶ Kothari C.R, ‘Research Methodology Methods and Techniques’ (New Age International Limited, 2004)

¹⁴⁷ Ibid.

¹⁴⁸ Edmondson, A. C., & McManus, S. E ‘Methodological Fit in Management Field Research’ (2007): The Academy of Management Review, 32(4), 1155-1179

¹⁴⁹ Marshall, C., & Rossman, G. B. (2015): Designing qualitative research (Sixth edition.). (Thousand Oaks, California (2015).

¹⁵⁰ Edmondson & McManus, 2007 op cit.

¹⁵¹ Van de Ven, A. H. (2007): Engaged scholarship: a guide for organizational and social research. (Oxford University Press’, 2007)

¹⁵² Oso, W.Y & Onen, D (2009): A general guide to writing research proposal and report. (Nairobi: The Jomo Kenyatta Foundation, (2009).

¹⁵³ Terry Hutchinson, Nigel Duncan, “Defining and Describing what we do: Doctrinal Legal Research” Vol.17 No 1 2012

results and recommendations.¹⁵⁴ Adopting a qualitative methodology in this study provided rich descriptions of people's perceptions and points of view regarding their realities.¹⁵⁵

3.1.2 Area of Study

Contextually, the Albertine Graben is an important area for biodiversity and of significant ecological and evolutionary processes. It is considered one of the most species rich eco-regions in Africa, evidenced by the high number of protected areas in the region.¹⁵⁶

3.1.3 Research Method

The researcher used a doctrinal based qualitative research method. The research involved analysis of different literature, reports, journal articles by re-known authors on the subject of multi-stakeholders' engagement and the legal regime in Uganda. Doctrinal research is the established traditional genre of research in the legal field.¹⁵⁷ Also known as, theory-testing or knowledge building research in the legal academia, it dealt with studying existing laws, related cases and authoritative materials analytically on the subject matter. This being a legal research which touches on the legal and policy regimes the researcher thought it wise to use the doctrinal method. Chynoweth asserts that doctrinal research methodology is the process of legal analysis.¹⁵⁸

The nature of the qualitative doctrinal legal research methodology henceforth enable the researcher to analyse the literature review. The need to appreciate and articulate the legal aspects of this research such as laws, statutes, case law as indicated in the literature review doesn't require the researcher to undertake data collection as this is could be acquired through desk and library research methods. Henceforth being of legal nature, the researcher chose this methodology as the best method to be used to carry out the research.

¹⁵⁴ Ibid

¹⁵⁵ Kvale, S. (1996): 'Interviews: an introduction to qualitative research interviewing: (Thousand Oaks, 1996).

¹⁵⁶ Bariyo, N. (2015): 'Uganda Set to Award New Oil Exploration Licenses in 2015', (2014). The Wall Street Journal, the Wall Street Journal: New York. 3 June 2014. Accessed from: <http://online.wsj.com/articles/uganda-set-to-award-new-oil-exploration-licenses-in-2015-1401793334> on 31st Jan 2019.

¹⁵⁷ 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.

¹⁵⁸ Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), Advanced Research Methods in the Built Environment (Wiley-Blackwell, 2008) 37.

3.2 Sample and Sampling Techniques

In this study the researcher used documentary review to analyse the historical evolution of extractive governance and development in Uganda documents used in the; legal, fiscal, environmental and institutional frameworks all are representation of evidence under investigation one has to examine statutes history and case reports. The rationale behind documentary review was that it is more effective and provides clear and comprehensive evidence.¹⁵⁹ Documents language and words are in context and there was no need for transcribing which saves time and cost since they are written after thoughtful information.

The study used desk research where a total of over 80 documents were reviewed.

3.3 Data Collection Strategy/Methods

Qualitative research is the approach that was used and it is associated with the social constructivist paradigm which emphasises the socially constructed nature of reality. It is about recording, analysing and attempting to uncover the deeper meaning and significance of the issues being researched.

3.3.1 Documentary Review

In the secondary analysis of qualitative data, good documentation cannot be underestimated as it provides necessary background and much needed context, both of which make re-use a more worthwhile and systematic endeavor. Secondary data was obtained through the use of published and unpublished documents. Various publications, magazines and newspapers reports, historical documents and other sources of published information were reviewed by the researcher.

Documentary review checklist contained a list of documents to be reviewed modified with the performance assessment tasks and measurement guidelines and reports on; taxation, environment, licensing and monitoring of extractive governance.

¹⁵⁹ Mvgalakwa. M, The Use Of Documentary Research Methods' (2006) Social Research Reports African Sociological Reviews'' Vol. 10 Issue 2 p. 221.

Various reports, publications were reviewed which includes magazines, judicial reports, women CSO reports, MoLUD and MEMD reports, and newspapers reports, Historical documents and other sources of published information were also reviewed by the researcher.

Documentary research is the use of outside sources, documents, to support the viewpoint or argument of an academic work. The process of documentary research often involved conceptualizing, using and assessing documents. Analysis of the data gathered from these reports was undertaken to understand stakeholder engagements, as well as understand which universities mining IOCs engage with.

3.4 Data Analysis Plan

The qualitative data was analyzed using both thematic analysis and content analysis. Content analysis involves coding the data and later processing it. This is because the two approaches complement each other since; the theme emerges from the researcher and the description summarized from the responses.¹⁶⁰

In a similar process, data gathered from desk research, IOCs Annual reports were analysed and presented to provide the types of engagements reported by mining IOCs and the universities involved. The interpretation stage involved the development of links that bring together themes by selecting the most useful data segments to support an emerging story.¹⁶¹

When analysing legal, policy and institutional frameworks, the researcher adopted a gap analysis.¹⁶² Gap analysis is a way to compare current conditions and practices to identify the gaps with regards to compliance to relevant standards and steps involved as follows; finding out the existing practices and current situation, determining what is the best practice developing plan to close the gap and carry out an implementation plan to arrive at the objectives which are based on the best practices.¹⁶³ The researcher adopted gap analysis to look at legal and institutional frameworks using international standards for: rule of law, participation, transparency, accountability, publicity, equity, inclusiveness, effectiveness and efficiency.

¹⁶⁰ Given, L. M, (2008):The Sage encyclopedia of qualitative research methods (1st ed.). (Los Angeles: SAGE, 2008).

¹⁶¹ Marshall & Rossman, 2015.

¹⁶² Hamid Ashraf and Fredrick Cawood (2017): Mineral Development for Growth: The Case for a New Mineral Policy Frame Work For Pakistan Journal Of Science And Technology Policy Management. p. 246- 274 at p.25

¹⁶³ Ibid.

3.5 Ethical Considerations

This research study followed UCU Law Students Research guidelines. Interviewees were provided with information about this research project and a consent form. In line with UCU Research ethics procedures, potential participants will be provided with details of the research project and its objectives, associated benefits and risks, and privacy and confidentiality measures. Prior-informed consent forms was signed, scanned and sent to the researcher before each interview was conducted.

3.6 Chapter Conclusion

This chapter details the research methodology that was used to address the research question. It provided evidence that the design was selected considering time and resource constraints of this project. It also provided a detailed description of the research process, including data collection and analysis. The Qualitative approaches involved an in-depth probe and application of subjectively-interpreted data was used in this study. Qualitative researchers aim to gather an in-depth understanding of human behavior and the reasons that govern such behavior. The research design enabled the legal researcher to take the theoretical framework as a starting point and focused of the research objectives. This legal research took place in a law library to locate authoritative decisions, applicable legislation and any secondary discussion, reads and analyse the materials, formulate conclusions write up the study results and recommendations.

CHAPTER FOUR

RESEARCH FINDINGS

4.1 Introduction

This chapter gives a brief description of the background of the oil and gas sector in Uganda, gives an analysis of the collected data analysis, interpretation of the findings in accordance with the research questions and objectives of the study.

In 2006 Uganda discovered commercially viable oil and gas in the Albertine region, which was estimated to be around 6.5 billion barrels of reserves out of which 1.4 billion barrels may be recoverable¹⁶⁴. Uganda being one of the poorest countries in the world, the expectations of anticipated benefits are high come 2020 when the production of the first commercial oil is expected to commence. However the relationships between oil companies and the local communities especially those in remote areas in the Albertine region are complex¹⁶⁵ and this is because these extractive companies are looked at as a source of employment and investment by the local communities but as this remains unfulfilled, the gap between the oil companies and the local communities widens¹⁶⁶ and as thus a lot of efforts have gone in the making of laws and policies that will govern the sector and see to it that the country maximises the benefits of exploiting its oil and gas reserves.¹⁶⁷ One major concern for government, the citizens and all stakeholders has been how Ugandans will benefit from the oil and gas sector. Concerns have been raised on whether the sector can provide employment for citizens, use locally produced goods and services as well as exploit local resources to transfer technology that can kick start other sectors of the economy.¹⁶⁸ The debate has tended to be around an analysis of the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector.

¹⁶⁴ PEPD, 2015

¹⁶⁵ Imbun, 2007

¹⁶⁶ Anderson and Zandvliet, 2009

¹⁶⁷ Magelah, P., G., (2014): Local Content in Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes: ACODE Policy Briefing Paper Series, No.28, 2014. Kampala ISBN 978 9970 34 031 6

¹⁶⁸ Magelah, P., G., (2014): Local Content in Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes: ACODE Policy Briefing Paper Series, No.28, 2014. Kampala ISBN 978 9970 34 031 6

4.2 Summary of Study Findings

4.2.1. Key stakeholders engaged in the extractive industries

Stakeholder engagement has been widely accepted in the extractives industry.

Freeman defined stakeholder as “a group of individuals without whose support an organization or company would cease to exist¹⁶⁹” and these include employees, service providers, the community, private and government institutions.

Researchers and other scholars have gone ahead to define stakeholders as earlier on noted to include “any group or individual who can affect or is affected by the achievement of the organisation’s objectives.”¹⁷⁰

Managing stakeholders effectively begins with the stakeholder identification process. Thus, stakeholder identification is a fundamental task for an organization or country’s oil and gas industry success.¹⁷¹ Stakeholder engagement is a key element of any organized and planned intervention because it guides the decision making process related to any intervention in the oil and gas industry¹⁷². Stakeholder engagement is a continuous process that runs throughout the participation in the industry.

In the stakeholder identification process an effective stakeholder engagement plan has to be developed and in the process of its development it is important to determine who the stakeholders are, what their priorities and objectives are in relation to the extractives industry and make sure that the engagement plan is consistent with both the Ugandan and International Legal requirements for stakeholder engagement.

In stakeholder identification process, different priorities can be taken into consideration and one can consider the extent to which an organization gives priority to the competing stakeholder claims.¹⁷³

¹⁶⁹ Freeman 1984

¹⁷⁰ Opcit Freeman 1984, p. 64.

¹⁷¹ Ballejos, L. C., & Montagna, J. M. (2008): Method for stakeholder identification in inter organizational environments’ (2008). Requirements Engineering, 13(4), 281-297 Accessed from <https://doi.org/10.1007/s00766-008-0069-1> on 23rd April 2019; see also Friedman, A. L., & Miles, S. ‘Stakeholders: Theory and practice’ (Oxford University Press, 2006).

¹⁷² Chapleo, C., & Simms, C. ‘Stakeholder analysis in higher education: A case study of the University of Portsmouth’ (2010). Perspectives, 14(1), 12-20. Accessed from <<https://doi.org/10.1080/13603100903458034>> on 23rd April 2019

¹⁷³ Mitchell et al (1997)

Mitchel et al, in their article *“Who and What really Counts”* puts forward points that can be considered in stakeholder identification and these include; the stakeholders’ power to influence the company, the legitimacy of their relationship with the company and the urgency of such stakeholders claim to the firm.

Freeman put forth another method of stakeholder identification known as *“Stakeholder Mapping”¹⁷⁴* in which he stressed that a stakeholder framework needs to identify specific groups usually divided into two that is; Primary and secondary and then procedures to manage these groups. According to Freeman’s Mapping model of stakeholder identification, Primary stakeholders are the most important for the organization for example the community, shareholders, employees, service providers and suppliers among others. He considers Secondary stakeholders to be those that can affect or be affected by the firm but they are able to influence the primary stakeholders and these include Non-Governmental Organisations in the industry.

Stakeholder analysis is an important part of developing a stakeholder engagement plan for policy formulation. It helps to pave way for engagement of all the parties, who are involved in research and developing the policy framework. By identifying the stakeholders, it is easy to reach the aim and the goal of the policy by giving a specific direction¹⁷⁵.

The starting point noted for existing guidance on stakeholder engagement is Partnership Africa Canada’s (PAC).¹⁷⁶ The PAC review highlights a number of stakeholder engagement guidelines, and provides a bibliography with other articles and resources in the “Works Reviewed” section. The list of guidelines upon which PAC bases its best practices for stakeholder engagement includes: Good Practice Principles for Stakeholder Engagement, International Finance Corporation, Washington DC, USA; Stakeholder Engagement: A Toolkit, REVIT (2007) and Corporate Social Responsibility: An Implementation Guide for Business, International Institute for Sustainable Development (2007) among others. From its review of this guidance, PAC summarizes the best

¹⁷⁴ Freeman et al. (2007)

¹⁷⁵ ODI (2014): Planning Tools (2014.). Accessed from <<http://www.odi.org/publications/5257-stakeholder-analysis>> on 28th January 2019.

¹⁷⁶ Partnership Africa Canada, ‘Stakeholder Engagement and Due Diligence’ (DAF/INV/NCP/RD (2012)11)

practices for stakeholder engagement, based on which it suggests an interactive cycle with four phases.¹⁷⁷

Conventional approaches to natural resource management usually focus on advices from experts, without including the local stakeholders.¹⁷⁸ This has changed in recent years, and there are high demands regarding oil and gas exploration and production. Oels¹⁷⁹ states that it is costly to maintain a good dialogue with the stakeholders, but it is even more costly not have a good dialogue. In addition, it will be a less sustainable solution. Stakeholder dialogue for management leads to growth in social learning and growth of social capital.¹⁸⁰

4.3 Legal and policy Framework for multi-stakeholder engagement

A multitude of solutions have been proposed for developing countries to overcome the resource curse¹⁸¹, which focus primarily on strengthening the institutions, improving fiscal management, and bettering the legal environment and policies to avoid or overcome the resource curse. Various approach the resource curse as a “wicked problem,¹⁸² a situation that involves many actors with conflicting worldviews, such that information and knowledge have no consensus. Interventions to resolve wicked problems therefore often result in worse outcomes than before such interventions.¹⁸³ However, in an effort to resolve wicked problems, scholars and practitioners strongly agree in adopting collaboration as a strategy to cope with the wicked problems.¹⁸⁴

The proliferation of studies on the “resource curse” has gathered many political and policy prescriptions and many more international, national, and local initiatives to combat the negative side effects resulting from mining activities. Developing countries are generally advised by the International Financial Institutions (IFIs) to strengthen their institutions, improve fiscal

¹⁷⁷ PAC Report, ‘Stakeholder Engagement Best Practices’ (2011) on p. 15. PAC Report, p. 15-16.

¹⁷⁸ Oels, 2006

¹⁷⁹ Ibid

¹⁸⁰ Ibid.

¹⁸¹ Gilberthorpe, Emma, and Dinah Rajak, “The Anthropology of Extraction: Critical Perspectives on the Resource Curse.” (2017). *Journal of Development Studies* 53(2): 186–204. Accessed from

<https://www.tandfonline.com/doi/full/10.1080/00220388.2016.1160064> on 24th March 2019

¹⁸² Rittel, Horst, and Melvin Webber (1973): “Dilemmas in a General Theory of Planning.” (1973): *Policy Sciences* 4: 155–69. <https://www.cc.gatech.edu/fac/ellendo/rittel/rittel-dilemma.pdf> (August 7, 2017) .

¹⁸³ Robinson, David, and Derek Wilkinson, “Sense of Community in a Remote Mining Town: Validating a Neighborhood Cohesion Scale.” (1995). *American Journal of Community Psychology* 23(1): 137–48.

¹⁸⁴ Rich, Eddie, and Jonas Moberg, *Beyond Governments : Making Collective Governance Work : Lessons from the Extractive Industries Transparency Initiative*.

management, and strengthen their legal frameworks and multi-stakeholder involvement policies. Despite these advices and consultations, many developing countries are still trapped in the curse. Recent data provided by the McKinsey Global Institute, identifies 81 countries where the oil, gas and mineral sectors play a dominant role. However, almost 80% of those countries have per capita income below the global average, and since 1995 more than half have failed to match the global average growth rate.¹⁸⁵

From an international perspective, since its inception, EITI has been evolving continuously to meet the demand of its member countries, while maintaining and mandating a global standard.¹⁸⁶ Although there are many critics, the sound legitimacy of the EITI could be credited to its ability to recreate its relevance to its countries and the extractive sector.¹⁸⁷

All in all, the reviewed literature shows that the system context presents a highly uncertain environment, given the volatile resource-dependent economy, unstable legislative environment in Uganda.

Different authors¹⁸⁸ note that a proper legal and policy regime would offer incentives to its various stakeholders to engage in the extractive industry initiatives on a continuous basis, because there is not any other institutionalized platform which these stakeholders could engage formally.

In Mongolia, studies¹⁸⁹ show that even though the legal enforcement of companies to report is weak, the great majority of companies submit their reports and cooperates in reconciliation. This is also the case for the government organizations. Through a decree and resolution from the Mongolian government, line ministries are also mandated to participate and engage in the multi-stakeholder initiative.¹⁹⁰

¹⁸⁵ Dobbs, Richard et al' (2013): Reverse the Curse: Maximizing the Potential of Resource-Driven Economies." (2013). McKinsey & Company (December): 1–164.

¹⁸⁶ Alstine, James Van, (2017): The Extractive Industries and Society Critical Re FI Ections on 15 Years of the Extractive Industries Transparency Initiative (EITI)." (2017): The Extractive Industries and Society 4(4): 766–70. Accessed from <https://doi.org/10.1016/j.exis.2017.10.010> on 2nd April 2019

¹⁸⁷ Graaf, Thijs V, Benjamin K., Sovacool, and Nathan Andrews (2016): "Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI)." (2016) 83: 179–92

¹⁸⁸ Fenton, P, and Elissaios P, (2017): "The Extractive Industries and Society Evaluating the Impact of the Extractive Industries Transparency Initiative (EITI) on Corruption in Zambia." (2017), the Extractive Industries and Society 4(4): 795–805.

¹⁸⁹ Batdorj, Bulgan, Coping with resource curse : examining the case of extractive industry transparency initiative of Mongolia" (Master of Applied Science – MA Sc, University of British Columbia, 2018).

¹⁹⁰ Ibid.

International studies also show that the management system required by Performance Standard 1 requires a more robust and extensive stakeholder engagement process than other management system standards.¹⁹¹ The purpose of stakeholder engagement is to establish and maintain a constructive relationship with a variety of external stakeholders over the life of the project and is an integral part of an efficient and adaptive ESMS.¹⁹² However, a general critique is that there may be norms, societal practices, or legal barriers that impede the full participation of persons of one gender (usually women, but potentially men) in consultation, decision-making, or sharing of project benefits. These legal and societal norms and practices may lead to gender discrimination or inequality. In projects with such issues the client may provide opportunities to enhance full participation and influence in decision-making through separate mechanisms for consultation and grievances, and developing measures that allow both women and men equal access to project benefits (such as land titles, compensation, and employment). Where deemed useful, it may include a separate women’s consultative process. Gender and disability considerations of engagement processes are important according to UN.¹⁹³

Other authors¹⁹⁴ critically review emerging trends in legislative regimes regulating Community Development Agreements (CDAs) in the mining sector in Africa. It focuses on legal regimes that mandate CDAs as distinct from those that merely require mining companies to engage in community development activities in their areas of operation. The article highlights the divergent approaches various African countries have adopted and critically analyzes key issues in the legislative provisions with a view to identifying gaps and implementation challenges and suggesting alternative approaches.¹⁹⁵ The review focuses on the following issues: the definition of “community”, circumstances when CDAs are required, the enforceability of CDAs, compliance monitoring of CDAs, the institutional framework for the implementation of CDAs, and the

¹⁹¹ , such as ISO 14001

¹⁹² IFC/World Bank Group (January 1, 2012): Guidance Note 1 Assessment and Management of Environmental and Social Risks and Impacts. Accessed from https://www.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated_GN1-2012.pdf?MOD=AJPERES on 2nd February 2019.

¹⁹³ See United Nations. 2006. “Convention on the Rights of Persons with Disabilities.” United Nations, New York. <http://www.un.org/disabilities/convention/conventionfull.shtml>. See also “Optional Protocol to the Convention on the Rights of Persons with Disabilities.” <http://www.un.org/disabilities/convention/optprotocol.shtml>.

¹⁹⁴ Nwapi, Chilenye (2017): Legal and institutional frameworks for community development agreements in the mining sector in Africa (2017); *The Extractive Industries and Society*, 4. 202-215. 10.1016/j.exis.2016.11.010

¹⁹⁵ Ibid.

shortcomings of the various regimes. It makes two key findings, namely: (1) while the regimes share several common characteristics, they differ in some critical respects, such as when CDAs are required and in their recognition of which communities qualify for the negotiation of a CDA; and (2) all the regimes share two key shortcomings: they pay either no or too inadequate attention to the issue of representatively of communities and to the need for community capacity building to enable meaningful community participation in CDA schemes.

In theory, such multi-stakeholder engagement can provide an effective instrument for 'locking in' all parties to long-term development commitments, defining mutual obligations and building a shared sense of responsibility.¹⁹⁶ Moreover, multi-stakeholder engagement can facilitate the mitigation and resolution of community-company conflicts,¹⁹⁷ particularly in situations where Governments fail to effectively provide basic services for resource endowed communities, and companies are forced to intervene in order to wade off opposition to their operations.¹⁹⁸

In particular, a number of factors have shaped, and will continue to shape, the outcomes of multi-stakeholder engagement including: the laws and traditions governing the ownership of land; elite bargaining schemes prevalent in particular mining localities; pre-existing company-community forms of engagements; the 'image' of companies; and provisions in laws and policies governing mineral wealth redistribution, including the mineral lease agreements signed between the Government and companies. Indeed, such factors have shaped previous attempts to foster community development in mining areas, particularly in the aftermath of the country's decade-long civil war of the 1990s, where successive G

Governments have introduced progressive policies and programmes geared towards improving extractive sector governance, rent sharing, peace-building, and the equitable distribution of resource wealth.¹⁹⁹

IFC guidelines also indicate that disclosure of relevant project information helps affected communities and other stakeholders understand the risks, impacts and opportunities of the project.

¹⁹⁶ Gathii, James & T Odumosu-Ayanu, Ibrionke (2016): The Turn to Contractual Responsibility in the Global Extractive Industry (2016): Business and Human Rights Journal. 1. 69-94. 10.1017/bhj.2015.6.

¹⁹⁷ Ibid

¹⁹⁸ Ibid.

¹⁹⁹ Dupuy, Kendra (2014): Community development requirements in mining laws' (2014): The Extractive Industries and Society. 1. 10.1016/j.exis.2014.04.007

The client will provide Affected Communities with access to relevant information on: (i) the purpose, nature, and scale of the project; (ii) the duration of proposed project activities; (iii) any risks to and potential impacts on such communities and relevant mitigation measures; (iv) the envisaged stakeholder engagement process; and (v) the grievance mechanism.²⁰⁰

Similarly, the sustainability, business, and human rights movement is a movement that has begun to change how businesses across the globe operate that has gained momentum in recent years with the private sector and legal profession, owing in part to the passage by the UN Human Rights Council regulations.²⁰¹ In light of these, many corporations and the legal profession as a whole are looking at how to adopt sustainability and human rights policies as part of their headquarters and field operations to avert costly disruptions and reputational harm in the context of implementing due diligence mechanisms. Other international multi-stakeholders, as well as industry-related initiatives are at the heart of this discussion because they are providing the framework for the private sector to engage with other sectors and generate best practices across regions through sustainability reporting and integrated operational practices.

An entirely new regime and system are emerging; these are comprised of both soft and hard law (international law), where soft law standards are being increasingly embedded as part of due diligence mechanisms and sustainability operations of the private sector. It has been noted that this process is acknowledging the “standard setting power of soft law into the development of emerging norms into the international community while also integrating social expectations into these rule making process.”²⁰²

In turn, this new regime and system are also influencing a new field of practice that does not only involve human rights or environmental law. The complexity of the legal questions emerging from

²⁰⁰ Depending on the scale of the project and significance of the risks and impacts, relevant document(s) could range from full Environmental and Social Assessments and Action Plans (i.e., Stakeholder Engagement Plan, Resettlement Action Plans, Biodiversity Action Plans, Hazardous Materials Management Plans, Emergency Preparedness and Response Plans, Community Health and Safety Plans, Ecosystem Restoration Plans, and Indigenous Peoples Development Plans, etc.) to easy-to-understand summaries of key issues and commitments. These documents could also include the client’s environmental and social policy and any supplemental measures and actions defined as a result of independent due diligence conducted by financiers.

²⁰¹ See UN Human Rights Council in 2011 of the UN Guiding Principles on Business and Human Rights (Guiding Principles) and the 2012 Rio+20 Sustainability Conference.

²⁰² U.N. Human Rights Council, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, Report of the Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises , A/HRC/4/035 (Feb. 9, 2007).

this new field of practice increasingly requires that corporate lawyers, whether in-house or those advising industries that, as a result of hydraulic fracking, have the potential to collide with ESG standards and run into serious conflicts or reputational damages, be well versed in standards and emerging system of laws so that they can integrate them as part of their advisory services to clients.

From a human rights perspective, studies show that ineffective stakeholder engagement leads directly and indirectly to adverse impacts and infringements on human rights. For instance, ineffective stakeholder engagement may infringe directly on the rights of indigenous peoples to consultation and participation in resource development,²⁰³ as well as the right to information of individual community members. Furthermore, ineffective stakeholder engagement may lead to infringements across the full spectrum of internationally recognized human rights.²⁰⁴ For example, IOCs may fail to recognize that a project is on land that has been previously expropriated or acquired without adequate compensation or recognition of collective ownership rights. IOCs may not be aware that impacts within a community are falling disproportionately on certain groups such as women and the poor. Other IOCs may not understand how local cultural and religious practices are being affected by reduced access to certain sites.²⁰⁵ Consequently, concerns about stakeholder engagement are increasingly expressed in explicit human rights terms and linked to specific human rights allegations.

Literature shows that poor stakeholder engagement is cited as an important issue in a large proportion of case studies about the conflicts between local communities and the extractive industry. In a recent study on these conflicts, consultation and communication issues were cited as a proximate or underlying issue for the conflict in 18 out of 25 case studies reviewed.²⁰⁶ These conflicts are manifested in a variety of manners: submissions by affected communities to governments or directly to the company; administrative proceedings; litigation; publicity

²⁰³ UN Declaration on the Rights of Indigenous Peoples: article 32; ILO Convention 169, article 15.

²⁰⁴ General human rights principles such as participation, transparency, access to information and accountability all reinforce the need for more effective stakeholder engagement. There are also specific human rights provisions that support greater access to information, such as in article 19 of the International Covenant on Civil and Political Rights. Furthermore, additional requirements exist for engagement with specific groups, notably in terms of the consultation and participation rights (including free, prior and informed consent) of indigenous peoples.

²⁰⁵ Ibid.

²⁰⁶ Davis R and Franks, D.M (2011): The cost of conflict with local communities in the extractive industry," (SR Mining Proceedings, (2011) p 6

campaigns; physical protests; and violence to property or persons.²⁰⁷ The conflicts and concerns related to extractive industry are thus increasingly framed in human rights terms. At the same time, many extractive industry IOCs are taking on commitments related to human rights due diligence, which will further reinforce the case for better stakeholder engagement as part of the corporate responsibility to respect human rights.

It is important to note that the regulatory framework applicable to stakeholder engagement in Uganda is part of the ongoing commitment to Project stakeholders and Good International Industry Practice (GIIP), this SEP was developed in line with national Ugandan legislative requirements and international standards, benchmarked by the IFC Performance Standards.²⁰⁸ One key issue identified is the extent to which local governments have been given a mandate within the oil policy and legal frameworks and whether they have the capacity to fulfill these mandates. Neither Uganda's National Oil and Gas Policy (2008) nor the Petroleum (Exploration, Development and Production) Act of 2013 addresses how institutions need to be strengthened or coordinated to implement, monitor and enforce regulations in the oil-bearing regions.²⁰⁹ In the Upstream Act, the public, affected parties and local authorities are given the right to view impact assessments and lodge objections regarding exploration licenses within a specified time, but no regulatory responsibility is conferred to the local level.²¹⁰

Draft Strategic Environmental Assessment (SEA) as a regulation identifies a clear role for local authorities, it states that "the District Level Monitoring Team is also in place and is composed of the technical staff of the local governments in the Albertine Graben."²¹¹ The SEA goes on to argue that increased financial and human resources are needed in order for NEMA to take the lead in coordinating environmental concerns in the Albertine Graben. The SEA stresses that environmental capacity building is needed at the district and local level where inspection and

²⁰⁷ Ibid.

²⁰⁸ Tilenga Project ESIA (2018): Appendix G: Stakeholder Engagement Plan May 2018. Prepared for: Total E&P Uganda and Tullow Uganda Operations

²⁰⁹ Manyindo, J., Van Alstine, J., Amaniga Ruhanga, I., Mukuru, E., Smith, L., Nantongo, C., Dyer, J. (2014): The Governance of Hydrocarbons in Uganda: Creating Opportunities for Multi-Stakeholder Engagement. Maendeleo ya Jamii, Kampala, Uganda.

²¹⁰ Republic of Uganda (2013a): The Petroleum (Exploration, Development and Production) Act, 2013, in: Uganda Acts Supplement No. 3. UPPC, Entebbe.

²¹¹ Republic of Uganda, (2013b): The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013. The Republic of Uganda; Entebbe. Accessed from:

<https://www.petroleum.go.ug/uploads/The%20Petroleum%20%28Refining%20Conversion%20Transimission%20and%20Midstream%20Storage%29%20Act%20No%20%204%20of%202013.pdf>, p.114

monitoring is important: “Urgent recruitment should be undertaken at the district levels in the Albertine Graben of key vacant positions such as labour officers, community development officers, physical planners and at each municipality, urban planners.”²¹²

A World Bank 2011 report states: “The Ugandan case, especially when cast in comparison with Right to Information (RTI) regimes in other country contexts, shows that the relative capacity and influence of civil society is a necessary condition to make RTI laws effective accountability instruments”. In Uganda, the enactment of the law was state-sponsored, and civil society groups had relatively little influence on its final passage, even though they were influential in bringing a bill to Parliament on the right of information. Most CSOs, except the larger and more prominent ones based in Kampala, have capacity constraints that hamper their ability to meaningfully participate and understand technical issues and key policies. However, CSO based in Kampala, many of whom are also active at the district level, revealed that information problems are even more challenging at this level.²¹³

4.4 Host community participation in extractive industry

The debate has been on whether there is enough community/ national capacity to deal with the employment, technology and service needs for the oil and gas industry. Questions have also been raised on standards of locally provided goods and services and whether they can meet the demands of the industry. On overall there is an agreement that the oil and gas industry should involve Ugandans and should in as much as possible employ Ugandans and Ugandan goods and services.²¹⁴ What seems to be a disparity is whether Uganda has capacity to provide the goods, services and skills necessary for the extractive industry sector?

Many countries engaged in oil and gas production or mining are introducing requirements for community participation commonly referred to as ‘local content’. This is increasingly so in the developing world mainly in Africa, Asia and Latin America. Local content requirements are mainly in form of policy and regulatory measures that focus at increasing use of the locally available labour, technology and other resources in the oil and gas sector. The focus is on transfer

²¹² Ibid: 117

²¹³ World Bank (2011) op cit

²¹⁴ Ibid

of technology by companies engaged in the extractive resource sector to the native people of a particular nation with a hope of assuring them income, employment and ultimately sustainable development. The development of local content has basically been a result of recognition that after years of oil and gas or mineral exploitation in many developing countries, little seems to be transferred to the citizens of these resource-rich countries in form of technology and employment.²¹⁵ Many citizens of resource-rich countries especially in the developing world tend to be mere spectators. This trend continues to exist in spite of the fact that many mining and petroleum companies in the developing world are given incentives such as tax holidays with a hope that they will be able to exploit the resource, provide employment for the natives and develop infrastructure which would enable the economy to develop.

Uganda is no exception to the observation that many citizens of resource-rich countries especially in the developing world are mere spectators. After the announcement of commercially viable quantities of petroleum in the country in 2006, there was excitement about the developments the new resource would bring. Ugandans have been excited at the potential for development, improvement of household incomes and general living standards once petroleum revenues start flowing. However, it is not always as rosy as it looks. Uganda will need stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the economy.²¹⁶ The need to fight the mismanagement of the oil resource that has been characteristic of most oil producing countries in the developing world is of paramount importance.

The failure to exploit resources sustainably and enable citizens take part in decision making and employment greatly contributes to conflicts emanating from natural resource endowments. Economic challenges such as the Dutch disease are a result of failing to link natural resource exploitation with other sectors of the economy like agriculture, tourism and industrial development. It is necessary to have in place measures to avoid the “Dutch disease”²¹⁷ and the resource curse

²¹⁵ Peter Matthews and Matthew Lynch (2011): Local content strategy: A guidance document for the oil and gas industry. IPIECA; London.

²¹⁶ Muhwezi, et.al, (2009): Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE: Policy Research Series, No. 30, 2009; Kampala.

²¹⁷ The “Dutch Disease” is a term used to describe an economic situation faced by many resource rich developing countries. The term is used to describe a situation where production and export of natural resources such as Oil and Gas or Minerals results into economic situation other exports from the country become less desirable which results in slowing down other sectors of the economy and over dependency on the particular resource. This in the end exposes the economy to negative forces of the sector (e.g. oil price fluctuation, “dying” of other sectors like agriculture and industry) and later affects economic development.

such as conflicts.²¹⁸ Many scholars have argued that the “Dutch disease” and resource conflicts are basically a result of poor management of resources in the country. The lack of involvement of citizens in the exploitation and use of the natural resources sector greatly hinders the trickle-down effect of a resource like oil consequently resulting in negative effects to the economy.

Uganda government has in place the National Oil and Gas Policy (NOGP), the upstream and midstream laws to govern and regulate the oil and gas sectors but the downstream bill is still being considered by parliament. It is important for these laws and policies to provide for citizen participation and safeguard citizens roles in the oil and gas sector.

The failure to exploit resources sustainably and enable citizens take part in decision making and employment greatly contributes to conflicts emanating from natural resource endowments. Economic challenges such as the Dutch disease are a result of failing to link natural resource exploitation with other sectors of the economy like agriculture, tourism and industrial development. The lack of involvement of citizens in the exploitation and use of the natural resources sector greatly hinders the trickle-down effect of a resource like oil consequently resulting in negative effects to the economy.

Host community participation in oil and gas sector has become a slogan of sorts across many countries in Africa. Different countries have made laws and policies to provide for local content where citizens can be employed, provide services or get a direct benefit from the sector. However, what many countries have not done is to increase host community participation. There is often confusion when it comes to discussion of host community participation as a concept and issues of local content. Whereas the host community can participate through local content, this is rather one of the forms of participation and it is not conclusive. It would therefore be wrong to conclude that there is host community participation just because you have local content law and policies. Basically, host community participation involves processes that provide for individuals in a community an opportunity to influence public decisions that affect them.²¹⁹ The definition can further be extended to include the process in which ordinary people take part – whether on a

²¹⁸ Collier, P. (2010): The Political Economy of Natural Resources. *Social Research*, 77(4): p.1105-1132.

²¹⁹ Cogan A. Sharpe, S. , & Hertzberg, J. (1986): Citizen participation. In Hand, I. & Madowell, B. D. (Eds.), *The Practice of State and Regional Planning; Municipal Management Series*. Chicago: American Planning Association.

voluntary or obligatory basis and whether acting alone or as part of a group – with the goal of influencing a decision involving significant choices that will affect their community.²²⁰ Host community participation involves a wide range of activities and systems that ensure views of an individual citizen are included in decision making processes.

The term “citizen participation” or host community participation involves two important items namely; the ‘citizens’ and ‘participation’. Used in strict sense “citizen participation” would mean only citizens of a country that take part in the decision-making process. However this is not always the case since there are other persons not necessarily citizens of the country that are entitled to take part in decision making. Different scholars tend to suggest that citizen participation should look at benefits accruing to those most in need and moving away from the legal definitions of citizenship.²²¹ For example, “citizen participation” has been described by Cunningham J. to focus on (a) members of the community who have no formal source of power except their majority numbers (the ordinary person in society), (b) exercise of power by those at a lower level of the community (power relations between the led and the leaders) and making decisions involving a significant number of community members.²²² Some scholars have argued that this should focus on getting local ownership of projects and other forms of interventions through increased participation by residents (as opposed to citizens).²²³ In simple terms, citizen participation involves power relations between members of a community and their leaders and the ability of that community irrespective of where it is located to take part in decisions and activities that affect them.

Participation on the other hand involves taking part in processes that lead to the decision or taking part in arriving at the decision itself.²²⁴ This does not mean the individual’s views have been taken

²²⁰ André, P. et al. (2006): Publication spéciale, Série no. 4, Fargo (ND): International Association for Impact Assessment. Available at http://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/definitions_anglais/citizen_participation.pdf

²²¹ Thomas Webler (1995): “Right” Discourse in Citizen Participation: An Evaluative Yardstick. *Technology, Risk, and Society* Volume 10, 1995, p. 35-86. Also See Cogan A (ibid) and Cunningham J. V

²²² Cunningham, J. V. (1972): “Citizen Participation in Public Affairs,” *Public Administration Review*, vol. 32, Special Issue: Curriculum Essays on Citizens, Politics, and Administration in Urban Neighbourhoods, p. 589-602.

²²³ André, P. et al. Ibid also see Rowe, G. and L. J. Frewer (2005): “A Typology of Public Engagement Mechanisms,” *Science, Technology, & Human Values*, vol. 30, no. 2, p. 251-290.

²²⁴ OECD (Organisation for Economic Co-operation and Development). 2001: *Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making*. Paris: OECD. Tina Nabatchi (2012): *A Manager’s Guide to Evaluating Citizen Participation*. *Fostering Transparency and Democracy Series 2012*: Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf> accessed on 14th July 2019.

up but rather the individual's views were considered in the process of arriving at a decision. Such a kind of participation can be direct for instance, taking part in an election or being part of a meeting that arrived at a decision or indirect through a representative. This can range from national or regional representation such as parliament to representation at a lower level such as village council or family.²²⁵

From the above definitions, it is important to appreciate that citizen participation is a much broader concept that may include various democratic processes for a country. In Uganda's case, these may include a wide range of systems from electoral democracy, governance such as central or local government to group formation, role of voluntary associations and how different players in society are contributing to the oil and gas sector.

It is important to note that there is a tendency to mix 'local content' and 'host community participation' in Uganda. A lot of communication tends to claim that there is promotion of host community participation through local content, which is not the case. Many times, local content limits itself to employment of citizens, transfer of technology and service provision leaving out the most important aspect of host community participation which is 'participation in decision making'. From the many policy and legal documents in Uganda, there is actually local content as opposed to citizen participation. This study focuses on host community participation in Uganda's oil and gas sector.

4.5 Inter-agency information sharing and coordination

4.5.1 Information sharing arrangement

The Benefits of Information Sharing in Petroleum Exploration is enormous since information is an input in the production function of an exploration firm. There exist various methods to model petroleum exploration. Geologists use simulation processes to model the probability of existence of the resource and the migration flows. Economists do not have the ability to ascertain where petroleum might be found but are more interested in the incentives the market provides to search

²²⁵ Tina Nabatchi (2012): A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012: Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf> accessed on 14th July 2019.

for the resource. In the 1960s economists were more concerned with historical relations between economic variables, say the price of oil, and exploration effort; concerns summarized by Fisher's (1964) pioneering study of the USA.²²⁶ Although later criticized because of the absence of a specification of optimal firm behaviour, the model was however seminal in its influence on the exploration models of the 1970s.²²⁷ With the advent of theoretical models of exhaustible resources based on inter-temporal optimization coupled with uncertainty, economists believed they were on the right track in dealing with the poor performance of forecasts.²²⁸ In spite of all the advantages of exhaustibility models, mainly their sound economic basis, they have been criticized for being very rigid and limited in their application because of methodological simplifications. More importantly, due to their complexity they have to simplify some important aspects of firm behaviour and by their nature they are also more suited to aggregate data analysis where firm differences and strategic behaviour can be assumed away. Parallel to this aggregate approach to exploration a more micro approach to exploration incentives has been running using analogies from industrial organization processes.

Information Sharing in Petroleum Exploration is similar to a Research and Development (R&D) Process. There is similarity between the process of research and development in manufacturing industries and the exploration of hydrocarbons. But the search for new deposits is only a special case of the search for greater knowledge, including better productive methods. The exploration of hydrocarbons takes two forms; one is the analysis of geological data gathered by either the companies themselves or, in many cases, by the government agency of the country involved. The second is the actual drilling of a well where physical evidence is gathered and analysed according to the technology available. Although there have been a very large number of technical improvements to the processing and interpretation of the first type of data, the only certain way to know the existence and the extent of the resource base is actually to drill.²²⁹ While the acquisition of knowledge is not a linear process most research and development programmes take similar routes towards innovation. This synergy is highly pronounced for exploration companies. As a

²²⁶ Examples of the approach are the studies of Erickson and Spann (1971) and MacAvoy and Pindyck (1973).

²²⁷ Examples of the approach are the studies of Erickson and Spann (1971) and MacAvoy and Pindyck (1973).

²²⁸ Ibid.

²²⁹ Among the most important developments the introduction of 3D and 4D (3D seismic over time) seismic have decreased dramatically the probabilities of drilling dry holes. While the chance of success is very large its cost is still high (see Oil and Gas Journal "3D, CAEX help independent ..." T 8 January 1993).

result of similar technical capabilities, information is the most valuable input in the exploration function of a company. Moreover, in a given geographical area information for competing companies is highly correlated. Given the fact that the size of license blocks available is usually smaller than the average field (and certainly smaller than a promising geological formation), the worth of information about a given prospect can be very similar for two neighbouring companies.²³⁰ The right conditions for the occurrence and existence of hydrocarbons extend over large areas that however constitute a small, and concentrated, fraction of the earth's crust. Without failing to give prominence to the extension of the three-mile limit by the Geneva Convention on the Continental Shelf, the exploration of hydrocarbons in the North Sea only received a push after the discovery of the Groningen gas field in the Netherlands²³¹ and the realization that the field and similar geological structures extended seawards. This was corroborated by the first gas discovery²³² and the discovery of the first oilfield in the Northern North Sea.²³³

The issue of access to information in Uganda was discussed in the case of *Charles Mwanguhya Mpiigi & Izama Angelo vs Attorney General, Miscellaneous Cause 751/2009* where " in which two journalists sought to be furnished with copies of PSAs made between the Government of Uganda and various oil companies. Those oil companies involved were entrusted with the role of prospecting the exploitation of the oil resources in the country. However the presiding magistrate declined the applicant's request for disclosure of the PSAs on grounds of the applicants' failure to prove that their disclosure to the public would be used for public benefit only and not harm third party interests. In this regard the reference made to third parties was aimed at protecting of IOCs and Government.

The presiding Court declined making disclosure on grounds of contractual confidentiality clauses. This extrapolates the weakness underlying possible unbalances between notions of contractual confidentiality on one hand and the public right of access to information on the other hand.

²³⁰ According to Brannon (1974) one third of oilfields in the USA cover 162 km² but typical licence blocks average about 37 sq. km (20-24 km² in federal lands). Although the UKCS licence blocks vary in size from 209-266 sq. km, at least 50 per cent of all fields lie under more than one block.

²³¹ Groningen gas field discovered in 1959.

²³² West Sole in 1965

²³³ Elofisk (1969)

For proper stakeholder management to be attained there is a need to devise measures to minimise the unbalance effects of the above conflict between commercial confidentiality and the citizenry right of access to information.²³⁴

4.5.2 Accountability and transparency among key people/IOCs in extractive industry

Transparency and accountability initiatives in the extractives sector accounts for as much as 90 per cent of total exports and budget outlays in several developing countries, which are also amongst the poorest in terms of per capita gross domestic product, poverty headcount and human development, and have a high risk of conflicts.²³⁵

Empirical literature shows that natural resource abundance does not necessarily lead to rapid growth and, in fact, is negatively correlated with growth²³⁶ and positively with the risk of civil war.²³⁷ A number of high-income countries have managed their abundant natural resources well, as have a few middle-income countries, such as Botswana. Botswana was amongst the poorest countries in the world in 1996, but had one of the fastest-growing economies throughout the last quarter of the twentieth century. It did so by managing the export boom through sensible macroeconomic policies, such as avoiding external debt, diversifying the domestic economy²³⁸ and investing in and achieving a minimum level of institutional quality.²³⁹ The literature identifies two broad mechanisms of impact – economic and political. The economic explanation includes a relative decrease in competitiveness of the non-resource sector, often described as ‘Dutch disease,’²⁴⁰ neglect of human capital,²⁴¹ volatility of commodity prices,²⁴² fiscal mismanagement,

²³⁴ <https://globalfreedomofexpression.columbia.edu/cases/charles-mwanguhya-mpagi-izama-angelo-v-attorney-general-miscellaneous-cause-no-751-200/>

²³⁵ International Monetary Fund (IMF), 2012: Macroeconomic policy frameworks for resource-rich developing countries: Washington, DC: IMF; Collier, P, Hoeffler, A and Rohner, D, 2009. Beyond greed and grievance: feasibility and civil war. Oxford Economic Papers: 61(1), p.1–27.

²³⁶ Gelb, A, 1988: Oil wind falls: blessing or curse? Washington, DC: World Bank and Oxford University Press. Available at: <<http://documents.worldbank.org/curated/en/536401468771314677/Oil-windfalls-Blessing-or-curse>> [Accessed 26 February 2019].

²³⁷ Collier, P, Hoeffler, A and Rohner, D, 2009: Beyond greed and grievance: feasibility and civil war. Oxford Economic Papers, 61(1), p.1–27

²³⁸ Hill, C, 1991: Managing commodity booms in Botswana. World Development: 19(9), p.1185–96.

²³⁹ Mehlum, H, Moene, K and Torvik, R, 2006. Institutions and the resource curse. Economic Journal, 116, 508, 1-20.

²⁴⁰ Matsen, E and Torvik, R, 2005: Optimal Dutch disease. Journal of Development Economics: 78, p.494–515.

²⁴¹ Bravo-Ortega, C and De Gregorio, J, 2005: The relative richness of the poor? Natural resources, human capital and economic growth: World Bank Policy Research Working Paper No. 3484. Washington, DC: World Bank.

²⁴² Frankel, JA, 2010. The natural resource curse: a survey, National Bureau of Economic Research (NBER) Working Paper No. 15836, Cambridge, MA.

debt overhang²⁴³ and failure of economic policy, including environmental degradation. Political factors include the erosion of already weak democratic institutions, rent-seeking, conflicts, corruption and patronage.²⁴⁴ Solutions to economic problems associated with the resource curse include sensible macroeconomic policies that avoid excessive debt, control inflation and pursue competitive exchange rates.²⁴⁵ However, the economic explanation does not sufficiently account for the heterogeneity amongst the countries for a given level of resource dependency. Gradually, this has led to more attention on the political explanation of the resource curse, which reflects on the combination of resource abundance, combined with poor governance, leading to rent-seeking behaviors, conflicts and corruption. These are found to correlate with poor growth.²⁴⁶

Transparency as an instrument for good governance gives substantial revenue from natural resources and less reliance on public taxation can undermine public scrutiny of government action and policies.²⁴⁷ When citizens lack a sense of public ownership of state revenues, it is easier for governments to maintain secrecy over revenues and expenditures from extractives. Furthermore, when the extracting company pays taxes directly to the state, citizens have minimal oversight regarding the flow of revenue and expenditure. This lack of information and ownership towards resource revenue leads to an accountability deficit.²⁴⁸ The disclosure of information by government agencies and extractive companies is a political process that typically requires national and international public intervention. The international community and advocacy groups have been promoting transparency of extractives revenue and expenditure as a means of boosting public accountability to reduce corruption, misappropriation and the general weakening of democratic institutions. Transparency and accountability have been on the agenda of good governance since the 1990s. Companies and government agencies usually have exclusive access to information on

²⁴³ Manzano, O and Rigobon, R, 2001: Resource curse or debt overhangs? National Bureau of Economic Research (NBER) Working Paper No. 8390

²⁴⁴ Van der Ploeg, F, 2011: Natural resources: curse or blessing? *Journal of Economic Literature*: 49(2), p.366–420.

²⁴⁵ International Monetary Fund (IMF), 2012: Macroeconomic policy frameworks for resource-rich developing countries. Washington, DC: IMF; Sarraf, M and Jiwajji, M, 2001: Beating the resource curse: the case of Botswana, Environment Department Paper No. 83. Washington, DC: World Bank.

²⁴⁶ Collier, P, Hoeffler, A and Rohner, D, 2009: Beyond greed and grievance: feasibility and civil war. *Oxford Economic Papers*, 61(1), p.1–27; Mehlum, H, Moene, K and Torvik, R, 2006: Institutions and the resource curse. *Economic Journal*, 116, 508, 1-20; Torvik, R, 2001: Natural resources, rent seeking and welfare. *Journal of Development Economics*: 67, p.455–70.

²⁴⁷ Collier, P, Hoeffler, A and Rohner, D, 2009: Beyond greed and grievance: feasibility and civil war. *Oxford Economic Papers*, 61(1), p.1–27; Venables, AJ, 2016: Using natural resources for development: why has it proven so difficult? *Journal of Economic Perspectives*, 30(1), p.161–84

²⁴⁸ Van der Ploeg, F, 2011: Natural resources: curse or blessing? *Journal of Economic Literature*, 49(2), p.366–420

extractives revenue, expenditures and environmental impact. In this context, the definition of transparency used in the literature could be roughly summarised as information to the public that is timely, accessible, reliable and relevant and enables the understanding of the rules, plans, processes and actions.²⁴⁹ There is an added challenge of communicating complicated information about the extractives sector to the public, especially for countries with low educational levels. Several multi-stakeholder initiatives have been established to encourage public disclosure of information. Apart from mandating this disclosure, these initiatives aim to create platforms for debate and to empower civil society organisations to use the information and engage with the government for better transparency and accountability, and ultimately improved development outcomes. Programmes such as the Extractive Industries Transparency Initiative (EITI), Publish What You Pay, the Kimberly Process Certification Scheme, the Natural Resource Governance Institute and the Revenue Watch Institute facilitate information sharing on natural resources to increase public awareness and spur demand for good governance. The EITI and Publish What You Pay require their member countries and signatory companies to disclose information along the extractives sector value chain, such as who received the contract, details on royalties and fees, fiscal and legal requirements, and the government's revenue share and how this revenue is allocated in the national budget. The Natural Resource Governance Institute promotes accountability and effective governance through research and advocacy. It should be noted that in March 2019, Uganda became a signatory of EITI but has not yet ratified the same.

4.6. Conclusion

Stakeholder engagement is key for the success of any sector. In particular, the extractives industry requires a systemic and strategic identification of stakeholders in accordance with their power, urgency and closeness to the oil and gas firms. Stakeholders play a key role in the industry and the extent to which an oil and gas company relates with the relevant stakeholders determines the extent of success of a given project.

²⁴⁹ Epremian, L, Lujala, P and Bruch, C, 2016: High-value natural resources and transparency: accounting for revenues and governance. Oxford Research Encyclopedia of Politics

Uganda has very good legal and policy frameworks that set a bench mark for stakeholder engagements in the extractives industry but however has met limitations in the implementation of these laws and policies due to the limited skilled labour in the oil and gas industry since it's a new venture in the country and other factors like the influence of political interests and corruption, limited information in forms of research in the country's natural resources and low technology have also limited the implementation of the multi-stakeholder engagement policy and legal frameworks.

CHAPTER FIVE

DISCUSSION OF THE FINDINGS

5.1 Introduction

Chapter Five discusses the results of the findings and the implications of those findings in light of related research. The discussions are based on the findings of the study guided by the study objectives. The Specific Objectives were; to identify the key stakeholders engaged in the extractive industries particularly the oil and gas sector; to explore the existing legal and policy framework (local and international) for multi-stakeholder engagement in oil and gas sector; and to propose a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector.

5.2 Discussions of Findings

The concept of stakeholder engagement has received commendable attention from researchers and scholars within the management field of study.²⁵⁰ Stakeholder analysis is an important part of developing a stakeholder engagement plan for policy formulation. It helps to pave way for engagement of all the parties, who are involved in research and developing policies. By identifying the stakeholders, it is easy to attain the goal of the policy through a given direction²⁵¹.

Different authors²⁵² use different attributes in the identification of stakeholders. And these as earlier on discussed in the previous chapter include power, legitimacy of the relationship and urgency.

Other authors have used different attributes in stakeholder identification. Mitchell differs from Freeman's classification of stakeholders and uses three different classifications of stakeholders namely; Latent, expectant and definitive stakeholders²⁵³.

²⁵⁰Clarkson, M. E. (1995). A stakeholder framework for analysing and evaluating corporate social performance: *Academy of Management Review*, 20(1), 92-117.

²⁵¹ODI (2014): *Planning Tools* (2014.). Accessed from <<http://www.odi.org/publications/5257-stakeholder-analysis>> on 28th January 2019.

²⁵² Ibid at 39

²⁵³ Mitchell et al (1997)

Latent stakeholders are the stakeholder group with only one of the attributes. The stakeholders with only one attribute will have a low stakeholder salience and in this group there are three types of stakeholders namely; Dormant, Discretionary and Demanding stakeholders²⁵⁴.

The dormant stakeholders possess the attribute of power which implies that they have the power to influence their involvement in any business whereas the discretionary stakeholders possess the attribute of legitimacy meaning they have very little or no influence on the business since it's not a must for the companies to engage with them and the demanding stakeholders are those with urgent claims, but have neither power nor legitimacy to back it up²⁵⁵.

A key gap identified is that government as a stakeholder has an important regulatory function. National legal regimes regulate both industry and natural resource development, and establish entry points for multi-stakeholder engagement at national levels. Environmental impact assessment (EIA) regulations provide an important foundation and driver for public consultation, but in many cases the implementation and enforcement of these regulations is inadequate, with very little guidance or specific requirements relating to how consultation should take place.

There is a need for more analysis on the specificities of how processes of legal empowerment of stakeholders, through justice reform, evolve in practice to test more closely how the law and access to dispute resolution mechanisms can create space for contesting property relations²⁵⁶. This requires that land reform and laws which address property rights be considered in light of their distributional and empowering impact, as they will not be politically neutral. Legal empowerment per se (as access to justice) is only part of the story for example, effective property rights for women depend also on the interaction between legal knowledge, titling procedures and social norms that enable equitable laws to be bypassed.²⁵⁷ Thus, legal empowerment as a process is relevant to create the enabling conditions for implementation of the law.

²⁵⁴ Ibid

²⁵⁵ Fredrick Moe & Snorri Sverrisson Rasch, "Acase study of the stakeholder dialogue in the Skarv development"

²⁵⁶ Cousins, B. 'Capitalism obscured: The limits of law and rights-based approaches to poverty reduction and development' (2009). *Journal of Peasant Studies*, 36 (4), p. 893-908.

²⁵⁷ Friedemann-Sánchez, G (2001): *Legal Literacy and Immovable Property: Laws, Norms and Practices in Colombia* (2001) *Development and Change*, 43(6): 1361-1384.

Meetings with stakeholders are central to the progress of the multi stakeholder engagements.²⁵⁸ After an initial kick-off meeting, regular meetings and constructive technical visits (i.e. in form of workshops) to smallholder firms most affected can be planned, to give hands-on ideas on how to start with the improvements. Conventional approaches to natural resource management usually focus on advices from experts, without including the local stakeholders.²⁵⁹ This has changed in recent years, and there are high demands regarding oil and gas exploration and production. It is costly to maintain a good dialogue with the stakeholders, but it is even more cost linked to not having a good dialogue. Stakeholder dialogue for management leads to growth in social learning and growth of social capital.²⁶⁰ For a multi-stakeholder approach to be applied effectively, requires: an ability and a willingness amongst the different stakeholders to engage with each other, and to communicate and collaborate effectively; a conducive policy and legislative framework; a certain level of skills, capacities and knowledge of all major stakeholder groups and an outcome-oriented process, ensuring that there will be resources and commitment to follow-up on ensuing actions.²⁶¹

It was also noted that there is good reason not to ignore the more theoretical literature that engages with both the analytical and normative components of the causal chain that is presumed in the theory of change linking legal security of multi-stakeholder engagement with social and political empowerment. Given the gaps in the literature, more research could usefully be undertaken on the following: The impact of improved legal security of individual multi-stakeholder engagement on social and political voice. Secondly, testing how, and if, legal mobilisation trends and litigation strategies for the poor, see other rights (such as rights to environmental protection, land rights, revenue sharing, compensation, health and education) as equally, or more, important than securing individual multi-stakeholder engagement or indeed communal multi-stakeholder engagement in terms of social and political voice (human rights approach).

Since 2006 when Uganda announced the discovery of oil and gas in the country, a lot of efforts have gone in the making of laws and policies that will govern the sector and see to it that the

²⁵⁸ Romero, M., Orth A., & Lara P. 'Options and Pathways for Stakeholder-Engagement in the Palm Oil Sector in the District of Chires, Puriscal, Costa Rica' (2015). ELD-MOOC 2015

²⁵⁹ Oels, 2006

²⁶⁰ Ibid.

²⁶¹ Hemmati, M. (ed); 'Multi-Stakeholder Processes: Beyond Deadlock and Conflict (London: Earth scan, 2002). Accessed from <http://www.minuhemmati.net/eng/msp/msp_book.htm> on 30th January 2019

country maximises the benefits of exploiting its oil and gas reserves.²⁶² One major concern for government, the citizens and all stakeholders has been how Ugandans will benefit from the oil and gas sector. Managing stakeholders effectively begins with the stakeholder identification process which has been discussed extensively in the previous chapter and from the discussions it has been concluded that stakeholder identification underpins successful stakeholder engagement.²⁶³

Legal and policy Framework for multi-stakeholder engagement in Uganda's oil and gas industry have been enacted. For example, the Petroleum Acts,²⁶⁴ provide for: state participation in petroleum activities; licensees, contractors and subcontractors to give preference to goods and services which are produced or available in Uganda and rendered by Ugandan citizens and companies; where the goods and services are not available in Uganda, their supply shall be provided by a company that has entered into a joint venture with a Ugandan company; the licensees, contractors and subcontractors notify the Ugandan enterprises of upcoming contracts and the quality, health, safety and environment requirements for the goods and services required for petroleum activities; and the training and employment of Ugandan citizens and the transfer of technology in the petroleum subsector. The National Oil and Gas Policy for Uganda (NOGP) of 2008, is the key document guiding the exploration, development and production of the country's oil and gas sector.

Stakeholder analysis is an important part of developing a stakeholder engagement plan for policy formulation. It helps to pave way for engagement of all the parties, who are involved in research and developing the policy²⁶⁵.

The starting point noted for existing guidance on stakeholder engagement is Partnership Africa Canada's (PAC).²⁶⁶ The PAC review highlights a number of stakeholder engagement guides, and

²⁶² Magelah, P., G., (2014): Local Content in Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes: ACODE Policy Briefing Paper Series, No.28, 2014. Kampala ISBN 978 9970 34 031 6

²⁶³ Chapleo, C., & Simms, C. 'Stakeholder analysis in higher education: A case study of the University of Portsmouth' (2010). Perspectives, 14(1), 12-20. Accessed from <<https://doi.org/10.1080/13603100903458034>> on 23rd April 2019

²⁶⁴ Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.

²⁶⁵ ODI (2014): Planning Tools (2014.). Accessed from<<http://www.odi.org/publications/5257-stakeholder-analysis>> on 28th January 2019.

²⁶⁶ Partnership Africa Canada, 'Stakeholder Engagement and Due Diligence' (DAF/INV/NCP/RD (2012)11).

provides a bibliography with other articles and resources in the “Works Reviewed” section. The list of guides upon which PAC bases its best practices for stakeholder engagement includes: Good Practice Principles for Stakeholder Engagement;²⁶⁷ and Corporate Social Responsibility: An Implementation Guide for Business.²⁶⁸ From its review of this guidance, PAC summarizes the best practices for stakeholder engagement, based on which it suggests an iterative cycle with four phases.²⁶⁹ Conventional approaches to natural resource management usually focus on advices from experts, without including the local stakeholders²⁷⁰. This has changed in recent years, and there are high demands regarding oil and gas exploration and production. Oels²⁷¹ states that it is costly to maintain a good dialogue with the stakeholders, but it is even more costly not have a good dialogue. In addition, it will be a less sustainable solution. Stakeholder dialogue for management leads to growth in social learning and growth of social capital.²⁷²

The extractives sector is governed by government decisions all along its value chain, including the decision to extract, regulation and monitoring of extraction activities, revenue arrangements (royalties, fees and taxes) and fiscal management of revenue resources (allocation and spending). TAI activities in the extractives sector provide information to stakeholders at every stage of the extractives value chain and can be broadly classified as disclosure of information to the public – providing a platform for deliberation – and sharing the information with the political elite.

The information and deliberation interventions are expected to lead to discussions around revenue collection and spending, which contributes to the acquisition of new knowledge, creates awareness, and equips citizens with a channel for engagement with the government and extractive companies. The new knowledge and opportunities to engage with one another should then make civic organising easier, and lead to collective civic action and enhanced bargaining power. The companies and government agencies are then expected to recognise the demand for action and engage with citizens to implement improvements, leading to inclusive policies and services, good governance and, ultimately, development outcomes.

²⁶⁷ World Bank Group (May 2007): Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets. International Finance Corporation (IFC): Washington DC.

²⁶⁸ International Institute for Sustainable Development (2007): Corporate Social Responsibility: An Implementation Guide for Business. Winnipeg, Manitoba Canada R3B 0Y4.

²⁶⁹ PAC Report, ‘Stakeholder Engagement Best Practices’ (2011) on p. 15. PAC Report, p. 15-16.

²⁷⁰ Oels, 2006

²⁷¹ Ibid

²⁷² Ibid.

However, several key assumptions along this causal chain might not hold. First, transparency initiatives are expected to lead to a timely and relevant supply of information, but evidence suggests that countries with low institutional capacity, powerful vested interests and administrative bottlenecks often lack incentives, which could limit reporting and result in failures in implementation of transparency regimes.²⁷³ For example, Under India's Right to Information Act, public officials are required to provide timely information and public documents to citizens. Although this could be a powerful tool, soliciting information remains a challenge. Pande²⁷⁴ mentions 235 reported cases of death, assault and harassment of information seekers during the 2007–2014 period. The second assumption is that supplying information leads to new knowledge gains. This premise ignores contextual factors and the fact that the information disclosed would have to be timely, accessible, reliable and relevant, and the users would need the time and ability to process the information. It is also important that the receivers display an interest in accessing the information to translate it into knowledge. However, evidence shows that information disclosed is often incomplete, incomprehensible and irrelevant to the intended audience.²⁷⁵ At best, this is due to inefficiencies, but in countries where democracy and the freedom of the press are curtailed – as is the case in many resource-dependent countries – this sub-optimal information provision is likely to be by design, not by default.²⁷⁶ The above premise also assumes that the media successfully processes, repackages and disseminates information to the public, thereby influencing citizens' choice in demanding, interpreting and using information. The third assumption is that there are several hurdles to citizens' ability to translate new knowledge and understanding of the problem into collective action. Lack of incentives (rational apathy), high cost of action, uncertainty of benefits, potential repercussions,²⁷⁷ lack of resources, challenges in forming and sustaining a coalition, and other context-specific issues hinder citizens from participating in collective action.²⁷⁸ Fourth, it is assumed that civil society successfully creates political pressure through public

²⁷³ Mejía Acosta, A, 2013: The impact and effectiveness of accountability and transparency initiatives: the governance of natural resources. *Development Policy Review*, 31(s1), p.89–105.

²⁷⁴ Pande, S, 2015: Dying for information: Right to information and whistle-blower protection in India, U4 Brief No. 3

²⁷⁵ Fung, A, Graham, M and Weil, D, 2007: Full disclosure: the promise and perils of transparency. New York: Cambridge University Press.

²⁷⁶ *Ibid*

²⁷⁷ Pande, S, 2015: Dying for information: Right to information and whistle-blower protection in India, U4 Brief No. 3.

²⁷⁸ Marquette, H and Peiffer, C, (2015): Corruption and collective action. Research Paper 32: Birmingham, UK: University of Birmingham. Available at: <<http://publications.dlprog.org/CorruptionandCollectiveAction.pdf>> [Accessed 20 February 2019]; Kosack, S and Fung, A, (2014): Does transparency improve governance? *Annual Review of Political Science*: 17, p.65–87. Available at: doi: 10.1146/annurev-polisci-032210-144356

mobilisation to compel the government to take action against the misappropriation of revenues, and that public accountability mechanisms (e.g. auditing agencies, law enforcement agencies and the judiciary) perform timely investigation and prosecute corrupt officials. However, evidence suggests that resource-dependent countries typically lack a vibrant civil society and public watchdogs.²⁷⁹ The long route to accountability is expected to work through the election process, which would incentivize politicians to act in the interest of citizens, provided that process is free from coercion, fraud and ethnic biases. Again, however, evidence indicates that elections in many resource-rich countries are not fair and that the administrative capacity and incentives required to respond to public demand are weak²⁸⁰.

Hence the causal chain from information disclosure to development is moderated by many contextual factors and relies on multiple assumptions. The effectiveness of transparency interventions could therefore be constrained by intended users' limited ability to process the information, barriers to collective action, weak democratic institutions, lack of media freedom, powerful vested interests, administrative bottlenecks, and lack of incentives in political and bureaucratic accountability mechanisms.

5.3 Conclusion

Chapter five has discussed the findings of this study and the implications of those findings in light of related research. The discussions are based on the findings of the study guided by the study objectives. The key stakeholders engaged in the extractive industries particularly the oil and gas sector were identified in the stakeholder's analysis. These were put into three different types of stakeholders: *dormant, discretionary and demanding*.

²⁷⁹ McGee, R and Gaventa, J, 2010. Synthesis report: review of impact and effectiveness of transparency and accountability initiatives. Available at: <<https://www.transparency-initiative.org/blog/607/synthesis-report-review-of-impact-and-effectiveness-of-transparency-and-accountability-initiatives/>> [Accessed 19 February 2019]; Devarajan, S, Khemani, S and Walton, M, 2014. Can civil society overcome government failure in Africa? *The World Bank Research Observer*, 29(1), p. 20–47; Hickey, S and King, S, 2016: Understanding social accountability: politics, power and building new social contracts. *Journal of Development Studies*, 52(8), 1225-1240, DOI: 10.1080/00220388.2015.1134778.

²⁸⁰ Keefer, P and Khemani, S, 2005. Democracy, Public expenditures, and the poor: understanding political incentives for providing public services. *World Bank Research Observer*: 20(1), p.1–28.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

The primary objective of this study was to analyse the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector. This was aimed at proposing a legal strategy which prioritizes stakeholders' engagement with most severely affected rather than most influential stakeholders in the oil and gas sector. This was based on regional and global best practices in various oil-producing nations.

To carry out this study, the researcher started by identifying key Stakeholders Engaged in the Extractive Industry (oil and gas sector) and key areas for Stakeholder Engagement in Oil and Gas that were presented in the literature review. The researcher examined the existing Legal and Policy Frameworks (Local and International) For Multi-Stakeholder Engagement in Oil and Gas Sector in Uganda.

Then, the researcher formulated the theoretical framework scope with the key areas of focus being: identification of the key stakeholders engaged in the extractive industries particularly the oil and gas sector; an exploration of the existing legal and policy framework (local and international) for multi-stakeholder engagement in oil and gas sector. Finally, the researcher conceptualized the relationship and interactions among the variables informing the study so as to achieve the objectives of the study.

6.2 Conclusion

In conclusion, this study has analysed the legal regime of multi-stakeholder engagement framework for extractive industries in the oil and gas sector in Uganda. This was aimed at proposing a legal strategy which prioritizes stakeholder engagement with most severely affected rather than most influential stakeholders in the oil and gas sector. The stakeholders were identified and categorised into three different types of stakeholders: *dormant, discretionary and demanding*. It was found that range of variables can determine a stakeholder's vulnerability and affect or restrict their ability to actively participate in engagement activities, including age, gender, ethnicity, social status,

livelihood and occupation (i.e. insecure, temporary, low wage employment), level of education, health status (including physical or mental disability), physical isolation (distance, lack of access to transportation), land rights and ownership and level of Marginalisation.

Potentially vulnerable or disadvantaged individuals and groups identified in the affected communities, include: Women, especially widows and female headed households; Children and youth (especially orphans); Elderly; Disabled or chronically ill; Low income households (with incomes below the subsistence level); Minority ethnic groups and tribes, including Balaalo cattle herders; Immigrants and refugees; Sex workers; and People living with HIV/AIDS. Understanding the community group as a key stakeholder within the NOGI is paramount to the success of the industry. This is because the community has a significant effect on the operations and activities of the OPCs. Stakeholder analysis is an important part of developing a stakeholder engagement plan for policy formulation.

6.3 Recommendations

Ministry of Energy and Mineral Development should ensure that effective stakeholders' engagement is carried out. Effective stakeholder engagement is characterized by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities. These new policies on stakeholder engagement are relevant to and interconnected with other new provisions in the updated guidelines, notably on human rights, risk-based due diligence and the avoidance of adverse impacts. "Local communities" are the specific focus of these provisions on stakeholder engagement, as groups that are potentially affected by a company's operations. Workers can also be affected stakeholders.

Ministry of Energy and Mineral Development should enforce the separate provisions in the OECD Guidelines related to an enterprise's interactions with other groups such as shareholders, subsidiaries and related entities, business partners, suppliers and sub-contractors. It is understood that these groups are not the 'stakeholders' intended under the terms of the Guidelines regarding

stakeholder engagement. This has created the debate about multi stakeholder engagement in the extractives industry and legal frameworks that must be addressed.

Ministry of Energy and Mineral Development should ensure continuous stakeholders engagement. Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the project's risks and adverse impacts, and the project's phase of development.

Ministry of Energy and Mineral Development should ensure that there is an independent multidisciplinary body to promote compliance. It can be noted that the only commendable form of stakeholder engagement is in environment sector, where CSOs requested government to establish a multi-stakeholder committee comprised of actors from government, the private sector, religious and cultural groups, CSOs, academia and others to act as an independent multidisciplinary oversight body to promote compliance with environmental conservation tools such as Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA), Environmental and Social Impact Assessment (ESIA)

The MFNP should preserve endangered species of wildlife. Based on preliminary evaluation, MFNP is believed to constitute a critical habitat as defined by the guidance notes to IFC's Performance Standards. There are several potential triggers for this, the most prominent being the presence of what may be the World's last remaining naturally breeding populations of the Endangered Rothschild's giraffe. The key stakeholders to consult within the MFPA include the Uganda Wildlife Authority (UWA), Ministry of Tourism, Wildlife and Heritage, tourism operators, District Governments, Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) working on environmental and conservations issues, and villages within the area.

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